LEGISLATIVE COUNCIL

Monday 28 November 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.19 p.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2004-05—
- Corporations—
  - Mitcham
  - Mount Gambier
  - Onkaparinga
  - Prospect
- District Councils—
  - Barunga West
  - Barossa
  - Copper Coast
  - Elliston
  - Grant
  - Kangaroo Island
  - Renmark
  - Roxby Downs
  - Streaky Bay

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

South Australian Film Corporation—Report, 2004-05.

SELECT COMMITTEE ON THE ROLE AND ADEQUACY OF GOVERNMENT FUNDED NATIONAL BROADCASTING

The Hon. NICK XENOPHON: I lay upon the table the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. R.K. SNEATH: I lay on the table an interim report of the committee on its inquiry into the Nurses Board of South Australia.

Report received and ordered to be published.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. G.E. GAGO: I bring up the 2003-04 report of the committee on the Upper South-East Dryland Salinity and Flood Management Act 2002.

Report received.

The Hon. G.E. GAGO: I bring up the report of the committee on an inquiry into the Eyre Peninsula Bushfire and Native Vegetation.

Report Received.

HOUSE OF ASSEMBLY, REGIONAL SITTING

The Hon. A.J. REDFORD: Mr President, I rise on a point of order. I noticed in another place the Speaker referred to the visit by the 'parliament' to Mount Gambier and a gift to the 'parliament' commemorating its visit. Could you pass on to the Speaker that it was not the 'parliament' that visited Mount Gambier but the House of Assembly; and could you correct the Speaker on the correct use of the term 'parliament'?

The PRESIDENT: I acknowledge the honourable member's point of protocol and I shall have a discussion with my colleague in another place.

QUESTION TIME

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Leader of the Government a question about DTED.

Leave granted.

The Hon. R.I. LUCAS: I am advised that in November 2003 cabinet approved expenditure of $814 338 for the economic development plan for the southern suburbs. I am advised that in November 2003 cabinet not only approved that expenditure but also agreed on the specific commitments that were to be funded by the government. The money was allocated to the department, the responsibility of the Leader of the Government in this chamber. Significant concern has been expressed to me from people within the minister's department that at the end of the last financial year, in the middle of 2005, the vast majority of that money to be spent on the economic development plan for the southern suburbs had been left unspent. Indeed, $559 000 had been unspent out of just over $800 000.

Significant concern has been expressed that many small and medium enterprises in the southern suburbs believe they could have been assisted in terms of job development and job creation if the minister, his chief executive and the department had managed to get on with the job that they were given in 2003 of spending this cabinet allocated money. My questions are:

1. How does the minister defend the fact that his department has left the large majority of the urgently needed $814 000 for the economic development plan for the southern suburbs unspent as at the end of 2005?

2. Will the minister bring back an urgent report to this chamber as to who, other than he, was responsible within the department for leaving this money unspent?

3. What does he intend to do in relation to the economic development plan expenditure for the southern suburbs?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Some money was made available in November 2003. I am not exactly sure of the time, but certainly it pre-dated my time as the minister in this portfolio—which was April 2004. Certainly, significant discussions went on with the Onkaparinga council and the Minister for the Southern Suburbs in relation to these particular programs to which the honourable member has referred, in terms of developing an economic development plan for the southern suburbs. Local government has been closely involved with that. I am aware that not all the money has been spent. The honourable member has sought some information in relation to the amount. Obviously, I do not have that information at my fingertips at present, but I will get the information and bring back a response.

It is all very well for the honourable member to suggest that this money was available for individual companies. That was not the purpose for it. The money that was made available was to provide an economic development plan for the southern suburbs, and a lot of work has been undertaken

in relation to that matter with one of the officers. The Department of Trade and Economic Development has been working with not only Onkaparinga council but also the Office for the Southern Suburbs to get that particular information.

The Hon. R.I. Lucas: What sort of things are you looking at?

The Hon. P. HOLLOWAY: The honourable member asks these questions. I suggest that he look at the unemployment figures for this state, which have been at the lowest level they have been for many years.

The Hon. R.I. Lucas: Thanks to Howard and Costello.

The Hon. P. HOLLOWAY: No, it isn't. They have actually been lower than other states. That was not the case some years ago, but since this government has developed an economic development plan we have achieved that goal.

Members interjecting:

The Hon. P. HOLLOWAY: Members opposite might not like it, but those are the facts.

The Hon. R.I. LUCAS: I ask a supplementary question. Is it true that the Expenditure Review Committee of cabinet was so unconvinced by the minister's submission for carryover that he was given only conditional approval for carryover of these funds until he could justify why he had not spent the vast majority of this money since November 2003?

The Hon. P. HOLLOWAY: I have already explained to the honourable member that I will not discuss matters which are before cabinet.

The Hon. R.I. Lucas: It's too embarrassing for you.

The Hon. P. HOLLOWAY: Not in the least.

RAVE PARTIES

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about rave parties.

Leave granted.

The Hon. R.D. LAWSON: The case of Ms Michelle Leslie, who has been in custody in Indonesia for the last three months having been found in possession of two Ecstasy tablets, has excited a good deal of interest in this country. It is well documented that Ecstasy and other illicit drugs are widely available and extensively used at so-called rave parties. Yesterday's *Sunday Mail* contained a notification that on 2 December there will be a so-called dance party called Summer Enchanted, which is to be held at an undisclosed location in the northern suburbs at an outdoor venue. This event is expected to draw up to 8 000 people.

The report states that the police have issued a warning that the law will be enforced if any pill testing is engaged in at that particular event. Detective Chief Inspector Peter Harvey is quoted as saying:

> . . . if we have reasonable cause there has been an offence we will take action. The police are not involved in moral arguments. We enforce the law.

He said that the police from the Elizabeth local service area would maintain a visual and covert presence at the event.

This government's position in relation to the matter of pill testing was somewhat ambivalently put by the Hon. Lea Stevens (former minister for health) when she said in March this year:

> The government's position is clear and it has been stated repeatedly: we will not support any testing which involves handing drugs back to kids.

I repeat: '. . . any testing which involves handing drugs back to kids.' It is not clear to everybody that that does not mean that the government does not mind pill testing if the drugs are not in fact handed back to the users. My questions are:

1. Does the minister accept that it is anticipated that at the Summer Enchanted dance party on 3 December Ecstasy and other illicit drugs will be available and will be used by people who attend?

2. What is the government's position in relation to such parties?

3. Why are the police issuing warnings to researchers who say they wish to conduct tests, but not to other persons who might be minded to attend such functions?

4. What action will this government take to ensure that illicit drugs are not available and are not used at the forthcoming Summer Enchanted dance party?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): Obviously, I am aware that an article appeared in the *Sunday Mail* yesterday. Apparently, the Melbourne-based group, Enlighten Harm Reduction, claimed that it had unsuccessfully requested permission from the health minister in the other place to conduct pill testing at the forthcoming rave event, Summer Enchanted. I must advise the council that, under the Controlled Substances Act, Enlighten Harm Reduction would require a permit, which is issued by Pharmaceutical Services (Drug and Alcohol Services South Australia), to legally conduct pill testing at the rave event.

There is no record of an application being received from Enlighten Harm Reduction to conduct drug testing at either the minister's office or Pharmaceutical Services. I advise that, even if an application had been received, I would not approve a permit for drug testing to be issued because, as the honourable member obviously knows, South Australia supports the position of the National Ministerial Council on Drugs, that is, that it cannot endorse the development and use of drug-testing kits for personal use.

As the former minister for health mentioned (and it was also mentioned during the asking of this question), the government does not endorse the development or use of drug-testing kits. Indeed, there is no evidence to indicate that testing leads to any net reduction in the harm caused by drugs. My only personal advice to any young people (and, I am sure, the only sensible advice) would be, 'Just do not take them, then you don't have to worry about the quality of them. Do not take them.'

The Hon. R.D. LAWSON: As a supplementary question, I point out that the question did not relate to the government's position relating to drug testing; it related to the government's position regarding the use of drugs and the availability of drugs at these parties.

The Hon. CARMEL ZOLLO: It is the same answer: we do not agree. They are illegal. What is your question? They are illegal.

An honourable member: We know you're soft on drugs.

The Hon. CARMEL ZOLLO: That is a disgusting thing for you to say, just disgusting!

The Hon. SANDRA KANCK: As a supplementary question—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: —given that the minister has said that there is no proof that pill testing reduces the use

of these drugs, what is the source of her research to make that claim and what does she say to all the other research around the world that shows that pill testing reduces the use of these illicit drugs at rave parties?

The Hon. CARMEL ZOLLO: That is the advice that I have received from experts.

The Hon. Sandra Kanck: Which experts?

The Hon. CARMEL ZOLLO: Obviously, DASSA and, probably, the ministerial council. Nevertheless, I will bring back some further advice for the honourable member.

The Hon. NICK XENOPHON: As a supplementary question, has the government received advice on issues of legal liability arising out of the consequences of pills being tested and then there being a significant adverse reaction, such as an overdose requiring hospitalisation? Has any advice been provided to the minister about the potential legal liability involved with any Royal Adelaide Hospital linked unit involved in such testing?

The Hon. CARMEL ZOLLO: I will probably have to take advice in relation to the legality of the question raised by the honourable member. Again, we do not agree with young people taking these drugs. The best advice to them is: 'Please, just do not take them', but I will bring back some advice for the honourable member.

The Hon. IAN GILFILLAN: I have a further supplementary question. Has the minister read the contents of an email I sent her on the presentation to the Balanced Justice Conference held last Friday week by Dr David Caldicott, senior registrar at the hospital, in which the case is put clearly and firmly for the benefits that flow from drug testing at rave parties?

The Hon. CARMEL ZOLLO: I probably have not had the opportunity to read the honourable member's email. No doubt it is probably in my office, but I have to say that both the government and the police are not supportive of the research being conducted by Dr Caldicott. I think it is important that public perception does not identify the government's condoning drug use. Any research within this area should be undertaken under strict guidelines, but again I will have a look as to exactly what the honourable member has sent through the email system and bring back some further advice.

The Hon. SANDRA KANCK: I have a further supplementary question. Given that the international research shows that the use of pill testing reduces the amount of drug taking at rave parties, has the government taken any legal advice about its legal liability in the event that somebody does have some adverse reaction and the government has refused pill testing as a way of reducing the use of these drugs?

The Hon. CARMEL ZOLLO: Again, it is illegal, but I can tell honourable members that the issue of drug testing is on the agendas for both the Intergovernmental Committee on Drugs and the Ministerial Council on Drug Strategies for 2006.

The Hon. SANDRA KANCK: I have a further supplementary question. The minister referred to public perception. Is the minister going to make this decision based on public perception or on scientific fact?

The Hon. CARMEL ZOLLO: As a government, we have a duty of care and responsibility to all our citizens, and it is certainly my view and it is something that would be discussed around the cabinet table that the message we should be giving to our young people is simply: 'Don't take them. Then you don't have to worry about whether there are any toxic substances in them.'

The Hon. IAN GILFILLAN: I have a further supplementary question. What is the difference between the harm minimisation of drug testing and the government's hypodermic syringe exchange for quite clearly the continuation of an illegal drug-taking activity?

The Hon. CARMEL ZOLLO: Would you mind repeating the question?

The Hon. IAN GILFILLAN: What is the difference between providing a drug testing facility to minimise harm at a public event and the hypodermic syringe exchange, which clearly provides for the continued illegal use of a prohibited substance?

The Hon. CARMEL ZOLLO: I think the needle and syringe program is used for HIV and for hepatitis C illnesses, and I think the research has now very much shown that, based on the costs of treatment and the quality of life etc., it is estimated that the return on needle programs is between $2.4 billion and $7.7 billion on that investment. I think that a lot of the questions that have been asked are clearly questions of conscience. Our government always has a duty of care in relation to education, health issues and law and order issues. Members opposite might not agree, but the government of the day clearly has to take all three into consideration when making policy. Regarding the pill testing that we are talking about at rave parties, it is the government's view that it is entirely sending out the wrong message to our young people. The only simple answer can be: 'Don't take drugs and then you will not have to worry about the subsequent consequences.'

The Hon. KATE REYNOLDS: I have a further supplementary question.

The PRESIDENT: I am getting very concerned about the number of supplementary questions. This is not on.

The Hon. KATE REYNOLDS: I have a further supplementary question arising from the minister's answer. How does the government in that case justify the millions of dollars that it spends on programs to encourage people to drink only safe amounts of alcohol?

The PRESIDENT: Alcohol is a legal drug.

The Hon. CARMEL ZOLLO: I am not sure how that arises out of the answer.

The PRESIDENT: I think that the connection is that there are programs for both forms of drug. I think the answer is fairly obvious: one is a legal drug, the other is not.

The Hon. CARMEL ZOLLO: One is legal and one is not legal.

PRISON CHAPLAINCY

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Correctional Services questions about prison chaplaincy.

Leave granted.

The Hon. A.J. REDFORD: Last week the Minister for Education and Children's Services told parliament that school chaplains would no longer be called school chaplains; instead, they would be called Christian volunteers. The

shadow minister Vickie Chapman MP described the move as political correctness gone mad. I understand that Heads of Churches State Schools Ministry Coordinating Group, the education department's Debra Kay, states:

> It is the view of DECS that the term used to describe persons who are volunteering in schools through the Christian Volunteer program—

I might add that we call it the school chaplaincy program—

> should be free from any ambiguity, and that parents and students should be clear about the service that is offered and the personnel offering the service. DECS does not believe that the name (chaplain) reflects the background of the person and the nature of the service sufficiently clearly for DECS purposes.

As the member for Bragg pointed out, the term 'chaplain' has been in use since the 14th century. The prison chaplaincy service provides an important and integral service to our prisons in South Australia. I know that the service is staffed by many persons who assist in providing this extremely valuable service. I also understand that many of those persons are volunteers and, indeed, in some cases, not formally qualified. I also note that, earlier this year, the Victorian Salvation Army was taken to court by a prisoner claiming to be a 'Wicca'—in other words, an exponent of witchcraft—under their religious vilification legislation in relation to the prison chaplaincy service, alleging religious vilification of his Wiccan beliefs. I understand that that application was dismissed. My questions are:

1. Does the minister agree with his cabinet colleague's decision to change the term 'school chaplain' to the term 'Christian volunteer'?

2. Is the minister contemplating changing the name of Prison Chaplaincy Services SA to any other name? If so, what?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question. I take the opportunity to thank all those volunteers who work in the prison services and who add to the rehabilitation and counselling that is provided. However, I recognise that there are opportunities for damage to be done by unqualified people proffering advice and going under a name that may or may not be authorised by the particular churches that operate inside the prison system. As the minister responsible for prisons, I would be concerned if there were any watering down or any lesser service being provided by less qualified people.

A lot of people who provide counselling and support to prison services only have life skills themselves to present when dealing with prisoners, so I do not want to be dissuaded from discouraging those people from assisting. We have footballers and other sportspeople who enter prisons to provide leadership and mentoring skills. I think it is the responsibility of the church groups and organisations themselves to make the declarations for and on behalf of the people who operate in the service of those Christian denominations or, in some cases, people of non-Christian faiths, as we are starting to get in gaols now in South Australia. I am not aware that there has been any cabinet decision in relation to the changed name. I think that it is a departmental decision.

The Hon. A.J. Redford: Like with education.

The Hon. T.G. ROBERTS: Yes. With education, I think that it is a departmental decision made by the Department of Education.

The Hon. A.J. Redford: But she supports it.

The Hon. T.G. ROBERTS: Yes; I understand that the minister supports the changed name, but I am not sure that there has been any collective wisdom applied to discussing the issue around the table. It is something that the honourable member has probably triggered. I do not want it to impact back into the prison system.

The Hon. A.J. Redford: So, you are not confirming any change.

The Hon. T.G. ROBERTS: No change has been recommended to me either by the prison chaplain service or the volunteers. But if it is a name change for the sake of a name change with no change to service delivery, I cannot see that any damage could or would be caused. However, that is for the group that services the prisons and the collective wisdom of the Ministers Fraternal. They may want to make a recommendation to the prison chaplain service through the correctional services system, and I will certainly raise it inside cabinet.

The Hon. A.J. REDFORD: I have a supplementary question. If there is an approach to change the name, what will the minister's response be?

The Hon. T.G. ROBERTS: It will be one of consideration and consultation.

The Hon. J.F. STEFANI: Can the minister advise whether he sought the views on this matter from his Excom cabinet colleague, Monsignor Cappo?

The Hon. T.G. ROBERTS: I think that the Ministers Fraternal probably have a broader range of views than Monsignor Cappo, although he is in touch with all the religions within South Australia, and I would make an approach to him for an opinion.

HURRICANE KATRINA

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Trade and Industry a question about Hurricane Katrina.

Leave granted.

The Hon. G.E. GAGO: I noted with interest that the minister has previously reported on companies that are providing much needed help after the devastating tsunami in Asia. Is he aware of any South Australian companies that are assisting to rebuild New Orleans after the destruction caused by Hurricane Katrina?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for the opportunity to talk about one of the quiet achievers in this state, namely, I-SITE Pty Ltd. Specialising in 3D laser imaging systems, I-SITE has been at the forefront of efforts to rebuild the US city of New Orleans in the wake of the devastation caused by Hurricane Katrina in August this year. An American team of engineers and researchers, sponsored by the US National Science Foundation to map structural and geotechnical damage to the city's levees and waterways, has used the I-SITE studio software developed by Adelaide-based I-SITE Pty Ltd.

Highly detailed 3D models produced with the software have been used to assist with analysis and reconstruction efforts. Ten different sites where levees had failed were scanned and modelled using the company's I-SITE studio software, with more than 180 scans conducted over a five-day period. The Managing Director of I-SITE, Dr Bob Johnson, is a respected figure in Australia's mining industry and has been a valuable member of the Export Council, established by the government in December 2003 to advise on export

strategy issues and address barriers. As well as the US success, the company's software and equipment is also being used worldwide by surveyors, engineers, investigators and law enforcement agencies. I-SITE's success in global markets is built upon the company's research strengths and smart focusing specific niche opportunities in overseas markets.

The company's American business is principally managed through its office based in the United States, while the company's software and laser scanner are developed and produced in Adelaide. The international success of companies such as I-SITE demonstrate very effectively how South Australian businesses can overcome the challenge of distance by seeking out opportunities where South Australia has a competitive advantage. I congratulate I-SITE on its success in this and other ventures.

EAGLE QUARRY MOUNTAIN BIKE PARK

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Recreation, Sport and Racing, a question relating to the Eagle Quarry Mountain Bike Park.

Leave granted.

The Hon. IAN GILFILLAN: In November 2001 the then Liberal minister for sport and recreation, now Deputy Leader of the Opposition, Mr Iain Evans, announced the intended purchase of the Eagle Quarry near Eagle on the Hill. This quarry was to be converted into a mountain bike park and, in fact, it was thus purchased. Now, four years later, that park is still waiting to be opened to the public. So far, trails have been cut and then been allowed to become overgrown as volunteers have not been allowed access to the site to perform trail maintenance. Some of these trials have had to be recut as a result of this lack of maintenance, and others are still completely overgrown.

For the past two years, mountain bike events have been scheduled for this park and then been subsequently cancelled as the park has not yet opened. Three of these events, including the state championships, were scheduled to take place this year alone. As a result of this, South Australia has not hosted a round of the national mountain bike circuit, and that is a poor outcome for a sport with such a high participation rate in a state which is flaunting itself as being cycling friendly, with that wonderful event the Tour Down Under.

The park was a key feature of the government's mountain bike strategy 2001-05 and yet remains closed in the last months of this year 2005. Reports in the *Mount Barker Courier* indicate that more than $1 million was spent in this (so to speak) 'yes, ministerish' park without riders—the cheapest bike park to conduct, because if you have no riders, it has no costs—with no public announcement of a possible opening date. My questions are:

1. Does the minister care about providing off-road facilities for mountain bikers?

2. How does he explain the pig headed inaction over the Eagle Quarry Mountain Bike Park?

3. Will he now guarantee access for volunteers to help prepare the park and announce a firm opening date?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his very constructive, well thought out question. I think he has uncovered something of a wasted resource, if the information he has supplied to the council is accurate. I am sure that the Minister for Recreation, Sport and Racing, who is a bold supporter of walking trails and bike access in the city, will take it up as a major issue. I am not quite sure who the intransigent groups are to whom the honourable member refers, but I am sure the minister will track them down and try to get some action in revising what seems to be an unused asset.

MITSUBISHI MOTORS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade questions about Mitsubishi Motors.

Leave granted.

The Hon. T.G. CAMERON: Some disturbing information regarding the possible closure of Mitsubishi Motors has come to my attention. I do not believe the figures, but one way to find out is to put a question to the minister. Mitsubishi Motors is one of Australia's largest vehicle manufacturers. The company employs 3 000 direct employees and has a 200-plus strong national dealer network. The new boss of Mitsubishi is Mr Robert McEniry, who has been employed on a five-year, $5 million contract, and he was previously employed by SAAB and General Motors. He replaced Mr Tom Phillips as Mitsubishi's CEO on 1 November 2005.

Mitsubishi has received hundreds of millions of dollars in both federal and state government assistance and loans over recent years, particularly in the past five years. In 1997, Mitsubishi threatened closure as part of a successful campaign by the car companies to push the Howard government to maintain auto tariffs at least until to 2005. In August 2001, the company received $200 million in federal assistance, as well as a $20 million interest-free loan from the state government after it threatened to exit the country, close its operations, and destroy some 3 400 jobs in the process. In 2002, the state government agreed to provide $50 million (made up of $40 million in cash over five years and $10 million in concessions over 10 years), while the federal government agreed to provide another $35 million.

I have been advised that Mitsubishi sales are currently running at 15 per week for the whole of Australia and that cars are being stockpiled. Some auto industry experts are quietly saying that the closure of Mitsubishi is inevitable. Many are predicting that Mitsubishi will close next year, perhaps after the state election is out of the way. Direct job losses if Mitsubishi were to close have been estimated at 3 200, and flow-on effects to suppliers could see as many as another 12 000 go. Severance payments have been estimated by the union to be as much as $2 billion. My questions are:

1. Will the minister confirm that Mitsubishi sales have plunged to approximately 15 per week in Australia and that it is currently stockpiling cars?

2. What are the total severance payments owed to Mitsubishi workers; and can the government assure Mitsubishi workers, in the event of a collapse, that their payments are safe?

3. Will the government rule out the rumours that Mitsubishi will close next year after the state election?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I think it is highly regrettable that these sorts of questions are raised. That sort of speculation really does not do anyone any good. We have just seen—

The Hon. T.G. Cameron: We just want you to tell the truth.

The Hon. P. HOLLOWAY: Well, that sort of highly speculative question, without being checked, is just a disgrace, frankly. I will take it on notice.

LAW AND ORDER

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

Leave granted.

The Hon. T.J. STEPHENS: Last week, in response to a question I asked, the Minister for Industry and Trade claimed that the Rann Labor government had the highest level of policing in South Australia's history and said, 'Thanks to some of the other law and order measures this government has taken, we have been able to very effectively reduce crime.' Members would also be aware that recently released ABS national crime figures show a position that is contrary to the impression created by the leader in this chamber and Premier Rann. The national ABS figures say that murder in South Australia is 38 per cent higher; total homicide and related offences, 51 per cent higher; armed robbery, 10.4 per cent higher in South Australia; unlawful entry with intent, 13.6 per cent higher in South Australia; motor vehicle theft, 33.8 per cent higher in South Australia; and other theft, 25.6 per cent higher in South Australia.

In fact the rate of crime in a range of categories actually increased dramatically in South Australia between 2003 and 2004: murder up 5.3 per cent; attempted murder up 30.7 per cent; total homicide and related offences up 11.3 per cent; kidnapping/abduction up 15 per cent; and motor vehicle thefts up 2.45 per cent. My questions are:

1. Why does the minister misrepresent the true state of policing and crime in South Australia?

2. Is the minister saying that the government's policies regarding law and order are responsible for these frightening increases in crime?

3. What criminal offences have decreased under this government?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): A number of them. I will get the statistics from the Minister for Police and bring back a reply.

MENTAL HEALTH

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Mental Health and Substance Abuse a question about her replies to questions in relation to mental health.

Leave granted.

The Hon. J.M.A. LENSINK: I would like to seek clarification in relation to three questions I have asked of the minister. The first is in relation to a question I asked on 8 November regarding the incident at Glenside with Mr Ben Harvey. In her reply, in part, the minister said:

> I have asked for a review of security procedures at Glenside, which prevent drug and alcohol use. Clearly, I will have to bring back advice at another time.

I then asked a supplementary question in relation to whether drug and alcohol use is permitted within Glenside. On the second occasion, on 22 November, I asked a question in relation to the case of Jarrod of Mount Barker. His care worker had stated on *Stateline* that 'hospitals will not treat people with mental health problems if they have been taking illicit drugs'. The third occasion was on 24 November when Dr Paul Lehmann stated that at a meeting with Jonathon Brayley, where it was intended to be just he and the acting director of mental health, a ministerial adviser from the health minister's office had attended. I sought clarification as to whether it was now the practice for this government to invite ministerial advisers to attend meetings between health bureaucrats. My question are:

1. In relation to Ben Harvey, has the minister sought a review of procedures at Glenside? Does she have a report which she can provide to us? Has drug and alcohol use been permitted in Glenside and, if so, is that still the case?

2. Will the minister undertake to provide an answer to this place in relation to Glenn Wells' statement on television a couple of weeks ago that 'hospitals will not treat people with mental health problems if they have been taking illicit drugs'?

3. Will the minister clarify whether it is a new practice of this government that politically appointed advisers attend meetings of bureaucrats?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I think the last question might be easier to deal with first. It was my understanding that Dr Paul Lehmann wrote to virtually every state member of parliament in South Australia. The issues were raised with the Hon. Lea Stevens (as minister for health at the time). I do not see anything untoward in ministerial staff being at that meeting. If the honourable member does, so be it. Honestly, I do not see anything untoward in relation to that.

In relation to the patient at Glenside, obviously, this person's name has been mentioned, but in future I would like us all to observe that we should not be using people's names. I am not having a go at the honourable member because I think his name may have been raised in the other place; obviously, his name is out there. I would not like to use people's names. We all know the very unique challenges that mental health issues do raise. I think possibly we add further heartache to the families of people whose names are mentioned in parliament.

I cannot go into specific details about individual cases because of confidentiality reasons, but I advise the honourable member that the patient was not in a secure ward. Therefore, this is not a matter of escape in relation to this gentleman. I have asked the Director for Mental Health to investigate in order to ensure all procedures were appropriately followed. I understand that the investigation is continuing and should be completed shortly. I thought I had responded already—at the time it was a supplementary question from the Hon. Rob Lucas—that we have a protocol in relation to drug and alcohol use at Glenside. Cannabis, illicit drugs and alcohol are not allowed into the Glenside campus. The campus has numerous exit and entry points, and they may be used by patients and members of the public. It is a health facility. The entry points have signs indicating that drug use is not tolerated and monitoring strategies are in force.

Security personnel monitor activity on the grounds for signs of suspicious activity; patients are informed that the consumption of any non-prescribed substances is not allowed; and patients may leave the grounds on approved leave. If the staff believe that a person is intoxicated by any substance, that person is required to undergo a breath analysis. I am advised that any prohibited items are confiscated and reported to senior staff and police where appropriate. As we all know, police can be called to the Glenside campus by senior staff (for example, the duty nurse manager) in respect of any matter which, within the community, would require police

involvement. I think that covers the honourable member's inquiry in relation to that gentleman. In relation to the Mount Barker incident, I think it was the carer who raised the issue that we do not have dual—

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

The Hon. CARMEL ZOLLO: Right. I said at the time on the program that we have provided funding for dual diagnosis staff to be made available to our mental health services. It is my intention that those staff be made available at various levels. I think this incident occurred last June, and it is now my understanding that the patient involved has been stabilised. I am also advised that a root cause analysis of the circumstances of his case is being conducted through the Department of Health. A root cause analysis is an investigation which focuses on lessons that can be learned from a situation. Indeed, I said to Dr Lehmann that, if anybody has any concerns in relation to the way patients are handled, they should always bring them to the attention of my office, because if something goes wrong we need to fix it and we need to learn from it.

As I said, since that time the government has made the announcement about dual diagnosis staff, and I announced an injection of $1.9 million over four years for CAMHS workers in regional areas, and I am advised that Mount Barker would be a recipient of that. As I said, we need to learn from these incidents, and I encourage everybody to bring such incidents to the attention of my office.

The Hon. J.M.A. LENSINK: I ask a supplementary question. Is it then the case that, if one of the dual diagnosis workers is not in a hospital and somebody presents with a problem arising from illicit drug use, they will not be treated in hospital, or is what the care worker said incorrect?

The Hon. CARMEL ZOLLO: As I said to the honourable member, this incident happened last June, and it is my advice now that some assistance would be given. DASSA and mental health are working more closely and collaboratively together, virtually every day, and protocols have been set up to deal with diagnosis by nurses. So, I hope that situation is not repeated.

ABORIGINES, SPORTING ACHIEVEMENTS

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the sporting achievements of Aboriginal people.

Leave granted.

The Hon. J. GAZZOLA: The South Australian indigenous football and netball teams recently competed in the Charles Perkins National Indigenous Football and Netball Championships in Darwin. I understand the teams were outstandingly successful. Will the minister please describe the two grand final events at which the South Australian teams were victorious over the Northern Territory and Victorian based teams?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): It is good to see that somebody reads my press releases; if only more of them would be printed. The good news is that I can confirm the results to which the honourable member refers. Indigenous sports men and women have continued their recent dominance of interstate competition, taking out both open-age titles of the Charles Perkins National Indigenous Football and Netball Championships in Darwin.

Taking into account our population levels and percentages of indigenous and non-indigenous people, I think that, in most sports across the board, South Australia does very well and punches above its weight. Over the years, South Australian teams of all kinds have much to be congratulated about. The annual event attracts football and netball teams throughout Australia. In the Australian Rules competition, the South Australian team advanced to the grand final against a heavily-favoured Northern Territory team. The NT Top End, who were playing on their home ground and in front of a vocal home crowd, usually gets a few goals extra as a result of its local support.

The South Australian team, the Nungas, coached by former Adelaide Crows favourite Eddie Hocking, outlasted the home team to win the open-age championship 13.6 (84) to 10.11 (71). This team win gives Hocking his second victory in a row as the team coach, and I would put that on a par with Malcolm Blight in terms of national successes. It is also the South Australian team's third straight win in the National Indigenous Football Championships and the sixth time that it has participated in the grand final since the competition was revived in the year 2000.

In the netball competition, the South Australian team, which has been dominant at the National Indigenous Championships for the past few years, again claimed the title with a 27-22 victory over the team from Victoria. Jaki Banks, who was a departmental officer in DAAR (a very good departmental officer as well as a very good netballer), and Courtney Nowak were the stand-out players for South Australia during the tournament. South Australia has a proud tradition of achievement by our Aboriginal sports men and women at the elite level of their chosen sports. These successful men and women are wonderful role models for Aboriginal communities throughout the state, especially to young people at the start of what could be successful sporting careers.

I extend my congratulations and those of the whole of the council to those who have competed. I mention, too, the sports and education program which we have recently announced. The opening of the training and playing facility in Adelaide with connections to northern area schools is an initiative which, we hope, will bring not only good sporting results but also good academic career paths for young and mature-aged Aboriginal people in this state.

ATTORNEY-GENERAL

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, a question about the Attorney-General's possible conflict of interest.

Leave granted.

The Hon. KATE REYNOLDS: Today the Attorney-General said on ABC Radio that South Australia already has adequate measures in place to tackle any alleged corruption. We are pleased that the opposition has now promised to consider an anti-corruption commission if it wins next year's state election. Members will know that the South Australian Democrats have a bill before the parliament for an independent commission against crime and corruption—and, I think, that is for the third time. New South Wales and Queensland—

The Hon. Ian Gilfillan interjecting:

The Hon. KATE REYNOLDS: Thank you. My colleague the Hon. Ian Gilfillan confirms that is correct. New South Wales and Queensland have learned the lesson of the past and both now have well resourced and highly-effective

commissions to investigate allegations of government corruption. My questions to the Premier, through the minister, are:

1. Considering that the Attorney-General himself is the subject of two inquiries, which should have been investigated by an anti-corruption commission, how can the government, the parliament and the citizens of South Australia feel confident that the Attorney-General will take an objective view on this matter?

2. Does the Attorney-General have a personal interest in making sure that South Australia does not have an anti-corruption commission?

3. Has the Premier or the government taken legal advice about whether or not the Attorney-General has a conflict of interest in relation to this matter and therefore should not be commenting publicly on these proposals?

4. Will the Premier act to ensure that another minister—or, better still, the Premier himself—comments on the proposals for an independent commission against crime and corruption whilst the perception of the conflict of interest by the Attorney-General continues?

The PRESIDENT: Before the minister answers that, the question had a lot of allegations in it which would not be acceptable outside the council. It is always the responsibility of honourable members to treat members of both houses as though they are at least innocent, and perceptions are really not the best part of it. Minister, you can answer the question the best way you like.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I remind the honourable member that the Attorney-General was called as a witness of truth in the corruption trial of Randall Ashbourne in relation to that matter. That is a fact. I know the opposition and members of the Australian Democrats are trying to grossly distort the position in relation to that.

The Hon. R.K. Sneath interjecting:

The Hon. P. HOLLOWAY: Yes; anyone can make allegations under parliamentary privilege. It is a very easy thing to do, and for the honourable member to suggest that the transfer of funds in the Crown Solicitor's trust account was to somehow suggest some impropriety on the part of the Attorney-General is an extremely dishonest and offensive question from the member who raised it. The answer to the second question is no. Really, this is the sort of very contemptuous question that one would expect from the Australian Democrats. What I find extraordinary is that we now have the Liberal Party saying they might consider it if they get into government. I think that, if we had a Liberal government, past history has shown you might well need a body like that, because we had a situation there where the minister in charge of IT was trading in shares in IT companies.

That was the sort of behaviour and the morality of people opposite. That was their morality and we also had a number of ministers who were forced to resign as a result of their behaviour. They were forced to resign because of their behaviour. So the Liberal Party has said that if they get into government they will consider it. How weak! They do not believe in it either. This is just another cheap shot from them and I am surprised the Hon. Kate Reynolds has been silly enough to fall for it, actually. What are you saying?

The Hon. Caroline Schaefer: If you have no concerns, what are you worried about?

The Hon. P. HOLLOWAY: I will tell you one reason why; it is the $17 million. It costs I think between $17 million and $25 million; If Liberal members want to take money out of health, education and law and order and put it into the sort of events we have seen here—if they think that is their priority—then I hope they put it to the people of South Australia. I hope they say, 'We will spend between $17 million and $25 million less than the Labor government every year in relation to health, education, law and order and we will spend it on lawyers. We will find some top lawyers, give them $400 grand or $500 grand each to go around and investigate on this endless sort of frolic' that they have been on before; notwithstanding the fact that the justification for it has already been to court. In case the Hon. Kate Reynolds has not noticed it, Mr Ashbourne was actually charged with abuse of public office and he was found not guilty. Mr Atkinson was a witness in relation to that case. Sandra Kanck and the Hon. Kate Reynolds spent every day—

The Hon. Kate Reynolds: The Hon. Sandra Kanck.

The Hon. P. HOLLOWAY: Yes, I am sorry: the Hon. Sandra Kanck and the Hon. Kate Reynolds—and we might even have the Hon. Mr Brindal, I believe. If we can change our rules a bit, to 10 years, he might get a guernsey as well. Perhaps our lower house colleagues should do it. It is an interesting exercise, isn't it?

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Full-time job! The Hon. Angus Redford does not seem to be aware that a couple of extra former Liberal ministers apparently, or at least one is currently being investigated by the police ACB, as a result of digging by their own colleagues, of course, and assisted by the Hon. Sandra Kanck, as a result of this information. As a result of the activities of these members opposite, what they have done together is simply gone through this great exercise to bring in everybody who knows Ralph Clarke, anyone who knew him at any stage in history; they have gone through all this exercise, dragged them all up and asked all sorts of questions and yet the only action that appears to be happening is that as a result of that investigation at least one former Liberal minister being investigated for corruption because this government has been so clean that, as the Auditor-General said, 'This was no problem at all'. If this is as clean as it has got here, there must have been cases where members opposite in the past have done it. So, if there is any role for such a body, they are the sort of people who one suspects would be investigated by it.

REPLY TO QUESTION

SUPPORTED ACCOMMODATION

In reply to **Hon. KATE REYNOLDS** (13 September).

The Hon. T.G. ROBERTS: The Minister for Housing has provided the following information:

Serious investigation and research was required to identify and consider the most appropriate assistance options, in regard to the fire safety issues in the 'private for profit' sector.

DFC has consulted with fire safety, legal and taxation experts to ensure any subsidy to assist proprietors and landowners to meet sprinkler system costs is properly managed, and that Government funding is used effectively as a contribution towards appropriate fire safety equipment. It is essential that any assistance will guarantee safety in the event of a fire for all people associated with such facilities.

I would also like to comment that there are no new fire safety standards; that the life safety standards required of Supported Residential Facilities (SRFs) are prescribed in the Building Code of Australia and enforced through councils' Building Fire Safety committees and the South Australian Metropolitan Fire Service. It has been known to Government for some time that many SRFs are

not compliant with fire safety standards and have been required to upgrade and improve their fire safety equipment and procedures

I visited Mt Gambier in May 2005. At that time, I also visited Mr Alister Armstrong at his SRF, Lambert Village. During that visit I was asked if the Government intended to assist proprietors meet the costs associated with the installation of residential sprinkler systems. I advised Mr Armstrong and other representatives from the SRF sector that the Government was still considering the matter and that further information would be provided in due course.

I understand Mr McEwen did talk to Mr Armstrong about Government assistance to the SRF sector to meet residential sprinkler system costs but before the subsidy scheme was finalised. However, Mr McEwen told Mr Armstrong that he expected the details of the scheme would be finalised soon.

I sent a letter on 15 September 2005 to all SRF proprietors, the SRF Association and the SRF Advisory Committee informing them of the Government's commitment and intention to provide a subsidy towards the costs associated with the installation of residential sprinkler systems into eligible SRFs.

Government has not refused to fund follow-up services to people living in SRFs who required more than one dental treatment. The current one-off special Oral Health program funded by DFC is in response to SRF residents requiring urgent dental treatment. All residents in the eligible SRFs have been provided with access to a complete dental program to ensure that their immediate dental needs are met.

Future planning for ongoing dental treatment for SRF residents is being discussed between DFC and the South Australian Dental Services (SADS) to ensure that this group of people continue to access dental services as required.

SRF residents are eligible for the SADS program. I would hope that with the improved linkages with dental services, that proprietors, other carers and service providers will be able to assist new residents to access dental services.

I understand that the Premier has acknowledged Mr Marshall's letter. I have had a meeting with Mr Marshall and other representatives from the SRF Association and discussed the sector's concerns. Since that meeting, I have announced the Government's fire safety residential sprinkler subsidy scheme.

I have also undertaken a series of visits to SRF's to gain further first-hand insight into this and other matters, and propose to continue my program of visits.

MITSUBISHI MOTORS

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

Leave granted.

The Hon. P. HOLLOWAY: I have just had some brief information put through in relation to Mitsubishi. The advice I have—and it is second hand—is that it sold 980 cars in October and that it is expecting to sell 1 800 in November. It is not shutting down. This is the initial information I have. As soon as I get further information, I will provide it to the council so that the disgusting, disgraceful and damaging rumour released by the Hon. Terry Cameron can be addressed.

TERRORISM (POLICE POWERS) BILL

In committee.

Clause 1.

The Hon. R.D. LAWSON: Clause 1 may be the appropriate time to ask the minister to indicate when it is contemplated that this bill will come into operation. Secondly, will he indicate to the committee why this bill is a separate piece of legislation from the terrorism bill dealing with preventive detention? I ask these questions in the light of a submission made to me (and, I imagine, to other members) by the South Australian Bar Association. I could perhaps have mentioned this earlier, but it ought be put on the record that the association, through its President, Jonathan Wells QC, by memorandum dated 16 November 2005 has expressed opposition to the bill generally. Referring to the fact that the police powers bill is proceeding independently of the preventive detention bill, he states:

> The Association regrets that legislation is being enacted in this piecemeal way, thus obscuring from public view the complete legislative strategy and the interaction of its component parts.

In addition to asking the minister when it is envisaged that this bill will come into operation, I ask him to indicate why the government has adopted what the Bar Association describes as a 'piecemeal' approach.

The Hon. P. HOLLOWAY: I will answer the first question, namely, when will the act come into operation. I refer the honourable member to clause 18 of the bill, entitled 'Process for seeking judicial officer confirmation', which provides:

> The Commissioner of Police or other police officer concerned must comply with the process prescribed by the regulations in seeking to obtain from a relevant judicial officer the confirmation required under this Part in respect of the issuing of a special powers authorisation or special area declaration.

In other words, very special and sensitive regulations will have to be made. As to the second part of the honourable member's question, my advice is that the reason for the so-called piecemeal approach is that these bills have been developed separately because they are indeed about separate matters.

The Hon. R.D. LAWSON: I note the minister's statement that it has been necessary to develop sensitive regulations. Accepting that, is it intended that the act will come into operation before those regulations are finalised, as often happens, or does the government intend to have them promulgated at the same time as the police powers bill comes into operation? Finally, how long is it anticipated that it will take to finalise those regulations, which he describes as extremely sensitive?

The Hon. P. HOLLOWAY: In answer to the first question, the bill and the regulations will come into operation at the same time, as the bill will simply not work without those regulations. In relation to the second question about how long they will take, obviously, that is a matter of negotiation. The proper processes will apply between the judiciary and the Commissioner of Police. Given those negotiations, it is really a matter of how long that process takes. It is obviously in the hands of those individuals, and we will take however long is necessary to get that proper outcome.

The Hon. R.D. LAWSON: Is it the government's intention to have this legislation operating on 1 January 2006, or at some earlier or later stage?

The Hon. P. HOLLOWAY: We would certainly like that to be the case. It would certainly be desirable but, obviously, it is subject to the proviso that I just gave in relation to negotiations.

Clause passed.

Clause 2.

The Hon. IAN GILFILLAN: I move:

Page 3, after line 9—

Clause 2(1)—after the definition of *investigative authorisation* insert:

issuing authority—see section 2A;

In putting these amendments on file, it is in no way to be interpreted that the Democrats support this legislation, as we made clear at the second reading stage and in calling a division to vote against it. We remain implacably opposed to it as legislation in this state. I acknowledge that most of the amendments are based on the very thoughtful recommendations of the Law Society, to which I assume all members would at least have access if they have not had them sent to them directly. The first amendment on file can be used as a test case for the varying of the definition of 'investigative authorisation' and in relation to 'relevant authority' and 'relevant judicial officer'. Clause 2(1) provides:

> . . . after the definition of *investigative authorisation* insert: *issuing authority*—see section 2A.

My amendment No. 3 refers to section 2A. I foreshadow, of course, that, if successful with this amendment, I will be moving amendment No. 3, which provides:

> . . . after clause 2 insert:
> 2A—Issuing authority
> The minister may, by writing, appoint a Judge of the Supreme Court as an issuing authority if the Judge has, by writing, consented to the appointment and the consent is in force.

In a way, this links with my amendment No. 2. I am sorry if it sounds a bit confusing, but in the original bill the relevant authority is wider than just a judge of the Supreme Court as an issuing authority. As far as the committee is concerned, we may well be able to deal with these issues in at least the original two amendments, because several of the other amendments that are on file are consequential.

The Hon. P. HOLLOWAY: I think this should be treated as the test amendment. I think that the Hon. Mr Gilfillan, by his comments, agrees to that. Amendments Nos 1 to 14 in the name of the Hon. Mr Gilfillan and amendment No. 16 are all designed to do the one thing: replace the proposed system of issuing authorisations to one based wholly and solely on application to a Supreme Court judge.

The system proposed by the bill is as follows. The bill provides for a variety of declarations by the Commissioner of Police, or other senior police officer above the rank of superintendent, if the commissioner is unavailable to issue the authorisation. These authorisations cannot be issued unless the Minister for Police and a judge of the District or Supreme Court have confirmed that the Commissioner of Police has proper grounds for issuing the authorisation. In urgent circumstances, an authorisation may be issued without ministerial or judicial confirmation but confirmation must be sought as soon as possible. The minister or judge may refuse to confirm such an authorisation if they are not satisfied that there were proper grounds for issuing the authorisation. If either refuses to the confirm the authorisation, it ceases to have any force.

It is proposed that this well thought out system of checks and balances, taking into account the variety of possible needs and exigencies of the situation, should be replaced by a single and flexible system based entirely on the approval of a Supreme Court judge acting in his or her personal capacity. The government cannot and will not accept these amendments. The system proposed pays no attention to the context in which that system will have to work. In essence, that system will have to work in circumstances in which there is credible intelligence in the hands of the police that a terrorist attack is imminent or, worse yet, the facts will be that a terrorist attack has just happened. The idea that if a bomb goes off in the Adelaide Railway Station, the Commissioner of Police will have to traipse off to a Supreme Court judge (if he can find one) and ask permission to cordon off that area, search people running away from it or in it and so on (as contemplated by this extraordinary legislation) is fantastical and not to be contemplated.

I ask members to compare the protections proposed in this bill with the regime so recently enacted under the Emergency Management Act 2004. That act is also concerned with real emergencies and, like this bill, contemplates the conferral of extraordinary powers in a declared emergency. I direct members' attention to section 22 of the act. When there is an identified major incident, the Commissioner of Police makes a declaration and that is that. The same is true of a major emergency under section 23. Great powers are conferred as a result. This bill sets up a carefully balanced system so that the maximum practical judicial oversight is built in. That proposal should be supported. It is generally consistent with existing analogous mechanisms that have turned out to be good enough for New South Wales, the Northern Territory and Queensland, although the government proposes additional realistic judicial protection, but the emphasis is on 'realistic'. In the government's view, this amendment and all those which follow should be defeated.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition will not be supporting this amendment. I am mindful of the fact that both the Law Society and the South Australian Bar Association have proposed a system under which a judge has the sole authority to authorise the exercise of powers under this legislation. We believe that judicial oversight of a regime of this kind is important, but we do not believe that the function of authorising these exceptional powers (which might be exercised at very short notice) is appropriately a judicial function. It seems to me that there is an ambiguity in the position being adopted by the legal bodies. It is well illustrated in the comment of the South Australian Bar Association in the submission to which I earlier referred. The association says:

> . . . the association opposes the involvement of members of the judiciary in the administrative processes connected with the issuing of authorisations to police officers. Such a role necessarily compromises the independence of the judicial officer concerned. The proper role of an independent judiciary is to review the legality of action purportedly taken under the act.

I think that is a principal statement of position; I agree with it. The role of judicial officers is different to that of executive officers, and the institution of these proceedings is appropriately, in our view, left in the hands of the police. The judiciary does have a role in relation to these authorisations. It is a role to confirm, in conjunction with the Minister for Police—a minister responsible to this parliament and, ultimately, the people of South Australia. We will not be supporting this amendment or any amendment which is designed to remove that regime.

I remind the chamber—if reminding is necessary—that this is a bill to grant police powers. At present, it is true that judicial officers authorise the issue of search warrants in certain circumstances. They also issue telephone tapping and other surveillance. They do so as a result of something initiated by police in their executive authority. They are really adopting a confirming position in relation to those matters, which is comparable to the position under which we are placing them in this bill.

I actually agree with the Bar Association's view that it would have been better for these two terrorism bills presently before this chamber to be put into one, because there are differing regimes in relation to preventive detention orders

(which is the subject of the other bill) and differing forms of judicial oversight. It would have been better and more comprehensible to have them amalgamated in one unified system. However, I accept the fact that this government has been slow—almost the slowest in Australia—to come forward with a police powers bill. In other states they have had police powers legislation in place for years. In those parliaments they are not debating two bills at the same time.

Perfection is the enemy of progress. I accept the fact that the government has been slow with the police powers bill. The other bill, which has developed subsequently as a result of interstate and national consultations, has led to a differing regime. There is no point in crying over spilt milk, but we certainly do not believe that the role of judicial officers ought to be elevated in the manner suggested by this amendment.

The Hon. IAN GILFILLAN: I agree with the Hon. Robert Lawson that—I will not say confusion, because the Bar Association argues that the bill should be withdrawn—the observation that the judiciary should not be involved other than in a review of the decision is a logical position that the Bar Association puts up. However, the Law Society puts up an immediate practical recommendation for amending the bill before us. I do not believe the argument against it is valid. I think it is appropriate to quote a couple of paragraphs from the paper provided to me by the Law Society in relation to this matter. It states:

> 1. The powers granted to police pursuant to a special powers authorisation or a special area declaration are a grave intrusion to the rights of privacy and liberty enjoyed by South Australians. They also represent a breach of Australia's obligations under international human rights law, including Article 17 of the International Covenant on Civil and Political Rights.
>
> 2. Previously, when Australian parliaments have granted such wide-reaching powers they have ensured that the issuing authority is independent of the persons who are going to execute those powers.

They give a couple of examples. It continues:

> Even the draconian power to issue a 'control order' contained in the commonwealth anti-terrorism (No. 2) bill has a similar procedure.

In the third point, they state that the reasons for this were explained by the High Court in the context of a telephone interception warrant. It goes on in some detail, and I assume it refers to Grollo v. Palmer 1995. Apart from the great seriousness of the intrusion on civil rights being entered into by these pieces of terrorism legislation, the series of amendments that I have on file would leave clause 3(4) intact. It provides:

> A special powers authorisation may be issued orally in urgent circumstances, but if issued orally must be confirmed in writing as soon as practicable after its use.

That would allow the Commissioner to make one telephone call to a relevant authority and action could be taken immediately. So, to argue that my amendment should be opposed on the ground of expediency does not stand up. Neither the government nor the opposition will support my amendment. I can count the numbers, and there seems to be no point in calling for a division, but I emphasise that I think their opposition to this is more pedantry than based on a particularly profound principle.

The Hon. R.D. LAWSON: We believe that an analogy does exist between measures of this kind and the provisions of the Emergency Powers Act. No-one would suggest that, if there was a bushfire raging down the hill, the Police Commissioner (as the commander in crisis situations) should go running off to a judge to ask permission to enter private land, or burn off, or take some decisive action that would affect the rights, health and property of individuals. We accepted in that legislation that in a situation of urgency and emergency you have to have an executive in charge to address the issue appropriately.

It would be over-egging the pudding to suggest that the Police Commissioner should in those circumstances—that is, in the case of a fire, flood, earthquake or other emergency—go off to a judge. In fact, no-one would ever suggest that he should go off to a judge in those circumstances but, when the issue involves a terrorist act, there are those in the legal profession who say that that is different, that the Police Commissioner should not be able to act as we would expect him to act in these particular circumstances. We believe that the argument raised by the minister is valid. I emphasised in my second reading speech that it would be a highly unusual emergency situation in which the powers of this bill might be invoked.

Amendment negatived.

The Hon. IAN GILFILLAN: Having lost that amendment, I suspect that several of my amendments will not be worth pursuing. However, I move:

> Clause 2(1), definitions of 'relevant authority' and 'relevant judicial officer'—delete the definitions.

The definition of 'relevant authority' is worth referring to because my amendments attempt to focus the responsibility with a judge of the Supreme Court.

'The relevant authority', as spelt out in clause 3(3), is the Commissioner of Police, or, if the Commissioner of Police is unavailable, the Deputy Commissioner of Police, or, if the Commissioner of Police and the Deputy Commissioner are both unavailable, the relevant authority is an assistant commissioner of police, or, if the Commissioner of Police, the Deputy Commissioner of Police and all assistant commissioners of police are unavailable to issue an authorisation, a police officer above the rank of superintendent can move in and make the decision.

It is almost that Uncle Tom Cobble and all can, under certain circumstances, be embraced as a relevant authority. The second part which I am moving to delete, 'relevant judicial officer', means a judge of the Supreme Court or a judge of the District Court. The committee will realise that my amendment aims to restrict it to a judge of the Supreme Court. Obviously, I am moving to delete that. However, I realise that there may not need to be extensive debate on this amendment, because, at least in spirit, it is embraced by the loss of my first amendment.

The Hon. R.D. LAWSON: Before the government indicates a position, I want to ask the minister a question, which he might answer as he responds. In relation to the cascading relevant authority down to the rank of superintendent in the event of higher ranks being unavailable, has a similar mechanism been adopted in any other legislation to which the minister can refer the committee?

The Hon. P. HOLLOWAY: Not that we are aware of. In relation to the Hon. Ian Gilfillan's amendment, the government believes that it is consequential to the Hon. Ian Gilfillan's earlier amendment. We believe that it is necessary to retain the definitions of 'relevant authority' and 'relevant judicial officer' in the bill, and that is why we oppose this amendment.

The Hon. R.D. LAWSON: I indicate that the opposition—and for the same reasons—opposes this amendment as an entirely consequential amendment.

Amendment negatived.

The Hon. R.D. LAWSON: Clause 2 does contain a definition of 'terrorist act', namely, that that expression shall have 'the same meaning as in part 5.3 of the Criminal Code of the commonwealth, except that it does not include a terrorist act comprised of a threat'. Will the minister indicate to the committee why the government proposes that we have a definition of 'terrorist act' which, from time to time, can be altered by a parliament other than this parliament? Also, why is it that the definition of 'terrorist act' in the state act will not include a terrorist act comprised only of a threat?

The Hon. P. HOLLOWAY: In relation to the first question, in fact, the state has already done just what the honourable member asked. Under the Terrorism (Commonwealth Powers) Act 2002, we have already referred power to the commonwealth government over terrorism by formal constitutional reference of power. That power, of course, includes the power for the commonwealth to define what a terrorist act is. In relation to the second question, if one looks at clause 3(1) of the bill, one can see the special powers authorisations applying to situations where a terrorist act is imminent. So you cannot have a threat to have a threat. If the terrorist act is imminent then the threat exists. So if the act has already happened, the threat is irrelevant, so, given the purpose of this bill and the special powers authorisation, it is not required.

The Hon. R.D. LAWSON: I will pursue the definition of 'terrorist act'. I might be wrong, but I understood that the definition of 'terrorist act' in the Terrorism (Commonwealth Powers) Act 2002, whereby the state vested powers to the commonwealth in relation to terrorist acts, has a definition of 'terrorist act' which is set out in the schedule to that act, and a definition which is not, as it were, an elastic one. The definition is described in that particular act. I should put on the record the fact that the Bar Association view of this is as follows:

> The trigger for the granting of the enhanced powers in this bill is the satisfaction that there are reasonable grounds to believe that a terrorist act is or has been committed or is imminent. The definition of 'terrorist act' is substantially left to the federal parliament, which may amend it without regard to, or even contrary to, the wishes of the South Australian parliament. Moreover, the current definition is unacceptably vague, permitting subjective assessments as to whether or not a particular action might endanger someone's life or create a serious risk to the health or safety of a section of the public.

My question to the minister is: am I wrong in thinking that the existing definition of 'terrorist act' in the 2002 legislation is capable of being amended without reference to the South Australian parliament?

The Hon. P. HOLLOWAY: I am advised that, yes, that definition can be adjusted under the Terrorism (Commonwealth Powers) Act 2002. However, provided under that act is a memorandum of understanding between the state and the commonwealth where the state must agree to any change of definition. So, there are powers within that act which give the state some comfort.

The Hon. R.D. LAWSON: Perhaps the minister can indicate where that agreement is found. Is it in some legislative instrument, or is it the result of some political compact between governments?

The Hon. P. HOLLOWAY: I am advised that that MOU is not in the legislation but that it is a formal agreement between the commonwealth and all states. It came out of a COAG meeting, so it is an agreement. If you remember at that time, after 11 September, the commonwealth was seeking that agreement from all of the states at COAG and, as a result of that agreement, that bill was passed and that MOU which involves all states and territories is the defining instrument for that.

The Hon. R.D. LAWSON: On this same point, members will recall that a couple of weeks ago the commonwealth parliament amended the definition of 'terrorist act' in some legislation—and I do not know which—to change the definite article 'the terrorist act' to stipulate 'a terrorist act'. Was the agreement of the states sought to that amendment to the definition of 'terrorist act' under the memorandum of understanding to which the minister has just referred? If so, by what means was South Australia's assent to that change communicated?

The Hon. CARMEL ZOLLO: I am advised that the commonwealth sought the formal agreement of all states and territories to amend the legislation it proposed. According to the MOU, there must be an agreement of the majority of states before the commonwealth amendment to the definition of terrorism can go ahead. If the honourable member looks at section 3 of the referral act, he will find reference to express amendments to the text of the legislation by commonwealth acts.

The Hon. IAN GILFILLAN: In relation to that same definition of 'terrorist act' which provides: 'has the same meaning as in Part 5.3 of the Criminal Code of the Commonwealth, except that it does not include a terrorist act comprised of a threat;' does that mean that this exception is peculiar to South Australia? Either way, why should a threat not be regarded as a terrorist act?

The Hon. CARMEL ZOLLO: First, in relation to whether this is peculiar to South Australia, I advise the honourable member that the answer is no. Secondly, I am advised that clause 3(1)(a) requires that a terrorist act be imminent; it cannot be a threat of a threat. I hope that makes sense. Clause 3(2)(a) requires that a terrorist act has been committed and, in such a case, the threat is irrelevant because the cause has gone.

The Hon. IAN GILFILLAN: I do not intend to pursue the semantics of when a threat is and is not a threat, but with the indulgence of the committee I will pursue the answer to the first part of my question, which was a very brief no. If, in fact, it is not peculiar to South Australia, I would like to know where else this definition applies. One assumes that it does not apply in the federal legislation, as the wording implies that this exception is not in the federal legislation.

The Hon. CARMEL ZOLLO: In relation to federal legislation, I am advised that it would not be, as they do not have this legislation; they do not need it. I am advised that New South Wales, for example, has this definition.

The Hon. SANDRA KANCK: As a follow-up to that answer, I understand that the whole package of terrorism legislation that has been agreed to does not require it to be mirror legislation per se. To what extent are other states passing legislation that is the same as this?

The Hon. CARMEL ZOLLO: I am advised that New South Wales, Queensland and the Northern Territory already have this legislation.

The Hon. Sandra Kanck: Have they passed it?

The Hon. CARMEL ZOLLO: Yes. Tasmania has just introduced it. Western Australia is halfway through its introduction into parliament, and Victoria has a draft bill, which some officers have certainly seen.

The Hon. SANDRA KANCK: Given that today the senate committee is reporting on its inquiry into the anti-terror bill No. 2 (I do not think that it is talking about the anti-terror bill 2005), to what extent does this legislation and, I

suppose, also our second terrorism bill have to interface with the federal legislation? It seems to me that, if that report is being handed down only this afternoon in the senate, we in this parliament do not know what the recommendations are. It seems very foolish to go ahead when an inquiry has been held and to ignore any recommendations which the senate committee might make and which could have relevance to this legislation.

The Hon. CARMEL ZOLLO: I am advised that the Senate committee review will not have any relevance to this bill, but that it will be relevant to the preventative detention bill. I am advised that, as soon as the senate committee report becomes available, the government will rapidly examine it to see whether we need to do anything to the preventative detention bill.

The Hon. SANDRA KANCK: I am a bit surprised to hear that the Senate committee will not have any relevance, because I understand that one of the things it was looking at is the particular thing that we have in clause 25. I am not trying to pre-empt clause 25, but the issue of a lack of a judicial remedy is being looked at by this Senate committee. It is surprising to be told that, although that committee has looked at it and will probably make recommendations, it does not have any relevance to the bill with which we are now dealing. I would like some clarification of that please.

The Hon. CARMEL ZOLLO: I am advised that the judicial remedy clauses in the two bills are entirely different.

The Hon. R.D. LAWSON: This bill deals with imminent terrorist acts or terrorist acts that have occurred, and the preventative detention bill deals with imminent terrorist acts and acts that might have occurred. This act excludes from the definition of 'terrorist act' a threat to commit a terrorist act, yet the preventative detention act does not have a similar exclusion—it applies to all terrorist acts. The commonwealth act itself defines 'terrorist act' in terms of 'an action or threat of action' where the action falls within certain descriptions, and also where 'the action is done or the threat is made with the intention of advancing a political, religious or ideological cause' and where 'the action is done or the threat is made with the intention of coercing, influencing', etc.

It seems that the threat of a terrorist act comes within the definition of 'terrorist act' in this legislation, but for us not to exclude threats in the other legislation we are severely limiting the operation of this act and, indeed, I believe, creating a complication that may well mean that this act cannot be implemented, because people will say we have an imminent terrorist act, the only evidence of which is a threat of action, but we cannot use this act, because it specifically provides that threat of action is—

The Hon. Ian Gilfillan: Not actionable.

The Hon. R.D. LAWSON: Not actionable. I would like the minister to put on the record the government's answer to this conundrum.

The Hon. CARMEL ZOLLO: I am advised that this bill is about giving police powers to investigate terrorist behaviour. In order to do that, it has to have a definition of 'terrorist behaviour' as a trigger. It does not want to extend extraordinary or emergency police powers of investigation to so-called imminent threats. How can a threat be imminent? On the other hand, the preventive detention bill is not about criminal investigation at all. It is about freezing the situation by detaining people, and it positively prohibits the use of its power for investigative purposes. Detaining people who make threats makes sense, and that is why we are handling them separately.

The Hon. SANDRA KANCK: A couple of weeks ago, I am sure the minister would be aware that people were arrested because there was a threat that they would commit terrorist acts. Had those people lived in South Australia, under this legislation would the police have been able to arrest them?

The Hon. CARMEL ZOLLO: I am advised that it is almost impossible for us to answer that at all. We do not know all the information that was provided and it is probably a hypothetical, I would say. We cannot really answer that.

The Hon. R.D. LAWSON: Is the minister saying that, if the Police Commissioner receives a threat which he believes to be a reasonable threat from a source which he believes to be authoritative and which is verified by other information and intelligence available to the police, and the Police Commissioner believes that the threat is likely to be carried out, he cannot exercise the powers under this act because it is merely a threat of a terrorist act?

The Hon. CARMEL ZOLLO: I am advised that the answer to that is no, because either the Police Commissioner believes that the terrorist act is imminent or it is not. If the Commissioner believes that it is imminent, he can trigger the powers. If the Commissioner does not believe that the terrorist act is imminent, he cannot.

The Hon. R.D. LAWSON: When the court ultimately rules that this legislation cannot be used, I will be one of those who can say I told you so.

Clause passed.

Clauses 3 to 5 passed.

Clause 6.

The Hon. IAN GILFILLAN: I move:

Page 6, lines 7 and 8—

Clause 6(1)—delete 'the relevant authority who issued it or a police officer of a more senior rank' and substitute:

the Commissioner of Police

Clause 6(1) in the bill provides:

A special powers authorisation may be revoked by the relevant authority who issued it or a police officer of a more senior rank.

My amendment deletes the words the 'relevant authority who issued it or a police officer of a more senior rank' and substitutes 'the Commissioner of Police'. I will not revisit the arguments as to what should be the relevant authority—that is behind us. A special powers authorisation, were it to have been properly induced, has some significance, and I think that the only way that could be revoked properly should be with the authority of the Commissioner of Police.

Subclause (2) provides that the Commissioner of Police is under direction from the police minister to revoke, if the police minister feels that is the proper course of action. I still believe it is a reasonable amendment under the circumstances to have the Commissioner of Police as the power who can revoke on his or her own authority; and, as in subclause (2), he or she will have to comply with a direction from the police minister. That is already in the bill.

The Hon. P. HOLLOWAY: We thought this was consequential. Given that he has argued for it, it seems rather strange the honourable member should be making it more difficult to revoke an authorisation rather than easing it. It seems to be going against the Hon. Ian Gilfillan's whole position. I would think that by making it the Commissioner of Police rather than the relevant authority who issued it, or a police officer of more senior rank, it is more difficult to revoke.

The Hon. IAN GILFILLAN: I indicate that the argument of urgency and expediency for the invoking of a special

powers authorisation may be time critical. I do not see that the same criterion applies to the revoking of it, and I remain unconvinced by the government's position.

The Hon. R.D. LAWSON: We will not be supporting the honourable member's amendment. Clause 6 facilitates a higher ranking officer making the revocation order in circumstances where, for example, because the Commissioner, his deputies and assistants were not available, a superintendent has issued the order; maybe because the Commissioner is in another state or out of the jurisdiction. In those circumstances the superintendent has made the declaration in an emergency situation. If the Deputy Commissioner comes back into the jurisdiction, for example, he or she does have the power to make a revocation, because he or she meets the description of being a police officer of a more senior rank. We cannot see why the only officer who can issue the countermanding order must be the Commissioner himself. We believe that clause 6 is a sensible part of the scheme of this act.

Amendment negatived; clause passed.

Clauses 7 to 12 passed.

Clause 13.

The Hon. IAN GILFILLAN: I move:

Page 8, after line 14—
Clause 13—before subclause (1) insert:

(a1) The Commissioner of Police may, with the approval of the police minister, apply to an issuing authority for the issue of a special area declaration.

(a2) An application may be made without the approval of the police minister if necessary because of the urgency of the circumstances, but, in that event, the police minister must be informed of the application as soon as reasonably practicable and the Commissioner of Police must withdraw the application if directed to do so by the police minister.

I know that some members may think there are consequential factors involved here, but I will move the amendment. Before subclause (1) I would have inserted:

(a1) The Commissioner of Police may, with the approval of the police minister, apply to an issuing authority for the issue of a special area declaration.

(a2) An application may be made without the approval of the police minister if necessary because of the urgency of the circumstances, but, in that event, the police minister must be informed of the application as soon as reasonably practicable and the Commissioner of Police must withdraw the application if directed to do so by the police minister.

As a result of scrutiny of the actual text in the bill, and recognising that earlier efforts to vary the relevant authority have not been successful, I still believe the principle of this amendment is worth testing before the committee.

The Hon. P. HOLLOWAY: We oppose the amendment. We regard it as consequential to the earlier amendments moved by the Hon. Ian Gilfillan, and for that reason we oppose it.

The Hon. R.D. LAWSON: I indicate that I believe this is a consequential amendment and, the earlier clauses having been defeated, we will be opposing this amendment.

Amendment negatived, clause passed.

Clauses 14 and 15 passed.

Clause 16.

The Hon. P. HOLLOWAY: I move:

Page 9, lines 28 to 31—Delete subclause (2).

I will also speak to my next amendment which is to insert a new clause, because this amendment becomes relevant only if my next amendment is passed. This amendment is self-explanatory. It is designed to set up rules of behaviour for police officers exercising extraordinary powers under this act. It includes obligations to act in such a way as to avoid unnecessary damage to persons and property.

The Hon. R.D. LAWSON: What was the basis for this late amendment being developed?

The Hon. P. HOLLOWAY: I am advised that it came about as a result of trying to take into account as far as possible the Law Society's submission.

Amendment carried; clause as amended passed.

New clause 16A.

The Hon. P. HOLLOWAY: I move:

After clause 16 insert:
Division 4A—Constraints on exercise of powers
16A—Constraints on exercise of powers
Powers under this act must be exercised with care—

(a) to avoid inflicting unnecessary physical harm, humiliation or embarrassment; and

(b) to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and

(c) to avoid causing unnecessary damage to property.

The Hon. R.D. LAWSON: Given that the government does not agree to provide for persons who suffer damages as a consequence of the misuse of the powers of this act, why has the government not provided any sanctions in relation to the excessive use of these powers? Surely, if the government was serious about trying to avoid offending those with genuinely held cultural values or religious beliefs there would be some sanction for failing to honour this noble objective.

The Hon. P. HOLLOWAY: The police are subject to the Police Complaints Authority if they act contrary to any law—including this law, if it comes into force. The police would be subject to the normal disciplines of the Police Complaints Authority.

The Hon. IAN GILFILLAN: In relation to this, it is significant to take note of my next amendment which seeks to define a penalty for a police officer who offends in a way which to a certain extent is spelt out in the government's amendment. I agree with the implication in the Hon. Robert Lawson's question. There are penalties for everyone else involved in this situation who infringe the intention of the legislation, but there is no specified penalty for a police officer.

For the general public to rely on the police assessing offences made by its own members, this provision does not achieve a great degree of confidence in the public's mind. Although it is reasonable to have an amendment identifying these constraints to be observed, where they are blatantly ignored or contravened it is reasonable that the legislation should spell out a penalty, and my next amendment does that.

The Hon. R.D. LAWSON: This is a highly selective and politically correct identification of the issues—avoid inflicting unnecessary harm, humiliation and embarrassment; avoid offending genuinely-held cultural values or religious belief; and avoid causing unnecessary damage to property. One can take the obvious example of police cordoning off the central business district of Adelaide, for example, and causing immense harm to small business, as well as inconvenience to services, businesses and ordinary citizens going about their business.

There is no injunction to exercise care in those directions, presumably because the government does not feel that it needs to be soft-soaped with what I regard as fairly empty rhetoric of this kind. Notwithstanding that, I indicate that the opposition will not oppose this amendment. It is a bit of window dressing. The government has acknowledged that it

has done it to try to salve some of the concern of the Law Society. I would not have thought that the Law Society's concerns were about trivia of this kind; its concerns are far more basic and expressed more robustly.

New clause inserted.

Clause 17.

The Hon. IAN GILFILLAN: I move:

Page 9, line 33 to page 10, line 15—

Clause 17—delete the clause and substitute:

17—Offence

A police officer is guilty of an offence if the officer in exercising powers under this act goes beyond what is authorised and intentionally subjects a person to cruel, inhuman or degrading treatment.

Maximum penalty:$10 000 or imprisonment for two years.

I did argue the case for it in discussion on the previous amendment of the government, and I repeat that I believe, from previous experience, that anything other than a specified penalty for offences by a police officer using these extraordinary powers is a very wishy-washy way of dealing with it. That is why I move this amendment.

The Hon. P. HOLLOWAY: This amendment appears to have two purposes. The first purpose is to delete all offences which back up the requirements of the bill, and this is simply unacceptable. Police need suitable offences with which to enforce the civil obligations of the powers contained in the bill when they are triggered. Suitable offences are proposed in clause 17 and the penalties have been aligned with analogous offences in the general law in a balanced way. They should not be struck out. Again, I ask honourable members to compare this bill with the regime so recently enacted under the Emergency Management Act 2004. That act is also concerned with real emergencies and, like this bill, contemplates the conferral of extraordinary powers in a declared emergency. It contains suitable offences of the kind contemplated here. This amendment is simply unacceptable to the government, and it should be unacceptable to any right-thinking person.

However, that is apparently not enough for the honourable member. Not content with depriving the police of the ability to enforce their powers, he wants to make them criminally liable—not the offenders, but the police. So it is also proposed in this amendment to make it a criminal offence for a police officer to treat a person in a 'cruel, inhuman or degrading way'. This is not an acceptable offence. The government has absolutely no objection at all to requiring and demanding that police do not treat people in a cruel, inhuman or degrading way in the exercise of any powers; however, it is opposed to making it a criminal offence, the words are too vague. The government is happy to make this an obligation. It is happy to make it the kind of subject matter which could form the basis of complaint to the Police Complaints Authority and a consequent disciplinary offence should that be shown; however, it is not happy to have a vague, waffly, ill-defined and arbitrary defence waft onto the statutes book. The amendment is opposed for this reason, as well.

The Hon. IAN GILFILLAN: I think it is quite salient to the point to read out the recommendations from the Law Society in relation to this, and its argument as to why clause 17 should be removed—that is, these clauses that relate to a person who may offend. Its recommendations read:

25. The offences provision in clause 17 is likely to have no impact on potential terrorists or their sympathisers. The only likely 'offenders' are innocent South Australians caught up in the execution of these draconian powers.
26. The purpose of the powers under the bill is to deal with emergencies, the offences do not assist with this. All they will create is a 'tail of pointless prosecutions'. They already overlap existing offences.
27. The provision seems to be no more than an unhealthy and repressive reflex action of imposing sanctions to make legislative prescriptions seem more serious.

I could not put it better myself.

The Hon. R.D. LAWSON: I indicate that the opposition will not be supporting this amendment. The statement from the Law Society that was just read out by the honourable member is, to my mind, entirely unconvincing. The existing provisions of section 17, which create a range of offences for failing to cooperate with persons exercising these powers, are appropriate, in our view, and it is inappropriate to remove them. We believe that the insertion of an offence in the terms proposed by the honourable member—namely, that a police officer is guilty of an offence if the officer exercises powers under this act by going beyond what is authorised and intentionally subjecting a person to cruel, inhuman or degrading treatment—is unnecessary.

If a police officer were to subject any person, whilst he or she is exercising powers under this act, in a cruel, inhumane or degrading way, the officer would undoubtedly be subject to appropriate sanctions. We think it is unnecessary and, in a sense, offensive to create an offence of this kind, so we will not support the honourable member's amendment.

The Hon. IAN GILFILLAN: My final observation on this debate about the amendment is to quote existing subclause (2) which I have moved to delete:

A person must not, without reasonable excuse, in response to a requirement to disclose his or her identity under this act—

(a) give a name that is false in a material particular; or

(b) give an address other than the person's full and correct address.

Maximum penalty: $10 000 fine or imprisonment for 2 years.

So, for a deficient address given unless you had a reasonable excuse—in other words, you did not know where you lived or something strange like that—there is a maximum penalty of very high severity.

Amendment negatived; clause passed.

Clause 18.

The Hon. IAN GILFILLAN: I move:

Page 10, lines 17 to 21—

Clause 18—delete the clause and substitute:

18—Status of issuing authority.

The function of issuing a special powers authorisation or special area declaration is conferred on an issuing authority in a personal capacity and not as a court or a member of a court.

I am quite happy to be advised on this amendment. The reason for it was, quite clearly, that an issuing authority should be regarded as a person rather than a representative of a structure such as a court. I am prepared to take advice on this amendment, as it may not now be relevant because of the failure of my earlier amendments. However, there is no point in not moving it.

The Hon. P. HOLLOWAY: The government regards this as subsequent to the honourable member's first amendment which was defeated, so we oppose the amendment.

The Hon. R.D. LAWSON: I do not think it is entirely consequential upon the earlier amendment because there are still in the bill—as there always have been—certain judicial functions. These are not functions to authorise the issue of the authorisation; they are functions to confirm it. There is obviously a constitutional argument that to confer powers of this kind on a judge can contravene the separation of powers

contained in chapter 5 of the Commonwealth Constitution. For that reason, very often—as some of the cases suggest—the judge exercising the powers is not exercising the judicial power of the court but a function as a persona designata, an individual. That provision is, I think, unnecessary in relation to the particular issue which remains in the bill, namely, the power of the judge to confirm (or not to confirm, as the case may be) the authorisation. However, even though this clause would have some work to do, I do not think it is appropriate in the circumstances that we have not amended the existing arrangements.

The Hon. P. HOLLOWAY: My advice is the same as that just given by the Hon. Robert Lawson.

Amendment negatived; clause passed.

Clause 19 passed.

Clause 20.

The Hon. IAN GILFILLAN: I move:

Page 11, lines 9 and 10—

(1)(b)—Delete paragraph (b) and substitute:

(b) if the person seeks an explanation of the reason for the exercise of the power—

(a) inform the person that the power is exercised under a special powers authorisation or special area declaration (as the case requires) under this act; and

(b) inform the person of the date on which the authorisation or declaration was issued; and

(c) offer the person an explanation of the reason for the exercise of the power in relation to the person.

The paragraph to be deleted hinges on the introduction that a police officer must, before or at the time of exercising a power under this act, or as soon as is reasonably practicable after exercising the power, do a couple of things. The wording to which I am taking exception is:

(b) if requested to do so by the person the subject of the exercise of the power, provide the person with the reason for the exercise of the power.

I think we should give more detail and more effect to that, so I move that that be deleted and replaced by the words in my amendment.

The Hon. P. HOLLOWAY: I oppose the Hon. Ian Gilfillan's amendment. The government sympathises with the intention behind it but thinks that it goes too far. The government has its own limited amendment to put in its place. The reason for limiting the amount of information required is simply practical and operational. Imagine a young constable staffing a cordon preventing people going in or out. That constable is going to know that there is a special authorisation for that and will probably know what kind but will almost certainly not know the operational reason for what he or she is being asked to do and, even if they did, which is most unlikely, they should not be required to disclose operational information to someone who may be a terrorist or associated with a terrorist. This amendment should be opposed and the government amendment supported. I move:

Page 11, lines 9 and 10—

(1)(b)—Delete paragraph (b) and substitute:

(b) if the person seeks an explanation of the reason for the exercise of the power—inform the person that the power is exercised under a special powers authorisation or special area declaration (as the case requires) under this act.

This amendment is self-explanatory. It is designed to require police officers enforcing the act against members of the public to inform them that these extraordinary measures are being taken because this act has been invoked and, in effect, a terrorist emergency has been declared. I think that members can see that the government amendment is a much more practical and, I would argue, sensible proposal.

The Hon. R.D. LAWSON: We are more attracted to the government's amendment and will be supporting it, rather than the honourable member's amendment. We agree that the wording of the bill itself was capable of amendment and should have been amended. We are glad that the government has done so. We support the government's amendment.

The Hon. Ian Gilfillan's amendment negatived; the Hon. P. Holloway's amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 11, lines 11 to 14—

Clause 20(2)—delete subclause (2) and substitute:

(2) A person who was searched, or whose vehicle or premises were searched, under a special powers authorisation or special area declaration may, within 12 months after the search, make a written request to the Commissioner of Police for—

(a) a written statement that the search was conducted under this Act; and

(b) a copy of the authorisation or declaration,

and the Commissioner of Police must provide the statement and copy within 7 days after receiving the request.

This amendment deletes clause 20(2). For clarification, I will refer to the current clause in the bill and then the replacement in my amendment. Currently, in the bill the Commissioner of Police is to arrange for a written statement to be provided on written request made within 12 months of the search to a person who was searched, or whose vehicle or premises were searched, under this act, stating that the search was conducted under this act. My replacement wording puts a time restraint on the time in which the Police Commissioner is required to respond.

The wording of my amendment is that a person who was searched, or whose vehicle or premises were searched, under a special powers authorisation or special area declaration may, within 12 months after the search, make a written request to the Police Commissioner for a written statement that the search was conducted under this act and a copy of the authorisation or declaration. The Commissioner of Police must provide the statement and copy within seven days after receiving the request.

Members will note that the only significant effect of my amendment is to provide a reasonable time frame for the Commissioner of Police to give satisfaction to the person who has made a written request to the Commissioner for certain information. In our view, it is reasonable that that should be provided within seven days after receiving the request.

The Hon. P. HOLLOWAY: This amendment is not acceptable as it relates to, for example, special areas declarations. Suppose, as is quite possible, the Commissioner of Police decided that Adelaide Railway Station is a possible terrorist target. He might issue a declaration valid for, say, a month. During that time, police could search the backpacks of anyone entering the railway station. There may be thousands of such searches. The scheme proposed by the amendments of the honourable member would have the result that each of those searched would have the right to demand the prescribed information from the searching police officer and then the right, under this amendment, to demand a copy of the authorisation plus a written statement involving a confirmation of police notes from the Commissioner of Police within seven days. I repeat: there could be thousands of them, and this is not remotely practical. The example could

be multiplied many times over and, obviously, the honourable member is simply making an attempt at legislative sabotage to derail the impact of this bill. The government opposes the amendment.

The Hon. R.D. LAWSON: We will not support the Hon. Ian Gilfillan's amendment. The requirement that the Commissioner provide the statement within seven days does seem to us to be unnecessarily restrictive. Maybe the Commissioner can do that in the circumstances, but it well may be that Football Park has been searched three times in 14 days and a vast number of requests might be made, and to impose a seven-day time limit is altogether unrealistic. Whilst I would not call it sabotage, I think it is also putting into the legislation disincentives for the police to seek to exercise the powers in the legislation. We should not be putting unnecessary or bureaucratic impediments into legislation of this kind.

We are now dealing with the minutiae, but we should never lose sight of the fact that this is legislation at a remarkable time to deal with exceptional and very serious situations. To impose this form of requirement on police is really excessive. We certainly agree that it is appropriate that those who are searched have certain rights and that they have the right to have that confirmed, if they want, within 12 months. However, we cannot support, nor do we think it is either reasonable or necessary to impose, a seven-day time limit on the Commissioner for the supply of the information, which may well take more than seven days to obtain.

The Hon. IAN GILFILLAN: I am sorry to hear what I think is very lightweight opposition to the amendment. I hope that it does not reflect that the government and the opposition really regard these measures as being somewhat trivial in their effect on civil rights and in their impact on what is normally the fair expectation of citizens in our community going about their normal business. The comparison with the burden on the Commissioner which the government has imposed in its own bill, which has been a little more refined and which also has a time limit in my amendment, is not substantial. It is very hard not to take the view that this is not being treated seriously. If the opposition believes that the intention of my amendment is reasonable, why do we not look at a way of improving the wording in the current bill? I have heard the response from both the government and the opposition, that is, that they intend to oppose the amendment. However, I regret that the reasons given to me do not seem to be substantial.

Amendment negatived; clause as amended passed.

Clause 21.

The Hon. IAN GILFILLAN: I move:

Page 11, lines 16 to 20—Clause 21(1)—delete subclause (1) and substitute:

(1) If—

(a) a police officer has seized a thing in the exercise of a power under this act; and

(b) the police officer is satisfied that—

(i) its retention as evidence is not required; and

(ii) it is lawful for the person to have possession of it,

the police officer must, as soon as reasonably practicable, return it to the owner or person who had lawful possession before it was seized.

This amendment replaces the wording of clause 21(1)—'Return of seized things', which provides:

(1) A police officer who, in exercising a power under this act, seizes a thing, must return the thing to the owner or person who had lawful possession of the thing before it was seized if the officer is satisfied that—

(a) its retention as evidence is not required; and

(b) it is lawful for the person to have possession of the thing.

Subclause (2) is not relevant to my amendment. I think that, again, this amendment minimises the impact of the legislation on ordinary members of the public.

The Hon. P. HOLLOWAY: The government is happy to accept the amendment.

The Hon. R.D. LAWSON: We support the amendment.

Amendment carried; clause as amended passed.

Clauses 22 and 23 passed.

Clause 24.

The Hon. R.D. LAWSON: My amendment No. 2 amends clause 27, not clause 24. It is a misprint. It should read 'Clause 27, page 13, line 24.'

Clause passed.

Clause 25.

The Hon. IAN GILFILLAN: I move:

Page 12, lines 20 to 27—Delete the clause.

This is a very simple amendment, namely, that clause 25 be deleted in its entirety. The clause is entitled 'Authorisation or declaration not open to challenge'. As is my custom in dealing with amendments, I will read into *Hansard* the clause we move to delete, as follows:

(1) A special powers authorisation or special area declaration (and any decision of the Police Minister with respect to the authorisation or declaration) may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

They should really try to cover it, shouldn't they? Subclause (2) provides:

(2) However, subsection (1) does not prevent a special powers authorisation or special area declaration being called into question in proceedings under the Police (Complaints and Disciplinary Proceedings) Act 1985.

This is sorry consolation indeed. As I observed earlier, the cute way of referring complaints against the police to the police entities which are under the umbrella of police has not satisfied the requirements of the community at large—and it would not in the least circumstances. I think that it is worth reading the observations made by the Law Society (and I think that it speaks for many clear-thinking people in our community) in its objection to this clause, as it holds very serious concerns about the retention of the clause in any legislation. The Law Society states:

7. Clause 25 of the Bill, privative clause, purports to restrict any court from reviewing the special powers authorisation or special area declaration.

8. Since the High Court's decision in the matter of plaintiff S157 in 2003, the manner in which such a privative clause would operate under state law is unclear.

9. However, such a clause could possibly have a number of effects.

10. First, the clause could prevent a person from challenging the legality of a special powers authorisation or special area declaration in the courts by way of judicial review if, for example, the Commissioner of Police as relevant authority maintained a special powers authorisation beyond the period of 14 days there would be no way for a court to prevent or restrain this. The Commissioner of Police as relevant authority would have the power to interpret, apply the powers in the bill, as he or she wished with no restrictions.

11. Secondly, the clause could prevent a person charged with any offence from challenging the admission of evidence obtained under a special powers authorisation or a special area declaration by way of collateral challenge. Evidence obtained by police officers acting illegally is inadmissible. The clause would allow police, under the cover of a special powers authorisation or a special area declaration,

to perform acts going beyond their powers and not be held accountable in the criminal trial process.

12. Thirdly, the clause could prevent people mistreated by police exercising their powers from seeking a remedy or compensation from the courts. As an example, schedule 1, subclause (2) of the bill permits strip searches only in relation to certain persons in certain circumstances. The existence of clause 25 means that police could strip search anyone who is within the area of a special powers declaration and then claim that their exercise of power, despite being in breach of the statute, was unreviewable.

13. The effect of clause 25 is uncertain, but it is clear that it would have significant detrimental effects on South Australians if the powers in the bill would be misused. The clause is an outrageous deprivation of ordinary civil rights and an attack on the rule of law. It also serves no purpose whatever in the context of the aims of the bill.

14. Furthermore, a possible effect of clause 25 would contravene Australia's obligations pursuant to article 2, subclause (3) of the International Covenant on Civil and Political Rights. This provides:

Each state party to the present covenant undertakes-

(a) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

(b) to ensure that any person claiming such a remedy shall have his right thereto determined by a competent judicial, administrative or legislative authority, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy.

(c) To ensure that the competent authorities shall enforce such remedies when granted.

The Hon. Sandra Kanck: Where is that from?

The Hon. IAN GILFILLAN: It is from article 2(3) of the International Covenant on Civil and Political Rights.

The Hon. Sandra Kanck: And isn't Australia a signatory to that?

The Hon. IAN GILFILLAN: Australia's obligations are clear and are spelt out by this observation by the Law Society as being a participating nation, so one would expect them to comply with it. It is no surprise to find that the Law Society has strongly recommended the removal of clause 25 from the bill.

The Hon. P. HOLLOWAY: The effect of this amendment is to delete what is technically known as the privative clause. The general effect of this clause is to prevent judicial review of authorisations. The government opposes this amendment. It recognises the exceptional nature of the clause, but it maintains that it is warranted, given the other protections and lines of accountability proposed by the bill in the extraordinary circumstances the bill contemplates. The bill carefully preserves the scrutiny of the Police Complaints Authority. There is judicial scrutiny proposed in the bill, but it is not proposed that there be an appeal from that and the police minister is accountable to the public and to the parliament for the exercise of these powers. These are strong and carefully considered provisions. In addition, the privative clause does not foreclose all remedies—only some.

The clause does not preclude a civil action for damages by persons who suffer damages as a result of a tortious exercise of powers by a police officer acting under the terms of the Commissioner's warrant as provided for in this clause. Courts generally read down probative clauses; that is, such clauses are construed strictly by the courts. Under the statutory interpretation principles, clear words are required to abrogate a person's rights. Because those rights have not been specifically expressed in this clause in such a way as to exclude those rights, the government believes that nothing in this clause will exclude a person's right to seek redress under this clause.

This clause seeks to prevent any legal impediment to the issuing of the warrant that may frustrate the Commissioner in his attempt to prevent a terrorist act. The check in the first instance is that a judge will need to approve the application by the Commissioner. This clause will prevent any challenge during the period of time for which the warrant is in place. However, if, after the warrant has been executed, a person believes that the judge or the Commissioner has made a mistake, either intentionally or unintentionally, this clause will not remove the person's right to seek redress through the courts. However, it will stop the person from attempting to do that during the exercise of those powers.

It seems that, with this amendment, as with almost all of his other amendments, the honourable member does not take into account what will happen with this bill. He seems to think that this is going to be an everyday policing measure. Well, it will not be; it is not designed to be, and it cannot be. New South Wales has had a stronger bill with less protection since 2002, and it has not been used once. We cannot allow judicial review during the course of an authorisation.

Let us just test the honourable member's amendment against a real possibility contemplated explicitly by the bill. The Commissioner of Police gets credible and real intelligence from reliable sources—maybe a number of them; maybe through a joint task force investigating a terrorist cell; maybe from the Australian Crime Commission; maybe ASIO; or maybe a combination—that a terrorist cell is building bombs in a rented house in, say, eastern Prospect, defined by certain streets. They plan to attack the next day. The Commissioner has the area but not the precise house. The house is rented, so there is a requirement for an urgent search of rented houses in an area of Prospect by bomb sniffer dogs. The declaration is made and confirmed, and the house to house search begins. A cordon is set up to stop people going in and out while the search is on. Someone in a house in that street sees the police coming, phones his lawyer and, if the honourable member has his way, gets an injunction from a court to stop the search while the grounds are reviewed and tested by judicial review. That is not to be contemplated, nor any variation of that.

What if the bomb has really gone off? The authorisation lasts for 24 hours only, and, as in London, the proper job of the police is to preserve evidence, catch the offenders, help the victims, and so on. Is it seriously to be contemplated that this is all going to grind to a halt because someone decides that a judge had better look and see whether the paperwork is right, issue a subpoena and generally halt proceedings? Does the 24 hours continue to run whilst this goes on? No; it is not to be contemplated, and for those reasons the government opposes the amendment.

The Hon. R.D. LAWSON: I indicate that the Liberal Party thought long and hard about this, because private clauses are not provisions that we would ordinarily support. Certainly, private clauses require close examination of the way in which they will operate. Ordinarily, we do not believe that the right of people to go to a court and obtain an injunction to obtain mandamus or judicial review should be circumscribed. However, in this particular instance, we do not believe that it is appropriate to delete this private clause. We do not have as much confidence as some might in the fact that the Police Complaints Authority will have an overriding jurisdiction in relation to these matters.

Only yesterday the *Sunday Mail* featured a story in which (if the story is correct) one might have reason to question the capacity of the Police Complaints Authority to appropriately

address all of the issues brought before it from time to time. However, leaving aside that, we agree that it is not appropriate to have applications for judicial review about the granting of these powers, or the exercise of them, during the very narrow time-frame when these powers can be exercised. Bear in mind, they can be exercised only for 24 hours in relation to one form of declaration and up to 14 days in connection with another.

We simply do not have what might be termed the luxury of being able to go to court on applications of this kind. It would frustrate the very powers that the parliament is conferring upon the police to exercise in exceptional circumstances. As the minister says, excessive or wrongful exercise of those powers may result in legal action being taken against the authorities if damage is suffered, but we do not believe that judicial review ought be available in the circumstances of this particular bill.

We note that in relation to the preventive detention bill, where detention can be granted for up to 14 days, there is a provision for immediate judicial review at the behest of a person who is detained under that legislation. We will certainly be supporting the retention of judicial review in that bill, but we think that there is a significant difference between immediate detention on the one hand and the exercise by police of powers under this emergency legislation. So, we have given the matter earnest consideration, we have taken into account what the Law Society has submitted and we have noted the international covenant, which the honourable member read into the record from the Covenant on Civil and Political Rights. However, we believe that human rights law acknowledges that special measures are appropriate in relation to terrorism.

I refer to the Digest of Jurisprudence of the United Nations and Regional Organisations in the Protection of Human Rights While Countering Terrorism. I am indebted to the human rights committee of the Law Society for making the text of this digest available, and I quote passages from it:

> No one doubts that States have legitimate and urgent reasons to take all due measures to eliminate terrorism. Acts and strategies of terrorism aim at the destruction of human rights, democracy, and the rule of law. They destabilise governments and undermine civil society. Governments therefore have not only the right, but also the duty, to protect their nationals and others against terrorist attacks and to bring the perpetrators of such acts to justice.

The digest continues:

> Human rights law has sought to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms. It acknowledges that States must address serious and genuine security concerns, such as terrorism.

It goes on to refer to the three main instruments of human rights law, namely, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights. It says that those three conventions:

> . . . mandate that certain rights are not subject to suspension under any circumstances. The three treaties catalogue these non-derogable rights. The list of non-derogable rights contained in the ICCPR (International Covenant on Civil and Political Rights) includes the right to life; freedom of thought; conscience and religion; freedom from torture and cruel, inhuman or degrading treatment or punishment, and the principles of precision and the non-retroactivity of criminal law.

None of the provisions of this law offend or undermine those non-derogable rights, in my view. In those circumstances, given the context in which this privacy clause appears, we will be supporting its retention and opposing its deletion.

The Hon. IAN GILFILLAN: I am sorry to hear that. I thought from listening intently to the commencement of the Hon. Robert Lawson's contribution that he was showing that proper statesmanlike quality that he shows so often and was prepared to defend what I and the Democrats regard as inalienable rights in any community, unless they will be totally destroyed by this phantom fear of the impact of the terrorism per se. We have been raised with the bogy that any of these measures can be stopped in their tracks because there will be someone approaching any one of this very comprehensive lists to look to have restraint or remove what in that person's view is a decision that should be challenged. First, they have to get an injunction. The people to whom this challenge would be put are not just simply running dogs for the terrorists, nor would they be insensitive to the factors which have been identified as being so critical.

However, those who I think are taking the sledgehammer approach to this are not prepared to assess what is the balance of the potential damage to the fabric of our community. The whole issue of terrorism and its impact either real, implied, or threatened in our society is very vague. It is not, in our view, defined in a surgically accurate form so that it cannot be stretched into areas which we are not even imagining at this stage, if this legislation comes into effect. It is important to recognise what the Bar Association stated in its rather brief submission over the hand of its President, Jonathan Wells QC. We received a copy of its submission on 17 November. I refer to the paragraph in relation to clause 25 which states:

> The association expresses particular concern that persons whose rights are at stake are deprived of the fundamental right to challenge decisions taken under the act to issue or to reissue special powers authorisations and to issue special area declarations. Similarly there is an incapacity to challenge decisions pertaining to seizure and detention of things. Section 25 of the bill attempts to preclude review by the courts of such decisions. Whatever may be the extent of the obligation of a superior court to give full force to such a privative clause in the face of manifest jurisdictional error, a challenge will not be available simply and cheaply. Access to justice is unacceptably compromised.

It seems to me surprising that two balanced bodies representing the law as practised in South Australia (and amongst whom one would imagine there are many members who are extremely conscious of what is seen as the threat of terrorism) could take such an unequivocal stand to oppose clause 25. The Democrats certainly accept that their opinion is profound, well balanced and well presented, and add to that our own abhorrence at the sacrifice of what has been accepted as a basic right of people in our society. That is why we strongly support the removal of clause 25.

The Hon. SANDRA KANCK: I would like the minister to perhaps walk me through a theoretical example. Let us say that under clause 3 of this bill it is determined that a terrorist act is imminent and a special powers authorisation is sought, that being a preventative authorisation. Clause 4 spells out that that can last as long as seven days. One of the people in this terrorist ring is someone called Terry Roberts and not the Terry Roberts here, but the police swoop on the Terry Roberts who is a member of this chamber.

In the light of clause 25, which provides that the declaration may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings or restrained, removed or otherwise affected by proceedings in the

nature of prohibition or mandamus, what recourse to action would our Terry Roberts have in this case?

The Hon. P. HOLLOWAY: To what action does the honourable member wish to have recourse—to what action would she suggest that he needs recourse?

The Hon. SANDRA KANCK: The recourse that our Terry Roberts might want to have in this circumstance would be to go to a court and say, 'Hey, I'm not the Terry Roberts you are talking about.'

The Hon. P. HOLLOWAY: What action is the member suggesting?

The Hon. SANDRA KANCK: Clause 25 is saying that he cannot take any action. If he is the wrong Terry Roberts, this clause prevents that, does it not?

The Hon. P. HOLLOWAY: No, the member has missed the point. I am asking: what action by the police is the member suggesting that he should have action against—that his bag be searched, or disclose his identity? What particular power? I point out to the honourable member that the person would not be detained under this act. This is not about detention; that is in the next bill.

The Hon. R.D. LAWSON: I think that is an important point to allay the honourable member's fears. The power to search persons under this legislation is very limited. Clause 9(4) provides:

> A police officer may detain a person for as long as is reasonably necessary to conduct a search under this section.

Terry Roberts could not be long detained under that provision. If he is in his vehicle, clause 10(3) provides:

> A police officer may detain a person who is in a vehicle stopped under this section for as long as is reasonably necessary to conduct a search under this section.

How to search premises is similarly limited to a short duration. As I understand it (and this is an important consideration from our point of view), this is not a bill to detain people. Terry Roberts will be free to go. Also, if Terry Roberts has been wrongly treated, whilst it is true that the police, under clause 23, have certain protection—for example, they cannot be sued because there was some irregularity in the way in which the minister confirmed the order—they are otherwise subject to all the common law rights and remedies that a citizen might have against them. Clause 23 does not completely immunise them from liability; it simply says that they cannot be held liable merely because there was some irregularity. But otherwise they can be held liable.

The Hon. P. HOLLOWAY: I thank the Hon. Robert Lawson for making the point that I was leading up to, that is, that the inconvenience to a person in the situation outlined by the Hon. Sandra Kanck would be a relatively minor inconvenience. We are not talking about detention here.

The Hon. SANDRA KANCK: I am surprised that the minister would describe that as minor. I imagine myself, in those circumstances, being utterly terrified. I appreciate what the Hon. Mr Lawson has explained, but I would still like to explore it a little more. Clause 23 (and we are having to do a lot of comparisons between clauses because they interact) provides that the police officer is not to be convicted or held liable merely because there was an irregularity or defect in the issuing of a special powers authorisation or special area declaration. In the example that I have given, that would mean that the defect would be that the wrong address has been given and, therefore, the wrong person has been searched. Clause 23 is saying that Terry Roberts would not be able to sue that police officer. Would Terry Roberts be able to sue the government? Against whom would he be able to take action?

The Hon. P. HOLLOWAY: I believe that the person in that situation could probably sue the crown under the doctrine of vicarious liability.

The Hon. R.D. LAWSON: I do see that this act can have quite serious consequences. Let us say that the police, under an area declaration, cordon off a large section of the central business district while they are searching for a bomb, or doing whatever, and they may leave that in place for some days. In those circumstances there would be a strong incentive for Myer, for example, to make an application to the court to have it lifted because its economic interests are being affected adversely. I have taken that into account, frankly, in reaching the position that even in those circumstances, because of the exceptional nature of this legislation, they should not have a power to have the court review a decision made by the Police Commissioner, in the first place, and the judge and the minister of police in confirming that decision.

At the moment, if there is a murder or suicide at Myer, it may cause it to suffer great loss because the police, in the exercise of their investigative powers, say they are not allowing people to enter a particular area. There is no power now to recover damages for something of that kind. There is really no redress for any citizen or business who is caught up in a situation of that kind. We cannot see why there should be redress in the case of a terrorist act. Notwithstanding our serious reservations about privative clauses, we do not believe it is appropriate in this particular legislation.

The committee divided on the amendment:

AYES (16)

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

NOES (4)

Gilfillan, I. (teller)	Kanck, S. M.
Reynolds, K.	Xenophon, N.

Majority of 12 for the ayes.

Amendment thus negatived; clause passed.

Clause 26 passed.

New clause 26A.

The Hon. IAN GILFILLAN: I move:

> After clause 26 insert:
> Division 7—Application for compensation
> 26A—Application for compensation in relation to exercise of powers
> (1) A person who suffers harm as a result of the exercise or purported exercise of powers under this Act may apply to the Supreme Court for compensation on the ground that the powers were exercised improperly.
> (2) The application must be made within 28 days after the exercise or purported exercise of the powers.
> (3) In this section—
> harm includes loss of life, personal injury, damage to property, economic loss, pain and suffering and loss of any other kind.

This is the insertion of a new clause aiming at compensation for people who have suffered harm. It comes after clause 26, which is the evidentiary provision.

The CHAIRMAN: There seem to be about five conversations going on in the chamber at the moment. I am having a lot of difficulty hearing the Hon. Mr Gilfillan.

The Hon. P. HOLLOWAY: The government opposes the amendment. It seems to operate on the premise that the privative clause in clause 25 will stop this kind of action. It will not. This has all been explained in the previous debate. The course of action proposed here—

The Hon. IAN GILFILLAN: I rise on a point of order, Mr Chair. It is difficult to hear the minister. His voice is softly modulated and there is competing noise.

The CHAIRMAN: Indeed. I made the point before he started his contribution that there were too many conversations. I counted five separate conversations, none of them on the bill.

The Hon. P. HOLLOWAY: The course of action proposed here is flawed in concept and flawed in potential operation. In addition, it cannot be right that the parliament composes as a by-blow another form of the common law action of misfeasance in public office without considering all the implications in doing so. This is a matter for the review process, if at all.

The Hon. R.D. LAWSON: I cannot help noticing the fact that there is a compensation clause in the preventive detention bill, and that is a specific clause which will be considered later when that bill is debated here. However, there is no specific compensation clause in the specific powers bill. As I indicated in my remarks on the earlier clause, this is a bill dealing with police powers. Specific provisions for compensation are not found in other legislation dealing with police powers. There may be common law rights to compensation, but statutory rights for compensation are not usually included.

One can have one's dozen pawpaws, imported from Queensland, thrown in the rubbish bin by the fruit fly inspector at the airport or at the border, with no compensation available for systems of that kind; nor is there, generally speaking, for the exercise by police of powers, when police might put a roadblock up and prevent people arriving at work, or missing out on a contract, or all sorts of other things. The citizens are not entitled to statutory compensation. If, as the result of a robbery at a service station, police want to take fingerprints, etc., the service station proprietor does not have a statutory right to recompense.

We, as a community, assume that the cost of police investigations will fall unevenly, but the loss lies where it falls and, for those reasons, whilst we strongly support compensation in the preventive detention bill, we will not be supporting the insertion of this provision. I think I am correct in saying, because I did look at the provisions of all the other state police powers terrorism legislation, that nowhere else is there, as I recall it, a specific provision of the type here inserted, so we will not be supporting this clause.

The Hon. IAN GILFILLAN: Whether it is in other legislation or not is totally immaterial to assessing the justice or otherwise of this particular clause. This is extraordinary legislation. No-one in this place, whether they are ardent supporters of it or those, like ourselves, who doubt its necessity, would deny that this is profound change to the basic application of the law in the community as we have known it. One cannot say that the exercise of the powers or purported exercise of the powers under this act does not deserve an extraordinary measure to compensate those who would have suffered harm, and harm is identified as being of substantial impact; it is not trivial.

The only actions that would be entertained by the Supreme Court—and no-one will go through that process lightly—would be substantial. If it is, as the Hon. Robert Lawson said (and we also noted the fact that there is compensation in the detention and preventive detention legislation), the logic for that is sound; the illogicity of opposing this in this bill is unsound. All I can believe is that there is a programming of members in this place to knee-jerk to requirements that have come from elsewhere.

I cannot believe that members, left to their own devices and their own consciences, could oppose anyone being able to seek compensation for having suffered a loss of life, personal injury, damage to property, economic loss, pain and suffering and loss of any other kind. The government and the opposition, apparently, have locked themselves into this situation; and I deplore it, as, obviously, does the Law Society.

The Hon. R.D. LAWSON: The honourable member in his passion, I think, overlooks reality. People suffer loss every day because, for example, an aeroplane is delayed because of a search. Someone misses a plane, someone misses a business contact, someone suffers economic loss or someone misses their grandmother's funeral because their plane was delayed because there was a search at a particular place, and they suffer psychological damage in consequence of that. These days there is a great deal of inconvenience rort by terrorists. If we are to compensate everyone for all the losses and harm they might suffer in consequence of the exercise by authorities of these powers, where does it all end?

Where it ends, of course, is that the authorities, knowing that they are up for the vast expense of having to compensate everyone who might have suffered some harm in consequence, will say, 'Well, we won't be exercising the powers. We can't afford to exercise the powers'; when, if the circumstances for the exercise of these powers arise, they should do so in the interests of the community as a whole. It is for that reason that we will not be supporting this new clause. Although, as I say, preventive detention raises other issues about a person's human rights when you are detained for up to 14 days and it is found that you are wrongly detained for 14 days, and, clearly, you should have rights in those circumstances.

Otherwise, in the more amorphous circumstances in the exercise of these powers, we simply do not believe that compensation is appropriate. I believe that we have taken a principal position in relation to this matter, not one that is driven purely by expediency.

The Hon. IAN GILFILLAN: I can hardly believe that the honourable member would believe that someone or the family of someone who has lost a life, suffered severe personal injury or substantial damage to property is not entitled to seek compensation through what is a very fair, impartial and substantial process through the Supreme Court. It is not like an automatic hand-out, which then gets rewarded with some sort of gratuitous doling out of money. I find it unbelievable that the shadow attorney-general can have such a variation in values of two arms of similarly purposeful legislation: first, the terrorist police powers; and, secondly, preventive detention. I do not follow it.

New clause negatived.

Clause 27.

The Hon. R.D. LAWSON: I move:

Page 13, line 20—

Clause 27(3)—delete 'within six months after receiving a report and substitute:

within six sitting days or three months after receiving a report, whichever is the shorter period.

Progress reported; committee to sit again.

EYRE PENINSULA BUSHFIRES

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I lay on the table a copy of a ministerial statement on the Lower Eyre Peninsula bushfire re-establishment program made earlier today in another place by my colleague the Minister for Agriculture, Food and Fisheries.

[Sitting suspended from 6.01 to 7.48 p.m.]

MITSUBISHI MOTORS

The Hon. T.G. CAMERON: I seek leave to make a personal explanation.

Leave granted.

The Hon. T.G. CAMERON: During the preamble before my question to the leader of the council today, I stated that I had been advised that Mitsubishi sales were currently running at 15 per week for the whole of Australia. I meant to say 15 per day; that figure I stand by.

TERRORISM (POLICE POWERS) BILL

In committee (resumed on motion).

Clause 27.

The Hon. R.D. LAWSON: Clause 27 presently provides that as soon as practical after a special powers authorisation ceases to operate the Police Commissioner is to provide a report to the Attorney-General and to the police minister. The report is to set out the terms of the authorisation, the period during which it operated, in order to identify as far as reasonably practical the matters that were relied upon for the issuing of the authorisation, to describe generally the powers exercised under the authorisation, to state the result of the exercise of those powers, and to generally describe inconvenience to or adverse impact upon the community, sections of the community, businesses, individuals, etc.

Subclause (3) provides that the Attorney-General must, within six months after receiving a report, lay a copy of that report before both houses of parliament. My amendment seeks to halve that period to three months or within six sitting days after receiving the report, whichever is the shorter period. The reason for this is obvious. The government by introducing its bill acknowledges that there is a requirement that the Commissioner report and that it be tabled in parliament. What we object to is the fact that the Attorney has up to six months in which to lay a hard copy of that report before both houses of parliament.

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: As the honourable member says, 'What's he going to do with it in the meantime?' Presumably, if he wants to release it he can release it, but if he does not want to release it he can hang on to it for six months. We believe that is altogether too long. Ordinarily reports from agencies and the like are required to be tabled within six sitting days, and we are suggesting it either be within three months or six sitting days, whichever is the shorter period. This is all about part of the accountability mechanisms in this bill, and I will be interested to hear what reason the government can advance for such a long period.

The Hon. P. HOLLOWAY: The effect of this amendment is to require the report to be made to the parliament not within six months of the report being received but within six sitting days or three months after receiving the report, whichever is the shorter period. The government is compelled to oppose the amendment. It is plainly impractical. It might have been possible to reach some consensus on the three-month part of it rather than the six, but six sitting days is unreasonable. Suppose the parliament is sitting when the bomb goes off. I do not know why the opposition has chosen six sitting days, but that period will be less than two real weeks. What will inevitably happen, particularly if the next amendment passes as well, is that the Attorney-General—

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: If you will just listen to the rest of it though—will request the Commissioner of Police not to provide a report except in a time frame so as to make the report to the parliament possible as well as timely, but there is also an ambiguity which will cause problems because the time frame is too tight. What counts as a report? The Commissioner of Police will without doubt be reporting to government, including the Attorney-General, on a daily basis. One would certainly hope so, in those situations. If parliament is sitting, does the clock start ticking on the basis of these reports? All of them? Are there to be as many reports to parliament as daily reports? Clearly, this is not workable. As I said, if it was just a matter of the overall time, certainly the three months the government could live with, but to have the six sitting days provides a potential situation where it could just be totally impractical if there were some incident happening at the start of a parliamentary period.

The Hon. R.D. LAWSON: I simply do not accept that rather lame excuse provided by the government. This report from the Police Commissioner is to be provided by the Police Commissioner as soon as practicable. He is not required to do it on the day the terrorist bomb goes off. The legislation allows the Police Commissioner to use his discretion as to when he provides the report. This section does not cover every report that the Police Commissioner might make by telephone during the course of a day or even in the course of a week. This report very clearly in the language of this section is a formal report setting out certain things that the section requires. It is 'the' report. The idea that the obligation could arise where the Police Commissioner was on some sort of continuing obligation on a day-by-day basis is really preposterous.

The section says 'as soon as practicable after the authorisation ceases to operate.' In the case of the bomb going off, the authorisation may end within 48 hours of that time or it may end within seven days thereafter if there is an investigation or authorisation, and thereafter in the fullness of time, when the Commissioner has all the material available to put in the report that he can put in the report, he gives it to the Attorney-General and the government is seeking that the Attorney-General can pop it in his back pocket and wait for a slow news day, or perhaps wait for a busy news day, to bury the report appropriately. We think six months is altogether too leisurely and are unconvinced by these arguments.

The Hon. IAN GILFILLAN: The Democrats support the very sensible amendment. I am not sure whether the Hon. Robert Lawson looked at subclause (4) and felt uneasy about it, but he does not need to make a comment about it. It provides:

Before the Attorney-General lays a copy of the report before both houses of parliament, the report may be edited to exclude material

that, in the opinion of the Attorney-General, may be subject to privilege or public interest immunity.

It is a pretty safe document that the opposition is moving will be tabled within six sitting days or three months, so we have no qualms in supporting the amendment.

The Hon. P. HOLLOWAY: What the Hon. Robert Lawson wants to do is amend the second part to change that bit of it as well. There has to be some practicality here. If an event occurs during the term of parliament and the minister is immediately notified, given a report by the Commissioner of Police, as one would expect would be the case, then all that editing and everything else has to be done in a period that could be less than two weeks. The government accepts six months, so you could argue that six months may be too long a period, but we have a lot of difficulty with the six sitting days because if the council continues in the future to sit as it does now, with eight-day sittings, that could be effectively less than two weeks if an incident were to occur at the start of the session. The fact is that that is just an impractical period of time. So, I urge the committee not to place this situation here. For the Hon. Robert Lawson to suggest that there would be some sort of a cover-up is something that I find absolutely incredible. He is talking about slow news days and busy news days. What on earth are we talking about here?

The Hon. R.D. Lawson: We know this government.

The Hon. R.I. Lucas: We've seen you in action. You're not to be trusted—

The Hon. P. HOLLOWAY: In relation to a report about the police using terrorism powers?

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I hope those comments go on the record because one of these days, if this thing is interpreted and the judges look at it, they will know two things: first, the contempt with which the Leader of the Opposition in this place treats the parliament; and, secondly, his stupidity.

The Hon. R.D. LAWSON: I indicate to the committee and the Hon. Ian Gilfillan that I have an amendment in relation to subsection (4), which I will move—

The Hon. Ian Gilfillan: In due course.

The Hon. R.D. LAWSON: In due course, yes.

The Hon. P. HOLLOWAY: I indicate that the government will not call for a division, but these amendments are unacceptable. It would be a tragedy when this bill goes back to the house if we could not negotiate something sensible on this. It would be a pity if the powers in this bill were not to be appropriately passed.

The Hon. IAN GILFILLAN: I have nothing to add to the debate except that the Leader of the Government used the word 'tragedy'. I find it very difficult to apply the word 'tragedy' to the fact that the Police Commissioner, who is responsible for providing the report, will have weighed up the pros and cons of what needs to be analysed and the actual timing to give the Attorney-General the report. Having got the report, why does the Attorney-General have exclusive access to and awareness of a report which is surely the property of this parliament as much as it is of the Attorney-General? To call it a tragedy when we are now encouraging the old secrecy syndrome—the 'keep it comfortable' syndrome—I find a disgrace.

The Hon. R.D. LAWSON: Perhaps I should add to that. How can it be suggested that a report which describes generally any inconvenience or adverse impact on the community (or sections of the community) should be buried for half a year when people in the community are entitled to know? They are the ones who have been inconvenienced and, as the section provides, the Police Commissioner will put in what is appropriate, and presumably he will not put in things that are inappropriate, and there is also a power to exclude material on certain public interest grounds, if appropriate.

The Hon. P. HOLLOWAY: I want to indicate something here. One of the reports that the Attorney-General might receive from the Police Commissioner in relation to this under subclause (1)(d)—'stating the result of the exercise of those powers'—could result in the launching of a prosecution. That might be one of the things that the Attorney-General—

The Hon. Ian Gilfillan interjecting:

The Hon. P. HOLLOWAY: Yes, but all that has to be edited within what could be less than a fortnight of its being received. Yes, sure, it can be received, but some time must be allowed for that to be checked. Somebody has to check the court lists and that sort of thing, all within less than two weeks. It could be at a time like now: the busy end of the session. What is more, if the second amendment is carried, the Ombudsman has to edit it as well. So, the Attorney-General loses control of the issue in that sense. He is directed to do it under this clause. But, if the next amendment is carried, he will have lost control of the process, which would be an intolerable situation.

Amendment carried.

The Hon. R.D. LAWSON: I move:

Page 13, line 24—Clause 27(4)—after 'Attorney-General' insert 'and the Ombudsman'

Proposed section 27(4) provides:

Before the Attorney-General lays a copy of the report before both houses of parliament, the report may be edited to exclude material that, in the opinion of the Attorney-General, may be subject to privilege or public interest immunity.

My amendment requires that the editing process be not solely the responsibility of the Attorney-General but also of the Ombudsman. We believe there ought be some degree of independent judgment brought to bear on the question of whether or not material should be excluded from the report on the ground of privilege or public interest immunity. Members should bear in mind that the action of initiating an authorisation is an action of the executive government, through the Commissioner of Police, endorsed by the Minister for Police. So, it is an action for which a government will be held politically accountable and responsible. In those circumstances, we believe that to leave to the Attorney alone the power to make decisions about the editing of a report of this kind is dangerous and inappropriate.

It is true that there is no-one in the South Australian hierarchy like a commissioner of information or the like who might be seen to be the natural repository of a function of this kind. However, I notice that the federal legislation gives to the federal Ombudsman comparable powers in relation to their terrorism legislation—not precisely in relation to the editing of reports, but a function where an independent third person is required to exercise judgment. The Ombudsman is an experienced and independent officer of the parliament, and he is experienced in dealing with freedom of information applications. The Ombudsman understands fully the requirements of government, and the Ombudsman,whomever it might be, will understand full well not only the nature of a government's desire for secrecy but also the need to balance that desire with the public interest.

The issue of whether or not a report provided by the Police Commissioner is subject to privilege or public interest immunity may never arise. However, if it does arise, we in the parliament would want to be satisfied that the editing process that has been undertaken has been objectively checked and verified. It is for that reason that we seek to have the Ombudsman play a role in this important task.

The Hon. P. HOLLOWAY: It is plain and obvious that the report to be laid before the parliament—and therefore made public—cannot contain information disclosed to the government that may be operational, privileged or otherwise compromise police sources or operations. So, the bill provides that the Attorney-General can edit this out. Now that the other amendment has gone through, it could be less than a fortnight that this has to be done. The amendment proposes that this editing be, in effect, checked by the Ombudsman—again, potentially in less than a fortnight. Again, this is plainly impractical. In the first place, it will mean that there will be every incentive for the Commissioner's report to the Attorney-General to be less than complete and for the judgments to be made by the Commissioner and not by the minister for the Crown, and that cannot be good. It needs to be understood that that will be one of the inevitable consequences if this amendment goes through.

Secondly, it is simply not the role of the Ombudsman to act as adjudicator of, say, different legal questions of public interest immunity. The Ombudsman is a major part of the apparatus of administrative review, and there is nothing about this function that is anything to do with judicial review. It might properly be a function of the Crown or, if the honourable member thought it important enough, the independent office of the Solicitor-General, but not the Ombudsman. The Deputy Leader of the Opposition said that the federal legislation gives a role to the Ombudsman. That is true for only one reason: in the federal jurisdiction the Ombudsman has the role of the Police Complaints Authority. So, that is the only reason why the Ombudsman is referred to in the federal legislation, namely, because he has that specific role, which the Ombudsman does not have within our jurisdiction. Finally, I ask the deputy leader: has he asked the Ombudsman whether he believes it is appropriate or proper for him to have this role? Has he consulted the Ombudsman about the amendment?

The Hon. IAN GILFILLAN: I will put the Democrats' position, and then the deputy leader may wish to respond to the comments. The Democrats oppose the amendment. It seems to fit very uncomfortably with the earlier enlightened amendment, which we supported. First, the contents of the report are most unlikely to raise matters to which the role of the Ombudsman is specifically targeted. Secondly, what would happen? We would then have two editions; one sanctioned by the Ombudsman and one sanctioned by the Attorney-General. What happens if there is a disagreement on the text? So, we are not prepared to support that practical consequence but, because we supported this relatively tight time frame, as it is important that the parliament and the public have access to the report, there could be a valid argument that extra time would be required if two people were to be involved. Essentially, in our view there is certainly no role for the Ombudsman in this exercise.

The Hon. R.D. LAWSON: We know where the numbers lie, so we will not divide and detain the committee further.

Amendment negatived; clause as amended passed.

Clauses 28 and 29 passed.

Clause 30.

The Hon. SANDRA KANCK: I move:

Line 34—Delete 'tenth' and insert 'fifth'

I apologise to honourable members for moving on the run this very simple amendment for a five-year sunset clause. The reason I do so is that at about 20 past seven tonight I received a copy of the report of the Senate committee on the anti-terrorism (No. 2) bill, which was tabled tonight. If anyone watched the ABC TV tonight, as I did, they would have seen the chair of the committee, (Liberal senator Marise Payne) propose on behalf of the committee a total of 52 recommendations.

The Hon. Ian Gilfillan interjecting:

The Hon. SANDRA KANCK: Yes; she is a member of the government. I think that is very important because, amongst the recommendations, is a five-year sunset clause to the bill. I do not know what is going to happen to that bill and what amendments will be moved in the next few days but, presumably, having recommended it, the Liberal members of that committee at least are likely to support a five-year sunset clause. It seems particularly reasonable to the Democrats that we should also have a five-year sunset clause on our legislation as well.

The Hon. P. HOLLOWAY: As I understood it, the COAG agreement was for a 10-year sunset clause on this. I have just sighted the act in Tasmania, which has a 10-year expiry date, which is why the government will oppose the amendment. It will honour the agreement for the 10-year anniversary for the expiry of this act.

The Hon. R.D. LAWSON: We propose to support the 10-year sunset clause. This was a matter of quite some debate amongst my colleagues. The preventative detention bill currently before this parliament has a 10-year sunset clause and we believe it was appropriate to have uniformity in this matter. We are also mindful of the fact that, although the legislation is given a sunset clause, this parliament or any parliament at any time could amend or repeal this bill. In the circumstances we believe that 10 years is appropriate and we also point to the COAG communique of 27 September, which provided for COAG to review all of the new terrorism laws after five years and they would be sunsetted after 10 years.

Consistent with the national agreement, and consistent with the provisions of the Preventative Detention Act, my party resolved to accept the 10-year sunset clause. If the commonwealth were to adopt the position proposed by a parliamentary committee, and if the commonwealth were to breach its own COAG agreement, we would be irritated to say the least, but there is no indication from the commonwealth government that it will reneging on the agreement reflected in the communique and until such time as it does renege on that proposal we will stick with 10 years.

The Hon. IAN GILFILLAN: It is disappointing to hear that the decision of the committee is dictated by Canberra. I do not find that very comfortable. I would say it is a good argument for abolishing both the House of Assembly and the Legislative Council. Maybe we could show a little more independence than other houses of parliament. The bill, including other acts, talks about a five-year review. That is a substantial exercise and it is in the bill. It is an appropriate time after that five-year review for an independent sovereign parliament to review whether it wants to have the legislation continue or not. Nothing prevents an expiry at the fifth anniversary from being followed by a reintroduction and reactivation of legislation, if that is what the parliament wants.

The Hon. Sandra Kanck: And we have done it on many occasions.

The Hon. IAN GILFILLAN: We have done it, as my colleague says, on many occasions. It has been conceived, one assumes by this, that the tenth anniversary will be a date of sunset clause or expiry. There is nothing there that says that in no circumstances will an identical act be reintroduced. Nothing says that is the end of the matter. Why should not we, after having had a detailed analysis and review in five years, not have the opportunity to revisit the legislation? I think it is actually denying the responsibility of a parliament to make the decision of our behalf. If we are taking our marching orders from Canberra, well, so be it, but the Democrats are not.

The Hon. NICK XENOPHON: I indicate my support for this amendment. I believe that five years is more than sufficient time. If in five years there is still a concern that the climate that exists, that the risk of terrorism and the risk of public safety are as manifest as they are now then, of course, we can extend this sweeping legislation. Otherwise, I believe that five years is a sufficient period of time. I support the reasoning of the mover in that I believe that, in the worst-case scenario, from my point of view, if we need to extend it we can, but I would have thought that five years will give us a pretty good idea of whether the threat still exists to the same extent that it does now.

The Hon. SANDRA KANCK: One of the disappointing things about dealing with this bill in the time line in which we have is that the Senate committee has reported today—and I suspect from what I am hearing in the chamber that I am probably the only one in this chamber at the present time who has had in any way a look at what the Senate—

The Hon. Ian Gilfillan: No; not quite. So has your colleague behind you.

The Hon. SANDRA KANCK: Not quite; my colleague behind me has also seen some of the recommendations. We have not had time to digest the Senate committee's recommendations. They may impact on that, and they may in fact be far more important than a COAG agreement. It is interesting to look and see who is driving this issue. As my colleague said: it is Canberra driving it. In the Senate committee's inquiry, the Attorney-General's Department's response to a question about the need for a 10 year period was that, basically, the legislation would be used only rarely. That is surely not a good reason to have a 10 year sunset clause in this legislation. In fact, the Human Rights Commission recommended four to five years, and the Gilbert and Tobin Centre for Public Law recommended a maximum of three years. I would be appreciative if the minister could inform the chamber of how it is that the government accepts 10 years for no other reason than it is part of a COAG agreement into which the public of Australia and South Australia had no input.

The Hon. P. HOLLOWAY: It is all very well for the Hon. Sandra Kanck to say that, but the fact is that the premiers—the leaders of each state—and the commonwealth government were involved in that, and of course the parliaments in every other part of the country (I am not sure whether all of them have yet endorsed it) I believe will endorse it. If it is not 10 years, if the commonwealth were to change that agreement, then obviously that would immediately trigger a reconsideration of this by all the parties and, of course, it could be amended at some stage in the future if that is necessary. As far as the government is concerned, that was the agreement and that is what we intend to do.

It is hard to believe sometimes that even the people of Europe seem able—with all the different languages and the 300 million to 400 million people—to get on better than people in this country seem to. Nonetheless, this government intends to cooperate—we need to cooperate—with the federal authorities because we have powers as a state in some matters. Police forces are generally state forces. The commonwealth has a number of other external and security powers. If we are to effectively deal with terrorism in this country, we need to work together, and that is what we are essentially doing. That is why we are supporting the 10 year time frame. If it is changed at a federal level—and that remains to be seen—then we will have a look at that at the time.

The Hon. SANDRA KANCK: I remind the minister that we are part of a representative democracy, and COAG did not consult with anyone in the community in Australia or South Australia. So, what we have is a very undemocratic decision by the commonwealth and by the South Australian government in some sort of very strange Labor-Liberal coalition.

The Hon. T.G. Cameron: How can you say that it is undemocratic?

The Hon. SANDRA KANCK: It is undemocratic because there has been no consultation. It is a representative democracy. We represent people. When our Premier goes off to a COAG meeting without having consulted South Australians and gives an undertaking like this, then we are not being represented. That is fairly obvious.

The Hon. T.G. Cameron: It is not representative unless you're involved?

The Hon. SANDRA KANCK: No; I am talking about the public. We are all in a privileged position as members here.

The Hon. R.D. Lawson: We get to vote.

The Hon. SANDRA KANCK: Yes; we get the right to have a vote on this.

The Hon. R.D. Lawson: And speak for ourselves, which some of us aren't prepared to do.

The Hon. SANDRA KANCK: Well, I know we are going to have a vote, and I know it is going to be defeated, but, minister, given the Senate committee's report today, and given the possibility that by the end of this week the federal legislation will be amended to have a five-year sunset clause, where does that leave this particular legislation?

The Hon. P. HOLLOWAY: It is my advice that the Senate report was in relation to the preventative detention bill. It is about detaining people. This police powers bill is a state measure because, of course, police forces are state forces. As I understand it, the commonwealth does not have similar legislation to this, so that the recommendation relates to the next bill that we will be debating, that is, the preventative detention bill. If that has changed it will require consultation with all the states and, ultimately, this bill (if the other bill is passed this week) could be later changed if necessary, or if it is considered desirable. All we can do is work on the basis of what has been agreed, and just because a Senate report has made that recommendation does not necessarily mean that the government of the day in Canberra will accept it.

The Hon. SANDRA KANCK: The minister has been wrongly advised. Recommendations 38 and 39 of the Senate committee report refer to, for instance, the use of the proposed stop, question, detain, search and seizure powers. Recommendations 43 and 44 are in relation to the collection, use, handling, retention and disposal of personal information,

as are recommendations 48 and 49. So, to say that all of the Senate committee's reports deal with preventative detention is not correct.

The Hon. P. HOLLOWAY: The first set of recommendations to which the honourable member refers apply to schedule 5 of the commonwealth bill which refers to the Commonwealth Crimes Act 1914 relating to search, information gathering, arrest and related powers. The other matters are not relevant to this bill.

The Hon. SANDRA KANCK: That is a nonsense argument. Of course the Senate committee's report deals with commonwealth legislation. We are dealing with state legislation, and I am making a comparison here. If the Senate committee's report is making recommendations about the proposed stop, question, detain, search and seizure powers under commonwealth law then we need to be looking at the relevant provisions in our law. To say that it does not pertain to what we are dealing with is a nonsense argument.

The Hon. P. HOLLOWAY: All I can say is a Senate committee might make recommendations. All we can do in this bill is honour the undertaking that we have made in the agreement between the commonwealth and the states. If the commonwealth unilaterally changes that, that will trigger consultation, and presumably that may well trigger amendments. However, at this stage, all we can do is proceed on the basis that the commonwealth act as it is now presented talks about 10 years to the extent that is relevant or comparable with this bill, and we intend to honour that until such time as that agreement is changed.

The Hon. T.G. CAMERON: Would the other states be in a similar position to South Australia, which was just outlined by Sandra Kanck?

The Hon. P. HOLLOWAY: Absolutely. As I indicated earlier, Tasmania has just passed its act. It has a 10-year provision. The Northern Territory, New South Wales and Queensland have passed their bills. I am advised that Western Australia and Tasmania have bills, and Victoria is close. So, essentially, yes.

The Hon. R.D. LAWSON: I point out that the bill introduced into the federal parliament also contains sunset provisions. In relation to stop, question and search powers, there is a 10-year sunset clause; and there is also a 10-year sunset clause in relation to preventive detention orders. Certainly, in the bill that was presented to the commonwealth parliament, the commonwealth government honoured the agreement contained in the COAG communique.

Amendment negatived: clause passed.

Schedules and title passed.

Bill reported with amendments: committee's report adopted.

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

That this bill be now read a third time.

The Hon. SANDRA KANCK: I indicate on behalf of the South Australian Democrats that, indeed, this is a sad day to see legislation such as this passed with the agreement of the Liberal Party. With the great traditions of liberalism on which they were founded, I think this is an extraordinary disappointment. Combined with this government's law and order policies and the extra powers that are already being given to police, this on top of it compound that. I think it is almost time that we changed our numberplates in South Australia—rather than its being the festival state, it should be the police state. We oppose the third reading.

The Hon. T.G. CAMERON: I suppose that I, too, could get up and express my disappointment about a bill curbing liberty and people's civil rights and freedoms, and so on, and express my disappointment that this bill has been introduced by a Labor government. However, I will not do that, because I believe that we are living in extraordinary times and that this legislation is necessary. I will not be criticising either Labor or Liberal for their support for this bill: I am supporting it myself.

The Hon. R.D. LAWSON: I should not rise to the bait of the Hon. Sandra Kanck, but there is a suggestion implicit in her remarks that my party has abandoned its principles in relation to its support of this bill. Nothing could be further from the truth. We see legislation of this kind as a necessary evil. We see that it is necessary to balance the civil liberties of Australian citizens against the very real danger presented by terrorists. We also see it as the responsibility of responsible governments and parliaments to heed the advice of those who are close to the coalface in relation to terrorism.

The clear advice given to governments and, through them, to parliaments, concerning the risk of terrorism is that there is a very real risk in this country. We are not immune to terrorist acts. If we are to prevent or minimise the effect of terrorist acts, authorities need to have certain powers—powers which, perhaps, we would prefer them not to have, and powers which we hope they would never have to exercise. However, the fact is that, in striking a fair balance between the protection of the community and the rights of individuals, we have to make judgments.

Also implicit in the Hon. Sandra Kanck's remarks is the suggestion that this is somehow a novel, or new, piece of legislation. South Australia is the last state in the commonwealth to adopt enhanced police powers. In Sydney it happened years ago and, similarly, in the Northern Territory. We, like Western Australia, have been lagging. I am not saying that we have to follow suit simply because they have done something. However, do not let it be suggested that this piece of legislation is some novel, heinous intrusion into the rights of Australian citizens.

The Hon. IAN GILFILLAN: There has been some commentary in the media about the need or otherwise for these forms of legislation. David Neal, in the Melbourne *Age*, indicated what I believe is reasonable; that it certainly does stretch into the anticipated preventive detention legislation, but the two are coupled together. He pointed out, as many people realise, that the 17 arrests that have taken place recently in Australia were carried out under existing legislation and existing police powers. He concluded:

> In the absence of a strong case for saying that the powers exercised this week are defective, proposals for preventative detention, control orders and sedition offences are too vague, lack proper procedural protections and are open to abuse.

It is that last comment that I believe is relevant to this debate. We are on a toboggan ride, propelled by the gravity of the fear of so-called terrorism. I have been in this place in the periods in which the fear of the outlawed bikie gangs and other forms of threat to civil good order has prompted pushes for legislation that have been emotion and fear driven. I have yet to see clear evidence that there is any deficiency in the current legislation in our statute books to deal with all the

issues that have been raised as being the bogeys that had to be addressed by this extraordinary anti-civil rights legislation that is being railroaded through the parliaments to appease the pressure from those who want it to appear to the public that they are doing the right thing. Unfortunately, it has not been a balanced and in-depth analysis by the parliaments either in Canberra or in this place.

For that reason, I think it is a sad day if we pass this particular bill (as it appears we will) and I believe, if it is going to be 10 years before it is reviewed in a sunset situation, we will have 10 years of being what a former resident of South Africa communicated to me; that is, we will be living in a police state. It is very hard to allay his fears that the legislation currently before us is anything other than a huge step towards the sort of regime that was exercised in South Africa to introduce such an oppressive and cruel regime. How can anyone want to see that introduced in South Australia? I certainly do not.

The council divided on the third reading:

AYES (16)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A.L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Ridgway, D. W.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	Stephens, T. J.
Xenophon, N.	Zollo, C.

NOES (3)

Gilfillan, I.	Kanck, S. M.
Reynolds, K.	

Majority of 13 for the ayes.

Third reading thus carried.

Bill passed.

LOCAL GOVERNMENT (LOCHIEL PARK LANDS) AMENDMENT BILL

In committee.

(Continued from 22 November. Page 3151.)

Clause 1.

The Hon. R.I. LUCAS: Since we last met, the Campbelltown City Council met at I think 6 o'clock on Wednesday evening last. It has corresponded with all members and indicated that it has unanimously agreed that it is quite happy to accept the passage of the legislation without the final resolution of the signed memorandum of understanding between the government and the Campbelltown City Council. As we indicated last week, Liberal members were happy to be guided by the Campbelltown City Council. We wished to receive correspondence from the council as to its view, not just the view of the officers who provide advice to the council. We indicated last week that we were prepared to be guided by the views of the Campbelltown City Council.

I indicated, I think—although I have not checked *Hansard*—that my personal view was that, if I was in the position of the Campbelltown City Council, I would have insisted on seeing the signed copy of the memorandum of understanding with the government prior to the passage of the legislation. As I indicated—I think in the letter to the council—in that way the council would retain some leverage because, once the legislation is passed, it has only the government's word and, as I have indicated previously, I have perhaps less confidence in the word of this government and its ministers than others might have. Personal experience can be bitter experience. When one has a Deputy Premier who portrays the government's position in relation to keeping promises but who does not have the moral fibre not to break his promises, I do not have as much confidence in the government as perhaps others.

However, as I said, nevertheless, we did say this was ultimately a judgment for the Campbelltown City Council. It has resolved that it is prepared to allow the legislation to proceed without having seen the final detail of the memorandum of understanding. I am informed that there will be discussions. I am not sure whether there have been any discussions since last Friday, but there will be discussions between the government's advisers and the Campbelltown City Council officers to seek to resolve them. It will be interesting to see how long it will be before we see a final resolution of that memorandum of understanding and, secondly, whether it meets the requirements that the Campbelltown City Council put down in its original letters to the Minister for Infrastructure on behalf of the government.

Certainly, when we get the opportunity to see the final memorandum of understanding, we will want to check and see whether the requirements that the mayor put down on behalf of the ratepayers of the Campbelltown City Council have been met in the final memorandum of understanding. It is the view of Liberal members that we have been driven by a concern that the long-term interests of the ratepayers of the Campbelltown City Council are protected in this. I do not intend to repeat the detail of the concerns that we had in relation to maintenance, etc. We canvassed that well and truly last week.

Finally, I want to say again that Liberal members are indebted to the member for Hartley—colloquially known as the 'Lion of Hartley'—for his ceaseless and determined representation of the constituents in his electorate. As I have indicated before, whether there is a Liberal government or a Labor government out there, he has always put the best interests of his constituents first. Of course, that has been rewarded over many years by majority support for him in continuing numbers.

An honourable member interjecting:

The Hon. R.I. LUCAS: As I have said to the member for Hartley, those little tasks that were given to him assisted him in demonstrating to his constituents that he was prepared to fight for them.

An honourable member interjecting:

The Hon. R.I. LUCAS: No, not character building. It demonstrated to his constituents that even with his own party he was prepared fearlessly to take on ministers in his own government, as he did, and not just with Lochiel Park but with JPMorgan and a number of other issues in his electorate as well. I will not be diverted, but Lochiel Park was indeed one of those where he did so.

Over the last couple of weeks, as we have finalised the discussions with the council, quietly and behind the scenes the person keeping it all hanging together has been the local member, Joe Scalzi, and I want to pay a tribute to him for all that he has done in the last few weeks and months in a satisfactory resolution to all of this. From Liberal members' viewpoint, we are prepared now to see the legislation proceed, and we will watch with interest the resolution of the MOU.

The Hon. NICK XENOPHON: To borrow from Shakespeare, it is a case of 'all's well that ends well'. It seems that some members of the government may have found

the process of a select committee looking into this bill a little tortuous. However, I believe that it was a useful process. It raised some legitimate questions. I am pleased to see that the council has signed off on this proposal. I do not expect that it will ever arise, but if there is not a satisfactory memorandum of understanding between the government and the Campbelltown council, we will all hear about it, particularly the people within the City of Campbelltown. However, I hasten to add that I do not expect that to be the case.

I believe that this will be a significant community asset for the people of the City of Campbelltown. I would like to think that the proposed development will showcase sustainable developments and innovative design. Again, I put on record the incredible work and tireless campaigning of Margaret Sewell and June Jenkins. Without their tireless efforts, I believe that this would not have occurred. They really borrowed from that Churchillian phrase: never, never, never give up. Tonight, we are seeing the productive consequences of their enormous efforts.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 3—
Lines 20 and 21—Delete 'take reasonable steps to'
Line 22—Delete 'take reasonable steps to'
Line 27—Delete 'between 24 and 30' and substitute:
36
Line 32—Delete 'take reasonable steps to'
Lines 34 and 35—Delete '24 months after practical completion' and substitute:
the expiration of the period of 36 months referred to in subclause (10(6)
Page 4—
Lines 1 to 5—Delete subclause (14) and substitute:
(14) The responsible minister must, before a proclamation is made under subclause (13), consult with the council.
Line 12—After 'must' insert:
take reasonable steps to
Lines 15 to 18—Delete ', subject to any approval, in writing, of the responsible minister for the alteration, replacement or removal of specified infrastructure or facilities or infrastructure or facilities of a specified class'
Lines 27 and 28—Delete 'without the approval of the responsible minister' and substitute:
except in accordance with the management plan adopted under subclause (18)
Line 38—Delete 'two months' and substitute:
six months

Given that we have had a select committee (as the Hon. Nick Xenophon just pointed out), which took a significant amount of evidence, and given that this bill has been the subject of quite lengthy debate, I will not delay the committee further. These amendments were considered by the select committee and endorsed. I seek the support of the committee.

The Hon. SANDRA KANCK: I indicate Democrat support, and I am glad that the minister is moving them en bloc. Again, I remind members of the fax that we received from the LGA on 10 November—and it is now 18 days later and we are still dealing with this. In its fax, the LGA said:

The government amendments in this regard are supported by the council and the LGA. With these amendments in place, neither the LGA nor the council wish to delay the passage of the bill in any way.

The Hon. Carmel Zollo interjecting:

The Hon. SANDRA KANCK: Well, I read it out at the time, but it did not seem to make much difference. We have had this fax from the LGA and two subsequent faxes from the Campbelltown council, and, hopefully, the message has got through.

Amendments carried; clause as amended passed.

Schedule.

The Hon. P. HOLLOWAY: I move:

Page 6—
Delete the plan appearing above paragraph (c) and substitute:

A replacement plan was supplied.

This amendment inserts a new plan into the schedule of the bill. Again, it was subject to the consideration of the select committee.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

GUARDIANSHIP AND ADMINISTRATION (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 3, after line 9—insert:
(4) Section 3(1), definition of 'relative', (c)—delete paragraph (c) and substitute:
(c) someone (not being a guardian appointed under this act) who—
(i) if the person is under 18 years of age—acts in loco parentis in relation to the person; or
(ii) in any other case—is charged with overseeing the ongoing day-to-day supervision, care and well-being of the person;

The Guardianship and Administration Act 1993 provides that, if a person with a mental incapacity cannot consent to his or her own treatment, consent must be sought from a suitable decision-maker. Where there is no medical agent, guardian or enduring guardian then the following specified relatives can provide consent to medical or dental treatment under section 59 of the Guardianship and Administration Act 1993: spouse, including a legal de facto spouse; a parent; a brother or sister of or over 18 years; a daughter or son of or over 18 years; a person who acts in loco parentis.

For the past 10 years, and until recently, the definition of relative that refers to 'in loco parentis' has been interpreted as the person who provides the main, ongoing, day-to-day care and supervision of the person, not being the person who is going to provide the treatment. It is now clear that 'in loco parentis' can only refer to decisions relating to minors. In cases where no-one is available to provide substitute consent, the Guardianship Board can provide consent to medical or dental treatment. This requires a hearing before the Guardianship Board. This presents an enormous challenge for the Guardianship Board, the Office of the Public Advocate, health service providers and people with mental incapacity. It means that each time a person requires non-urgent treatment, and has no family able to consent on their behalf, it will require either a one-off consent from the Guardianship Board or the appointment of a legal guardian with health decision-making responsibilities.

Such an approach will undoubtedly lead to unacceptable delays in access to treatment where substitute consent is required. The government is fixing this situation by moving a government amendment to the bill. The amendment makes

it clear that the person who is charged with overseeing the ongoing day-to-day supervision, care and wellbeing of the person with the incapacity can provide consent to medical or dental treatment. This will allow the directors and managers of nursing homes, hostels and support services to provide consent for medical or dental treatment on behalf of the person who was unable to give effective consent on their own behalf. The amendment has been requested by the Public Advocate, John Harley, and it is supported by the President of the Guardianship Board, Robert Park. It is also consistent with the recommendations proposed by Ian Bidmeade in the Review of Mental Health Legislation (see recommendation 24.1—The Guardianship and Administration Act should be amended to clarify in loco parentis issues.)

The amendment continues the policy and practice behind the act. The policy has always been to allow, where possible, decision making to be delegated to an appropriate person. This has allowed directors of hospitals, nursing homes and other institutions to consent to medical and dental treatment on behalf of the incapacitated resident. I ask the committee to support the amendment.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition will support this amendment.

Amendment carried; clause as amended passed.

Clause 5.

The Hon. SANDRA KANCK: I move:

Page 3, lines 10 to 21—Delete clause 5 and substitute:

5—Amendment of section 6—Establishment and constitution of Board

Section 6(3), (4) and (5)—delete subsections (3), (4) and (5) and substitute:

(3) In the case of proceedings under the Mental Health Act 1993, the following rules apply:

(a) members who constitute the Board for the purpose of hearing appeals from decisions or orders under this act will sit exclusively in that jurisdiction;

(b) in selecting members from the panel constituted under section 8(1), the President or Deputy President must select a psychiatrist;

(c) the Board may, if the President considers it appropriate in particular proceedings, be constituted of the President or a Deputy President and a member of the panel constituted under section 8(1).

(4) The regulations may provide that, except in relation to guardianship orders, administration orders and proceedings under the Mental Health Act 1993, the Board may be constituted of—

(a) the President, a Deputy President, or a member of a panel, sitting alone; or

(b) any 2 members sitting together as follows:

(i) the President, or a Deputy President, and a member of a panel;

(ii) 2 members of the same panel;

(iii) 1 member from each panel.

This amendment follows from representations I had made to me by lawyers last year who act for members of the public in hearings in the Guardianship Board, and they raised questions of fundamental fairness for some of the people who have appeared before the Guardianship Board. The major issue is that these boards, when they are looking at some of these issues, are sitting with boards of one member, who may or may not have legal qualifications, who may or may not have medical qualifications, and I was given an example, for instance, of a person who appeared before one of these single-member hearings, and that hearing determined that the person concerned had to be put under a treatment order, which was actually against the wishes and the recommendations of that person's treating GP.

I have been given a copy of a letter that the President of the Law Society sent to the Attorney-General on 18 November. It is a three-page letter so I will not read all of it, but I will read what I think are the pertinent aspects that relate to my amendment. This is by Deej Eszenyi, the President of the Law Society. She says:

The current regulations provide that in both divisions—

that is, the Guardianship Board sitting in its ordinary division and its appellate division—

the Guardianship Board, when hearing applications for community treatment orders, continuing detention orders and appeals against detention for periods of up to 45 days, may be constituted by a single person without any legal or medical qualifications or, in fact, any tertiary qualifications at all. In practice, this occurs frequently. Clause 5 of the bill contemplates the Guardianship Board when hearing such matters being constituted by one or two people neither of whom are required to have any legal, medical or tertiary qualifications. When hearing applications for guardianship orders or administration orders in respect of a person's financial affairs, the board is required to be fully constituted by a member with legal qualifications, a person with medical expertise and a community member.

It is submitted that applications for involuntary treatment and detention abrogate basic civil liberties and that the legislation should recognise this fact. It seems inconsistent that applications for involuntary treatment and detention can be heard by a board constituted by persons without any medical, legal or tertiary qualifications whilst applications for orders dealing with financial matters require a fully constituted board. . . When read with the current regulations, the bill specifically provides for the Guardianship Board to sit without—

and she underlines 'without'—

a mental health practitioner when reviewing detention orders.From my point of view, that is extremely peculiar.

She referred to the state government's discussion paper 'Paving the Way: Review of Mental Health Legislation in South Australia' and noted:

The Guardianship Board often has to use single member hearings because of resourcing issues. Competence will vary and appeals can follow.

By having amendments like this we will ensure that people with mental illnesses who appear before the Guardianship Board are more likely to get a fairer hearing and also to reduce the number of appeals that are likely to occur.

The Hon. P. HOLLOWAY: These amendments are based on recommendations from the Law Society. However, they appear to go further than the Law Society suggestions. As I previously indicated, these issues are currently being examined by the government in the context of the Bidmeade review. These are issues which the government takes seriously and which require proper consideration and consultation before the policy is changed. To allow these amendments to proceed would skew the proper process that is currently under way, a process that will in due course implement recommendations arising from the Bidmeade review. The Law Society has already contributed to the Bidmeade review and also provided feedback on the report's recommendations.

As members are aware, the Department of Health has established a reference group to provide advice and oversight to the mental health unit and the department, as it progresses the recommendations of the report. There is in-principle support for some of the submissions that the Law Society has put forward. However, as is proper, the consultation process is working towards refining some of these suggestions so that difficulties that might arise in practice are sorted out. These amendments cut across the Bidmeade review and represent major changes to the operation of the Guardianship Board in

relation to proceedings under the Mental Health Act. To pass such amendments without consultation while the Bidmeade review is in the process of being implemented is imprudent.

The proposed amendments also have serious cost implications for the Guardianship Board. The amendments would make it necessary to drastically increase the number of psychiatrists available to the board. This has practical implications, because it is not easy to recruit psychiatrists. There are complex reasons why this is so. For those reasons, I ask the committee to reject the amendment.

The Hon. R.D. LAWSON: On behalf of the Liberal opposition, I commend the Hon. Sandra Kanck for introducing this amendment. The honourable member referred to the letter from the President of the Law Society to the Attorney-General. During my second reading contribution I read extensive sections of that letter; indeed, rather more fully than did the mover of this amendment. In the minister's second reading response, he provided the rather poor explanation that amending the regulations in the manner suggested by the Law Society would have immediate, serious, financial implications for the Guardianship Board as well as practical difficulties.

Tonight he said, in answer to the honourable member's amendment, that this amendment would have serious cost implications. The amendment itself is not actually addressing the cost issues. It is addressing fundamental issues about whether or not orders should be made. We are attracted to the view that the current situation is inappropriate. We are not convinced that merely saying we will leave it all to the implementation of the Bidmeade review will produce much in the short term.

We are mindful of the fact that the Layton review into child protection—a matter which was given allegedly high priority by the government—took years finally to be implemented in part and still has not been completely implemented. We fear that the Bidmeade report (Paving the Way review) will have a similar fate and that the matters raised by the Law Society will be overlooked and pushed to one side, not implemented on the ground of costs.

So, we are in something of a dilemma. On the one hand, the honourable member has an amendment which, on the face of it, appears to answer the serious concerns raised by the Law Society. I am particularly mindful of the fact that the current president, Ms Deej Eszenyi, is a leading practitioner in this field, and she has quite some personal knowledge and experience of what occurs in the Guardianship Board. However, on the other hand, we understand that what has been happening in the Guardianship Board has been happening for quite some time. It is true that there have been some complaints. However, a review process is possible through the appellate mechanism and, whilst we do not regard the current situation to be satisfactory, we are prepared to take the government on face value when it says that it is implementing the Bidmeade report.

We understand and are mindful of the fact that there would be serious cost implications of requiring psychiatrists to sit on these boards, and we are having two member boards. There would be serious cost implications. We believe that the government ought be able to find those costs but, given the fact that this matter arose at a fairly late stage in the process of this bill, which was introduced as merely a technical amendment for the purpose of ironing out a number of administrative matters on the board, we believe that to insert this amendment would in fact frustrate the good things that are contained in the bill, as introduced by the government and as amended in the manner it has been this evening. So, for those reasons, and with a somewhat reluctant and heavy heart, we indicate to the honourable member that we will not support her amendment. However, in the new parliament, we will certainly pursue this issue, and the government will not be able to duckshove as easily as it has on this occasion.

The Hon. SANDRA KANCK: I indicate that I am disappointed with both the government and opposition responses. The Hon. Mr Lawson has indicated by comparison with the Layton report the length of time that some of these things take and, given that the discussion paper on the review of mental health went out at the beginning of this year, it was not until about three to four months ago that we had the report on that. I anticipate that it would probably be another couple of years before we have an opportunity fulsomely to address these issues. I anticipate that the amendment that I have here now will be the one that will be included in the legislation that is introduced at that time. During that time, there will be what I see as abuses of human rights occurring, because this parliament has failed to address the issue. So, I am very sorry on behalf of people who are brought before the Guardianship Board, with sittings of one person, that these decisions are being made this way.

Amendment negatived; clause passed.

Remaining clauses (6 to 11) and title passed.

Bill reported with an amendment; committee's report adopted.

Bill read a third time and passed.

TERRORISM (PREVENTATIVE DETENTION) BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 3248.)

The Hon. R.D. LAWSON: This bill was first introduced into this parliament on 9 November. The bill arises out of decisions made at the COAG special meeting on counter-terrorism held on 27 September this year. The communique from that meeting contains the following statement:

> State and territory leaders agreed to enact legislation to give effect to measures which, because of constitutional constraints, the commonwealth could not enact, including preventative detention for up to 14 days.

I emphasise those last words, that is, 'including preventative detention for up to 14 days'. The Liberal opposition has closely considered this bill, and we support its second reading and its passage. The important thing to emphasise at the very beginning is that this bill is significantly different from one that was originally proposed by the commonwealth and put onto a web site by ACT Chief Minister, Jon Stanhope.

We gather that this bill as introduced is something like between the 75th and the 85th version thereof. It has been very significantly reworked. In particular, many of the features of this bill were not present in the bill which was originally proposed and which came close to being agreed by commonwealth and state leaders.

This bill complements and, in many respects, mirrors the Anti-Terrorism (No. 2) Bill 2005, which was introduced into the House of Representatives on 3 November. However, unlike the commonwealth bill, this measure does not include provision for control or so-called tracking orders. At the time when the bill was introduced, we were the first state to have it introduced into our parliament. This was said to be necessary because of our electoral cycle, which is code for 'because the Premier of the state wants to close down the

parliament on 1 December so that this government can escape accountability leading into the election scheduled for 18 March'.

The bill allows for preventive detention for up to 14 days in response to an actual or an imminent terrorist act. It is important to note that the bill is limited to the detention of persons in order to:

(a) prevent an imminent terrorist attack occurring; or
(b) preserve evidence of or relating to a recent terrorist act.

This is a very important matter to bear in mind, namely, there are only two circumstances in which preventive detention for up to 14 days can be implemented: to prevent an imminent terrorist attack occurring or to preserve evidence relating to a recent terrorist act. It is equally important to note that the bill does not facilitate investigations; it is simply about prevention or preservation. Accordingly, a person who is under preventive detention under the provisions of this bill cannot be interrogated. The person can be asked questions of a very limited type but cannot be interrogated. Therefore, the vision of this power, which I accept is an extraordinary power being granted to authorities, will not enable people to be plucked out of their home, taken away to some place and interrogated.

The maximum period of detention is 14 days if the order is made by a judge, or 24 hours only if the order is made by a police officer. Of course, such a police officer must be of or above the rank of assistant commissioner. The issuing authority for these orders is a judge or a retired judge of the Supreme or District Court and who is appointed in writing for this purpose. The Assistant Commissioner of Police, or an officer of that rank or above, can issue a preventive detention order only if there is an urgent need for it and it is not reasonably practicable to have the application dealt with by a judge.

The circumstances in which a preventive detention order can be made are set out in clause 6 of the bill. They are quite stringent. There must be, first, suspicion on reasonable grounds—not any old suspicion but suspicion on reasonable grounds—that the subject will engage in a terrorist act or, secondly, possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act or, thirdly, has done 'an act in preparation for, or planning, a terrorist act'. That is the first bracket of conditions, and they are stringent.

To that bracket is added another layer of conditions. The following additional requirements must be met: satisfaction, once again on reasonable grounds, that making the order would substantially assist in preventing a terrorist act occurring and that detaining the subject for a period for which the subject is to be detained is reasonably necessary for the purposes of assisting in preventing a terrorist act occurring. These are stringent conditions. In addition, the terrorist act must be one that is imminent and expected to occur at some time within the next 14 days. In addition to preventative detention orders in relation to imminent terrorist acts, there is a power to issue a preventative detention order if a terrorist act has occurred within the past 28 days and the issuing authority is satisfied on reasonable grounds, first, that it is necessary to detain the subject to preserve evidence of or relating to the terrorist act and, secondly, detaining the subject is reasonably necessary for that purpose.

A number of additional protections were put into this bill that were not present in the original bill. First, the preventative detention order cannot be made in relation to a person under the age of 16 years. Next, multiple prevention orders or successive detention orders cannot be made one after the other to achieve a length of detention greater than 14 days, so, if the first detention order is for three days, a subsequent order or orders cannot be for a combined period of greater than 11 days. Very importantly, a person who is detained under one of these orders must be brought before the Supreme Court for review. It is similar to the provision that relates under the Bail Act. Somebody who is arrested and placed in custody must be brought before a magistrate or justice at the earliest opportunity. Similarly, such a protection is built into this bill. That court has the power to quash the order and may award compensation against the crown if the court is satisfied that the subject was improperly detained.

The original scheme provided for the person detained to contact only one family member for the purpose of notifying the family member that the person was safe. This has been expanded in this bill. The person detained may contact up to six persons: one family member, a person with whom the person lives, the person's employer, one employee (if the person actually employs others), one business partner and one other person if a detaining police officer agrees. We have a circumstance where the virtual blanket prohibition originally proposed has been largely ameliorated. Contact may be by telephone, fax or email. However, the communication is limited to the person saying to the person he or she is calling that they are safe and not able to be contacted for the time being. The person is prohibited from disclosing that they are being held under a preventative detention order, being detained or to indicate the period of detention. This is a serious incursion into the civil liberties of an individual and this is the major incursion in my view.

A person will, in addition to contacting those six family members and/or associates, be entitled to contact a lawyer and the person can tell the lawyer what their circumstances are because the purpose of contacting a lawyer is to obtain advice from the lawyer about the person's legal rights in relation to the preventative detention order or the treatment the person is receiving in detention, or arranging for the lawyer to act in connection with a review to the Supreme Court or arranging for the lawyer to act in legal proceedings in respect of the order. From what was originally a proposal that there be no legal involvement or opportunity for legal involvement, we now have a fairly comprehensive statement of rights.

The person may be visited by the lawyer and may communicate with the lawyer by telephone, fax or email. There are some protections built in and one is that a lawyer could be specifically excluded under a prohibited contact order and one would realise that it is quite possible that, if a person is a party to a terrorist cell, member of a terrorist cell or a sympathiser with a terrorist cell, there may be a lawyer connected with that terrorist group and the authorities have the power to make a prohibited contact order. Clearly, the purpose of this act could be frustrated if a member of a terrorist group is able to contact a terrorist lawyer who is a member of the group and can thereby tip-off other people and become aware of circumstances which could be inimical to the national interest.

It must be acknowledged that communications with family members, etc. and the lawyers may be monitored; however, any communication between the detainee and a lawyer is not admissible in evidence against the person. There are special provisions for the detention of persons aged over 16 but under 18 years or who are incapable of managing their own

affairs. Those protections are appropriate; I will not go into them in detail. Persons contacted by the detainee (including lawyers, family members and interpreters, etc.) are not entitled to intentionally disclose to another the fact that a preventative detention order has been made. I know there are many who have qualms about the secrecy of these detention orders, but one must return constantly to the point that these orders are fairly exceptional; they can only be made to prevent an imminent terrorist attack occurring or to preserve evidence relating to a recent terrorist act.

A person who is detained cannot be questioned except for the purpose of identifying that person or ensuring the safety and well-being of the person. For example, the person can be asked their name, whether they require medical assistance, whether they are feeling well or not, etc., but the person cannot be interrogated. That is a specific prohibition. Police are entitled to take identification material: for example, fingerprints, handprints, footprints, recordings of the person's voice, samples of the person's handwriting, and photographs, including video recordings. The purpose of taking these things is to identify the individual, to ensure that the individual is whom he or she says they are, and that material must be destroyed within 12 months if proceedings have not been brought.

Where a preventative detention order is in force, police may apply for a prohibited contact order. I mentioned those briefly before. They will have the effect of prohibiting the detainee from contacting particular persons. The application for such a prohibited contact order must be made to an issuing authority (that is, the judge or, in cases of great urgency, the police) and must set out the facts and other grounds on which the police officer considers the order should be made. Such an order can be made only if the issuing authority is satisfied on reasonable grounds that making the order will assist in achieving the purpose for which the preventative detention order was made.

At the time the Stanhope draft was released there were arguments about possible constitutional objections. It was said by many commentators that it would be undesirable for there to be any lingering constitutional doubt about the efficacy of this legislation. These objections have been overcome by the provision that a judge acting under this act is acting in a personal capacity and not as a court or as a member of a court.

The police have certain powers in relation to exercising their functions under this act. They have the power to enter premises if they believe on reasonable grounds that a person who is the subject of a preventative detention order is on the premises. They cannot enter a dwelling between 9 p.m. and 6 a.m. unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody at some other time. Police have power to require the person to provide his or her name and address. Police must not use more force, or subject the person to greater indignity than is necessary and reasonable. They may conduct a frisk search, and they may seize any dangerous item, or one that could be used to escape or to contact another, or to operate a device remotely.

This act does not affect the law relating to legal professional privilege, so it does not abrogate an important right of citizens. It does not prevent people from taking legal proceedings in respect of a preventative detention order, or their treatment whilst under such an order. This bill contains no privative clause, similar to clause 25 of the police powers bill that was dealt with earlier today.

This act also has a 10-year sunset clause, and I refer readers of *Hansard* to a discussion earlier in the committee stage of the police powers bill when the Hon. Sandra Kanck argued that a five-year sunset clause was more appropriate than a 10-year clause. It is important to note that the powers in this bill were not used in the recent terrorist incident where a number of persons were arrested in the eastern states. Police have been able to exercise their ordinary powers to arrest and detain the persons who were allegedly planning the terrorist attacks. Unlike the commonwealth legislation, this act does not touch upon the crime of sedition at all. I think that that is worth saying because some of the arguments that have been made in relation to the commonwealth legislation clearly have no application to this bill.

The Human Rights Committee of the Law Society of South Australia has written a paper in which it is claimed that the police powers bill contravenes fundamental human rights. I disagree. I refer to a passage from the Digest of Jurisprudence of the United Nations and Regional Organisations in the Protection of Human Rights While Countering Terrorism. Earlier this evening, I read this passage into the record during the committee stage of the police powers bill, so I will not again read the same material onto the record. However, I refer to it, and rely upon it to say, as I did in relation to the police powers bill, that significant as this bill is, it does not derogate from those fundamental freedoms which are contained in the International Covenant for Civil and Political Rights or other human rights instruments. It does not derogate from those fundamental freedoms which, in international humanitarian law, are regarded as non-derogable.

I do not shy away from the fact that this bill intrudes into the rights of citizens—the power to detain a person who has not committed a crime, or is not charged with or suspected of having committed a crime, even for 14 days, is a very serious intrusion—but the protections and limitations that apply to this bill as it now stands are very considerable indeed. I have previously used the analogy, which I think is appropriate when one talks about taking away the rights of individuals, and we hear the civil rights advocates saying that it is entirely inappropriate that a person's name and address can be demanded, and that their property can be searched, etc.

I point, for example, to the Fruit and Plant Protection Act—the legislation that attempts to protect the state of South Australia from incursions of fruit-fly. We give to inspectors under the Fruit and Plant Protection Act—and we have given for 50 years—the powers to demand people give their names, open their cars, be searched, irrespective of the fact that they are not suspected of having committed any offence whatsoever. The committee deemed that the risk of fruit-fly to South Australia was so great that extraordinary measures needed to be taken. No doubt they could have said at the time those powers were introduced, 'These are very serious powers. We are incurring on rights that have been laid down for 500 years in the British common law system. This is the thin end of the wedge. These powers will be abused. People will no longer be safe to travel about their business for fear of oppressive action by inspectors.'

That has not happened. The community accepted that regime because there was a danger that the community acknowledged. I believe that the danger which terrorism represents to this community is one which is exceptional and which does require exceptional powers, and that we as parliamentarians should not shirk from our responsibility to the community to provide those necessary powers. I believe that these powers have been tailored; they have been written

down; protections have been written into the legislation; there is judicial oversight; and there are considerable limitations on the way in which the powers can be exercised. Legislation of this kind is always a balance—a balance between, on the one hand, the civil rights of citizens, and, on the other, the right of our community to be safe from the depredations of those who would attack the fibre of our society. I believe that human rights have not been jeopardised irreparably by these measures, and the Liberal opposition will be supporting the passage of this bill.

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

STATUTES AMENDMENT (VEHICLES AND VESSEL OFFENCES) BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 3217.)

The Hon. R.D. LAWSON: This bill was introduced in another place on 4 May this year. It is the Rann government's legislative response to public outrage over the case of Eugene McGee. The bill was very substantially amended by the government earlier this month, on 7 November, when the government produced 10 pages of amendments (almost as much as the bill itself) just before the bill was due to be debated during the committee stage in another place. I think that is a measure of the government's lack of organisation in relation to this important measure.

The bill makes four significant amendments to the law. First, it restructures the offence of causing death by dangerous driving in the Criminal Law Consolidation Act. Secondly, it creates a new offence in the Criminal Law Consolidation Act of leaving the scene of an accident after causing death or physical injury by careless use of a motor vehicle or vessel, and it increases the existing penalty for the similar offence that will continue to exist in the Road Traffic Act. Thirdly, it redefines the expression 'motor vehicle' and now includes 'motor vessels'. Fourthly, it amends the Road Traffic Act to ensure that a period of disqualification that is given to a person who is imprisoned commences to operate after the offender is released.

Restructuring the offence of causing death by dangerous driving is, in my view, the most significant law reform contained within this bill. It introduces the notion of aggravating circumstances. The bill redefines the offence of causing death by dangerous driving under section 19A of the Criminal Law Consolidation Act, and it adopts the terminology and form adopted in the Statutes Amendment and Repeal (Aggravated Offences) Bill, which only last week passed both houses following a deadlock conference.

It will be recalled that the aggravated offences act divides all crimes against the person into simple offences and aggravated offences. A crime falls into the latter category if aggravating circumstances exist—for example, if the offence is against a law enforcement officer or a young child or an elderly person, or if the offender was armed at the time of the offence or used torture, and so on. These aggravating circumstances are set out in section 5AA of the aggravated offences act. The penalty for an aggravated offence is higher than the penalty for the same offence that is not committed with aggravating circumstances.

The new aggravating circumstances in cause death by dangerous driving will occur, first, where the driver was attempting to escape police; secondly, was disqualified from holding or obtaining a driver's licence; thirdly, was engaged in a prolonged, persistent and deliberate course of very bad driving; fourthly, had a blood alcohol reading of .15 or more; and, fifthly, was contravening section 45A or section 47 of the Road Traffic Act. Section 45A of the Road Traffic Act is the new offence of excessive speed, namely, driving at more than 45 km/h over the limit. Section 47 of the Road Traffic Act is the existing provision dealing with driving under the influence.

There is a new penalty regime in these criminal offences. Where death occurs, for a first offence, if it is a basic offence, the penalty will be 10 years plus a maximum disqualification for a further five years, which is similar to the current penalty. However, for the aggravated first offence, the maximum penalty will be 15 years plus disqualification for at least 10 years. For a second offence, the present penalty is 15 years, plus disqualification for 10 years. For the basic offence, the penalty will remain the same. However, for the aggravated offence the penalty will rise to 20 years maximum, plus disqualification for at least 10 years. For subsequent offences, it is presently 15 years, plus disqualification for 10 years. There will be a 20 years maximum penalty, plus disqualification for at least 10 years.

The maximum penalty for causing death by dangerous use of a motor vehicle which is not motorised—for example, a cycle or a horse-drawn cart—will be increased from two years to seven years. That is the penalty where death occurs. There is a similar scale of penalties where death is not caused but the culpable driving results in serious harm. Thirdly, where non-serious harm occurs, as in the current act, a lesser scale applies where some harm, but less than serious harm, is caused. This new scale for a first offence, if it is a basic offence, will be five years, plus a minimum of three years disqualification. Presently, that is four years plus a minimum one year disqualification.

For a first offence, if it is an aggravated offence, where non-serious harm occurs the penalty for both basic and aggravated offences will be seven years maximum, plus a minimum of three years disqualification. Presently, the maximum prison term is six years. The penalty relating to manslaughter in the Criminal Law Consolidation Act is amended by providing that, if the person convicted used a motor vehicle in the commission of the offence, a minimum disqualification of 10 years must be ordered. This is to ensure that the penalty for manslaughter using a motor vehicle is not less than the penalty for causing death by dangerous driving.

The next subject dealt with in this act is leaving the scene of an accident, which was brought to great community focus in the case of Mr Eugene McGee, who pleaded, I believe, to leaving the scene of a collision which resulted in a tragic death. The bill will create a new criminal offence within the Criminal Law Consolidation Act by enacting a new section 19AB, which will deal with leaving the scene of an accident after causing death or harm by careless use of a motor vehicle or vessel. The penalty for the new offence will be a maximum term of 10 years imprisonment and a licence disqualification for at least five years. For a subsequent offence, the penalty will be 15 years and disqualification for 10 years or more.

The difference between the new offence and the existing offence in the Road Traffic Act is that the Road Traffic Act offence applies whenever a person is killed or injured, even

if the driver was in no way negligent or culpable. The new offence in the Criminal Law Consolidation Act with a tougher penalty applies only when death or injury results from careless or dangerous driving. That means there will still be an offence within the Road Traffic Act. Presently, section 43 of the Road Traffic Act provides that a driver of a vehicle involved in an accident in which a person is killed or injured must stop and give all possible assistance. The maximum penalty is $5 000 or imprisonment for one year, and disqualification for at least a year. This is a summary offence and it can be dealt with in the Magistrates Court. This bill will increase the maximum term to five years. The maximum fine will remain at $5 000. It should be noted that this offence will continue to apply only to any accident in which a person is killed or injured.

The death or injury does not have to arise in consequence of dangerous or even negligent or careless driving. Of course, if those elements are present, the offender will be charged under the Criminal Law Consolidation Act with the more serious offence and be subject to the higher penalty I mentioned previously. As the Road Traffic Act penalty is increased to five years, the offence will now be an indictable offence, leading to a trial by jury in the District Court.

I turn now to the inclusion of vessels. The offence of causing harm or death by dangerous use of a vehicle will be extended to the use of motor vessels, and these are defined in the Harbors and Navigation Act as a ship, boat or vessel used in navigation, or an air-cushioned vehicle, or other similar craft used in transporting passengers or goods by water, or a surfboard, wind surfboard, motorised jet ski, water skis or other similar device on which a person rides through the water, or a structure that is designed to float in water and is used for commercial, industrial or scientific purposes. The Harbors and Navigation Act currently imposes a maximum penalty of $5 000 for operating a vessel at a dangerous speed or in a dangerous manner, or $2 500 for operating a vessel without due care.

There are also offences for operating a vessel while under the influence of liquor, or a drug, or above the prescribed alcohol limit. None of these offences applies specifically to causing injury. However, under the current law, a person who operates a vessel in a culpable manner can be charged with manslaughter if death results, or with endangering life if grievous bodily harm occurs. We cannot see any distinction in principle between a driver who drives a car in a culpable manner and a person who is in control of a boat (let us say, a speed boat) who kills or injures someone. We cannot see that those people should be treated any differently and, accordingly, we support the extension of the application of this law.

One cannot help being cynical about this particular bill. Following the public outrage over the McGee case, the Attorney-General told listeners to ABC Radio that he would be preparing a submission for cabinet on a tougher penalty for leaving the scene of an accident. On the very morning that he made that statement, and quite clearly before he had prepared any submission for cabinet, the Premier announced that the penalty for leaving the scene would be increased to 10 years. Talk about law making on the run; talk about knee-jerk reactions; talk about being reactive and not proactive! That is this government. The government was not even being innovative: it was merely adopting what the Victorian government had announced shortly before in relation to penalties in that state.

The government sought to create the impression that increasing the penalty would avoid a repetition of McGee's case; namely, if the same facts occurred again, Mr McGee, or the defendant in the new case, would not escape prison. But the fact is that that is a false impression. A close reading of Judge Worthington's remarks reveals that imprisonment was not an option in the case of Mr McGee and, if the same facts arose again, on that law, the offender would not be imprisoned. This once again illustrates the hypocrisy of the Labor government on these issues. However, this bill is not an entirely political response to McGee's case, because the bill incorporates provisions that were already in the pipeline as part of a general move to classify offences between basic and aggravated offences.

We supported that matter in the aggravated offences bill and we will be supporting it here. We accept that, as a matter of principle, there should be a high penalty for leaving the scene of an accident. Unless the penalty is the same as that for the primary offence for which a driver is liable, there will always be an incentive to flee the scene in the hope of escaping detection and in the knowledge that, even if one is captured, the penalty will be less, so we do believe in tougher penalties.

There were a number of other amendments made in the last tranche of amendments that were introduced by the government and I will pursue those during the committee stage. I will mention only a couple of them. The defence of genuine belief that stopping and giving assistance will endanger physical safety will not be an excuse for failing to present oneself to a member of the police force within 90 minutes and to submit to a test. We think that is an important provision. There might a circumstance when, for example, a young woman is driving alone at night in a lonely place, where she runs into a gang of bikies and one of them might be thrown off his motorbike. The young woman may not want to get out of her car to render assistance for fear of what might happen to her. That is a perfectly reasonable fear, but that should not be an opportunity to escape reporting the matter at all or reporting for a breath test to police and, accordingly, there is a 90-minute requirement inserted.

There is an entirely new amendment to the Bail Act which will provide that there is a presumption against bail being granted where a charge of manslaughter, cause death by dangerous driving, or reckless endangerment was committed in the course of attempting to escape pursuit or attempting to entice a police officer to engage in a pursuit. I remind the house that the Liberal Party has proposed extensive amendments to the Bail Act. In fact, we introduced a bill. More than 18 months ago the government said it would be reviewing the Bail Act, against a fanfare of the Premier talking tough again, but we have not yet seen the government's Bail Act. We are not going to see any Bail Act. Now, at the death knell of this parliamentary session, the government introduces a very minor and specific amendment to the Bail Act, singling out these particular offences as offences in which bail will not automatically be granted.

It is amazing that, when my proposal was first raised, the Attorney-General's objection to reversing the presumption in favour of bail in certain circumstances was the fact that it would fill all the prisons. He said he was not going to agree to the Liberal amendments. Now we find that, under pressure, he is able to find the resources in relation to these offences. There are other amendments which the government belatedly introduced, a number of them in consequence of the road traffic drug-driving amendment bill which passed through the

Assembly and is presently in this place. We will be supporting the second reading and looking forward to the committee stage, when we will be pursuing a number of the issues I have mentioned.

The Hon. A.L. EVANS: I support the second reading of this bill. The bill seeks to amend the Criminal Law Consolidation Act 1935, the Bail Act 1985, the Harbors and Navigation Act 1993 and the Road Traffic Act 1961, in order to achieve the following:

- create a new offence of leaving an accident scene after causing death or physical harm by careless use of a vehicle or vessel;
- restructure the offence of causing death by dangerous driving; and
- increase the penalties for failing to stop and give assistance to persons injured in motor vehicle accidents.

The bill also makes several other amendments, some of which are aimed at imposing greater obligations on those who drive carelessly, drive under the influence of alcohol or drivers involved in an accident in which a person is killed or injured. Clearly, the contents of this bill come as a result of the meagre penalties imposed on several high profile road accident cases in which death was caused by dangerous driving and the offender left the accident scene at which a person was killed or seriously injured. My constituents would support the majority of the amendments to the legislation to which I have referred.

Clearly, this is an unsatisfactory state of affairs in our South Australian law. In fact, I am surprised that the laws in this regard were not amended by previous governments. The government now states that the laws should reflect the serious nature of such action and ensure that penalties are appropriate. Well, I say, 'It is about time.' At this stage, I support the second reading of the bill.

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

EQUAL OPPORTUNITY BILL

Adjourned debate on second reading.

(Continued from 9 November. Page 3000.)

The Hon. R.D. LAWSON: I rise to commend the Hon. Kate Reynolds for introducing the Equal Opportunity Bill 2005. This bill clearly exposes the hypocrisy of the Rann Labor government on this issue. In November 2002 the Attorney-General announced a review of the Equal Opportunity Act. He said:

> This review is an important step on the path to fulfilling the government's pre-election commitment to ensure that all South Australians are protected against unjustified discrimination.

That was in November 2002. It took him a year to produce a framework paper in November 2003, which was jointly issued by the Attorney-General and the Hon. Stephanie Key. That paper was circulated, and it widely extolled the commitment of the Rann Labor government to improving equal opportunity.

It stated that, when the Equal Opportunity Act was first introduced, South Australia was the leader in social reform and that the baton of social progressiveness had been passed from Don Dunstan to Mike Rann and, as the torch carrier for Dunstan reforms, the Premier would take us all into the nirvana of equal opportunity, but in May of this year the Rann government announced that the amending bill would not be introduced until after the forthcoming election.

The reason for that is not hard to find, namely there are a number of proposals in the Rann government's framework paper that would be inconsistent with the rhetoric of this government. For example, the framework paper proposed expunging of criminal records after a particular period. The Rann government finds that it cannot be out there appealing to a constituency that is calling for tougher penalties for law and order and at the same time be introducing legislation of this kind. They will be exposed for the hypocrites they are. Bob Francis will rip shreds off the Attorney-General when he calls in. So what is the best way to approach this political quandary? You will find that the government has abandoned its commitment to equal opportunity.

It is worth reminding those opposite that, before the 2002 election, the Australian Labor Party had detailed policies on equal opportunity. The branch policy stated that Labor would:

1. Modernise the state's equal opportunity and anti-discrimination legislation to ensure comprehensive protection of South Australians against unjustified discrimination; and

2. Provide for anti-vilification legislation to be extended to other groups within the community as appropriate. We know that this government received representations from the discrimination commissioner and others that religious vilification be included in the Equal Opportunity Act and the government, whilst originally floating that idea, retreated at a hundred miles an hour when the ramifications of legislation of that kind were realised by those constituencies out there that this government is seeking to appeal to.

3. The South Australian branch of the ALP promised to review the Equal Opportunity Act to enhance its effectiveness and, in particular:

(1) to include an increase in the time for lodging complaints and the ability of the tribunal to grant extension of time;

(2) to extend disability discrimination to mirror the definition in the commonwealth Disability Discrimination Act;

(3) to amend vicarious liability provisions to place an onus on the employer to establish that they took all reasonable steps to prevent discrimination, harassment or victimisation.

That is something dear to the Hon. Bob Sneath and Hon. John Gazzola. You make it tough for people to employ people, blame the employer and make them vicariously responsible for actions over which they might have no control.

(4) to ensure that provisions relating to age in industrial relations are enforceable;

(5) to extend the grounds for discrimination, for example to include discrimination on the ground of family and caring responsibilities and locational disadvantage, including indirect discrimination; and

(6) to extend the areas covered by the act to include independent contractors.

That is that class of entrepreneurs that the Labor Party finds so offensive and is always keen to sink the boot into. The Labor Party policy continued that the branch would ensure that same-sex relationships are recognised in the way that heterosexual relationships are in terms of the provisions of the act. The government has finally introduced legislation on that subject. The promises made by the South Australian branch of the Labor Party were many and varied. In addition, the October 2002 ALP convention passed a justice resolution, which said that the government would consider legislation to

make the vilification of gay men, lesbians, bisexual and transgender people or persons regarded as such and persons infected with HIV/AIDS or presumed to be so unlawful, consistent with the approach adopted in the New South Wales Anti-Discrimination Act of 1977.

There is a measure the Attorney-General would be happy to promote when he goes out to various religious groups in the community. He would be happy, one would think, to be embracing his party's policy. What happens when the election approaches and the focus of what this government is actually doing becomes manifest? The government goes to water. We know and those out in the community know that if this government happens to be returned after the election, it will introduce these measures without any doubt at all. What it is doing at the moment is covering up the fact that that is what it does propose, because it knows that it is not electorally popular.

It is worth noting that Brian Martin QC conducted an extensive review of the Equal Opportunity Act as long ago as 1995, and in 2001 the previous (Liberal) government introduced a bill that made a number of amendments to the Equal Opportunity Act. That bill was still being debated in this place at the time of the 2002 election, so that bill lapsed. The Liberal government had introduced a number of measures to improve the Equal Opportunity Act, but this government, when it crawled its way into power in 2002, despite all of its rhetoric, did nothing even to implement those reforms. Once again, it has promised much but delivered little.

I do not think it is appropriate or necessary at this hour to run through the many provisions and changes of this very extensive bill. It must be highly embarrassing to supporters of the Australian Labor Party that they have dillydallied on equal opportunity. A member of the Australian Democrats has had the guts to take up the cudgels and expose the hypocrisy of the government by introducing a bill. I can say that there are some parts of this bill that my party, when it has examined the bill in detail, will undoubtedly support. There are some parts that I would suspect we would not be supporting. However, I commend the member for bringing the bill forward.

I do not propose to go through the bill clause by clause or even to address some of the major amendments which are wrought by this bill. Ultimately, I believe it is a committee bill. We will certainly support the second reading of the bill. Unfortunately, time being as it is, this chamber will not have an opportunity to pursue the bill through the committee stage in the three days remaining to us. We will certainly support the bill to the committee stage to enable it to go into committee, even if it will not be progressed much beyond that.

The Hon. R.K. SNEATH: The government does not support this bill. The government has long since made public its intentions that the Equal Opportunity Act should be comprehensively reviewed. We conducted a public consultation process in 2003 and, unlike opposition members who say they will support it and then eventually knock it on the head, we were upfront and so we do not support it. The government reform proposals were controversial with some groups and, in the government's view, the parliament would need substantial time to work through the proposed amendments. Accordingly, the government has not introduced a bill this year as it had planned to do. However, if re-elected, we will do that early in the new session so that there will be ample time for public scrutiny of the measures and for the parliamentary debate to take place.

The government has a number of difficulties with the present measure which has not been adequately thought through. As an example, Ms Reynolds would forbid discrimination on the grounds of religion. As members recall, the government consulted the public about such an amendment in 2002 and decided not to proceed with it. It is clear that the mainstream Christian churches of South Australia do not want such an amendment. Many religious people hold that they have the right or even duty to preach against what they see as the errors of other faiths and that this amendment would hamper them in doing so. They also believe that they have a right to exclude from the membership of religious organisations those who do not adhere to the religion. They would then be caught in a difficulty because to adhere to the requirements of their faith would bring them into conflict with the civil law. Our present equal opportunity laws have been framed to avoid creating this type of conflict where possible.

Further, the bill does not preserve the present exemptions that would allow a religious school to discriminate on the grounds of sexuality. As the recent work of the Social Development Committee on the Statutes Amendment (Relationships) Bill shows, independent schools are anxious to preserve this exemption. I expect that the Hon. Ms Reynolds will have consulted on her bill and I invite her to disclose what the churches and the independent schools have said about it.

The bill also prohibits discrimination on the novel ground of 'social status', which includes homelessness, unemployment or other forms of social exclusion. Among the areas in which it is forbidden to discriminate is the area of accommodation. There must be few, if any, private landlords in South Australia who would not, all other things being equal, prefer to have a tenant who is employed rather than one who is unemployed.

In reality, they would also treat with caution a prospective tenant who was homeless because he or she was evicted from a previous tenancy for not paying the rent. The Hon. Ms Reynolds may deplore such conduct, but I suggest to her that it is a fact of life. I invite her to tell us the results of her consultation with landlords and their agents about this provision. The same problem will arise in the other fields covered by the act. Employers will not treat job applicants with a long history of unemployment as favourably as they would those with a good employment record.

The Hon. R.D. Lawson: You support that, do you?

The Hon. R.K. SNEATH: I am just saying that there are holes in Ms Reynolds' bill. The honourable member can listen and learn. Suppliers will not give credit to people who are thought to be unable to repay. Under this bill, prospective employers will also have to be careful in the use made of an applicant's police record. If a person has been reported to the police for alleged offences but has not been successfully prosecuted, the employer must generally disregard this. For example, suppose a person's former employer tells a prospective future employer that the person was charged with stealing from the firm, but the charges were dropped because other staff would not give evidence. The prospective employer must disregard that in deciding whether to hire the person—and perhaps he should. After all, a person is assumed innocent by our criminal justice system. However, in reality, does anyone seriously think that this information will not influence a prospective employer's decision? Again, I invite the honourable member to tell the council what has

been the reaction of the employers with whom she has consulted.

Another interesting feature of the bill is that it removes the right of any party to be legally represented before the tribunal. Such representation may be allowed by the tribunal, in its discretion, but it is not a right. At the moment, both the complainant and the respondent can have lawyers if they so wish. The complainant's lawyer is generally provided at public expense. Mr Brian Martin QC made some recommendations about that issue, which are not taken up here. Also, at present, the Equal Opportunity Tribunal is usually a no-cost jurisdiction. Costs can be awarded only if an application is vexatious or instituted to cause delay or obstruction. Most cases do not fall into those categories, and it is usual for each party to bear its own costs. However, under this bill, the tribunal will be able to order costs whenever it thinks that it is justified. Further, the tribunal will be able to order that either party give security for the other's costs of an inquiry.

Many complainants may be persons who have been refused employment or dismissed from employment on grounds covered by the bill, and they may face real difficulty in finding security for costs. It is also rather a puzzle to know how the tribunal will be able to decide an application for security for costs if it does not know at the time whether it will be persuaded at the end of the case to make an order that one party pay the other party's costs. Perhaps the Hon. Ms Reynolds can clarify this point. At the least, it seems that under this bill there is a greater risk than under the present law that one party will be paying the other's costs.

Clause 111 is also interesting in that it would seem that a person who commits perjury before the tribunal can never be prosecuted. The government wants to see the Equal Opportunity Act reformed, but it candidly admits that this is a difficult and controversial undertaking, and it has not been able to complete that undertaking in this term of office. There are legitimate competing interests to be considered, and these interests have not been adequately weighed up in framing this bill, and the government does not support it. I must say that, in the eight years that the opposition was in government, it did nothing to address any of the issues mentioned in this bill.

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

HUMAN RIGHTS BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I reiterate that the government does not support the bill, but we will not oppose individual clauses. We will reserve our vote for the third reading stage.

The Hon. R.D. LAWSON: Will the mover indicate whether or not any other state jurisdiction in Australia has embraced legislation of this kind? The mover indicated that the bill was modelled very closely on the bill of the Australian Capital Territory, but will she inform the committee whether any other jurisdiction has embraced the concept?

The Hon. SANDRA KANCK: Certainly it is modelled closely on ACT legislation, but I recognise that by implication we are talking about a territory and not a state. No other state has human rights legislation in place. However, there is a discussion paper in Victoria presently that is out for consultation and submissions (not from the government), but it is being strongly taken up by people in the community who are concerned about this issue, knowing that over a period of about 15 years or so attempts to get a human rights bill through the federal parliament have failed. Interest groups and community groups are now taking this up and saying that, in lieu of a failure to have such legislation and such an act in place federally, individual states and territories should take up the cudgels on this.

The Hon. R.D. LAWSON: Although not strictly on clause 1 the preamble to the bill is quite extensive. Clause 7 of the preamble gives us some cause for concern. It provides:

> Although human rights belong to all individuals, they have special significance for indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

Whilst we might agree or disagree with most of the sentiments contained therein, we find it very difficult to suggest that these universal human rights of are of greater significance to one section of the community above another. I wonder what the basis of the mover's contention that human rights have special significance above and beyond that which it does for the rest of us for indigenous people.

The Hon. SANDRA KANCK: I am glad we are finally having some of this discussion. In introducing the bill 15 months ago I said that I looked forward to some vigorous debate, and none was forthcoming. This bill replicates the ACT act, and that happens to be clause 7 of its preamble. If the opposition were to find this an impediment we would look at ways of amending it. The opposition might come up with its own acceptable amendment to it or might delete it. As I said back in December 2004, we are open to all possibilities on this, because we believe it is so important in the absence of federal legislation for South Australia to have its own.

The Hon. R.D. LAWSON: On a point of clarification for my edification, as we are dealing with clause 1, does the committee deal with the preamble here in legislation of this kind or is it when we get to the title?

The CHAIRMAN: The preamble is actually before clause 1, but I am ruling it in. Standing order 290 provides:

> The following order shall be observed in considering a Bill and its title, viz:
> (1) The Clauses seriatim and any proposed new Clauses;
> (2) Postponed Clauses (not having been specifically postponed to certain other Clauses);
> (3) The Schedules. . .
> (4) The Preamble;
> (5) The Title,

The Hon. R.D. LAWSON: The matter having been raised, we could not agree to support the preamble in the terms that have been set out in this bill.

Clause negatived.

Remaining clauses (2 to 42) negatived.

Schedule and preamble negatived.

Title passed.

Bill reported; committee's report adopted.

ADJOURNMENT

At 11.17 p.m. the council adjourned until Tuesday 29 November at 2.15 p.m.