LEGISLATIVE COUNCIL

Monday 7 February 2005

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

EYRE PENINSULA BUSHFIRES

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

That the Legislative Council expresses its sadness at the devastating effect of the 11 January 2005 bushfires on Lower Eyre Peninsula; mourns the tragic loss of nine South Australians in the fires; extends its deepest sympathy to those who suffered the loss of friends, family members, homes, stock and property; commends the selfless and heroic efforts of all emergency services personnel; and pledges its moral and practical support to the communities of the West Coast in their efforts to rebuild, and that, as a mark of respect to the memory of those who perished in the disaster, the sitting of the council be suspended until the ringing of the bells.

I join with the Premier in the other place in moving this motion. The recent Christmas/New Year period was sad, bewildering and shocking. At a normally languid time for South Australians—a time of rest, reflection and simply being with one another—the world was turned upside down. The Boxing Day tsunami brought havoc to millions of people in Southern Asia—a display of the terrible coiled power of this earth. Two weeks later, the elements visited destruction and tragedy on our state.

On 11 January we woke to those ominous, hot northerly winds that every South Australians fears. With awful familiarity, radio stations began broadcasting reports of blazes in the south eastern Adelaide Hills—fires that ultimately were contained by the well-drilled efforts of our emergency services. However, on Lower Eyre Peninsula a fiery orange thunderhead was forming, and within hours its terrible power was unleashed, and a fire cut a swathe through farmlands, towns and hamlets. It was utterly ferocious—a fire that travelled at twice the speed of the fastest blaze recorded in the state's history.

I was able to see the aftermath of the devastation of the fire when, as the duty minister on Eyre Peninsula, I visited some of the affected areas. In some places, the scene resembled that of a Martian landscape, with the intensity of the fire melting aluminium posts, which, I understand, take heat well in excess of 600° celsius. Again, that demonstrated nature's wrath and fickleness. As is often the case, the fire seemed to cruelly pick and choose—this house burned to the ground, the one next door largely untouched; the school at Poonindie scorched as if by a giant blowtorch, the tiny local historic church spared; and the football oval at Yallunda Flat an uncanny oasis of green within many hectares of burned farmland. The destruction of homes, property and stock was devastating and, of course, the smaller scale but more personal losses—the irrecoverable artefacts of memory—were painful: the wedding pictures, the kids' footy and netball trophies, and the cards and presents of another Christmas Day.

Amid all this, South Australians lost nine of their own—nine souls we today remember, honour and mourn. They are: little Jack and Star Borlase of Wanilla; their grandmother, Judy Griffith of Adelaide; a much-loved teacher from Port Lincoln High School, Helen Castle; Jodie Russell-Kay of Poonindie and her children, Graham and Zoe; and the original 'Cockaleechie Kid', Neil Richardson, and his mate, Trent Murnane. I do not wish to recount each of the harrowing stories attached to these names, but we note today that they died while fleeing the flames, while comforting one another and, in the case of the CFS volunteers Trent Murnane and Neil Richardson, while trying to save the lives and property of those in their community. I am sure that all members join me in expressing sincere condolences to the families and friends of those who died in the fires and to everyone on Lower Eyre Peninsula who suffered a loss of some kind on 11 January. You remain in our thoughts and prayers.

It is no consolation to the victims when we say that the fires brought out the best in South Australians. Still, it is true and deserves acknowledgment today. Perhaps the most heroic and selfless actions were carried out by emergency services personnel—both staff and volunteers. These include fire-fighters, police and ambulance officers and State Emergency Services staff. To place your life at grave risk in order to save the lives of others and to risk your life for the house of a neighbour, or the dwelling of a person you may never meet, are acts not merely of courage and dedication but of humanity and love. These people, I believe, demonstrate the highest form of citizenship to which we can aspire.

When we think of the fires, understandably we recall the sorrow of individual losses—the stories of narrow escapes and life-saving efforts. But, for me, what was most striking were the spontaneous, concerted and cooperative actions of Australians—of South Australians—as a people: churches and children, battlers and businesspeople, and governments of all ilk and level. It seemed that everyone rallied around, everyone pitched in and everyone did what they could.

People were stunned by the scale of the damage, both human and material, but, most importantly, they were stunned into action. The speedy, practical support provided by all manner of individuals and organisations was extremely heartening: primary producers sent, unprompted, fodder and meat to West Coast communities; doctors and nurses saved the lives of victims, healed their wounds and eased their pain; teachers repaired their schools and readied their students for the scheduled start of another school year; the Governor, Her Excellency Marjorie Nelson-Jackson, comforted victims; a couple in Sydney, with no apparent connection with the fires, sent a cheque for $5 000; South Australian public servants and ministerial staff worked tirelessly to keep the machinery of the relief effort going; and the work of volunteers at the Cummins and Port Lincoln recovery centres. We also remember the hardworking members of the West Coast Recovery Committee, led by Vince Monterola, and the practical assistance and gestures of support that were many and heartfelt. Together, they showed that, in a time of acute need, we are, in fact, good, caring neighbours.

It is important to note, too, that honourable members on both sides carried out highly commendable work. In particular, I thank cabinet colleagues, especially the Minister for Emergency Services, for their sterling efforts. The placement of at least one minister on Eyre Peninsula at all times, with cabinet-delegated powers, was important in getting things moving quickly and efficiently. Ministers oversaw and administered a number of government initiatives, including:

- the 1802020 West Coast hotline number;
- the $6 million South Australian government emergency assistance fund;
- a range of financial assistance grants; and
- the waiving of water charges, stamp duty and other fees.

I would also like to recognise members opposite and in another place and, in particular, the local member for

Flinders, Liz Penfold, who was closely involved in these efforts.

South Australia's worst natural disaster since the Ash Wednesday fires of 1983 was a shocking and tragic event. Unstoppable, capricious fires took the lives of nine South Australians—five adults who gave ceaselessly to family, friends and fellow citizens and four lovely children whose smiles and great promise have been taken away from us.

By speaking to and passing this motion today, this council extends its sincere condolences to the people of Lower Eyre Peninsula and, with compassion and caring, we pledge our continuing support. This terrible disaster has unmistakably brought the people of this state closer together and I have no doubt that, amid the sorrow, the characteristically resilient communities of Eyre Peninsula will rebuild and rebound. The date of Tuesday 11 January 2005 will glow in our collective memory for a very long time.

The Hon. R.I. LUCAS (Leader of the Opposition): It is with sadness that I rise on behalf of Liberal members to support the motion that has been moved by the Leader of the Government and to endorse and support his comments. I indicate at the outset that I intend, as leader, to speak briefly, and I have asked my colleague the Hon. Caroline Schaefer, who as all members will know has many years of personal and local knowledge of Eyre Peninsula and many of the families and communities that have been significantly impacted by this tragedy, to speak in more detail on behalf of Liberal members.

I say at the outset that, formally, Liberal members obviously extend our deepest sympathy to all who have been impacted by this tragedy. Some of us in this chamber who are familiar with the South-East—a number of members on all sides of the council—have personal knowledge and recollection of the long-term scars (physical, social and emotional) that significant tragedies just over 20 years ago impacted on the people and the community of the South-East. We know that initial significant issues have to be resolved, and we commend governments—federal, state and local—and all who have been associated with the initial relief efforts. But, if there is a message, it is that there is a long-term need for assistance and, certainly, we can assure the government that members on this side of the chamber, wherever we can, will do what we can to assist state, federal and local authorities not only to cope with the initial issues that have to be coped with but also the long-term issues that will need to be coped with.

As I said, we congratulate all who have been involved so far—and the Leader of the Government has acknowledged many. In particular, I acknowledge the work of the local member, Liz Penfold, and, more importantly (I am sure she will not mind), the hard work of her staff, because in the early days Liz Penfold's office and her staff were an initial port of call for people who required assistance, and they continue to work with the appropriate authorities to provide whatever help they can. I acknowledge publicly the work that the local member and her staff have undertaken. As I said, I intend to speak only briefly and to ask my colleague the Hon. Caroline Schaefer to speak more fully. I commend the motion to members and I again extend our deepest sympathies to all who have been impacted.

The Hon. SANDRA KANCK: I was on holidays in Tasmania—in fact, I had been there only a couple of days—when the fire broke out, and I did not even become aware of its existence until four in the afternoon. By the time I arrived back here the damage had been done and a lot of the clearing up had started. Nevertheless, it was a tragedy, and there is no doubt about that.

My colleague the Hon. Ian Gilfillan last week spent two days on Eyre Peninsula looking at the damage. I think that he will speak about what he saw; and, within the next few weeks, I also intend to visit. On behalf of the Democrats, I express my respect and admiration to all those people who were involved in containing the fire, to those who were involved in the cleaning up afterwards and providing support to the victims of the fire and to those who are still involved in that process. To those who lost their loved ones, to those who suffered property damage and destruction and to those who experienced trauma, on behalf of the Democrats I offer our profound sympathy.

The Hon. CAROLINE SCHAEFER: This will be something of a difficult speech for me because, in fact, I know all but one of the families who had someone die in the fire and many of the land owners whose lives have been irreparably changed because of an act of nature. The important thing to remember is that, particularly by the Tuesday, the fire was unstoppable. As the Hon. Paul Holloway said, the fire brought about great bravery, stoicism and courage from people over there; and, indeed, great charity and compassion from the rest of South Australia and Australia.

I first visited the area on the Friday after the fire and I was given an overview. I went back the next week to speak with the people I knew on the ground and, as I have said, the stories I was told are particularly heroic. As always, I was deeply touched by the fact that, in spite of many people having lost almost everything, they still had the time to stop and talk to me and to show me the things that they felt I needed to see. Forty seven thousand stock were killed in the 827 square kilometres of land which was destroyed. That is almost half the livestock on Lower Eyre Peninsula.

Half the livestock for that area were either killed in the fire or had to be destroyed in the ensuing two or three days. Many of the sheep in particular that people had believed had survived later had to be destroyed—even after they had been agisted—as a result of smoke damage to their lungs and delayed burns on all parts of their bodies. Fortunately, that time appears now to have passed but, I think, perhaps that was the most gut-wrenching task many farmers had to do. In many cases they had to go out straight after narrowly escaping with their own lives and destroy stock; and in some cases studs, which had been bred up over many generations, were completely destroyed.

Of course, that breeding stock is irreplaceable, and it has been very difficult for a number of the stud owners to cope with what has happened. I was told by the person involved (someone whom I have known since he was a boy and with whom I have been involved through the sport of showjumping) that all he could do was save his three best horses and then shelter in the house. Straight after the fire he had to shoot all his other horses and then his stud sheep, and all his rams. All that remains on that property (which is a Land Care property) is the house and two sheds—no fences, no trees and, certainly, no grass. The stories of people who narrowly escaped with their lives make me realise that it is a miracle that, in fact, we did not lose at least 50 people. I spoke to people who had to lie in the middle of a road to save their own life; who had to hide in ditches to save their own life; and, in a couple of cases, it was only that the fire was so

intense that it formed a fireball and jumped over them that they are alive to tell the tale today.

As the Hon. Paul Holloway has said, the generosity of South Australians and Australians has been remarkable. People are still going over there and helping with fencing and replacing many of the buildings, in particular the fencing, and I am sure that aid will continue. Many of the townspeople from Wanilla, Wangary and North Shields also lost their pets. Many people lost their pet dogs, cats and chooks, and all the things that make up part of being a family and living in the country.

But for me, after all those things, after the loss of human and animal life, the most disturbing and distressing thing is the absolute destruction of the soil itself. I think those of us who farm the land understand that we have a great affinity with that land. I read yesterday that it is now estimated that, in the most intense parts of the fire, it reached 2000° Centigrade. It was a fire six times more intense than Ash Wednesday, and I saw places where the sand had actually turned to glass because of the intensity of the heat. Coaxial cables have been melted a metre under the ground. I saw a new poly water tank, which had water in it, melted as a result of the intensity of the fire. I do not believe that any one of us has any idea about the long-term damage to the bio-organisms and the ecology of that soil. I think it was so intense that it must have virtually sterilised that soil and, certainly to walk on it and look at it, it is destroyed; it is just like powder.

As the Hon. Paul Holloway said, a trip from Edilillie to Wangary is reminiscent of what I imagine a nuclear holocaust to be. On the day I was there, the only thing that could be seen, other than drifting sand, was someone's field bin, which was full of seed for this year, still smoking. Everything else was utterly destroyed. I think it is that long-term restructuring of the soil where governments can and must be involved. I have written to both minister Hill and minister Campbell in the federal government because I believe there is an urgent need for more natural resource management funding. There is an urgent need to draw up a restructuring program which must involve regeneration of native bush and which must involve fencing off where the heritage scrub was—because there is not much of it left now.

I will not name one man who is very distressed. He is 60 years old and he told me that he has spent the past 40 years systematically revegetating his property. He started with small patches of native vegetation and slowly linked them up. He was able to show me the map and how he had done it over that time. His property now has not one blade of grass, not one fence post, and certainly no native vegetation; neither does it have a house, sheds or farming plant. He just said to me, 'I cannot start again. I cannot start again by myself' and obviously he cannot. They are the jobs that governments will have to do because people will be too busy and too spent trying to rebuild their lives and trying indeed to recapture some of their soil.

I have also put in a plea for some sort of subsidy for probably the only two known ways of stopping drift under normal circumstances, and I do not think any of us know whether those two method will, in fact, work under these circumstances. Normal light drifting sandy soil has recovered remarkably in recent years with clay spreading and a new system called delving, which is a machine that goes into the subsoil and lifts clay to the surface. Those methods of stopping normally light soil are very expensive. People will not be able to afford them on a broad-scale basis, but I believe that we must provide assistance over the next six months.

It is very urgent that we somehow have the ability to direct seed, roadsides and shelter belts and that we are able to encourage people. Some of the scrub that has burnt, people will readily tell you, is probably scrub that should not have been left, and there are other areas that were cleared that they would now like put under scrub. So, proper plans will need to be drawn up because, believe me, it is a completely blank sheet to start with.

These are the long-term issues that are confronting Eyre Peninsula, and I cannot stress enough that the area of Eyre Peninsula we are talking about is the lush area. It used to be the green area. It is the wealthy end of Eyre Peninsula as far as returning good grain and good stock. So I suppose it is even more devastating to see that country with absolutely nothing on it. I cannot stress enough that, when people tell you there is nothing left, there is nothing left. I saw a sheet of corrugated iron off what used to be the roof of a house, except that, when you touched it, it just disintegrated. It was powder.

My plea is for governments of all descriptions—and I commend the efforts that have been made so far—not to think of this as so often happens with any other sort of death whereby we rush and comfort the people in the short term and forget them in the medium and long term. It is the medium and long term which must be returned to Eyre Peninsula and which will require generous funding from all governments.

I want also, as has been previously done, to commend those people, particularly the volunteers, who risked their lives trying to save other people and other people's homes. Certainly I pay tribute to the CFS, the SES and all of the formal bodies, but I particularly pay tribute to the farmers with their little old farm trucks and perhaps a water tank on the back, many of whom, including Trent Murnane and Peewee Richardson, went to places that they perhaps should not have in order to save family and friends.

I also pay tribute to the government for its efforts, particularly the PIRSA staff on Eyre Peninsula. It is very difficult to single out people because whenever you do that you miss someone. I pay tribute to Monica Dodd, the rural counsellor for that region, who I think has possibly only just started to get some sleep again, and to all the people who rallied with food, sorting out the clothing and the donations that were sent over there. I congratulate Liz Penfold, her husband Geoff and her staff on their tremendous efforts for her constituents in their time of need.

It has been a concerted effort. Many of the people were still in shock when I was there. The first night I was there, I attended a farmers' meeting at Koppio. For many of them, it was the first time they had been off their property since the fire. I think perhaps that was the wake-up call for me to see so many people whom I knew or knew of—and almost all of them either had burns dressings or orange eyes from having had drops put in their eyes as a result of smoke damage—yet all they wanted to talk about was their neighbours. Not one person said to me, 'I am worse off than anyone else.' Every single one of them said to me, 'I am not too bad: it is my neighbour who is worse off.'

I reached the stage where I started asking, 'What did you lose?' One woman said, 'I was not too bad; I was able to shelter in the front end of the house and only the back was burnt.' That is how close it was for many of those people, yet they were still thinking about their neighbours. I am very confident that they have the stuff which is necessary to make

the recovery, but on behalf of the Liberal Party not only do I offer our condolences but offer a personal pledge that I will not forget them and I will not stop nagging for the type of long-term relief that I believe Lower Eyre Peninsula must have if we are to see a thriving farming community there again.

The Hon. KATE REYNOLDS: I, too, offer my sincere condolences to the people who lost family, neighbours, friends, workmates, stock, property and homes in the 11 January fires on the Lower Eyre Peninsula. As well as acknowledging the many hundreds of public servants and other professionals who made a first-class response to the many and complex needs in the area, I take this opportunity also to pay my respects and offer my thanks to the thousands of people who volunteered their time and energy and who have given their own resources to assist the individuals, families, organisations and whole communities affected by the fires. To many of us, volunteering and community service are central to community life, and particularly so in country areas.

Other members have spoken about the enormous contributions made by firefighters and other emergency service volunteers: their commitment, dedication and professionalism in incredibly difficult circumstances is recognised and very much appreciated. The huge emotional toll on everyone involved and the enormous logistical effort required during the days of the fires and then in the days, weeks and months afterwards cannot be overstated. Battling the fires, making properties safe, caring for those people who lost their homes, family members, friends and workmates, and then helping families, businesses and communities to rebuild takes a mammoth commitment.

Volunteers have been involved from the moment the first sirens went and will continue to play a central role in every activity associated with recovery and rebuilding, from the provision of welfare services, revegetating programs, rebuilding of infrastructure and the revitalising of energy for community events once the first wave of urgent work has been done. We all recognise that the work of governments at every level must and often should be supplemented and extended by the work of volunteers. The response to these devastating fires has shown that volunteers—people who come from all walks of life bringing a myriad of skills and ideas—are integral to community life which we hold dear in this country.

As we would expect, people from all over South Australia have given their time, skills and personal resources. As the Hon. Caroline Schaefer has so eloquently and insightfully highlighted, some have helped the family down the road, others have travelled from across the state to rebuild fences, counsel victims or prepare meals. Some put their own lives at risk to save the property or, indeed, the lives of others. All have worked not for their personal gain but to help others in need. Many of these volunteers have taken time off from their paid work; and many employers, recognising that business also has a role to play in supporting communities, have cheerfully supported their employees in whatever way possible, and I thank them for that.

Many hundreds of people have been involved in organising the collection and delivery of household goods and equipment needed for clean-up and rebuilding. Thousands of people have organised and participated in fundraising events in venues far away from the fire ravaged lower Eyre Peninsula, ensuring that some of the much needed funds will be available to rebuild homes, restock farms, rebuild businesses and community facilities and provide much needed support and advisory services. Other volunteers later this year will be delivering seedlings or travelling across the state to participate in replanting programs to ensure that, where possible, natural resources as well as the emotional and physical resources are able to regenerate, in time.

Even following so closely after the massive community response to the tsunami in Asia, the spirit of volunteering—of contributing one's own free will, one's time, energy and skills and of giving, whether of money or goods—is alive and well not just in South Australia but also in Australia in this time of personal and community tragedy, and that deserves recognition. Like the Hon. Caroline Schaefer, who has put a very persuasive argument for this, it is my hope that the goodwill and spirit of personal generosity and the very good efforts of government agencies, businesses and not for profit organisations continue with as much energy in the months and years ahead, because there is no doubt that the personal and community recovery after such emotional, physical and financial devastation takes much time and significant resources long after the spotlight has moved on to other events, so I indicate my support for the motion.

The Hon. A.L. EVANS: Family First supports the motion. After listening to the Hon. Caroline Schaefer, I was stunned and moved by her report from her perspective as a person with intimate knowledge of the area and the devastation of the fire. My heart goes out to the community, especially those who lost loved ones. My plea to the government is that it will do all it can, pay whatever price is necessary to restore the area to its former position and do all in its power to bring healing to the bereaved and injured. As a party we have encouraged our members to help in practical ways and give emotional support. To the people of the area I say, 'You have our prayers.'

The Hon. NICK XENOPHON: I join with my colleagues in supporting this motion. This most terrible event has brought out the best in our community. I join my colleagues in extending my heartfelt condolences to those who have lost loved ones and my sympathies to those who have lost property, stock and priceless memories. I pay tribute to the volunteer firefighters and those in the community who risked all to help their neighbours. I know from friends of mine who live in the lower Eyre Peninsula a few kilometres out of Port Lincoln and who were spared by just minutes from the fire what has gone on there, how raw the emotions are and the extent of the devastation. And I have been moved by the stories, not just of heroism but also of selfless goodwill in our community for those who needed assistance.

As massive as this natural disaster is, it is also a monumental environmental challenge, and I hope the government heeds the very wise words of the Hon. Caroline Schaefer, who has an intimate knowledge of this land, that something needs to be done. The way the very commendable and laudable assistance that has been given to the people of Eyre Peninsula has been coordinated has been impeccable, but it is important that it be followed through with medium and long-term support to repair the massive environmental damage that has occurred to a valuable and priceless part of our state.

The Hon. IAN GILFILLAN: I add my support for the motion and remind members that, as the Leader, Sandra

Kanck says, I was in that area for two days last week. My personal condolences, and I am sure those of every member, go to the families who have lost loved ones. It is very difficult even to imagine the anguish of someone who has lost members of their family with no expectation or time for preparation. It is extraordinarily heart wrenching to imagine, and to think with compassion about those people.

The other people for whom it is not perhaps quite so easy for non-farmers to relate to directly are those who, in many cases, lost what amounts to their lifetime's work. In some places where I stood—and White Flat is one place which is starkly embedded in my mind—I imagined my own role, having farmed on Kangaroo Island for 50 years. You cannot compile a list of all the things that are so precious to you, because it is part of your soul. I stood in those places and saw twisted galvanised iron and burnt out motor vehicles, where no trees remain alive, no garden, plants or animals—everything was black. The only difference was that it was not totally black: it almost looked like rolling smoke again, which is rather horrifying. But, the reality is that it was dust in the form of top soil blowing away. Both days I was there were strong windy days, and it was a viciously unpleasant situation to be in. I had sympathy and great admiration for those volunteers and others who were not necessarily volunteers, such as the farmers themselves and their families, who were at that stage erecting fences to have somewhere to hold stock when the time came.

My condolences also go to those people who have lost their farms, their accumulated lives and memorabilia. The emotional tearing from that is very hard to comprehend—it will take years, if ever, to heal. My condolences also go to the surrounding community, many of whom are even now, weeks after the fire, in a palpable state of stress and anxiety. Many people who are not directly affected by the fire are still suffering, and I think it is reasonable to embrace them in our expression of condolences.

I endorse all the remarks that have been made about understanding and caring, particularly the analysis by the Hon. Caroline Schaefer. However, I feel we have to make an undertaking that those people who have died and those who have suffered will not have done so—and it sounds so trite—in vain, because there are lessons to be learnt from the experience and the character of that fire. It is ridiculous to think that this was a one-off event and that we will patch it up by repairing that area. The fact is that there is nothing to guarantee that a similar fire with similar circumstances could not happen again somewhere else. We owe it as a mark of respect and for a memorial to those people who have suffered and continue to suffer that we undertake to explore the reasons for the bushfire and the lessons to be learnt to try to ensure that, as far as is humanly possible, another community does not have to suffer such a horrific tragedy as happened on Eyre Peninsula on 11 January.

The PRESIDENT: I make a brief contribution in support of all the other contributions made today. I heartily endorse the sentiments, sympathy and condolences, particularly in relation to the farms and the re-establishment of farming, that have been expressed by all other speakers. However, I make the personal observation that we should not forget those people who were not farmers but who lost their life savings and their life's work. In the coming months, they will require the sympathy and the help of governments and communities to the same extent as will the farmers. That is not to detract from the tragedy that has happened to the farmers and their obvious need for assistance, but a lot of other people were affected by the fire, such as those living in caravans, whose families have been devastated. As we stand to pass this motion in silence, we should send our condolences and our thoughts to all the people who were affected by the tragic bushfires on the peninsula.

Motion carried by members standing in their places in silence.

[Sitting suspended from 3 to 3.15 p.m.]

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2003-04—
- Corporations—
  - Adelaide
  - Burnside
  - Campbelltown
  - Holdfast Bay
  - Marion
  - Norwood, Payneham and St. Peters
  - Port Adelaide Enfield
  - Port Augusta
  - Tea Tree Gully
  - West Torrens
- District Councils—
  - Barunga West
  - Berri Barmera
  - Coorong
  - Copper Coast
  - Gawler
  - Grant
  - Kimba
  - Lower Eyre Peninsula
  - Mallala
  - Mid Murray
  - Mount Remarkable
  - Murray Bridge
  - Naracoorte Lucindale
  - Northern Areas
  - Peter Borough
  - Robe
  - Wattle Range
  - Yorke Peninsula
- Regional Council—
  - Port Pirie.

CITIZEN'S RIGHT OF REPLY

The PRESIDENT: I refer to my statement on our last sitting day, Thursday 9 December 2004, in which I advised that I had received a letter from Mr Tim Bourne requesting a right of reply in accordance with the sessional standing order passed by this council on Wednesday 15 September 2004. However, as there was not one clear sitting day before the matter could be tabled, I announced my intention at that time to allow the statement to be incorporated into *Hansard* on the next day of sitting.

I previously read to the council Mr Bourne's request of 8 December 2004, in which he considered that questions about his appointment to the Parole Board had 'a significant potential to not only adversely affect his reputation but to cause him injury in both his profession and as appointee to the position of Deputy Presiding Member of the Board'. Mr Bourne believed that 'the questions are also likely to undermine public confidence in the Parole Board'.

Following the procedures set out in the standing order, I have given consideration to this matter and believe that it complies with the requirements of the sessional standing

order. Therefore, I grant the request and direct that Mr Bourne's reply be incorporated into *Hansard* without my reading it.

On 24 November, in Question Time, three members of the Legislative Council (the Hon. A. Redford, R. Lawson and R. Lucas respectively) asked questions of the Hon. T.G. Roberts (Minister for Correctional Services) under the topics of Parole Board and Political Appointments. I was named in those questions. The questions were about my appointment by the Minister, pursuant to the Correctional Services Act 1982, to the position of Deputy Presiding Member of the Parole Board of South Australia.

The series of questions asked about me conveyed the following inescapable inferences, namely, that:-

1. my appointment to the position (described by Redford as a plum job) was the result of mateship with the Attorney-General rather than merit.

2. my appointment to the position was political, made without consultation with relevant and appropriate persons.

3. I am a person who would, in accepting appointment to public office, be prepared to compromise the standards of that office for personal financial gain by giving an undertaking to curb the Chair's (sic) public statements where criticism of the government was in fact warranted.

Not only is complicity in such conduct a complete anathema to me as a legal practitioner, but the abuse of public office as suggested might also constitute a criminal offence.

Further, the questions asked, and the inferences conveyed, are likely to result in significant damage to my reputation and professional standing, and to undermine public confidence in the Parole Board.

The questions were, however, based on a fundamentally false assumption by each of the members, namely that my appointment was in some way (and probably closely) related to my solicitor/client relationship with the Attorney-General.

The facts, relevantly, are as follows:

1. At no time prior to these questions being asked did I speak to the Attorney-General or any member of his staff, directly or indirectly, about my preparedness to accept a nomination to the position.

2. Nor did I speak personally to the Minister for Correctional Services.

3. I was asked by the Presiding Member, Frances Nelson QC, to agree to my name being put forward for consideration by the minister. I did not seek out the nomination for the position to which I have been appointed. Ms Nelson telephoned me and asked me to agree to make myself available for nomination and, after giving the matter some consideration, I acceded to that request. I think it highly unlikely that Ms Nelson was influenced in her approach to me by the Attorney-General, the Minister for Correctional Services or any other politician.

4. Mr Redford's reference to the position of Deputy Presiding Officer being a plum job suggests that it carries remuneration disproportionate to the time and effort required to carry out its tasks. My understanding of the position is quite the opposite, taking into account the disruption to my work as a lawyer in a busy private practice. Nonetheless, I acceded to Ms Nelson's request out of a willingness (shared by most legal practitioners) to contribute to our system of justice, particularly in the area of criminal law, irrespective of the financial reward attached to the position.

5. I most certainly did not accede to Ms Nelson's request in the expectation, hope or understanding that she would thereby 'curb (her) public statements' about the government's performance in the area of correctional services, mental health and parole. I am confident that any such understanding would have been sorely misplaced.

I have written to each of the members to express my concerns and ask that the correct facts be put on the public record. Members Redford and Lawson appeared to accept my statement of the true facts but declined my request in any event. Member Lucas did not respond.

The Hon. A.J. REDFORD: Is a copy of Mr Bourne's statement available to us all?

The PRESIDENT: It has been tabled and will be incorporated in *Hansard*. The usual procedures will apply: a copy will be given, and the Clerk will provide you with one if necessary.

QUESTION TIME

UNDER TREASURER'S CONTRACT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the minister representing the Treasurer a question about the Under Treasurer's contract.

Leave granted.

The Hon. R.I. LUCAS: The opposition has been advised that, on 11 August last year, a five-year contract extension was signed by Premier Mike Rann and Under Treasurer Jim Wright, and that contract was for five years, commencing on 27 September 2004. The opposition also understands that this contract was contained within a confidential minute to cabinet from Executive Council, which was signed by Treasurer Kevin Foley on 1 September 2004 and by Premier Mike Rann on 3 September 2004. This confidential minute to cabinet and Executive Council included the following recommendation:

That cabinet recommend the reappointment of Mr James Wright for a five-year term with effect from 27 September 2004.

The opposition further understands that that confidential minute to cabinet outlines in the background that, in accordance with the three months period of notice of the intent to reappoint afforded to Public Sector Management Act executives, Mr Wright has been informed of the intention to reappoint him to the position and had signed a contract pending reappointment by the Governor.

Members will also be aware, I am sure, that significant concerns have been expressed about the performance of the Under Treasurer from, amongst others, senior levels of the Public Service and, indeed, some ministers. As a former treasurer, I know that that is not always surprising, but I understand also that some significant people who advise this current government had also strongly expressed concern about the performance of the Under Treasurer.

Despite this contract having been signed for a five-year term, the *Government Gazette* of 30 September indicated that Mr Wright had been provided with a further three-year term from September 2004—not the five-year contract that had been agreed to between Mr Wright, the Premier and the Treasurer. The opposition, through freedom of information, has been able to have a look at that particular contract (that is, the three-year contract that is in existence at the moment), and clause 2.3 sets out the following:

The parties agree that on or after the 31st day of March 2006 the Premier may by the giving of one month's notice in writing elect to terminate the Agreement provided that the Chief Executive is to be appointed to another position in the South Australian public sector with Chief Executive responsibilities that is to be remunerated at a level not less than that payable from time to time under this Agreement and for a term not less than the then remaining term of this Agreement.

My questions to the Treasurer are as follows:

1. Why did the government originally sign a five-year contract with the Under Treasurer, Mr Jim Wright, and then decide that Mr Wright would not be offered a five-year contract and would be offered no more than a three-year contract extension?

2. Did Mr Wright previously have an equivalent clause to the clause 2.3 in his current contract, and did the former under treasurer, Mr Gerard Bradley, have a similar clause within his contract and, if not, why has the Rann government included this clause 2.3 into Mr Wright's contract which gives him a fall-back position after the next election at a rate

pay equivalent to or higher than the position of Under Treasurer should he be appointed to another position in the public sector?

The PRESIDENT: Before the minister answers that question, I direct him not to refer to confidential cabinet documents. On the last occasion we met I gave a ruling about cabinet documents and their standing in the council. I suggest that, with respect to information provided to the opposition under freedom of information, the minister makes his own decision and uses his judgment with respect to the questions regarding the contract. I ask members to recognise the standards of the council, and that confidential documents of cabinet are not the subject of questioning. The minister has a range of questions to answer—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Well, people call a point of order and I rule on it. I give a ruling order about the precedence, standards and statutes of Erskine May.

The Hon. R.I. LUCAS: I rise on a point of order, Mr President. Will you please refer to the standing order which prevents a question being asked in relation to leaked cabinet documents?

The PRESIDENT: Members can ask a question, but the honourable member referred to a confidential cabinet document. I have asked the minister not to refer to the cabinet document. Also, in his explanation the honourable member indicated that he had information that he had got from freedom of information, and I have directed that that information is clearly legitimate. However, with respect to confidential cabinet documents (and we went through this on the last occasion we sat) I did read out the precedent for the honourable member. I do not have it with me at the moment, but I am sure that the Clerk will provide the honourable member and me with it within seconds.

The Hon. R.I. LUCAS: I rise on a point of order, Mr President. I am happy to take that on notice or allow you time to provide it to me and other members but, in due course, could you provide to members a copy of the standing order which prevents questions being asked in relation to leaked cabinet documents?

The PRESIDENT: I read this into the *Hansard* on a previous occasion, but Erskine May states:

> . . . seeking information about matters which are in their nature secret (e.g. cabinet decisions), that is, in respect to any decision—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order! I continue:

> or Crown Law advice to the government.

In respect of the specific question asked by the Leader of the Opposition about what standing order prevents his asking a question: there is no standing order but, certainly, there are standards. The honourable member can ask the question, but it will not bring it within the standing orders or the precedence of the council. My job is to uphold the practice, protocols and procedures of this council and, in those efforts, try to maintain the dignity of the council at all times. Minister, did you want to answer?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will take account of your ruling, Mr President, and I will refer those questions to the Treasurer and bring back a reply. The only comment I could make is that it was my recollection that, around about this time, the government made some change to the length of contracts of all CEOs. That is a possible explanation, but I will get a considered reply on that matter in relation to the—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, as I said, the policy was changed around about that time, but I will—

The Hon. R.I. Lucas: The Treasurer did not know about that change?

The Hon. P. HOLLOWAY: It was made around about that time. As I said, that was my understanding. I will refer the question to the Treasurer and bring back a reply.

COURTS CLEARANCE RATES

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question on the subject of court delays.

Leave granted.

The Hon. R.D. LAWSON: In February last year, Man Bun Hung of Auldana was killed by stabbing, and Mau Tran has been accused of his murder. Mau Tran appeared in the Supreme Court in January this year before Justice Margaret Nyland on a bail application. The judge indicated at that stage that she could not guarantee a trial before 2006. The judge said:

> I am particularly concerned about the fact there will be a delay of at least another year before this matter comes to trial, given the shortage of judges and courtrooms currently available.

About 10 days ago the Productivity Commission released its latest report on government services. It revealed that the clearance rate—namely, the measure of whether a court is keeping up with its workload—of the South Australian Supreme Court is only 66.7 per cent—by far the lowest in Australia. In New South Wales, the comparable figure is 98.2 per cent; in Queensland, Western Australia and Tasmania the figure is over 100 per cent.

The clearance rate in the criminal division of the District Court of South Australia is also the lowest in Australia. The clearance rate in that court is 77.1 per cent when all other states are over 90 per cent, and two of them are over 100 per cent. My questions are:

1. Is the Attorney-General concerned by the clearance rate in the civil and criminal jurisdictions in both the Supreme Court and District Court?

2. What action has the government taken to address this issue?

3. Is the Attorney-General's degree of interest in resolving these matters fairly reflected in the fact that during his regular meeting with the Chief Justice of the Supreme Court the Attorney-General reads *The Advertiser* form guide?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): That last comment is quite pathetic. I am pleased the question has been asked because it will give the Attorney-General an opportunity to answer—

Members interjecting:

The Hon. P. HOLLOWAY: This was part of the gossip that the Leader of the Opposition led out of Kate Lennon during the select committee.

The Hon. R.I. Lucas: He has admitted it!

The Hon. P. HOLLOWAY: It is not quite as the leader says. It is not for me to describe it: I will leave it to the Attorney-General. But, if that is the sort of pathetic question the deputy leader can ask, then there is not much hope for him. Those figures in relation to clearance rates were given quite widespread coverage in the press, and I notice comments by the Chief Justice and the Attorney-General in relation to those matters. In particular, the Chief Justice said

something along the lines that there was need to improve rates in the Supreme Court. One would hope the courts would be able to do that. I do not think there is need for any further comment, but I will leave it up to the Attorney-General.

The PRESIDENT: I ask the minister in future not to refer to proceedings of select committees when he is answering questions. Sometimes one can get irate when answering questions, but we need to maintain the dignity of the council at all times.

WATER SUPPLY, PEAKE

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about water supply at Peake.

Leave granted.

The Hon. CAROLINE SCHAEFER: Last week the Leader of the Opposition and I visited a group of farmers in the district of Peake in the Murray Mallee. They have had their livelihoods severely affected by a new irrigator in the district, whose taking of water has dropped the watertable in an alarmingly short number of months by some 20 feet. I hasten to add that the irrigator in question has done so perfectly legally because the minister announced, I think in about March last year, that he would investigate whether proscription was necessary for ground water in that region. However, he took the unusual step of not announcing at the same time a moratorium on any further irrigation development. It is the first time of which I know that the minister has not announced a moratorium on any further development at the same time as his announcement to investigate proscription, and so a window of opportunity has been left for rampant development in that time.

Strangely or fortuitously—or something—just two days after the Hon. Rob Kerin and I visited Peake, the minister announced that he will be introducing a temporary moratorium on new irrigation and commercial and industrial water use in the region for up to two years. Why did the minister not announce a moratorium on further irrigation development at the same time as he announced his intention to investigate proscription in March last year?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I understand the frustrations people have in sharing a common resource, particularly when one neighbour's activity impacts on another. I will refer the question to the minister in another place and bring back a reply.

CORRECTIONAL SERVICES

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the Productivity Commission's report on government services.

Leave granted.

The Hon. G.E. GAGO: I read with interest and some amusement a media release from the shadow parliamentary secretary for correctional services last week. The shadow parliamentary secretary used various figures from the most recent Productivity Commission report on government services in yet another clumsy attempt to embarrass the Rann government. I recalled last week that around the time of estimates the shadow parliamentary secretary misunderstood reported figures, and embarrassingly he had to reissue a media release a few hours after his first one with the figures corrected. Has the shadow parliamentary secretary embarrassed the government with these figures, or has he simply put his foot in it yet again?

The Hon. T.G. ROBERTS (Minister for Correctional Services): It is at about this time in the political cycle in the lead-up to an election that shadow parliamentary secretaries and shadow ministers earn their keep by attacking the government—sometimes in a constructive way—and it makes the government look at its activities, activity levels, its efficiency and effectiveness and at some of the things that it is doing. In relation to some of the attacks on the current government, they are very thin indeed. There are and always will be difficulties in the correctional services system because of the nature of the way in which the portfolio has to be administered. It is not an easy portfolio.

The people with whom you are dealing in the prison system are not easy to deal with and a number of aspects are associated with the management of correctional services. When constructive suggestions are made by the opposition (which does happen from time to time), you do take them on board and look at them in terms of changed operational procedures perhaps if the suggestions are good ones. However, unfortunately there are times when oppositions have to use very flimsy evidence, particularly statistics which have appeared from time to time to present a case which might attract some sort of public attention, and the honourable member has achieved that. He put out a press release and he was able to argue a case based on percentages which made his case look very effective.

When you are talking about percentages in terms of the size of the correctional services administration in South Australia, you have to deal in numbers to get a reasonable guess at what is going on inside the portfolio. The issues that the honourable member raised in his statement included South Australia's having the highest rate of deaths from apparent unnatural causes in prisons among the five jurisdictions that reported this figure. Whilst our rate of 0.4 per 100 prisoners is the highest of those reporting, it needs to be noted that the actual number was just two deaths. Any death in custody from unnatural causes is something that all governments take heed of.

In relation to percentages, when people do comparisons with other states, the way the figures are concocted tends to make our correctional services system look bad. Most press releases and most opposition reporting try to highlight serious problems or problems within the correctional services system that do need change but, if you look at the number of unnatural deaths in South Australia in this term compared with what has happened in the past (and I do not want to be too negative and dwell on the figures from previous administrations), you see that the figures do not warrant any form of attack by way of comparisons with other states. We are improving as a small state, where even low figures such as two deaths can look high in percentage terms.

We are improving this figure, and this year the Productivity Commission report shows that this figure is the lowest it has been in the last five years. It is less than one-third of the 0.45 per cent it was in 2000-01 under the previous regime. I will not put out press statements and call in television cameras to present those figures.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: The press release we put out was in anticipation—and we were right—of a press release

being put out by the opposition to show how the figures would look bad. The shadow parliamentary secretary highlights South Australia's escape rate. Again, our small number of prisoners means that a single escape—or two, as it was in this reporting period—can have a big impact in percentage terms. It pleases me that the number of escapes is the lowest in South Australia in the past decade. Again, contrast this with the previous government's performance in 1994-95, when there were 34 escapes. We have managed to reduce this by a factor of 17, a pretty remarkable event for our correctional services system, and I congratulate—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: If the Bannon government had problems with its system, it was a management problem of the day, and I am sure that the ministers and government of the day moved to fix those problems.

In relation to the education and training rate, the shadow parliamentary secretary then states that South Australia has the second lowest secondary school education training rate for prisoners in Australia. The Productivity Commission uses four different categories to come up with a total for prisoner and offender education training rates, and the rates for the other three—higher education, vocational education and training and pre-certificate level 1 courses—are above the national average in South Australia, so in only one aspect we fall below the average.

The shadow parliamentary secretary is really scraping the barrel in using just one out of the four figures, when every other figure in this category shows us to be above the national average. If you look through the report, it gives a number of explanations in relation to comparisons between the states. Because each jurisdiction has its own method of calculation, it is not easy. The figures themselves can be confused, because it is not comparing apples with apples.

In conclusion, in nearly all aspects of this recent media release, the highlights have been made along with an explanation. If we were to get into a debate around the figures shown in relation to South Australia's Correctional Services lining up against the other states, we come in about the medium category in respect of many of the aspects. There are some areas where we are lower than other states. However, I think that, in the main, the people in corrections do very well under the circumstances in which they operate.

As I have reported in this chamber on a number of occasions, our gaol system is more expensive. In relation to regional prisons, the geography has to be taken into account, as well as the nature of the security and the style of prisons. However, in the main, Correctional Services officers in this state do a very good job under difficult circumstances. There are times when Correctional Services will make mistakes, as has been highlighted in this council by positive questioning from the other side in relation to some aspects of corrections. However, I pay tribute to those people working in the Correctional Services system in this state. I will be open and honest and say that mistakes will be made from time to time because of the nature of the system with which we are dealing.

I think that the honourable member's press release is a bit harsh in relation to the way in which the comparisons were used. I look forward to working with him in the next 12 months, in the lead up to March next year, in a cooperative spirit and with a bipartisan approach to correcting any of the problems that may appear in Correctional Services management.

The Hon. A.J. REDFORD: I have a supplementary question. Is it not the case that the Productivity Commission reports that South Australia had the highest increase in recidivism, or return to gaol, over the past year?

The Hon. T.G. ROBERTS: Recidivism is one of those areas where there was an increase over the state's previous good record. Again, it is one of those areas where, when you do your comparisons with other states, you will find that South Australia is again in the middle ranks of comparison. Recidivism is one of those areas where the government has to concentrate its attention. It is one of those areas where all governments strive to improve the figures. If we can correct the recidivism rate and try to keep those people who come into contact with our Correctional Services out of goal by providing education and training programs and by providing work programs within our system, hopefully we can improve in that area. So, there are always challenges.

The Hon. A.J. REDFORD: I have a further supplementary question. Does the minister agree with me that the Productivity Commission's report that 60 per cent of prisoners in South Australian gaols do no work is unacceptable?

The PRESIDENT: These questions are getting a long way from the original question. However, the minister can answer if he likes.

The Hon. T.G. ROBERTS: We would like to provide more opportunities for work within prisons, and we are always looking for ways in which we can achieve that.

The Hon. R.D. LAWSON: I have a supplementary question. Can the minister advise whether the government has found any ways in which to improve the rate of work in prisons? If so, what is the government doing about it?

The Hon. T.G. ROBERTS: As I have said, we are always working towards finding other opportunities for education, training and work orders. We are also working in community corrections to find ways to keep people out of prison.

BUSHFIRE MITIGATION AND MANAGEMENT INQUIRY

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Leader of the Government, representing the Premier, questions about an inquiry into bushfire mitigation and management.

Leave granted.

The Hon. IAN GILFILLAN: I preface my remarks by saying that, with great pleasure, I commend the government on its very effective and immediate response to the bushfire on Eyre Peninsula. I will not go into detail, but I add my congratulations to and appreciation of the South Australian Farmers Federation. The contributions of both the government and the federation have made a big difference to helping the post-fire situation on Eyre Peninsula.

I have a summary of a document entitled 'National inquiry on bushfire mitigation and management', dated 31 March 2004. The inquiry was chaired by Mr Stuart Ellis, a South Australian, who is head of the CFS. Professor Peter Kanowski and Professor Rob Whelan were the other two members of the inquiry. We just have to hand the response of this inquiry by the Council of Australian Governments, and I would say that it is largely due to a fuss made by the Democrats, both federally and in this state.

A very quick assessment indicates that several matters are raised in this report which are, and would have been, significant to a fire anywhere, but particularly on Eyre Peninsula, with the potential for rebuilding farmhouses and other buildings. It highlights the urgent need for a code for rebuilding in bushfire prone areas, and there is a recommendation that there be a code of practice for insurance, with the need for a cooling-off period before victims are pressured into signing off on their policies. The inquiry includes a very interesting recommendation relating to aerial activity, which is relevant to the debate now on Eyre Peninsula on when water bombers should have been used. The issue is also raised as to whether residents should be advised to go early—the 'go early or stay decision'—and the decision to use the ABC as the formal broadcaster in a fire situation is also discussed. In addition, there is considerable doubt about the accuracy of many of the early reports that came from the fire.

Two inquiries are likely to occur: a police inquiry of some sort, which is being conducted now, followed by a Coroner's report, both of which are specifically charged to look at the deaths that occurred as a result of the fire. My questions to the Premier are:

1. Does he recognise that neither the police nor the Coroner have expertise in bushfire mitigation and management?

2. Does he recognise that the time for the police and Coroner's reports to be completed may be as long, if not longer, than the 1983 Ash Wednesday report, when over 17 months elapsed before the report was made available?

3. Does he recognise the need for an independent inquiry, similar to the COAG inquiry? If not, why not?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Premier and bring back a reply. I thank the honourable member for his initial comments about the response to the bushfire. As other members mentioned in the condolence motion earlier today, some aspects of this fire really were quite unprecedented. I think that the Hon. Caroline Schaefer referred to the fact that some of the temperatures experienced in this fire were completely unprecedented. Like the Hon. Caroline Schaefer, I saw some of the limestone roads at the bottom of Eyre Peninsula which had been baked and turned red, with some of the bitumen melting on the roads. I must admit that I would never have thought North Shields a high bushfire prone area, but obviously I was wrong. Clearly, there are issues that are raised by that fire.

Regarding the police and the Coroner's report, although those authorities may not have particular expertise in fires, obviously the CFS and other experts will be providing advice. I think all of us want to learn whatever we can from this disaster to ensure that we can learn the lessons and, if at all possible, prevent such fires in this country—or, at least, reduce the effect of them. I am sure we would all want to do that. I will refer the questions to the Premier and bring back a reply.

The Hon. J.F. STEFANI: Sir, I have a supplementary question. In the course of the inquiry that is being conducted will the appropriate authorities investigate the possibility of fire shelters being introduced in the rear buildings in the area and determine whether that is practical?

The Hon. P. HOLLOWAY: I will ensure that that suggestion is passed on to the appropriate authorities for their consideration.

TRANSPORT SA SECURITY STAFF

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, questions about the discretionary powers of Transport SA security staff.

Leave granted.

The Hon. T.G. CAMERON: I have been contacted by a member of my staff who is a constituent about treatment that she received from a transit police member on Sunday 19 December last year. Mrs Williams (some of you may know her) and her 11-year old daughter were attending Carols by Candlelight at Elder Park and had caught the train to the city. Mrs Williams had taken her daughter's six-week old puppy on the train, as it was too young to be left at home by itself. After enjoying a night of carols, Mrs Williams returned to the station and she and her daughter boarded the Noarlunga-bound 10.02 train.

Whilst they were sitting in the train waiting for it to depart, a TransAdelaide security guard, along with three other transit police, approached and informed them that dogs were not allowed to travel on trains and demanded that they leave. Mrs Williams pointed out that the dog was only a puppy that her daughter had been given as an early Christmas present just a few days before. She stated that she felt it was too young to be left at home alone. The puppy was being held securely, was wrapped in a blanket and was fast asleep, making no noise at all.

The guard then became belligerent and once again demanded that they not only leave the train but that they exit from the train station. When Mrs Williams pointed out that she could not afford to take a taxi home and that she would be stuck in the city, the guard callously replied that that was not her concern and she would just have to make her own way home as best she could. By this time, Mrs William's daughter had become frightened and was in tears. Mrs Williams stated that the guard's bullying, cold and demeaning attitude had left her shocked and shaken. Her daughter was devastated by the experience and is now scared of all train security guards and will not get on a train. Mrs Williams finally managed to contact a friend, who drove into the city from Hallett Cove and gave her a lift home. The treatment of Mrs Williams and her daughter by the security guard, in my opinion, is nothing short of a disgrace. My questions to the minister are:

1. What training do transit police currently receive in customer relations, conflict resolution and conflict management?

2. Do transit police have discretionary powers, and what are they?

3. In this instance, could a transit police officer have used their discretionary powers to issue a caution rather than forcing the passengers, which included a child, from the train?

4. Will the minister order his department to investigate this matter?

5. If the minister finds that Mrs Williams was treated unfairly or harshly, will she receive a written apology? If the minister does wish to undertake an investigation, he can feel free to contact Mrs Williams in my office.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will pass that question on to the Minister for Transport and ask that she consider the matters raised by the honourable member.

ASBESTOS, DEPARTMENT OF EDUCATION AND CHILDREN'S SERVICES

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Education and Children's Services, a question about DECS and occupational health and safety.

Leave granted.

The Hon. A.J. REDFORD: Mr President, no doubt you would be aware that this government was elected on the basis that, as a Labor government, occupational health and safety would be given a priority. We have had a series of reviews, including the Stanley report which, I understand, is now gathering dust as we speak. Members will be aware that section 61 of the WorkCover legislation gives the public sector automatic exempt status irrespective of occupational health and safety performance and standards.

I sought under freedom of information occupational health and safety reports for the years ending June 2003 and June 2004. I have now received a copy of the Evaluation Report by WorkCover into DECS against the 1996 WorkCover exempt employer standards, which report is dated May 2004. The author, Mr Sean Power, reported on the process he underwent to audit DECS and, at page 7, he reports having held some 87 meetings (most of which, I understand, were signing off a process of audit and review).

The process review was signed off and, as part of that, some 21 sites within the education system were selected to assess risks—13 metropolitan and eight country. It came as a great disappointment to me that at page 10 that independent evaluation reports the following:

> Sites where building and roofing material are made from asbestos require signage indicating two types of hazards, i.e., warning of presence of asbestos and where roofing is involved signage indicating fragile roofing material.

The report further states:

> A lack of appropriate signage was found in seven schools.

That is almost a third of the schools that were audited. I know that you, Mr President, would be deeply disturbed given the enormous problems we have had over the past couple of years with asbestos and the enormous health damage that could create; and that, in this case, two young children are involved. Other issues include a failure in all sites where confined spaces existed to demonstrate full compliance with legislation; a non-compliance in relation to the management of fragile roofing materials and fall protection in over half the sites visited; inconsistent recording of training in just under half the sites visited; and, in some cases, training needs had not been planned or followed up.

Members might note that the government has been quick to introduce legislation imposing quite significant increased standards on the private sector, yet will not comply with existing standards within the department. In light of those appalling findings by this review, my questions are:

1. Why have there not been warnings regarding safety levels in DECS and, in particular, a lack of appropriate signage regarding asbestos presence and the like?

2. Will the minister give an assurance by the end of question time tomorrow that all sites (that is, as at today) are properly signed for asbestos?

3. Will the minister give an assurance that, by the end of question time tomorrow, all sites (that is, as at today) comply with the other complaints that are referred to at page 10 of this report? I have no doubt that members opposite would agree with the urgency in relation to the safety of schoolchildren—our young people—in our school communities.

4. Will the minister immediately arrange for a further audit of DECS to be completed by the end of this financial year applying current standards (given that this report was applying only previous standards), that is, exempt employer performance standards, and release the findings of that audit in a timely fashion?

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

SPEEDING OFFENCES

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Police, a question about speeding fines.

Leave granted.

The Hon. D.W. RIDGWAY: On 22 December 2004 I received a reply to an FOI request that I tendered to SAPOL regarding speeding fines. I had asked for details of statistics on revenue raised from speeding fines by photographic detection from 1 July 2002 to 31 July 2004 in the rural cities of Mount Gambier, Whyalla, Port Lincoln, Renmark, Waikerie, Berri, Loxton, Murray Bridge, Port Augusta and Victor Harbor. I received the following details: Victor Harbor, $100 502; Port Augusta, $322 214; Murray Bridge, $261 761; Loxton $63 073; Berri, $151 657; Renmark, $54 169; Port Lincoln, $215 388; Whyalla, $244 151; and Mount Gambier, $808 508.

I issued a press release which contained that information. *The Border Watch* is calling Mount Gambier the speed fine capital of the world as $1 100 a day is sucked out of the city's motorists. I felt that I should make another freedom of information application to SAPOL, asking exactly the same question in relation to the two years prior to my original request. It was worded such that I wanted access to statistics and revenue raised from speeding fines from photographic (that is, camera) detection from 1 July 1999 to 1 July 2002 in the rural cities—exactly as in the previous request. That request was rejected. The determination states the following:

> . . . that no documents exist in relation to the revenue raised by speed cameras. Inquiries were made with the Manager of the Expiation Notice Branch who advised that the South Australia Police does not have and does not create any documents in relation to revenue raised by speed cameras for the state of South Australia. Further inquiries were made with Manager Traffic Intelligence Section, who advised 'only the number of frames can be sourced, which is a labour intensive task to research'.

My questions are:

1. Does SAPOL keep information in relation to speeding fines revenue before 2002?

2. Is there a reason for one set of figures being released and another claim that they do not exist?

3. Will the minister explain why these figures are not recorded; or have they been recorded but not released?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): It might not be the Minister for Police, but I will refer the question to the responsible minister and bring back a reply.

MINERAL EXPLORATION

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

Leave granted.

The Hon. R.K. SNEATH: Exploration is the life blood of mining and last year the government released its plan to accelerate exploration. What evidence is there that the plan is working?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): Exploration is the life blood of mining, and I can tell the council that I am very pleased with the level of exploration that is now occurring in South Australia. South Australia's mining sector is continuing to burgeon on the back of the state government's initiative to encourage exploration for new mineral deposits. ABS figures show that mineral exploration expenditure was $15.7 million for the September quarter 2004—67 per cent higher than the corresponding September quarter for 2003. It follows a strong result in 2003-04 with expenditure topping $41.7 million—a 14 per cent increase over the previous year's result and close to the highest ever dollar amount.

These figures also represent the state's highest ever share of the national spend at 5.3 per cent. The previous best was 5 per cent. I expect the government's Plan to Accelerate Exploration—PACE initiative—to take expenditure to a new high this year of between $45 million and $50 million. The government has provided $10 million over five years to fund drilling partnerships with private industry on a dollar-for-dollar basis as part of a total package worth $22.5 million. Increasing the amount of exploration activity is the first step and opens up greater potential for new discoveries and, in turn, new mines.

The South Australian government is strongly pro-mining and pro-jobs and is actively encouraging the development of new mines in the state. Twenty-seven exploration projects were awarded $1.75 million last year through the PACE initiative, and the early results are looking promising. This great start to the program is helping to bolster our progress towards the target in the South Australian Strategic Plan to treble investment in mining exploration in South Australia by 2007 to a level of $100 million per year. This is a very exciting result and provides proof that the government's plan is working—a fact that is now being recognised around the country. Members may care to peruse page 20 of the *BRW* magazine of 20 January, because it is an excellent summary of the state of exploration in South Australia. For instance, it says:

> Apart from WMC resources giant Olympic Dam copper/uranium mine, South Australia is not well known for mineral discoveries. But that view is changing thanks to a string of excellent finds over the past 12 months. What makes the re-emergence more interesting is that the leader of the process is not a company it is the SA government. . . Rather than being a backwater run by an anti-mining government proud of its environmental credentials, South Australia is fast becoming the place to explore.

I think it is fair to say that the government's policies have played a part in this re-emergence, but in many ways it is the mining industry that is driving the process. The industry in South Australia has been very proactive in providing ideas, information, enthusiasm and encouragement, all of which have been and will continue to be essential to achieving the strategic plan targets I outlined earlier. I look forward to informing the council of continued success in boosting exploration expenditure in South Australia.

ASYLUM SEEKERS

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 Health, a question about the memorandum of understanding in relation to the provision of mental health services for asylum seekers.

Leave granted.

The Hon. KATE REYNOLDS: I have previously spoken in this place on many occasions about the mental abuse and trauma suffered by both adult and child detainees at Baxter Immigration Detention Centre. After having asked questions about the provision of mental health services for asylum seekers on at least four occasions in this place, I again would like to ask about the progress of a memorandum of understanding between the South Australian government and the Department of Immigration. I understand that this MOU was intended to improve mental health services at the centre and that it was supposed to have been finalised in the middle of last year. When I last asked about the lack of progress, the minister responded that negotiations for the MOU were still progressing and that relevant staff from DHS had been invited to participate in its development.

The provision of appropriate and timely assessment and specialist services and the consequences of those services not being provided properly has been highlighted in recent days by the tragic case of Ms Cornelia Rau. Ms Rau has been locked in Baxter, including in solitary confinement, for substantial periods of time for at least the past four months, despite the fact that she is an Australian resident who was clearly suffering from a severe mental illness and in need of specialist care which, I note, is not available at Baxter or in nearby Port Augusta.

I should add that I have been contacted by many refugee advocates in the past couple of days who are very angry that it is only now that an Australian resident has been treated so badly that the South Australian Premier has expressed concern about the treatment of detainees within South Australia's borders. My questions are:

1. When and by whom was the government alerted to the case of Ms Rau and what details of her situation were provided?
2. Does the minister have confidence in the mental health services currently being provided to detainees at Baxter?
3. How many Department of Health staff have taken part in the development of the memorandum of understanding; what level of input did they have; and what did they recommend?
4. Why has the MOU not yet been signed?
5. What is its current status and when it is it expected to be finalised?
6. Does the South Australian government intend to seek to have South Australia's Public Advocate given jurisdiction to intervene in cases where he wishes to act to protect the rights and interests of persons detained in Baxter whom he considers have reduced mental capacity and, if not, why not?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I add my personal concerns about the way in which the commonwealth processing system has—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: —seen a person, obviously not a detainee under the Terrorism Act—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: —being housed in Baxter—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order! The Hon. Mr Redford is not paid for his commentary.

The Hon. T.G. ROBERTS: I think the commonwealth has made its position clear. It sees it as a mistake. I think it is one step off an apology being made. The mental health issues associated with detainees and prisoners generally within institutions is one of those questions with which governments are starting to deal, but there will be a gap between levels of understanding in relation to the way in which patients are being held. Certainly there is evidence within our own system where people without mental health problems are admitted to detention centres but who, very soon after their admittance, develop mental health problems—and it is not hard to understand why. I will refer those questions to the minister in another place and bring back a reply.

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister advise the council whether Ms Rau was listed with the South Australia Police as a missing person?

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

HOMEWORK POLICY

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 Education and Children's Services, a question about homework.

Leave granted.

The Hon. A.L. EVANS: In February, an article appeared in *The Advertiser* reporting that homework is being abolished in some South Australian schools. Some schools in the public and private sector are employing no homework policies from reception to year 12. The schools are taking the opportunity to encourage students to spend time with their family. However, not all schools are taking up the initiative, rather maintaining their homework regime for students. I am aware that the Minister for Education and Children's Services has conducted forums across the state on the future of public education. A number of issues were raised by parents, including literacy and numeracy standards, school retention rates and the recruitment and retention of teachers.

I am also mindful of a parliamentary inquiry into obesity in 2004, which considered strategies to reduce the incidence and prevalence of obesity in our community. In its report the committee stated that, according to the latest data, around 24 per cent of Australian boys and 26 per cent of Australian girls are overweight or obese. Last year, Mr Ian Lillico, an educational consultant, Churchill fellow and school teacher of 30 years said that the community must look at a broader definition of homework, and that acknowledgment and recognition should be given to activities such as cooking, playing board games and playing organised and unorganised sport.

Mr Lillico, along with a number of other principals within our state, is advocating that a no homework policy is a step in the right direction to encourage students to spend after hours with parents and friends. Given the critical role of education laying a foundation for life, my questions are:

1. Will the minister initiate a formal assessment and review of the no homework policy in South Australian schools with a view to providing a more succinct statement on homework to the community?

2. Is the minister aware of other studies undertaken in other states? If yes, what has been the outcome of the research undertaken?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Homework is a vexed question amongst students. There have been a number of inquiries into it over time, and I think the recommendation that children's time will be more valuably spent with parents and extended family makes some sense, plus adding the weight, as the honourable member's question does, of suggesting alternatives that may be included in homework.

When I was in Western Australia I attended a homework centre in Karratha that was being used by young Aboriginal people in their senior high school years of education who were only too pleased to aggregate in a centre where they could assist each other with their homework or with their school work, which included, as the honourable member suggests, other activities.

It was a social and support centre for individuals. They were able to talk about a whole range of issues that affected them at home and school. Tutors were available, and the private sector gave encouragement through the Polly Farmer Foundation which the Hon. Mr Gilfillan and the government are working to attract into this state from Western Australia and South Australia and which was being supported by the mining industry in that region. There is no reason why other homework centres could not be built in other metropolitan and regional centres to include the same sort of activities. I will refer that question to the Minister for Education and Children's Services in another place and bring back a reply.

REPLIES TO QUESTIONS

TOWARDS CORRECTIONS 2020

In reply to **Hon. NICK XENOPHON** (14 September 2004).

In reply to **Hon. A.J. REDFORD** (14 September 2004).

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

Each year, around 4 000 prisoners enter the prison system. Of these, 82 per cent will spend less than 6 months in prison and 71 per cent less than 3 months.

I am informed the shortest possible time that is required to diagnose and monitor the Hepatitis C virus prior to treatment is 6 to 9 months.

The Department for Correctional Services has developed an educational video aimed at prisoners about Hepatitis C in prisons. The video contains the following information:

- Awareness of Hepatitis C in prisons;
- Symptoms and modes of transmission of Hepatitis C; and
- Treatment and support available to prisoners.

In cases where prisoners may be exhibiting signs of Hepatitis C, or have been diagnosed as positive, the Viral Hepatitis Nurse from the Royal Adelaide Hospital coordinates the treatment and support for these prisoners. This can take between 6 and 12 months to complete.

Further, prisoners are not legislatively required to provide information regarding their state of health. Patient/doctor confidentiality applies to prisoners the same as it does to members of the wider community

PRISONERS, TELEPHONE ACCESS

In reply to **Hon IAN GILFILLAN** (20 July 2004).

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

As with all correctional jurisdictions in Australia, South Australian prisons have a specially designed telephone system that provides restricted telephone access to all prisoners and allows the telephone conversations of prisoners to be monitored. The system requires special equipment which has been installed in every prison.

That equipment is not compatible with, nor does it recognise, 1800 telephone numbers.

Therefore, although the Department for Correctional Services would have no problems approving access to 1800 numbers to prisoners where there is no impact on the security of the prison, it has no capacity to do so.

In September 2002 the Department for Correctional Services sought expressions of interest for a replacement prisoner telephone system. A new contract is presently being negotiated. This new system will replace the current out-dated system and offer cheaper call rates for prisoners as well as other advantages for the Department in call monitoring and intelligence analysis.

The Department is unable to advise me, at this stage, whether or not 1800 numbers will be able to be accessed under the new system.

At present, in addition to the significant complaint mechanisms that currently exist within the Department for Correctional Services, prisoners have automatic access to the Ombudsman, independent Inspectors appointed by the Minister for Correctional Services and various community based prisoner agencies. In many cases, prisoner complaints are forwarded to all of these agencies simultaneously.

POLICE, ANTI-CORRUPTION BRANCH

In reply to **Hon. R.I. LUCAS** (28 October 2004).

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

On 22 September 2004, a form letter was sent from SAPOL Anti-Corruption Branch (ACB) to the heads of all Government agencies, seeking meetings with CEOs and/or senior staff to explain the role of the ACB. A secondary purpose was to establish networks to ensure matters could be reported when appropriate. There was no suggestion in this letter that the ACB was engaged in investigating allegations of serious misconduct or corruption.

The Officer in Charge, ACB, has since met with a number of Agency Heads, including the Under Treasurer. Further meetings are planned with other Heads of Agencies as part of the pro-active role of the ACB.

Current meetings have raised the awareness of some CEOs and their staff to the role of the ACB.

MINISTER, REGIONAL RESPONSIBILITY

In reply to **Hon D.W. RIDGWAY** (26 November 2003).

The Hon. T.G. ROBERTS: The Minister for Urban Development and Planning has advised:

The Minister for Urban Development and Planning has had administrative responsibility for Regional Ministerial Offices since December 2002, with the Manager being employed on the staff of the Premier reporting directly to the Premier on the activities of the offices.

Regional Ministerial Offices provide the community with a direct link to Cabinet Ministers and their offices. Further, they have a role of working with local leaders, community organisations, State Government agencies and the public to enhance the delivery of services and the development of policy for the region.

The role and function of Regional Ministerial Offices is similar in some respects to the Offices of the North, South and North West that have been established by this government, and which are also in my portfolio, so it makes sense to have the Regional Ministerial Offices also located in DTUP.

The role of the offices has not fundamentally changed since they were announced, however it is true to say that the activities of Regional Ministerial Offices have naturally evolved in the area of cross-agency collaboration and policy development.

I refer the member to the response printed in Hansard on 31 May 2004.

BIKE LANES

In reply to **Hon. IAN GILFILLAN** (28 October 2004).

The Hon. P. HOLLOWAY: The Minister for Transport has provided the following information.

The State Government is committed to a more sustainable transport system, including supporting cycling, by working towards an increase in the amount of cycling in the community and improving cycling safety.

Best practice for cyclists that use the arterial road system is the provision of continuous bicycle lanes. The gaps on Adelaide's arterial road bicycle network between sections of road with bicycle lanes and those without are often referred to as 'missing links'. Some of these occur at intersections of arterial roads where bicycle lanes on the approaches are not continuous through intersections.

At traffic signal controlled intersections on the arterial road network there are sometimes additional lanes compared to the number of lanes on the approaches to accommodate turning traffic. In these types of locations there are separate right hand turn lanes (sometimes two) and separate left turn lanes. These are designed to maximise safety and minimise delay for road users.

The greatest opportunity for improving conditions for cyclists at these locations occurs when there is a major upgrading of the intersection. Bicycle lanes are being installed along existing arterial roads by reallocating available road space or sometimes through the restriction of on-road parking. Last financial year bicycle lanes were installed on Marion Road between Sturt and Cross Roads.

Other opportunities to install bicycle lanes occur when complete new roads are constructed or existing ones widened. In these circumstances the needs of cyclists are always taken into account and bicycle lanes installed wherever feasible.

The State Government is committed to cycling and will continue to improve conditions for Adelaide's cyclists.

ADELAIDE RAILWAY STATION

In reply to **Hon. T.G. CAMERON** (14 September 2004).

The Hon. P. HOLLOWAY: The Minister for Transport has provided the following information.

Train arrival information is available in printed timetables, on the Internet at
www.adelaidemetro.com.au or www.transadelaide.com.au,
by telephone from the Passenger Transport InfoLine on 8210 1000 for metropolitan customers, 1800 182 160 for regional customers and 8303 0844 for the hearing impaired, via e-mail, SMS or face to face with staff at the InfoCentre or at the Adelaide Railway Station.

On arrival, passengers disembark and walk from the platforms through turn styles to the general concourse area where others would then meet them. Only ticket holders are permitted onto the platform area.

There is very little demand for arrival information on local trains, and not enough to justify investment in the required technology.

BEACHPORT BOAT RAMP

In reply to **Hon. D.W. RIDGWAY** (16 September 2004).

In reply to **Hon SANDRA KANCK** (16 September 2004).

The Hon. P. HOLLOWAY: The Minister for Transport has provided the following information.

1. Wattle Range Council has responsibility for sand management at the Beachport Boat Ramp.

However, it is probable that some of the sand currently deposited at the boat ramp may have been derived from the construction of the adjacent breakwater, which is a Coast Protection Board development. I understand that the Board has therefore provided some funding to assist Wattle Range Council remove this initial sand deposit.

2. The Development Assessment Commission gave approval for the temporary boat ramp for a trial period of two years, after which time an assessment would be made of its environmental impact, and a decision made regarding its retention.

During this two year trial period, (commencing from the date of Development Approval of 11 November 2003), an investigation by the Rivoli Bay Foreshore Advisory Committee of all potential boat ramp sites in Beachport is being undertaken. The final report of findings is not due until the end of June 2005.

3. The removal or retention of the temporary boat ramp has not yet been determined.

In response to the supplementary question, the Department for Environment and Heritage (DEH) recently completed construction of an offshore geotextile breakwater to protect both the seagrass beds

and provide shelter to the temporary ramp. The Department of Transport and Urban Planning, DEH and Council will continue to work closely in managing the foreshore.

NATIONAL ELECTRICITY MARKET

In reply to **Hon. SANDRA KANCK** (13 October 2004).

The Hon. P. HOLLOWAY: The Treasurer has provided the following information:

The national competition policy agreements required relevant Governments to disaggregate the electricity industry, so as to separate the monopoly network businesses from the generation and retail businesses, and to participate in the competitive National Electricity Market. Importantly, there was never any obligation under national competition policy to privatise electricity. This is demonstrated by the fact that Queensland and New South Wales have not privatised, yet have not been assessed as not complying with competition policy agreements on that account.

In respect of how much South Australia has received from the federal government by way of competition payments for the dismantling of ETSA, this is not able to be quantified as competition payments are made as a lump sum payment encompassing all of the associated reforms including electricity, gas, water, competitive neutrality, legislative reviews etc. It is only when the State fails to meet competition policy obligations and is assessed as not complying that a penalty is imposed and some value is attached (at least by the NCC) to that reform. There have been no penalties imposed on South Australia in respect of non-compliance with electricity reforms.

In 2002-03, a total of $13.7 million was paid in electricity concessions. In 2003-04 this amount was $17.2 million—$8.9 million of which has been carried over into the 2004-05 financial year pending more detailed reconciliations from energy suppliers. On 1 January 2004 the annual electricity concession was increased from $70 to $120 and eligibility was extended to self funded retirees who hold a Commonwealth Seniors Health Card.

TRANSPORT PLAN

In reply to **Hon. T.G. CAMERON** (22 July 2004).

The Hon. P. HOLLOWAY: The Minister for Transport has provided the following information.

I refer the honourable member to the response to Hon D.W. Ridgway printed in *Hansard* on 22 July 2004.

CRIMINAL LAW CONSOLIDATION (CRIMINAL NEGLECT) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This Bill is designed to attribute criminal liability to carers of children and vulnerable adults when the child or adult dies or is seriously harmed as a result of an unlawful act while in their care.

The Bill is not concerned with cases where the accused can be shown to have committed the act that killed or seriously harmed the victim, or can be shown to have been complicit in that act. In these cases, the accused is guilty of the offence of homicide or causing serious harm.

The Bill is aimed at a different kind of case: where the accused is someone who owes the victim a duty of care and has failed to protect the victim from harm that he or she should have anticipated. It covers two kinds of cases. The first is where there is no suggestion that it was the accused who actually killed or seriously harmed the victim. The second is where the accused is one of a number of people who had the exclusive opportunity to kill or seriously harm the victim and where, because no member of the group can be eliminated as the principal offender, no principal offender can be identified, with the result that neither the accused nor any other member of the group can be convicted either as principal offender or accomplice. These acquittals often come about because the only people who know what happened are the suspects themselves, and each says nothing or tells a story that conflicts with the stories of the other suspects. The courts have held that a jury that is unable to determine whom to believe should acquit all accused.

The South Australian case of *Macaskill* in 2003 demonstrates how the law works now. In that case, a three-month-old baby, Crystal, died as a result of non-accidental injury while in the care of her parents. The prosecution case against the mother was circumstantial, there being no direct evidence of who inflicted the fatal injury. The mother's defence was that there was a reasonable possibility that the father inflicted that injury. Neither she nor the father admitted to the act. The mother did not give evidence at the trial, but made a statement to police to the effect that only she and the father were with Crystal at the relevant time. The father gave evidence that, if accepted, would have exculpated him and, as a matter of logic, incriminated the mother. His evidence was found to be unreliable for a number of reasons. This left the Crown case dependent on the medical evidence. That evidence could not establish which parent inflicted the fatal injury. The prosecution being unable to exclude as a reasonable possibility that the father was the person who inflicted the injury upon Crystal, the mother was acquitted, although the court found that either her father or her mother must have killed Crystal.

Each parent was responsible for the care of this baby. The court inferred from the parents' exclusive access to her at the relevant time that one of them killed her, but could not tell which. This meant the court could not determine whether the mother was directly responsible for her child's death, whether she was complicit in it, whether she had nothing to do with it, whether she was aware or should have been aware of what was going on but could do nothing to prevent it, or whether, although not actively involved, she stood by and let the baby be killed when she could have prevented it (had the father been on trial, similar considerations would have applied to him.).

Some courts have tried to resolve the problem by recourse to the law of omissions. The law of omissions allows a person who had a duty to intervene in a given situation and who stood by and did nothing when a criminal act was being committed to be convicted of the offence relating to that criminal act.

An example is the New Zealand case of *Waitka* in 1993, in which the court held that a person would be guilty of an offence where he or she was under a duty to intervene in a given situation, did not perform that duty, by this failure encouraged or assisted another to commit the criminal act, and intended that the other person be so encouraged.

The problem with this approach is in having to prove an intention to encourage or assist another to commit the criminal act. There are situations where a person's inaction may be culpable even though the person had no intention to encourage or assist another person to commit the act. And there remains the central problem of establishing who committed the criminal act.

Publicity has mostly been given to cases of infants killed or seriously injured by carers or parents, because in these cases the victim is so utterly at the mercy of the person who causes their death or injury. Initially, the Government looked only at these cases in considering reform of this law. A consultation draft proposing a special alternative verdict in a trial of parents or carers jointly charged with causing an infant's death or serious harm was sent to interest groups and experts in South Australia and other States and Territories, including members of the Model Criminal Code Officers Committee and Directors of Public Prosecutions.

Consultation on that draft and consideration of a Bill recently introduced in the UK persuaded the Government that this new law can and should apply more broadly. It should apply to a person who assumes responsibility for the care of a child, whether an infant or not, or for the care of an adult whose ability to protect him or herself from an unlawful act that might cause serious harm or death is significantly impaired. It should be capable of being charged on its own (irrespective of whether the accused or anyone else is also charged with homicide or an offence of causing serious harm). It should also be capable of being charged as an alternative to homicide or to an offence of causing serious harm.

On 30 June 2004, the Government introduced a Bill that contained these features: the *Criminal Law Consolidation Act (Criminal Neglect) Amendment Bill 2004*. The Bill lapsed when Parliament was prorogued in July, 2004. The Government received many comments in relation to that Bill and, as a result, made some

technical changes before re-introducing what is essentially the same Bill.

The Government is grateful for the work of the Acting Director of Public Prosecutions and her staff on technical aspects of the Bill, and for the contributions of the Model Criminal Code Officers Committee, the Commonwealth Director of Public Prosecutions, and the Directors of Public Prosecutions in the ACT, the Northern Territory, Western Australia, Tasmania, and New South Wales, who have treated the Bill as a model for similar new laws in their jurisdictions.

This Bill, like its predecessor, creates a new offence of criminal neglect that does not depend on proof of the identity of the main offender.

The offence applies to a person who, at the time of the offence, has a duty of care to the victim.

A victim, for the purposes of this Bill, is a child under 16 years of age or a vulnerable adult. A vulnerable adult is a person of 16 years or more whose ability to protect him or herself from an unlawful act is significantly impaired through physical or mental disability, illness or infirmity. The Bill assumes that children under the age of 16 years are less able to protect themselves from harm than adults. Other laws make the same assumption—for example criminal laws prohibiting sexual activity with children under 16, child protection laws saying a child under 16 may not give consent to a voluntary custody arrangement; and compensation laws exempting a child under 16 who is injured in a car accident from the presumption that, as a passenger, the child contributed to the injury by agreeing to travel in the car with an intoxicated driver.

A person has a duty of care to a victim (whether a child or vulnerable adult) if the person is a parent or guardian of the victim or has assumed responsibility for the victim's care. In cases where the accused is not a parent or guardian, it must be proved beyond reasonable doubt that he or she actually assumed responsibility for the care of the victim.

It does not matter that the parent is a child. Parents are not absolved of responsibility for the care of their children just because they are children themselves. Even if a guardian is appointed, we still expect a child-parent to assume the day-to-day care and protection of the child. Equally, it does not matter that the person who has assumed responsibility for the care of a child or a vulnerable adult is a child. In either case, establishing a duty of care to the victim is only the first step in establishing liability, and, as will be explained, this offence has other elements that allow a court to recognise the difference in awareness and power between children and adults.

There are four elements that must be established beyond reasonable doubt before a person may be found guilty of the offence of criminal neglect.

The first element is that a child or vulnerable adult has died or suffered serious harm as a result of an unlawful act (for example because the death or injury cannot be attributed to natural causes or accident). The prosecution does not have to prove who committed that unlawful act. Responsibility for that act is not relevant to this offence. Serious harm is defined in this Bill to match the definition proposed to be added to the *Criminal Law Consolidation Act* by the *Statutes Amendment and Repeal (Aggravated Offences) Bill 2004*, also before Parliament.

The second element is that the accused, at the time of that act, had a duty of care to the victim. A duty of care is owed by a parent or guardian of the victim or by a person who had assumed responsibility for the victim's care.

The third element is that the accused was or ought to have been aware that there was an appreciable risk that serious harm would be caused to the victim by the unlawful act. This is the common law test for criminal negligence for manslaughter by unlawful and dangerous act. The jury need not find that the accused foresaw the particular unlawful act that killed or harmed the victim. The charge of criminal neglect will stand even though the death was caused by an unlawful act of a different kind from any that had occurred before of which the accused should have been aware. The charge will stand, even though there is no evidence of previous unlawful acts, if it is clear that the act that killed or harmed the victim was one that the accused appreciated or should have appreciated posed an objective risk of serious harm and was an act from which the accused could and should have tried to protect the victim. The prosecution must prove that the defendant was aware of that risk or ought to have been so aware. To the extent that an accused person's ability to appreciate that risk is diminished by, say, disability or youth, it is less likely that he or she will be convicted.

The final element, inextricably linked with the previous element, is that the accused failed to take steps that he or she could reasonably be expected to have taken in the circumstances to protect the victim from harm and the accused's failure to do so was, in the circumstances, so serious that a criminal penalty is warranted. Unless there is credible evidence to contradict it, a jury may infer inaction in a situation where a reasonable person would anticipate that, without intervention, the victim was at risk of harm, and may infer that the accused's inaction contributed to the harm inflicted on this occasion. An excuse that an accused did not realise that by intervening he or she could have averted the danger is unlikely to succeed. A person can fall short of the standard of care required by the criminal law by not perceiving the need to take action to avert danger to others.

As mentioned, the offence of criminal neglect may be charged on its own or as an alternative to a charge of the causative offence (that is, murder, manslaughter or any other offence of which the gravamen is that the defendant caused or was a party to causing the death of, or serious harm to, the victim).

When a person is charged with criminal neglect, the assumption is that the unlawful act that killed or harmed the victim was committed by someone else. In cases where it is impossible to tell which of two or more people killed or harmed the victim, but it is clear that one of them did, it would be possible to escape conviction for criminal neglect by repudiating that assumption. The accused could simply point to the reasonable possibility that it was he or she, and not someone else, who killed or harmed the victim. To prevent this perverse outcome, the Bill makes it clear that a person accused of criminal neglect cannot escape conviction by saying there was a reasonable possibility that he or she was the author of the unlawful act.

The maximum penalty for the offence of criminal neglect that causes death is imprisonment for 15 years. This is the same as the maximum penalty for recklessly endangering life. The equivalence is owing to advertent recklessness being an aggravating feature—but life is only endangered, not lost, in the former offence, whereas in the latter offence there is lesser fault (criminal negligence) but life is actually lost.

The maximum penalty for criminal neglect that causes serious harm is five years. This is the same as the maximum penalty proposed for the new offence of causing serious harm by criminal negligence in the *Statutes Amendment and Repeal (Aggravated Offences) Bill 2004*, referred to earlier—an offence introduced to bring South Australia into line with the Model Criminal Code and the criminal law in most other Australian States and Territories.

A person accused of criminal neglect may defend the charge in more than one way.

One defence might be that the accused did not owe the victim the requisite duty of care. This will depend on the circumstances in each case. It will not be available to a parent or guardian of a child or vulnerable adult, because that person is deemed to owe the victim a duty of care.

Another defence might be that the accused did take steps to protect the victim that were reasonable in the circumstances. A defence like this for a child-accused may be that although the steps taken by the accused might not seem appropriate by adult standards, they are perfectly reasonable for a child of the accused's age and circumstances.

Another defence might be that it would have been unreasonable to expect the accused to take any steps to protect the victim. This might be because the accused was under duress, for example, in circumstances of extreme domestic violence. It might be because the accused is a child and the other suspect an adult who exerted authority over that child.

These examples may help explain how this law is intended to work.

Bear in mind that this law will allow the prosecution several charging options in cases like these. The choice will depend on the facts of each case. One or both suspects may be charged with both the causative offence and the offence of criminal neglect in the alternative, or either offence on its own. In some cases, only one suspect may be charged.

Example 1

A six-year-old girl dies at home late one evening. The medical evidence shows that she died as a result of a severe beating to the head and torso. Post-mortem examination shows signs of past physical abuse. The only two people with the opportunity to kill the child are her mother and her mother's current boyfriend, who is not her father. He does not live at the house, but was staying overnight when the child died. He has stayed overnight about 20 times in the

past six months. The mother and the boyfriend both say the death resulted from injuries the child suffered when she fell down the stairs. Each denies witnessing the fall and says the other brought the child's injuries to his or her attention. The boyfriend says he has never assumed responsibility for the care of the child and the evidence about this is ambiguous.

There is no evidence to show whether the boyfriend, the mother or both of them administered the beating that killed the child. The only people who can say what happened are the mother and her boyfriend, but each has denied involvement while implicating the other.

This example is one in which it is not clear whether one of the suspects owes the requisite duty of care to the victim. In most cases, like *Macaskill*, each suspect owes the victim a duty of care by a direct relationship of parent or guardian, or by a clear, if temporary, assumption of responsibility for the care of the victim.

In this example, both suspects have every chance of being acquitted of homicide, because neither can be shown to be the principal offender. Knowing this, there is no incentive for either suspect to tell what happened.

But the mother is more vulnerable to a charge of criminal neglect than the boyfriend, because there is no doubt that she owed the victim a duty of care. The boyfriend has a greater chance of acquittal because of the difficulty in establishing a duty of care. Knowing this, it is in his interests to say nothing about what happened and to let the mother take the rap. The mother has every incentive to tell what happened if the boyfriend actually killed the child, once she appreciates that she is likely to take the blame for the child's death with a conviction for criminal neglect while he gets off scot-free.

It is intended that the Bill will create an incentive for at least one of the suspects to say what happened. Of course, the incentive may be as much to tell a lie as to tell the truth, particularly when the relationship between the suspects is fragile or transitory. The Bill does not attempt to alleviate the difficult task prosecutors have in deciding which version of events is more credible or in deciding whether to give immunity from prosecution. It aims to give prosecutors an alternative lesser charge in cases in which, otherwise, the only possible charge is murder or manslaughter or an offence of causing serious harm, and, in so doing, to encourage suspects to break their silence. That the silence may be a guilty silence is something prosecutors must always be alert to, and this law won't change that.

Example 2

In the same fact situation, each suspect is a parent of the child and therefore has the necessary duty of care. Again, a conviction for homicide is unlikely because it can't be established who was the principal offender. But this time each suspect has an equal chance of being convicted of criminal neglect. Assuming the act was not committed by them both, the one who did not commit the act has an incentive to say what really happened (if he or she knows it) to reduce the chance of a conviction, but only if the truth would show that he or she could not have been aware of the risk to the child or could not have protected her even if aware of the risk.

The Bill does not change the current law about the right to silence. But it is important to recognise that the right to silence does not affect the principle that where the relevant facts are peculiarly within the knowledge of the accused, his or her failure to give evidence enables an inference of guilt to be more readily drawn. Also, a court may take an accused's failure to give evidence into account when evaluating the evidence against him or her where there are matters that explain or contradict that evidence and which are within his or her sole knowledge and unavailable from any other source. But it is true that the incentive to tell what happened is crucial to this new offence. The reason joint caregivers are often acquitted for homicide is not that neither of them killed the victim, but because they are the only ones who know what happened and they choose not to tell.

Example 3

In this example, assume that the wheelchair-bound victim dies as a result of injuries received when she was tipped from her wheelchair down the stairs. The story given by each suspect is that the other found her at the bottom of the stairs. Apart from being wheelchair-bound, the victim had severe Alzheimers. The suspects are brother and sister, grandchildren of the victim, who live in the victim's house with her. The grandson is a 20-year-old junkie who spends much of the day at home. The granddaughter is a 15-year-old schoolgirl who is away from home during the day but generally home after school hours. Both deny any assumption of responsibility for their grandmother. Each says that responsibility was assumed by the other, to the extent that it was not also assumed by their aunt, who lived nearby, visited regularly and organised the victim's home nursing and medical care, or by their parents, who live at the family farm.

Both suspects are likely to be acquitted of homicide, because it will be difficult to prove beyond reasonable doubt who tipped the victim down the stairs.

Neither suspect being a parent nor guardian of the victim, their respective liability for criminal neglect will depend on whether they owed a duty of care to the victim. The court will look at any responsibility assumed in the past and the circumstances in the household at the time of the victim's death.

If a duty of care is established for one of them, and that person did not kill the victim, there is every incentive for him or her to say what happened to increase the chance of an acquittal for criminal neglect and, possibly, to make the charge of homicide stick to the other.

Example 4

In this example, the victims are young children, a boy and a girl. They are passengers in a four-wheel drive vehicle being driven along a remote highway at dusk. The only other occupants are their parents. Neither child is restrained by a seatbelt. The car swerves, overruns an embankment at the side of the road and rolls. Both children are thrown from it. The boy dies when crushed by the car and the girl is severely physically and intellectually disabled from her injuries. The parents receive minor cuts and bruises and the mother is so severely concussed that she has no memory of the accident or the journey. The father won't say what happened or who was driving. The only other eyewitness is the little girl, but she is no longer able to speak or understand questions. There is independent evidence that the car was being driven at a high speed just before the accident happened.

Both parents could be charged with dangerous driving causing death, dangerous driving causing serious harm and criminal neglect. The dangerous driving charges are unlikely to stick in the absence of proof of the identity of the driver. The only other possible causative offence is manslaughter by unlawful and dangerous act, that act being a failure to restrain the boy by a seatbelt. The charge is also unlikely to stick, if brought at all, unless it can be shown who failed to restrain the children.

If the father maintains his silence (and only the father can say what happened, because the mother has no memory of the journey or the accident), both parents risk being convicted of criminal neglect. They each have the relevant duty of care, would be expected to be aware of the high risk of serious harm that a lack of seatbelt restraint poses, and have apparently not taken steps that might reasonably have been taken to protect each child from harm.

The incentive in this case is for the father to concoct a story that places one parent in the driver's seat and the other asleep throughout the journey, including that the driver stopped the car to let the children stretch their legs and did not put their seatbelts on when they got back in. If believed, this will place only one parent, instead of two, at risk of a criminal conviction and imprisonment, leaving the other to look after the surviving child. But that incentive is so obvious that the prosecutor is likely to alert the jury to it and ask them to take the father's initial refusal to say what happened into account when testing his evidence. There is no real risk of a miscarriage of justice in these circumstances.

The UK Parliament has recently passed an Act that, among other things, creates a new offence of causing or allowing the death of a child or vulnerable adult. Under the UK *Domestic Violence, Crime and Victims Act*, this offence would apply where such a person dies as a result of unlawful conduct; where a member of the household caused the death; where the death occurred in anticipated circumstances; and the accused was or should have been aware that the victim was at risk but either caused the death or did not take all reasonable steps to prevent the death. It would not be necessary to show which member or members of the household caused the death and which failed to prevent it. All members of the household, subject to restrictions about age and mental capacity, would be liable for the offence if they meet the criteria. The maximum penalty is imprisonment for 14 years or a fine or both.

The main differences in approach between the UK Act and this Bill are these:

- The offence in this Bill is for unlawful death or serious harm, while the UK offence is confined to unlawful death. The Government is of the view that, as a matter of principle, the duty of care should extend to protecting the victim from

serious harm as well as from death, and the offence should reflect this.

- The UK Act does not refer overtly to a duty of care, but implies it between a person who is member of the victim's household and had frequent contact with the victim if that victim is a child or vulnerable adult. This Bill spells out when a duty of care exists, but does not deem a duty of care to exist in a person who is not a parent or guardian of the victim. It recognises that it is possible to share a household with a child or vulnerable adult, especially for short periods of time or limited purposes, without actually assuming any responsibility for that child or adult.
- The UK Act is limited to domestic relationships. This Bill goes further and includes relationships that are not confined to households. It contemplates situations where a duty of care is created by an assumption of responsibility between people who do not share a household (as when two adults assume responsibility for the care of their child's school friend for the day, and that friend dies or suffers serious harm while in their care).

This law breaks new legal ground. It may not satisfy everyone.

Some may wish a carer in the examples I have given to be found guilty of intentionally or recklessly causing death or serious harm. The Government is not prepared to go that far, because that would be to deem an intention or recklessness where none can be proved. But what can be proved is that the unlawful act that caused the death or serious harm involved such a high risk that death or serious harm would follow and that the accused's failure to protect the victim from it involved such a great falling short of the standard of care that a reasonable person in his or her position should be expected to exercise that the failure merits criminal punishment.

Some might say that people should not be held criminally responsible for their negligence. But they forget that the law already holds people criminally responsible for their negligence in the offence of manslaughter. In every other Australian jurisdiction, there are non-fatal offences against the person that require only negligence (to a criminal standard). The Government has introduced the *Statutes Amendment and Repeal (Aggravated Offences) Bill 2003,* which will create a similar liability in the offence of causing serious harm by criminal negligence.

The offence of criminal neglect is important to prevent people escaping criminal liability altogether when they fail to protect someone for whose welfare they have assumed responsibility and, as a result, that person dies or suffers serious harm.

People should expect criminal penalties not only for harming those in their care, or for helping or encouraging others to cause that harm, but also for standing by and letting that harm happen.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

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

4—Insertion of Division 1A

This clause inserts a new Division in the *Criminal Law Consolidation Act 1935*. The new Division creates an offence of "criminal neglect" which occurs where—

- a child under the age of 16 or a vulnerable adult (which is defined as person over 16 years of age whose ability to protect himself or herself is significantly impaired through physical or mental disability, illness or infirmity) suffers serious harm as a result of an unlawful act; and
- the defendant had a duty of care to the victim (ie. was the victim's parent or guardian or assumed responsibility for the victim's care); and
- the defendant was (or should have been) aware that there was an appreciable risk of serious harm to the victim by the unlawful act; and
- the defendant failed to take steps that could reasonably have been expected to protect the victim and that failure was, in the circumstances, so serious that a criminal penalty is warranted.

The maximum penalty for the offence is imprisonment for 15 years if the victim dies, or 5 years in any other case.

The provision also allows the conviction of a person for this new offence in a situation where there would otherwise be a reasonable doubt as to guilt of this offence because the relevant unlawful act may have actually been committed by the defendant. This will operate where the relevant unlawful act could only have been committed by the defendant or some other person who the evidence suggests could have committed the unlawful act.

The Hon. R.D. LAWSON: This is an important piece of legislation. It is also novel in the way it deals with difficult questions in our criminal law. This bill will create a new criminal offence of criminal neglect resulting in death or serious harm. The victim of the new offence may be a child or 'vulnerable adult', that is, a person aged over 16 who is significantly impaired through physical or mental disability. The essential elements of the new offence are a duty of care by the accused to the victim, coupled with a failure by the accused to takes steps to protect the victim from harm in circumstances where the accused was aware or should have been aware that there was an appreciable risk of serious harm from some unlawful act. The maximum penalty is 15 years where the victim dies and five years where the victim suffers serious harm. The bill also seeks to assist in the prosecution of cases where two persons have the care of a child or vulnerable adult at a time when that child or vulnerable adult suffers death or injury. This is a deeming provision, which I will come to in greater detail later in this contribution. It is this element of the bill which gives us some disquiet.

Cases sometimes arise where a child dies as a result of non-accidental injury, and the only witnesses and only suspects are, say, its mother and father, they being the two persons in the example given who have the care of the child. In the absence of direct evidence or a confession by one or other of the parents, both will be acquitted. This is because the law requires the acquittal of both suspects in cases where the jury is not satisfied beyond reasonable doubt of the guilt of either.

The case of Macaskill, which occurred on 6 March 2003, provides a good example of the need for such an offence. In that case, Justice Nyland found Lorraine Macaskill not guilty of the 1999 manslaughter of her three-month-old daughter Crystal. Lorraine and Crystal's father, Travis Hayes, were the only people who had care of Crystal when she sustained fatal injuries. The nature of her injuries were such that it was reasonable to conclude that Crystal had been beaten. Both Lorraine and Travis were originally charged with murder, but charges of murder against Travis were dropped when he testified against Lorraine. However, the judge could not accept his testimony, and both escaped conviction. Not surprisingly, there was public outrage at the acquittal, and that was reported in *The Advertiser* of 6 and 7 March 2003.

On that occasion, the Director of Public Prosecutions called for a 'death in care' offence, and the Attorney-General said that the government would act. We certainly agree that action is appropriate. The question for us is whether or not the particular offence created in this legislation, and the manner in which it is constructed, is appropriate. It should be noted that, as usual, this government claims that this bill is a first. However, it is modelled on legislation introduced in the United Kingdom in March last year, namely, the Domestic Violence (Crimes and Victims) Bill.

The simple offence, the new offence of criminal neglect resulting in death or serious harm, which is contained in proposed sections 14(1) and 14(3), should be supported and are certainly supported by the Liberal opposition. We note

that the proposed offence of causing serious harm by criminal negligence in the Statutes Amendment and Repeal (Aggravated Offences) Bill, which is presently on our *Notice Paper*, has been opposed by us on the grounds that the civil concept of negligence should be kept out of the criminal law. Of course, we recognise that reckless or grossly negligent acts which cause death may result in a charge of manslaughter under existing law. However, we do not believe that it is appropriate to bring into the criminal law the expression 'negligence', because to do so carries with it the risk of creating misleading concepts.

However, the deeming provision, to which I have previously referred, which is now contained in proposed section 14(3) (it was previously contained in subsection (2) of the section), creates some considerable difficulties. As I have said, the concept is well understood. When the perpetrator must be one or other or both of two people, neither of whom can provide a satisfactory account of the circumstances, the law deems them both guilty of criminal neglect, thereby creating an incentive for the non-perpetrator to testify, perhaps leading to the conviction of the actual perpetrator for murder or manslaughter.

The examples given in the overly long second reading explanation engender considerable unease. I must confess to distaste for expressions such as 'to take the rap' and 'the charges are unlikely to stick'. I would have thought that we could do without these Americanisms in explanations of this kind.

However, our greatest unease arises from the notion that charges are delayed for the purpose of providing a suspect with, to use the Attorney's words, 'every incentive to tell'. That expression is used repeatedly in the second reading example. Converting that concept into statutory law is difficult. Indeed, it has proven difficult for this government, bearing in mind the changes made to this bill from the time it was originally introduced in June last year to its ultimate introduction in another place in October. I think it is worth placing on the record the difficulty of this offence by reading the offence in proposed section 14(2) as follows:

> (2) If a jury considering a charge of criminal neglect against a defendant finds that—
>
> (a) there is reasonable doubt as to the identity of the person who committed the unlawful act that caused the victim's death or serious harm; but
>
> (b) the unlawful act can only have been the act of the defendant or some other person who, on the evidence, may have committed the unlawful act,
>
> the jury may find the defendant guilty of the charge of criminal neglect even though of the opinion that the unlawful act may have been the act of the defendant.

I urge all members to examine that proposed section closely to satisfy themselves that they, as legislators, understand what is to be put to a jury in cases of this kind. These are very difficult concepts. Those in our state who have considerable experience in the practice of the criminal law have, through the Criminal Law Committee of the Law Society, expressed to the government their concerns and circulated them to other members of parliament.

In a letter dated 27 August 2004, the Law Society has expressed disappointment that it was asked to comment only after the bill was introduced into the House of Assembly. It notes that, in the past, draft bills and explanatory memoranda have often been provided before the introduction of a bill. The letter states:

> We are concerned that there has not been sufficient analysis of the issues and broader consideration throughout the community.

It further states:

> Whilst the society supports the objectives of the bill in principle, there is overwhelming disquiet and concern about the provisions, the wording of the legislation, its application and its other effects.
>
> The stated purpose of obtaining the conviction of persons who did not commit the unlawful act which causes the death or serious harm of a 'protected person' is a matter of significant concern.
>
> The society is concerned that this legislation could encourage inadequate investigation by police and forensic experts; the presentation of weak prosecution cases; the criminalisation of innocent people; and the failure properly to prosecute an offender for the substantive offence for which they are truly guilty.

I interpose to indicate that I imagine that the society intended to say 'of which they are truly guilty'. The letter continues:

> One of the stated purposes of the bill is to get one or other of the parents of a child, for example, who did not commit the unlawful act occasioning death or serious harm to have an incentive to 'say what seriously happened'.
>
> However, it is considered equally likely that the legislation will create an incentive to fabricate, to shift blame and to make false accusations. We envisage a likely consequence of the legislation is that persons potentially liable will seek to cast blame upon each other, leaving both liable to conviction for criminal neglect and potentially resulting in an innocent party suffering conviction on that charge while the perpetrator avoids conviction for the substantive offence.

I interpose that they are real fears rooted in practical experience. The Law Society in its letter goes on to make a number of specific criticisms of the bill as it stood at the time the letter was written. One, at least, of those matters has been addressed. The letter further states:

> Specific concerns and criticisms are:
>
> 1. 'Guardian' is not defined in the legislation. 'Guardian' has numerous meanings in the community, has different meanings in different communities, particularly the Aboriginal community, has specific legal meanings in different contexts whether at common law or under various legislative schemes and being undefined gives rise to uncertainty in the application of this legislation.
>
> 2. 'Serious harm' is not defined.

I interpose that, in the bill now before the council, that deficiency is remedied and a definition of 'serious harm' has been included. The letter continues:

> 3. The concept of 'serious harm' should ordinarily mean physical harm. Serious harm can include psychological harm. The purpose of the legislation seems to be directed at physical harm. The legislation ought to be confined to that.

I interpose that the definition of 'serious harm' that has been included includes not only physical harm but also protracted impairment of part of the body or a physical or mental function. So, the concept of serious harm, which has been taken from other legislation, has been extended to include psychological or other harm in certain circumstances. I think this is in itself an issue that should be the subject of further discussion and examination, because there is a body of case law on this subject.

I might interpose a reference to the case of R v Chan-Fook, a decision of the Privy Council in 1994. This was a case in which the defendant was charged with assault occasioning actual bodily harm. The defendant had dragged the victim, who had been accused of stealing something, upstairs and locked him in a second floor room. The victim sought to escape from the room but fell to the ground and was injured. But he did not suffer any physical injury, he was reduced to a mental state, which the Crown alleged amounted to actual bodily harm. It was held, however, that 'actual bodily harm' meant physical harm and, whilst it was capable of including psychiatric injury, it did not include mere emotions such as fear, distress, panic or hysterical or nervous condition. Nor did it include states of mind which were not

in themselves evidence of some identifiable clinical condition.

Where psychiatric injury was relied upon as the basis for an allegation of bodily harm which was disputed by the defence, the prosecution is obliged to call expert evidence, and in the absence of expert evidence the question whether psychiatric injury had been occasioned by assault should not be left to the jury.

The limitation expressed in that decision of a court appears to have been overcome in this legislation by a definition of 'serious harm', which does include serious or protracted impairment of a mental function. That particular aspect, as with other aspects raised by the Law Society (and by the opposition in this contribution), indicates that this legislation should be the subject of a parliamentary review. The opposition considers that that sort of review cannot be undertaken during the ordinary committee stage of a bill of this kind but does require an examination by a parliamentary committee which can have the opportunity to examine witnesses and to tease out and explore the ramifications of a bill of this kind.

We do know, for example, that this bill has been modified not only in response to questions raised by the Law Society and others but also in response to concerns which I believe have been expressed by the judiciary. Point 4 of the passage from which I was reading states:

> By way of general comment, the language and wording of the legislation was considered to be confused, confusing, contradictory, ambiguous, impractical, unnecessarily complex and therefore likely to lead to uncertainty and injustice. An indication of the difficulties of language of the legislation was that there was amongst the committee members many different interpretations of the legislation, its meaning and application.

Point 6 of the Law Society's letter states:

> The wording in section 14(1)(d) does not appear to state the appropriate formula. If we take criminal neglect to be essentially concerned with the concepts of negligence or recklessness, which are traditionally known to the law and to the community, then these concepts should be approached in the usual way, that is, the
> · existence of a duty of care
> · identification of the requisite standard of care
> · a breach of care whether by act or omission
> · consequences of the breach of the duty, namely, the harm.

Point 7 states:

> A concept of 'appreciable risk' in section 14(1)(c) is again a novel term. The usual formulation in the context of negligence or recklessness refers to 'foreseeable risk'.

Point 8 states:

> Whilst on the one hand it is suggested that the bill is not concerned with cases where the accused can be shown to have committed the unlawful act that killed or seriously harmed the victim, on the other hand the bill is to enable both a substantive offence to be charged as well as the criminal neglect charge to be laid. Therefore the legislation can apply to where the prosecution considers it can prove the substantive offence.

Point 9 states:

> Some of the examples quoted [in the second reading explanation] may not be so clear cut. In example three—

and I will not stay to read that example—

> the adult may well be vulnerable but that does not establish that there is a duty of care owed by the grandchildren nor that the apparently vulnerable adult had any policy or practice by which there was care owed and delivered by the grandchildren as a matter of fact. On the one hand the grandchildren are the suspects in respect of the death of the vulnerable grandparent but there is nothing even to establish that there was anything more than an accident and yet even in a case of accident there is a substantial risk that other occupiers of the house, such as in this example, could be found criminally liable for criminal neglect. This would be productive of injustice.

I believe this letter from the Law Society has been circulated, so I will not read it all. However, I should mention points 11 and 12 which state:

> 11. The provisions of section 14(3)—

the letter refers to section 14(3), but it is now proposed section 14(2)—

> give rise to considerable conceptual difficulties including views that it may or may not involve a shifting of the onus of proof. The wording is ambiguous and needs clarification.
>
> 12. As a result, it was considered that the bill in its present form can only lead to more complex, more protracted, more costly and unnecessary, difficult court proceedings with consequential risks of injustice, unfairness, failure to achieve the stated purpose in the legislation, more appeals, more delay, more uncertainty.
>
> We repeat, the Law Society is not opposed in principle to the concept of the proposed legislation in so far as it seeks to ensure that perpetrators are properly convicted of substantive offences. We do, however, express serious concerns that this second version of the bill does not achieve the stated purpose.

It is interesting to note that the government, on what it must have perceived to be a quiet news day, yesterday issued a release speaking up the Premier's own assessment of his achievements on the subject of law and order—which actually undermines one's faith in the whole concept of self-assessment—and this legislation on vulnerable persons is claimed to be an achievement. I have indicated all along that the opposition, as with the legal profession, agrees that some appropriate steps need to be taken, but measures of this kind are all too late for the victim. We should be focusing more on prevention and early intervention. Finding the wrongdoer is one thing, but this government is all too keen on the glib solution, which, frankly, the government does not care whether or not works.

This Premier is interested only in a report card which places a tick alongside 'protection of vulnerable adults'. We are anxious to ensure that South Australian laws actually achieve a positive outcome; that they work; that they do not cause injustice; and that they cannot be misconstrued. Accordingly, the opposition believes that it is appropriate for this legislation to be referred to the Legislative Review Committee for its investigation and report. Therefore, I move:

> That all words after 'that' be deleted and 'the bill be withdrawn and referred to the Legislative Review Committee for its report and recommendations' be inserted.

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

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to the Crown Solicitor's Trust Account made earlier today in another place by my colleague the Attorney-General.

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

Adjourned debate on second reading.

(Continued from 10 November. Page 508.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise on behalf of the Liberal Party to support the second reading of the bill. With some changes, this bill is substantially the same as a bill that was introduced I think in the latter part of 2003, and I addressed the second reading of the

former bill on 6 May 2004. The bill did not progress beyond that stage and has now, as I said, been reintroduced with some amendments. I think I indicated at the time of the second reading in May 2004 that I was aware that there was ongoing concern about aspects of the bill and that there were ongoing discussions with the government. The government has indirectly given evidence to that by reintroducing the bill with one or two significant amendments, and in one case picking up some of the criticisms that were made at the time about the former legislation.

I do not intend to go through the extensive second reading contribution that I did when last we spoke, but I want to highlight some aspects of my contribution which still apply to our consideration of the legislation on this occasion and to seek again information from the minister and the government in relation to aspects of the legislation. As I said, we support broadly the second reading of the bill. However, there are one or two aspects to which we will move amendments. We are considering amendments in some other areas, and at this stage we are likely to oppose one particular provision. In May 2004, I asked some questions and raised issues, for example, in relation to WorkCover and whether or not it would be covered by the legislation and whether potentially under a certain set of circumstances WorkCover might be incorporated into the legislation.

I did that as a particular example, but I then raised some other potential issues—first, regarding agencies or instrumentalities of the Crown and, secondly, which statutory authorities are required to have their accounts audited by the Auditor-General. These are both eligible public authorities within the terms of the legislation. I formally seek from the minister a list of the authorities, the accounts of which the Auditor-General is required by law to audit. I think that would assist members. I know the Auditor-General has such a list and I think it would assist members if we were aware of all those statutory authorities, the accounts of which the Auditor-General is required by law to audit.

Similarly, I seek from the minister a list of all the agencies or instrumentalities of the Crown that will be caught under subparagraph (c)(i); that is, a statutory authority that is an agency or instrumentality of the Crown. Again I think that would give members a working list of the sorts of authorities which might be caught up under the proposed legislation. As I said, it would appear possible under the current bill that a minister for one of these authorities could direct that authority (if the legislation allows it) to make the decision to have its funds invested and managed by Funds SA.

It is also possible that the Treasurer could be directed to agree to accept the funds on behalf of Funds SA. So it is possible that a government, through ministerial direction, could bring about the process that is envisaged in the legislation. As I flagged last year, the opposition will be moving an amendment which will allow some parliamentary oversight of this particular set of circumstances so that the decision would have to be taken by way of regulation.

The parliament would have an opportunity, if it were so convinced, to disallow such a transfer of funds from an eligible authority to Funds SA. I indicate at the outset on behalf of the opposition that we would not enter into such a disallowance lightly and that, if there was a public interest in the legislation being used, I would imagine that in most circumstances the opposition is likely to support it. Nevertheless, it would be a safety net; if for whatever reason the government were acting contrary to the public interest in using the legislation, at least the proposal the opposition is putting would allow the parliament to express a contrary point of view.

I flag again that the opposition was not convinced by the government's desire to give much greater power to dismiss directors. I indicated that that was our position in May last year and I received nothing from the government. I repeat the offer that, if the government can provide us with some evidence as to why the Treasurer requires these greatly increased powers to sack directors of Funds SA, the opposition is prepared to listen to the government's argument and further reflect upon its inclination not to support such an increase in powers. I make clear again the opposition's current intention, but I repeat that, if the government can provide the opposition with some evidence as to why there should be this increase in power, we are prepared to reflect further on our position.

Finally, in the area of seeking further information, with the approval of the Treasurer I had a meeting with the Chair of Funds SA late last year and, after that meeting—I must say only in the last week or so, to be fair to the Treasurer's office—I formally sought from the Treasurer some information and placed on the record in the second reading today the sort of information we are seeking. I would like to receive detailed information as to the division of responsibilities that currently exists between Funds SA and Super SA in terms of who takes what decisions in this whole process.

I remember as a former treasurer that this was an issue of some sensitivity between Funds SA, Super SA and their respective boards and officers. I have some knowledge of what was occurring four years ago, but I am not aware of the detail of the current situation. Particularly, members ought to be aware as to what particular set of decisions Super SA takes in terms of the investment and management of public superannuation funds, and what decisions Funds SA takes, getting down to the detail of who eventually makes decisions in relation to the division of assets into asset classes, and the percentage of assets that might be invested in overseas equities or Australian equities, for example.

Is that specifically a decision taken by Funds SA or Super SA, or is it a consultation process between the two with the final decision formally being Super SA's, but Funds SA believing that its advice is mostly agreed to? I give that as only one example. I am looking for more detailed information in relation to other general areas. I am obviously looking not for the detail of individual decisions but for the general classification of decisions that have to be taken in investment strategy, that is, a strategy concerning being prepared to accept losses and the likelihood of losses in five, six or seven years.

Who makes that sort of decision? Is it Super SA in terms of its strategy, or is it Funds SA? The legislation goes on to contemplate some of these things by talking about performance plans. I am interested in the current arrangements between Funds SA and Super SA, for example, in terms of performance plans; that is, who finally makes decisions in relation to the details within a performance plan and what are the type of issues included in the performance plan for Funds SA; that is, in relation to Funds SA and Super SA?

I am also seeking from the Treasurer some detail as to what he envisages will be the relationship between Funds SA and an approved public authority under the current arrangements. For example, if WorkCover or the Public Trustee, or some other public authority, was to have its funds invested by Funds SA, I am interested to know what will be the division of responsibility between the particular eligible

authority and Funds SA. For example, with WorkCover, who would make the decisions in relation to the percentage of assets invested in asset classes, the degree of risk in the investment portfolio, etc.? Is that the WorkCover Board or the Funds SA Board, or do both of them have to agree? I think these are important decisions about which this committee needs to be aware in its consideration of the legislation.

Some authorities and bodies have put to me—and I am sure to other members—that some of these provisions ought to be further amended by the opposition. At this stage, we have not absolutely ruled out the prospect of further amendment in these areas. However, we are reserving our position to await the advice from the Treasurer in his response to the second reading. For example, one particular body is suggesting to us to amend section 5(a) of the act so that the functions would relate to investing and managing the nominated funds and approved authority pursuant to strategies formulated by that approved authority as opposed to 'the corporation'. That would be a quite clear change in authority under the proposed legislation, because the government is envisaging that the strategies would be formulated by the corporation to invest and manage pursuant to strategies formulated by Funds SA, whereas this particular body that is putting forward the suggested amendment is suggesting that it should not be Funds SA and that it should be the approved authority, which would be, say, WorkCover or the Public Trustee, or whatever other approved authority it might be.

So, that is why, in terms of the Treasurer's response, we want to know, in specific detail, under section 5(a) of the act, where it talks about investing and managing, pursuant to strategies, what are the strategies—the sorts of decisions—of the corporation that would be taken under that broad ambit of strategies and, if that were to be changed to 'the approved authority', as opposed to 'the corporation', what would be the sort of decisions that would therefore be retained by the approved authority, as opposed to being transferred to Funds SA, and what would be the problems, from the government's viewpoint, if indeed that amendment were to be moved?

Personally, at this stage, I am probably not inclined to support that amendment. However, I am interested in getting a detailed response from the Treasurer as to how this division of responsibility would operate. The traditional corporate governance models that are talked about would probably favour the sort of changes that are being recommended; that is, the approved authority, or in the existing example, Super SA, the boards under the current accepted models of corporate governance ought to be making the most of these broad decisions, and Funds SA would undertake the investment strategies within the parameters mapped out for them.

However, as a former treasurer, I understand that the history of managing these things within the South Australian public sector has not always been in accordance with that traditional corporate governance model. During my period as treasurer (I have not had recent experience, obviously), the very well respected board, management and staff within Funds SA have consistently outperformed most of the industry performance measure indices. I am not sure whether or not that is still the case, but that is certainly the history of Funds SA. That is probably why the South Australian public sector corporate governance model has not always been entirely in accordance with what some would argue is the traditional corporate governance model that perhaps ought to apply.

With those remarks I indicate that the opposition would not want to proceed with the committee stage until we have received a detailed response from the Treasurer, on behalf of the government and Funds SA. I will table within the next 24 hours some amendments we have agreed at the moment. However, I indicate that, subject to the response we get, the opposition might contemplate some further amendment, in particular in the last area I have just canvassed.

The Hon. IAN GILFILLAN: The Democrats supported this bill the last time it was brought before this chamber, and we support it again. The bill has two broad thrusts: first, the increased attention to accountability of the Superannuation Funds Management Corporation through the preparation of a performance plan and reporting against that plan; and, secondly, the possibility of some economies of scale to be realised through the corporation managing other government investments.

Constituents have raised concerns with me about the wisdom of the latter, because they are worried that their superannuation assets may not be receiving the quality attention they deserve if the corporation is distracted by short-term investment strategies. I do not hold that view, but I can understand their concern.

I believe that a competent financial manager should be flexible enough to handle diverse portfolios with different investment strategies. The Democrats will be very critical of the government if this exercise is used to attack the South Australian Public Service with another round of job cuts which result in staff being forced to take on workloads beyond their capacity to manage. Of course, if that is the case, any deficiencies will fall at the feet of the government for its not being aware that quality performance comes from those individuals given that responsibility having adequate workloads.

I feel quite at ease with the improved accountability. As members of this place would be aware, the Democrats are very keen on anything that improves the transparency and accountability of the state government. However, one concern, to which I alluded in speeches on former versions of this bill, still remains. Clause 8 provides:

> Amendment of section 10—Conditions of membership
> Section 10(6)—after paragraph (c) insert:
> (d) if the director has been appointed by the Governor on the nomination of the Minister—on the recommendation of the Minister for such reason as the Minister thinks fit.

This adds a further circumstance by which the government, through the Governor, can remove the director from office. Under the legislation, the board consists of between five and seven members. Section 9(2) of the act provides:

> (a) one will be elected by the contributors; and
> (b) one will be appointed by the Governor on the nomination of the South Australian Government Superannuation Federation; and
> (c) three, four or five will be appointed by the Governor on the nomination of the Minister.

In relation to the dismissal of a director from the board, the act provides:

> (6) The Governor may remove a director from office—
> (a) for misconduct; or
> (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
> (c) without limiting paragraph (b)—for non-compliance by the director with a duty imposed by this Act.

I have expressed concerns about the government's having the power arbitrarily to remove senior public servants and statutory authority heads without reference to parliament, and this is a particular case in point. The reasons for dismissal are

not spelt out. Clause 8 provides that the minister does not need to specify the reasons for dismissal and provides for 'such reason as the minister thinks fit'. Suddenly, we go from an independent body, with directions in writing and reports to the parliament, to the set of what could be called 'puppets', who are subject to removal at the minister's whim and who would then be under pressure to second-guess the position of the minister or the government, responding to hints, asides, nods and winks—much as we have seen with the state's Parole Board. Who knows how this may tempt ministers, either those of today or of the future, to whisper in ears and have certain decisions warped by that pressure?

However, we will support the bill at the second reading stage. Its major thrust is acceptable. Again, I indicate that we will oppose the clause I have outlined. The government should rethink its position on wanting to hold in its own hands the ability to sack someone because they do not please the government of the day in the way in which they perform their function. With those observations, I indicate that we are interested in the committee stage, but it is anticipated that we will support the third reading and therefore support the passing of the bill.

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

INDUSTRIAL LAW REFORM (ENTERPRISE AND ECONOMIC DEVELOPMENT—LABOUR MARKET RELATIONS) BILL

Adjourned debate on second reading.

(Continued from 9 December. Page 840.)

The Hon. CAROLINE SCHAEFER: I had hoped that, during the long Christmas break, the desperate lobbying of numerous small employers would be successful and that the government would, at least partially, see the error of some of its ways. To my absolute horror, however, I read that the Democrats, under the guidance of the Hon. Ian Gilfillan (himself a farmer), will support this most undemocratic legislation. It was also reported that the other Independents are unlikely to support the Liberal Party in its attempts to make this legislation more equitable. If that is the case, we can look forward to a decrease in employment, an increase in bankruptcy amongst small business and the growth of mistrust between employer and employee.

This bill is not about fair work practices, as it claims, but about strengthening the power of unions, even in non-union workplaces. It is based on the premise that all employers are rogues and scoundrels whose whole aim is to rip off their workers. I have been both an employer and an employee, and it does not take a great deal of commonsense to know that the best workplace relations are based on mutual respect and trust. People with a poor record can never get staff to stay. The best bosses have the best staff, and the worst bosses have the worst staff, or no staff, yet this bill assumes that everyone is the same, that no-one can be trusted and that the only bargaining that will work is that which ends up in the Industrial Relations Court.

Such a blatant grab for power by the unions can only result in a less competitive economy in South Australia. It flies in the face of the declared aims of this government's own strategic plan and will certainly work against the aim of trebling exports. The only way to increase exports is to be competitive on the world market and, as a state and country dependent upon exports, we must stop and not speed up the dangerous downward spiral we are already witnessing in South Australia. This measure is almost the reverse of the highly praised and effective commonwealth legislation. It will result in all those who can changing to a federal award, which will, in turn, weaken the position of those left under a state scheme.

Much has been said about the ant-competitive nature of this bill and the fact that it is anti-growth and anti-employment so I will not repeat those matters. However, I would like to draw attention to some of the issues that will most affect my shadow portfolio of primary industries and in fact all small employers. In its submission the South Australian Farmers Federation has called for recognition of the circumstances which affect farmers and which will therefore multiply the effect of this bad legislation. Those special circumstances include low or no profit margins, geographic isolation, very little available labour, the need to employ large numbers of people seasonally but not throughout the year and so on.

I can only repeat that the parts of this bill which threaten all small businesses will be magnified on farmers and, since this state is perhaps more dependent on primary industries for its export dollar than any other, we can all expect to suffer. Some of the issues raised by SAFF but not responded to in this bill are as follows. The new definition in section 5 allows the Industrial Court to declare an independent contractor to be an employee even though neither the contractor nor the farmer have asked for this to happen. It is increasingly common in rural areas for independent contractors to own expensive equipment such as headers and to do all the reaping in a given area.

This produces significant economies of scale and very often an income for someone who owns plant rather than land. This clause will be a significant disincentive for both contractors and farmers and will result in massive increases in costs, even though neither party wants this change. It is very common for farmers such as winegrape growers and horticulturalists to use a labour hire company to employ seasonal labour. This provides certainty to the labourers who move from property to property and district to district but work for the same employer without having to individually seek work, and it provides the farmers with certainty that they will be able to get labour when they need it.

The need to chase people who may be on one property for only a few days for details such as WorkCover, tax file numbers, superannuation and so on is borne by the labour hire contractor for a fee. Everyone is happy. This legislation will make it possible for the farmer to be deemed a coemployer and he or she could then be sued for, for instance, wrongful dismissal of someone they have never even seen. This change will make the labour hire firm comply with an award although which award or enterprise agreement is uncertain. This will have the effect of even less employment for itinerant workers who will probably choose to work in states with more commonsense agreements.

Who will then pick our grapes and our cherries, and how can this possibly help our exporters or our casual workers? Part 3A allows the commission to decide that a contract between a contractor and a farmer is unfair even, as I understand it, if both parties are happy with the contract. The commission can then vary the contract and award compensation that no-one has requested. These so-called reforms will discriminate against smaller farmers who cannot afford to run

all of their own plant and, as I have previously stated, those who are making a good living by contracting.

One of the great disincentives for small businesses generally is the wrongful dismissal legislation. This legislation greatly increases the powers of those laws and again will lead to even more small businesses deciding not to employ at all. One of the most bizarre provisions of this bill is section 98A which gives the commission the power to decide that particular categories of work cannot be undertaken by children who are defined as being under 18 and to place them under an award.

Most of us know that most family farms could not exist without quite a lot of input from children, and particularly children—or young adults, as most of us think of them—within that 14 to 16 age bracket. We have already seen the Bracks Labor government make it illegal for grandparents to have their grandchildren perform any task, even collecting the eggs on a farm, without paying for a licence to do so, and it appears that we are heading down the same path. Finally, this bill allows a union official to enter my home unannounced at any time on the premise of inspection. Why? Because I am a small business operator who happens to have my office in my home.

I am grateful to a number of agripolitical organisations for sending me copies of their submissions to either this bill or the original draft bill. I believe that the concerns expressed by the South Australian Wine Industry Association sum up the views of all primary industries and most other small and, indeed, large businesses in the state. Because of that, I will read that summary in its entirety. The summary of the South Australian Wine Industry Association states:

> The wine industry takes the view that the bill sets out the most significant change to South Australian industrial relations laws for several decades. Indeed many of the proposals will be a first in an Australian context in industrial relations laws. The wine industry supports further reform of the current industrial relations, but the case for change in most of the proposals put forward is lacking or not conclusive and seems intent on dealing with a fix for minority issues rather than positive benefits to the overall system.
>
> Previous governments of any political persuasion have in the past achieved industrial relations amendments that have assisted IR reform while still demonstrating a tangible benefit for South Australians when considering other states' IR laws and the Federal IR system. The current set of proposals however do not reflect this approach and must cause investors and business operators to seriously consider opportunities elsewhere. In our opinion, the changes proposed:
>
> · are considered negative rather than positive towards our wine industry membership interests in South Australia—

and as an aside, sir, I remind you that that particular industry is worth some $2 billion to South Australia—

> · seek to embed a concept of being 'fair' and by doing so raises the concept of 'unfairness'. These considerations allow any two people to have very different views about any given topic, which simply reinforces the prospect for disagreement, disharmony and potential disruption when applied within the workplace and argument before the Industrial Relations Commission;
> · on balance, aim to increase the level of disputation, disruption and hence time lost through industrial action within South Australian workplaces to the detriment of the sound industrial relations record of the state;
> · will significantly increase the workload of South Australia's Industrial Relations tribunals;
> · dictate concepts that are largely foreign to established case law, current business practice and workplace understanding;
> · impose a legislative solution to resolve issues (e.g., Labour Hire) considered by the Review of the Industrial Relations System conducted by Greg Stevens and the government as being unfair when the solution proposed creates as many issues and problems and fails to address why market forces have allowed these areas to be created;
> · fundamentally alters the current enterprise agreement system and participants' understanding, acceptance and commitment, potentially leading to uncertainty and lack of commitment for future agreement making;
> · potentially disrupts the enterprise bargaining process to facilitate exploration of the concept of and what is meant by 'best endeavours' bargaining;
> · will not assist small and medium sized businesses enter into enterprise agreement making because the review failed to identify the reasons these businesses lack interest in the enterprise bargaining system;
> · no longer allows an employer to be certain of costs of employment for the life of its enterprise agreement because third parties (Industrial Relations Commission) can order or add to any negotiated/agreed outcomes and potentially determine any matter that was not agreed;
> · reduce flexibility and will increase business risk and employment costs in order to comply;
> · require the application and/or consideration of judicial principles by a largely lay member commission jurisdiction;
> · encourage an operating environment that moves us toward litigation and adversarial relationships, reinforcing a 'them and us' mentality that is not conducive to harmonious workplaces;
> · provide minimal consideration of any harmonisation of state and federal industrial relations laws;
> · make business interests once again consider the benefits that the federal versus state system offers and/or consider the state of Australia in which it wishes to conduct its business or investment considerations due to potentially adverse industrial relations laws;
> · add to the complexity in understanding when applying industrial relations laws when both federal and state systems operate at the one workplace; and
> · increase business regulation adversely.

That is what the wine industry thinks of this piece of legislation. The question needs to be asked: who actually wants this legislation? Was there a groundswell of public demand for these changes? No. Did business ask for it? No. Did contractors ask for it? No. Did labourers ask for it? No. Did the average worker ask for it? No. Will it help any of the above? No. Will it increase employment? No; it will decrease jobs. Will working conditions for the average employee be better? No.

So, who does want this legislation and who will be better off? Only the unions and, in particular, the union officials: certainly not Joe Average worker. It needs to be recognised that, if this legislation passes unamended, it will be the thin end of the wedge, as has been seen in Victoria. For the sake of the future of the economy of South Australia, I ask the Independents and Democrats to think long and hard about the ramifications of simply following the government line on such an important piece of legislation.

The Hon. CARMEL ZOLLO: I will make a short contribution to this important piece of legislation with the aim of seeing fair industrial relations outcomes for all South Australians. We have seen consultations lasting over a year, with the government listening to the concerns expressed and incorporating them in the bill. What we have seen on the conservative side of politics (the opposition) is simply opposition for ideological reasons. One wonders whether some members on the opposite side understand the concerns of those less fortunate in our community as expressed by the minister in his second reading explanation—concerns about changes in the workplace that have heightened insecurity and made it harder for people to meet their family responsibilities.

I am pleased to see some changes to the current act for those employees who do not have the benefit of an award or an enterprise agreement in particular. It is proposed to make changes to the minimum standards in the act to:

· create a minimum standard for bereavement leave;

- provide that up to five days of existing sick leave entitlement can be taken as carer's leave;
- require the commission to set a minimum standard for severance pay, which is payable only where there is an application to the commission; and
- require the setting of a minimum wage.

As the minister said, all South Australians deserve a safety net, and this proposal gives them one. The minister also highlighted the need for workers in particular situations to know their rights and obligations as either contractors or employees. The many jobs with long tenure of employment in whatever field that existed when the post Second World War baby boomers started in the work force no longer exist. Obviously we have seen a contraction of the work force, with many new innovations and automation and the need for employees to be multiskilled.

When I commenced work in the late 1960s one could aspire to a number of specialised positions in any office, the field of commerce or even in primary industries. That is not now the case. Even more importantly, at that time if one workplace did not work out it was not such an issue—one simply took the next job. Jobs were plentiful. We now see many people employed as contract employees often required to reapply for their positions (and that is very much the case in executive positions, I suppose) after a certain period of tenure, or moving onto the next opportunity that exists for them for employment.

I believe that allowing for the Industrial Court to make a ruling as to whether a particular person or class of persons are contractors or employees before there is a problem certainly makes a great deal of sense. This proposal to the bill will assist both parties in understanding how it applies to them. I note also that the bill seeks to increase the potential length of enterprise agreements from two to three years for the obvious reason that it is a resource intensive enterprise. One does hear that, having just completed one round, it is time for the next instalment of enterprise bargaining to begin.

It is difficult also to talk about a piece of legislation such as this without making mention of the plight with which some outworkers are faced—those who are taken advantage of and who are not paid fairly for the work they perform. I am pleased to see the introduction of provisions to ensure that outworkers receive the payment that is their due. Not all outworkers, of course, are exploited, but regrettably we sometimes see evidence of those less empowered—either because of language or poverty—being exploited in such a way.

Many other initiatives are proposed in this legislation, including, of course, the setting of a minimum wage. South Australia does not have one. As the minister pointed out, this government wants to make sure that everyone benefits from economic growth. It is about helping the disadvantaged and making certain that our existing laws are better understood, applied and enforced. I am pleased to see the support indicated so far for this legislation by the Democrat members and the Hon. Nick Xenophon. Clearly, they are interested in some committee debate. Together with other members I did receive from the Hon. Robert Lawson a copy of many amendments proposed by the opposition. No doubt some of them are similar to those tabled in the other place. I am certain that it will be a long debate.

The Hon. J.S.L. DAWKINS: I indicate my opposition to this bill, formerly known as the fair work bill; and, in doing so, I endorse the comments made by my colleagues the Hons Robert Lawson, Terry Stephens and Caroline Schaefer. Initially I want to refer to the name of this bill. The submission from Business SA in relation to the bill states:

> This name is cumbersome and impractical. Business SA also opposed the earlier proposed reference to fair work for reasons that are set out in the submission. Nomenclature of statute should be based on fact, not subjective judgment. This name makes a value judgment and suggests that work is inherently unfair. Business SA disagrees with that assessment.

I strongly agree with Business SA. It is one of the most confusing titles for a bill I have ever come across since I have been following the governance of this state and particularly since I have been in the parliament. I think that it is a nonsensical title for a bill.

Business SA and many other employer groups have demonstrated significant concerns about the bill. I commend the member for Davenport for his work on this bill ever since it first came to light in draft form in late 2003. First, I will refer to the objects of the bill in clause 5, and, in particular, the comments made by Business SA. New section 3(fb) provides:

> to promote and facilitate security and permanency in employment;

Business SA's submission states:

> Casual employment (and other non-traditional working arrangements, such as contracting and labour hire) will be something that the act (and the commission) positively discourage. This ignores the choice and convenience offered to both employers and employees by working arrangements characterised by some as other than permanent and secure. It ignores the fact that many workers prefer these arrangements because they offer flexibility and choice.

New section 3(ka) provides:

> to encourage and facilitate membership of representative associations of employees and employers and to provide for the registration of those associations under this act;

The submission of Business SA states:

> Positively encouraging union membership is inconsistent with the existing section 3(k), which has an object: 'To provide for absolute freedom of association and choice of industrial representation.'

New section 4(1) provides:

> workplace means any place where an employee works and includes any place where such a person goes while at work but does not include any premises of an employee used for habitation by the employer and his or her household other than any part of such premises where an outworker works.

The submission by Business SA outlines the organisation's opposition to that clause. The submission states:

> This means that, where premises are used for a combination of outwork and residence, that part used for habitation will not be a workplace. There will be arguments about which parts of premises are used for habitation, and which parts are 'where an outworker works'. It may still allow arguments about rights to access a place where an employee goes while at work, where the employer also uses that place for habitation. Despite potential arguments about practical applications, the intention now seems to be that union officials not be able to enter any premises used for habitation, other than those premises where outwork is done. If part of some premises (which could be a home) is used to keep records or perform work, then an industrial inspector may enter that part (and presumably via a thoroughfare through the whole).

I now refer to some correspondence I have received from many industry associations and individual businesses which highlight enormous concerns about the bill. An extract from the submission from the Printing Industries Association of Australia (South Australian Region) states:

> In our view the [bill] as tabled in the South Australian parliament on 13 October 2004 is ostensibly in direction the same as the draft

bill released for comment on 19 December 2003. It is our further view that the bill before the parliament is not conducive to the development of business and industry and therefore will not promote economic growth, and as a result will be detrimental to employment in South Australia.

The bill in our view significantly offends the following objects of the Industrial and Employee Relations Act 1994, section 3 specifically:

(a) to promote goodwill in industry
(b) to contribute to the economic prosperity and welfare of the people of South Australia
(c) to facilitate industrial efficiency and flexibility, and to improve the productiveness of South Australian industry, and
(k) to provide for absolute freedom of association and choice of industrial representation

This body was one of many similar organisations, representing 15 000 businesses and employing more than 150 000 people, that came together to oppose this bill. Another submission was received from the Information Technology Contract and Recruitment Association (ITCRA). A media release of 29 November 2004 states:

If this fundamentally flawed piece of legislation ever sees the light of day 7 000 independent contracting IT professionals will flee South Australia and they will only be able to be replaced by contractors who are quite happy to have IR inspectors and trade union officials entering their homes uninvited. . . The current IR bill should be withdrawn and rewritten by those who do not believe that closing down flexible work arrangements like 'contract and casual employment' is the way to 'meet the needs of emerging labour markets'. The problem the SA government has is that its legislative design process has been hi-jacked by people who think that there is no fundamental inconsistency between 'positively encouraging union membership' and 'absolute freedom of association and choice in industrial representation'.

Where are the IT contractors who are prepared for an IR Commission on which they have no voice or representation—and don't want it—and which can declare that they are no longer independent contractors but 'employee(s)' irrespective of what the reality of the situation is.

ITCRA represents 120 companies who place and manage more than 100 000 IT contractors throughout Australia. About 7 000 of them live and work in South Australia and keep that state's IT infrastructure ticking over.

I also refer to a letter I received from Mr Darren Turner of the highly regarded Naracoorte wool products company Minijumbuck. The letter states:

As a previous winner of the 'State and National Small Business of the Year' award, we wish to express our disapproval of the 'Enterprise and Economic Development—Labour Market Relations Bill'.

The passing of this bill could be detrimental to small businesses in South Australia as well as a disincentive to attract new businesses to our state.

Mr Turner continues:

Employees need to feel safe in their job and employers need the right to choose who they employ.

We are concerned that the new bill will lead to more disputes over unfair dismissal claims. There will be more red tape, regulation, third party intervention and complexity, which will lead to higher running costs for businesses in South Australia.

I also refer to some of the comments I received from well-known South Australian businessman Mr Bob Day AO, Managing Director of Home Australia and President of the Independent Contractors of Australia. Mr Day says:

The bill contains provisions that will seriously damage thousands of small business owners and independent contractors. Labour costs will rise, productivity will diminish, competitive advantage will disappear and a highly motivated small business sector will again feel the asphyxiating pain of over regulation.

The government doesn't seem to get it. Independent contractors now comprise more than 20 per cent of the work force. And their numbers are rising. They are engaged by government, business and the community in an almost endless list of roles as IT professionals, farmers, journalists, building and mechanical trades, accountants, nurses, couriers—the list is almost endless.

I support the amendments moved by the Hon. Ian Evans in the House of Assembly and which will be moved in this chamber by the Hon. Robert Lawson, but ultimately I remain firmly opposed to this bill which will negatively impact on South Australia's economy, investment, business and jobs.

The Hon. G.E. GAGO: Today I speak in support of the government's Industrial Law Reform (Enterprise and Economic Development—Labour Market Relations) Bill that was introduced in another place by the Hon. Michael Wright, Minister for Industrial Relations. I will make my contribution brief, as I am mindful that many members are enthusiastic to express their own passionate views about this bill and, of course, a great deal has already been said on this issue. This bill allows greater fairness for South Australian workers who are disadvantaged by the existing industrial relations system operating in this state. The bill proposes to:

- change minimum employment standards, including the setting of a minimum wage
- introduce best endeavours bargaining and transmission of business provisions
- introduce a pay equity principle between male and female remuneration in awards
- restore the powers of industrial inspectors
- protect outworkers so that they are paid for their work
- grant labour hire workers the right to seek redress from host employers for their unfair actions.

They are just a few of the main features of this bill.

This bill makes provisions for basic minimum standards for employees who do not have an award or enterprise agreement. This provision includes a minimum standard of two days for bereavement leave, the option to take up to five days of existing sick leave as carer's leave, the setting of a minimum wage and allowing the IRC to set a minimum standard for severance pay. This provision gives employees who are not covered by an award access to basic entitlements that are only available to employees who are covered by an award. Indeed, it addresses areas of basic fairness for employees.

This bill signals significant reform of the way in which labour hire workers are treated by industrial law. Under existing law, labour hire workers have no rights to seek redress against a host employer who treats them unfairly. Host employers often have day-to-day control over a labour hire worker and are currently unaccountable for their actions which, in some circumstances, may be unfair and unreasonable. This provision allows labour hire workers to take a host employer to the Industrial Relations Commission for unfair dismissal.

Outworkers are another group of vulnerable workers who are assisted by this bill. Under the existing law, outworkers who are not paid correctly or not paid at all have no recourse to recover remuneration that is owed to them. This is because contractors and companies may go broke, leaving outworkers with no avenue to recover their unpaid wages. This bill includes provisions which allow outworkers, through the Industrial Relations Commission, to recover money owed to them from a person or company in the chain of contracts. Throughout this debate, I have been astonished at the misleading and desperate claim made by Business SA that 'there is no evidence that South Australian workers will benefit from this bill'. Business SA is fervently opposed to this bill basically because these provisions which I have just

mentioned obviously and blatantly do benefit workers and provide a much fairer deal for workers.

Another important provision of this bill restores the powers of industrial inspectors, allowing them to conduct audits and systematic inspections to monitor compliance with the act and enterprise agreements and awards. This provision also allows inspectors to conduct an investigation without a formal complaint being lodged. Under the existing legislation, industrial inspectors are not able to conduct an investigation without a formal complaint that identifies the concerned employee. This situation clearly prevents some employees from making a complaint for fear of reprimand or other forms of intimidation available to the employer.

The playing field is not a level one between employer and employee. They clearly do not have the same access to certain privileges, and it is an uneven playing field in terms of the power of employees and employers. Employers have many advantages available to them that are not available to employees. To remedy this situation, which undoubtedly works against the interests of employees, this bill provides for alleged abuses within a workplace being investigated without a formal complaint being lodged. Employees will be able to lodge a confidential complaint regarding their existing employer without any fear of being discriminated against or being at risk of losing their job or threats of losing their job. Many ludicrous and unsubstantiated arguments against this provision have been put forward by the Liberal Party, most notably by the Hon. Robert Lawson, who was desperate enough to insist that this provision will 'extend the powers of the bureaucracy to impose additional burdens on employers to provide further discouragement to employment'. That has been supported by numerous other members of the opposition. Industrial inspectors ensure that employers comply with the industrial law, just like the police ensure that citizens abide by the criminal law. I suppose I should not be surprised that the conservative side of politics is treating this provision, which improves fairness to workers, as a radical and unreasonable proposition.

I was interested to read Dr Pocock's views regarding this provision that gives industrial inspectors greater powers. She stated that this provision 'may see an improvement in enforcement that will ensure that award-abiding employers are not undercut by the illegal behaviours of unscrupulous competitors'. So, she is virtually making the point that this provision can be of benefit to employers who do abide by the industrial law.

Another interesting point of contention regarding this bill raised by Business SA and its loyal propaganda machine, the South Australian Liberal Party, relates to the best endeavours bargaining. The scare mongering tactics of the Liberals would have people believe that this provision is a regressive throwback to the dark ages. However, the best endeavours bargaining provision simply gives the IRC the power to settle an enterprise bargaining dispute in limited circumstances; for example, when one party is acting unreasonably. This provision prevents employers from refusing to continue to bargain or negotiate once an offer from an employee is made. In essence, this provision sets in legislation clear guidelines for the kind of conduct that is expected of both parties during enterprise bargaining negotiations.

In conclusion, I congratulate the Liberal Party on its efforts in attempting, with its cohort, Business SA, to conduct a scare campaign amongst the small business sector regarding this bill. The Liberal Party has not even pretended to be independent of Business SA during the conduct of this debate. The Hon. Robert Lawson showed no shame or embarrassment whatsoever as he outlined the Liberals' response to amendments to this bill by referring directly to Business SA's submission. He showed no shame or embarrassment whatever.

From reading the loads of material that the powerful lobbyist, Business SA, has distributed to fuel fear in this debate, one could believe that the passing of this bill signals the end of South Australia's economy and, as one of my colleagues said, even the chooks will stop laying. The misinformation and rhetorical nonsense cooked up by Business SA that this bill is somehow bad for business is absolutely false, and they know it. Only through the creation of a strengthened employment safety net and greater employment security will businesses grow, families be better off and jobs be secured. The future of South Australia and its economy are being looked after very well by this government, which has achieved its AAA credit rating, amongst other things. This bill is yet another step in the right direction. I am proud to stand up and speak in support of this bill and look forward to South Australia's most vulnerable and disadvantaged workers finally receiving some basic entitlements that they rightfully deserve. I commend the bill to the council.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

ADOPTION, INTER-COUNTRY

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

TRANSADELAIDE, GENERAL MANAGER

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

PETRY, Mr K., DEATH

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a ministerial statement and also a copy of the investigation report into the Leigh Creek rail line incident in relation to the tragic death of Mr Karl Petry made earlier today in another place by my colleague the Minister for Transport.

ADJOURNMENT

At 5.57 p.m. the council adjourned until Tuesday 8 February at 2.15 p.m.