LEGISLATIVE COUNCIL

Tuesday 29 November 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.18 p.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

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

Legal Practitioners Conduct Board—Report, 2004-05
Regulations under the following Acts—
Emergency Services Funding Act 1998—Private Roads Remissions
Superannuation Act 1988—Transferred Contributors

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

Alexandrina Council—Strathalbyn Township Local Heritage (updated September 2005) Plan Amendment Report by the Council
City of Campbelltown—Local Heritage Places Plan Amendment Report by the Council
Town of Gawler—Gawler Urban Boundary Plan Amendment Report by the Minister

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

Murray-Darling Basin Commission—Report, 2004-05
Regulations under the following Acts—
Natural Resources Management Act 2004—
Environmental Donations Licence
Refund of Levies

By the Minister for Mental Health and Substance Abuse (Hon. C. Zollo)—

Chicken Meat Industry Act—Report, 2003
University of South Australia—Report, 2004
University of South Australia—Financial Statements, 2004
Reports, 2004-05—
Advisory Board of Agriculture
Dairy Authority of South Australia
Local Government Activities
Local Government Association of South Australia
Local Government Superannuation Board
Phylloxera and Grape Industry Board of South Australia
Private Parking Areas Act 1986—Fees
Public and Environmental Health Act 1987—Fees
South Australian Health Commission Act 1976—Fees
South Australian Health Commission Act 1976—Fees
Response to the Social Development Committee Inquiry into Multiple Chemical Sensitivity (MCS), November 2005.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. G.E. GAGO: I bring up the report of the committee on the City of Adelaide, Central West Precinct Strategic Urban Renewal Plan Amendment.

SOUTHERN SUBURBS, ECONOMIC DEVELOPMENT

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

Leave granted.

The Hon. P. HOLLOWAY: Yesterday the Leader of the Opposition raised a number of questions regarding funding for economic development programs in the southern suburbs. I provide the following information. The Department of Trade and Economic Development is a funding agency for a range of economic development programs in the southern suburbs. In total there are seven projects which are managed by the City of Onkaparinga or the Office of the Southern Suburbs, and one project will be managed by the Department of Transport, Energy and Infrastructure. The Department of Trade and Economic Development is only making payments against these projects based on the achievement of key milestones by councils or others. It would be unreasonable to expect DTED to make these payments on economic development projects if milestones have not been met.

In a number of instances the City of Onkaparinga has had difficulties in securing appropriately qualified people to undertake the economic development work proposed, and in this regard it is only fair and proper that the best people are secured to undertake the work and that funding is not provided to contractors who are not qualified to the standard that the council and the state government would expect. In total there is around $814 000 available for economic development programs in the south: $255 000 was provided to the council in 2004-05; a carry-over of $320 000 has been granted; and the balance of $239 000 has already been allocated from the DTED 2005-06 budget. In other words, there has been no reduction in funding for economic development programs in the southern suburbs—it is purely a matter of the timing of payments.

CHILD ABUSE

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement relating to child abuse allegations made by the Deputy Premier in another place.

QUESTION TIME

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

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

Leave granted.

The Hon. R.I. LUCAS: This week and last week, through a series of questions, significant concerns about the budgetary and financial management of this minister and his Chief Executive Officer have been outlined and, through those questions, the concerns that have been raised by the Department of Treasury and Finance in particular, through the Expenditure Review Committee process, have been outlined.

As a result of those questions, further information has been provided to the opposition in recent days which indicates that the Department of Treasury and Finance, during recent discussions, told the Minister for Trade and Industry of its concerns that limited explanatory information had been provided by the minister's department in relation to year-to-date variances against the budget. The Department of Treasury and Finance indicated to the minister its concern about the poor quality of the monitoring information that had been provided by his department under his leadership, such

that the Department of Treasury and Finance, because of that poor quality of financial monitoring information, was not in a position to conduct a detailed analysis of the minister and his department's financial performance. The department also advised that, as of October this year, it was not yet in a position to assess whether or not it was going to be under or over budget in the current financial year. My questions are:

1. Is it correct that the minister's department has advised Treasury that, as of October this year, it is not yet in a position to assess whether or not it will be over or under budget in 2005-06?

2. Is it correct that the Department of Treasury and Finance has expressed concerns about the quality of monitoring information provided by the minister's department and, indeed, indicated that it was of poor quality and not of a sufficient standard to allow Treasury to conduct a detailed analysis of the performance of the minister's department under his leadership?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am very pleased that the Leader of the Opposition has raised the management of the Department of Trade and Economic Development, because it reminds me of the former management we had when the Leader of the Opposition himself was the head of DIT.

Can anyone remember John Cambridge? Can anyone here remember the purchases of alcohol that took place? Has everyone on the other side of the chamber forgotten what happened in DIT under the previous minister, what an utter shambles it was and how disgraceful was the conduct of that department? Since I have been in the portfolio, none of those sorts of practices has taken place, and I can give the council an assurance of that. There have been none of these payments or misuse of credit cards when the heads of departments were behaving in all sorts of disgraceful ways that ultimately led to the removal of the chief executive. Of course the Leader of the Opposition wants to fight back, because he knows that he was so incompetent and so lax with the management of the former department of industry and trade. He knows that those sorts of lax practices over which he presided now no longer exist.

As to the questions asked by the Leader of the Opposition in relation to carryovers, he knows that the carryover policy under him as treasurer was a complete disgrace. This person would not even talk to his minister for health (Dean Brown). Over $50 million in budget deficits were run up within the health department. That was the sort of crooked accounting that was going on with that government. It was a complete disgrace. He would not even talk to the minister. There was a breakdown in communication between the former deputy premier, the minister for health and the treasurer. It is one of the great tragedies of this state.

The Hon. R.I. Lucas: Twitchy, twitchy!

The Hon. P. HOLLOWAY: Touchy! I will stack up my record of running this department against that of the person opposite any day of the week.

The Hon. R.I. LUCAS: I have a supplementary question. Is the minister refusing to take up the issue in relation to whether or not Treasury has expressed concern about his department under his leadership in terms of the quality of monitoring information being provided?

The Hon. P. HOLLOWAY: The issue of reporting between the Treasury and my department will be resolved. But what my department will not have to report is the sort of corruption that flourished under the Leader of the Opposition.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. CAMERON: I rise on a point of order, Mr President.

The PRESIDENT: The honourable member's point of order is correct, even though he did not put it.

The Hon. T.G. Cameron: I did not think I had to.

COURT DELAYS

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

Leave granted.

The Hon. R.D. LAWSON: As was disclosed on the front page of this morning's *Advertiser*, record delays are being experienced in the criminal jurisdiction of South Australia's courts. This is, in fact, no news, because what the Chief Justice said today he had told an estimates committee earlier this year, and it has also been published widely in the Productivity Commission report and other reports relating to delays in South Australia's criminal courts. We have the worst record in this country. The Attorney-General was on radio today saying that these delays had nothing to do with the government, that the government has no control over the delays, that all services are being appropriately funded and that it is up to the courts to fix them up.

The Attorney is clearly at odds with the Chief Justice, who is today quoted as saying that the factors which led to this deterioration are outside the control of the courts. He suggests that resource problems within both the Office of the Director of Public Prosecutions and South Australia Police are at least partly responsible. I do not imagine the Attorney-General heard the Chief Justice say this because, as we all know, he is usually reading *The Advertiser* form guide at his meeting with the Chief Justice. My questions to the Attorney are:

1. Given today's public acknowledgment by the Chief Justice of inadequate resources, what action has this government taken to reduce the time delays?

2. Has the Attorney-General indicated to the Chief Justice that it is not the responsibility of the government to assist the court in resourcing issues?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the deputy leader for conveyancing his question over here, but I will refer it to the Attorney in another place and bring back a reply.

FOOD INNOVATION CENTRE

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking either the Minister for Industry and Trade or minister Zollo in her position as convener of the Premier's Food Council about the food innovation centre.

Leave granted.

The Hon. CAROLINE SCHAEFER: I have received information that discussions are taking place between departmental officers under the Minister for Industry and Trade and Food SA for the development of a food innovation centre at a cost of several million dollars to be announced in the lead up to the election. Will the minister tell the council whether he is aware of such discussions, where the building

is to be, how much it is to cost, what services it will provide, what the recurring budget will be for its operation, what the fees to industry will be, what the ratio of government to industry cost sharing will be and whether different options with funding equivalent to the numerous millions of dollars to be spent on this building have been put forward to industry as alternative suggested uses?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am aware that there have been discussions in general terms about a food innovation centre, but the minister responsible is my colleague the Minister for Agriculture, Food and Fisheries in another place. I will refer the question to him and bring back a reply.

BULKY GOODS RETAILING

The Hon. R.K. SNEATH: My question, to the Minister for Urban Development and Planning, is about bulky goods retailing.

Members interjecting:

The Hon. R.K. SNEATH: There is nothing wrong with being bulky and brainy—in fact, it is quite good—but bulky and dumb, like the Hon. Mr Ridgway, is pretty ordinary. Will the minister advise the council of the government's position in respect of the future of bulky goods retailing in this state?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for his question regarding bulky goods development which, given the current levels of economic activity occurring in this state, and the diversification of retail activity, is very relevant. Bulky goods development is a form of retailing with characteristics that generally set it apart from traditional retailing activities. Traditional forms of retailing are ideally located in centre-type zonings, which provide a range of consumer goods and services and are well served by both public and private transport facilities. The planning strategy supports and protects the role of a centre's hierarchy within this state.

In recent years, bulky goods retailing has emerged as a new form of retailing with requirements that often make it difficult and impracticable to establish in traditional centre locations. Under the current planning system, they would be classified as either a shop or a retail showroom. Bulky goods developments comprise large-scale self-contained showrooms and warehouses selling comparison goods, white goods, hardware and home wares, etc. They generally require a large floor plate with main road exposure and have additional car parking and truck manoeuvring requirements in comparison with shops or retail showrooms. It is becoming increasingly evident that existing centre locations often do not have the capacity to accommodate larger bulky goods developments, and the cost of floor space is prohibitive. In this context, industrial sites are more often targeted, particularly in established urban areas, as they satisfy the size and cost criteria.

We are also seeing the increasing incidence of the establishment of bulky goods development on airport land at both Adelaide and Parafield, and this bypasses state and local planning requirements. There is a similar situation in other states. There is considerable demand in South Australia for bulky goods developments. However, because our planning has not evolved with the diversification of retailing over the past few years, investors are facing two uncertainties: the lack of suitably zoned land and the prospect of having to undertake a non-complying assessment process because of the size and nature of the retailing activities.

Given the state's population, South Australia is comparatively under-represented in annual turnover attributed to the bulky goods retail sector. According to the Australian Bureau of Statistics, national retail turnover was $163.4 billion in 2003. That BIS Shrapnel bulky goods survey indicates that about $30 billion is attracted to bulky goods. I am advised that South Australia's share is currently in the vicinity of $2 billion, whereas, on a population basis, that share would be more like $2.5 billion. I am advised that that under-representation translates to between 500 and 1 000 jobs for South Australians. For this reason, the government considers it is timely to investigate the needs of bulky goods retailers more closely in order to better define this type of development through the legislation and to identify additional suitable sites across metropolitan Adelaide which may be suitable for large bulky goods developments requiring a floor plate in excess of 2 000 square metres. This will include the investigation of industrial land that is poorly utilised or does not meet the criteria for strategic industry needs.

In addition, the government intends to review existing development plan provisions to investigate the merit or otherwise of providing more flexibility in establishing bulky goods uses within commercial and business zones. It is intended that this work will be undertaken by Planning SA and the Department of Trade and Economic Development, as it is important that the investigations take into consideration the broader economic objectives of this state in providing a confident investor environment and protecting our key industry sectors while allowing for an orderly expansion of this state's bulky goods sector. I thank the honourable member for his interest in this important matter for the future of the state.

The Hon. SANDRA KANCK: I have a supplementary question. Given that Planning SA said that there is a shortage of industrial land in Adelaide, how is the minister going to reconcile that shortage with the intention that he has just stated of turning some industrial land into bulky goods areas?

The Hon. P. HOLLOWAY: The point I was making is that there is some land, particularly in some of the western suburbs, which is surrounded on all sides by residential development. For a number of reasons, that land has been on the market for years in some cases; it simply is not selling for industrial land. Given that an industrial site would inevitably be associated with some noise and perhaps other forms of pollution, developers are unwilling to invest in those sorts of sites when the residents are so close. Indeed, there has been movement in the opposite direction: a number of businesses have actually been moving out, and one can think of a number of companies which have been badly located within residential areas due to poor planning decisions in the past and which have been forced out because of pressures. It may well be that bulky goods provide one solution in relation to that.

In relation to industrial land, that is a very important matter, and indeed Planning SA and the Department of Trade and Economic Development are currently preparing an industrial land strategy which I hope will be finalised within the next few weeks. A lot of work has to be done on this because it is important that we provide sufficient industrial land for the expansion of Adelaide, and that work is being done. I see this bulky goods review as complementing the work of that industrial land strategy because clearly there is a change in the nature of retailing. One of the problems is that some of these large bulky goods retailers supply trade

customers as well as retail customers. That is what is happening.

In the past, the companies that sold directly to the trades might well have fitted into the zoning but now, since they retail to the public as well, these old definitions that have existed within the Planning Act for 15 years that regard them as retailing are not necessarily applicable. That is part of the reason why these laws have to be reviewed. Clearly, we also have to make sure that any bulky goods expansions are located in appropriate areas. If one wants to see a good example of that, one could probably look at the new bulky goods precinct at Mile End along the new connector road which has been based there, where formerly degraded industrial land has been turned into a bulky goods precinct.

I believe that we can have both here. We do need to protect industrial land. The government is well advanced on a strategy in relation to that, but also we need to recognise the changing retail patterns and make sure that, since this is the way that retailing appears to be going—and we have the lowest proportion, I believe, of bulky goods retailing here than any other state—it is done in a properly planned way so that we can get the best outcome from that growth.

The Hon. D.W. RIDGWAY: I have a supplementary question. What consultation has the government undertaken with industry groups such as the Property Council and the Urban Development Institute of Australia?

The Hon. P. HOLLOWAY: I meet with those two organisations and a whole lot of others, including the bulky goods associations, all the time, but this review I have just been talking about will obviously be talking to those and other organisations in relation to the development of this strategy so we can identify those suitable sites that might become available as bulky goods precincts similar to those that we see at Mile End.

KANGAROO ISLAND, CONTROLLED BURNING

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Minister for Environment, a question about controlled burning on Kangaroo Island.

Leave granted.

The Hon. SANDRA KANCK: The Department for Environment and Heritage has introduced a policy of burning native vegetation in South Australia on the bases of both hazard reduction and ecosystem management. In some cases this policy is confused in terms of those two objectives, with broad-scale hazard reduction being conducted on the basis of burning for ecological outcomes. Further, principles about ecological burning in general are being applied, rather than burning programs being informed and designed by the knowledge of local fire history.

The general principle that is being applied is that all Australian ecosystems have evolved with fire, yet Kangaroo Island has evolved for at least 2 300 years without Aboriginal fire, resulting in a number of unique ecosystems and a large number of endemic species. Flinders Chase National Park is one of the last wild remote places in South Australia where natural ecosystem processes, including fire, can be permitted to continue without interference. Despite this, the department is now burning on a broad scale on Kangaroo Island, including in Flinders Chase National Park.

On Monday 21 November a test burn was initiated at Yakka Flat in the south-west corner of the park. The fire escaped and burnt approximately 10 hectares before it was brought under control using heavy machinery that resulted in a huge amount of native vegetation damage and attendant ecological impacts. My questions to the minister are:

1. Why is the Department of Environment and Heritage undertaking broad-scale fuel reduction burns in the park and placing ecosystems within the park at risk unnecessarily?
2. Who authorised this decision?
3. Will those responsible for these actions be subject to sanctions?
4. Will the fire management plan be amended to prevent activity of this nature and focus on fire protection works around high-value assets and the edges of the park?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The debate in relation to prescribed burning has been a long one. I was a member of a House of Assembly select committee in the early 1990s which looked at this very issue, and this has been a controversial issue since then, but to suggest that never allowing native vegetation to burn is somehow good for that vegetation is, in itself, debatable. I am sure many environmentalists would make the point that there needs to be some regular burning of native vegetation in many ecosystems to ensure that they remain healthy. So, I am not sure that the assumption inherent in the honourable member's question is necessarily correct, but that is something that I will leave for others who have much more expertise in this matter than I.

My colleague the Hon. Carmel Zollo as the Minister for Emergency Services may wish to add something in relation to bushfires, but it is my understanding that fuel reduction was discussed at the Bushfires Summit and agreement was reached to reduce the enormous risk of property through prescribed burning without putting at jeopardy our ecosystems. I will ask my colleague the Hon. Carmel Zollo whether she wishes to add anything further in relation to bushfires, and I will refer the questions relating to DEH policy to my colleague in another place.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): There is probably not a great deal more that I can add. The bushfire season commences on KI on 1 December and, because of the fuel load prescribed, burning by DEH would of course be seen as eminently sensible. I am not aware of the particular burn to which the honourable member alludes, so I think it is appropriate that that part of the question be referred to my colleague in the other place. Depending on the fuel load, it would make a great deal of sense to have prescribed burning carried out in an efficient manner before the bushfire season commences when, of course, burning can be undertaken but a permit is needed. I will obtain some advice from the minister in the other place and bring back a response.

INSTITUTE OF MEDICAL AND VETERINARY SCIENCE

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Treasurer, questions in relation to salary sacrifice arrangements for IMVS employees.

Leave granted.

The Hon. NICK XENOPHON: I have been contacted by a group of employees of the Institute of Medical and Veterinary Science (IMVS) who are concerned about changes to federal laws which would see them lose their salary sacrifice arrangements. Following recent court judgments, the

Australian Taxation Office conducted a review which found that some employers were too closely controlled by a state government body and therefore not entitled to access tax concessions designated for public benevolent institutions (PBIs), including the fringe benefits tax exemption often passed on to employees through salary sacrifice arrangements. Employee arrangements were terminated on 31 March 2004 at the request of the state government.

I understand the federal government has made allowance for the provision of a transitional grant to be paid to assist certain state government organisations that have lost their concessional status until such time as the state government reviews its management of salary sacrifice packages. Staff of the IMVS are now facing uncertainty as to their status and potential financial difficulties as they stand to lose all their salary sacrifice benefits by April 2007. This change in the law not only affects the hundreds of workers at IMVS but also has the potential to affect workers in all of the major public hospitals in South Australia, including ambulance and domiciliary care workers.

I note that the Hon. Rob Lucas asked a question about this scheme in September 2004 and listed such organisations as Julia Farr Services, Metropolitan Domiciliary Care and the Intellectual Disability Service Council as being adversely affected. I am advised that since this time all public hospitals and ambulance workers have already been granted PBI status. My questions are:

1. Given the government's recent comments in support of Australian workers and their entitlements during the rally against the federal government's new industrial relations laws, what steps have been taken to ensure that those who have yet to resume their salary sacrificing can do so as soon as possible?

2. Can the minister confirm that staff at organisations such as SA Ambulance and the Royal Adelaide Hospital have been granted PBI status and, if so, why has not the same been granted to the staff at IMVS?

3. Can the minister give an assurance that salary sacrifice benefits will continue to be received by the staff at IMVS, as is the case for other health industry professionals?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The honourable member in his very first sentence talked about changes to federal laws. Obviously, if the federal government changes legislation in relation to taxation arrangements, that will have an impact that the states will live with. Obviously, this state wishes to work within that. I remind people that the commonwealth government, through its income tax system, has a surplus of many billions of dollars. If only the states had the sort of surplus that the commonwealth has! If one takes it on a per capita basis, the surplus the commonwealth will have in the current year, from later estimates, would be many hundreds of millions of dollars. But it appears that not only is the federal government still intent on reducing the working standards of workers by taking away basic rights but it is also starting to take away some of the taxation benefits as well. But it is a good question, and it is an important question. Obviously, those commonwealth decisions do impact upon state government actions. I will refer that question to my colleagues and bring back a reply for the honourable member because, as I said, it is a very important issue that I know my colleagues are attempting to work through.

The Hon. NICK XENOPHON: I have a supplementary question, Mr President. Given the concern of so many IMVS employees and that parliament is scheduled to rise this week for several months, will the government provide a response out of session as a matter of urgency to give some direction or comfort to those IMVS workers?

The Hon. P. HOLLOWAY: I am sure that the government is well aware of those issues and the need to inform those members, so I will endeavour to ensure that a response is given to those constituents whom the honourable member has mentioned as soon as possible.

POLICE COVER-UP

The Hon. A.J. REDFORD: 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 cover-up.

Leave granted.

The Hon. A.J. REDFORD: On Thursday 17 February this year I asked a series of questions of this government concerning the activities of police in Coober Pedy involving a random breath test unit. I set out the details of the incident in detail on that occasion and asked a series of questions, and I remind the government of the questions I asked. They were:

1. Does the minister believe the Police Complaints Authority has adequately addressed my constituent's concerns?

2. Does the minister agree that a complaint that an officer jumped out of a car before getting to an RBT is not within the responsibility of the Police Complaints Authority?

3. Is the minister of the view that it is not for the Police Complaints Authority to examine the internal investigation?

4. Does the minister agree that it is a satisfactory answer to allegations of police misconduct that the matters complained of are 'matters that SAPOL were already aware of'?

5. Why has the minister sat on certain correspondence?

None of those questions was answered by the government. Instead, the Minister for Police chose to attack me and told the House of Assembly that it was a matter thoroughly investigated by the Police Complaints Authority but, notwithstanding that, the Police Commissioner would further review the matter. Seven months later the Commissioner wrote to the young police officer and his wife and apologised for the treatment they received. No report—not a single report—was given by this police minister to the parliament, nor were any answers to my questions provided.

Last Sunday, in a front page article, the *Sunday Mail* reported that officers had failed to properly investigate the incident. Despite the fact that there had been an internal investigation, a Police Complaints Authority review and a subsequent Police Commissioner investigation, there was to be yet another investigation to determine whether police were to be subjected to any disciplinary proceedings. On my analysis, that so far amounts to some four investigations in relation to this incident.

I also note that a number of people were not interviewed in relation to the last investigation by the Police Commissioner, according to the *Sunday Mail* article, and, in that respect, I understand that Mr Niblett, the police officer photographed in the article, said he had not been spoken to in relation to this last investigation. In light of that my questions are:

1. When will I get answers to questions I asked on 17 February 2005?

2. Does the government have any priority in relation to the probity of investigations into the conduct of police officers?

3. Have any apologies been issued to any other police officers who were caught up in this fiasco; if so, to whom?

4. Has the matter been referred to the Director of Public Prosecutions for consideration before determining that no criminal charges should be laid?

5. Who will conduct this further, or fourth, investigation?

6. Will Mr and Mrs Baldino receive compensation for their costs—that is, their freedom of information costs and their costs of removing their home and other goods—arising from this particular saga?

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

CHARLES STURT CITY COUNCIL

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Local Government, a question about the City of Charles Sturt periodic review and alleged secret meetings.

Leave granted.

The Hon. D.W. RIDGWAY: On 18 October this year I asked a number of questions regarding these matters. I have since been contacted by a number of concerned residents who allege that, when they attended the public hearing regarding the periodic review, they were unable to give their evidence. In fact, I have a copy of some correspondence from one of those people to the chief executive officer. It reads:

> I attended council to present a submission on Monday 10 October 2005. During my talk councillors for the ward of Woodville were intently involved in a private conversation distracting my concentration and preventing other councillors from hearing properly. During the presentations of all the other ratepayers the same occurred.

The letter goes on:

> Surely a code of behaviour should be followed which includes promptly attending the chamber. . . not interrupting ratepayers during presentations, listening intently to presentations and not talking. I am sure if a visitor spoke in the visitor's gallery [in the same manner] they would be asked to leave. . . the chamber. . .

Another resident wrote, in a letter to the Electoral Commissioner:

> My concern was such that I declined the opportunity to speak to the chamber when called upon by the mayor as chairman to do so because of the improper behaviour of some members of council towards previous representers.

I draw members' attention to an article in the *Messenger* of 12 October. It reads:

> Six objectors attended the meeting to expand on their submissions. Woodville Historical Society chairman Trevor White was among those who gave a presentation to the council. He told the chamber he was concerned a drop in councillor numbers would mean less accountability from elected members. However, in unusual scenes, Mr White's speech was continually interrupted by councillors Anna Rau and Tolley Wasylenko, who objected to his comments, deriding them as irrelevant. 'This is turning into a general whinge,' councillor Rau said. After more interjections, Mr White eventually gave up and sat down.

In the previous question, the issue of secret meetings was brought to the attention of the Legislative Council. I have been informed that, following the deputy mayoral ballot, where one of the members was unsuccessful, she and her supporters retreated to the member for Croydon's office to work out their next strategy. I am told that that is where the statutory declarations were signed, a number of them being signed in front of councillor Tolley Wasylenko, with his being signed by Julleanne Duncan. I am not alleging that the member for Croydon was there. However, certainly, he has form, particularly in regard to involvement in council matters.

I refer the Legislative Council to a letter written when he was the member for Spence, and it is written on his official parliamentary letterhead. The letter, which relates to the local government elections in 1997, states:

> I write about the postal ballot starting on Monday 14 April, to elect two councillors to represent Woodville-Pennington Ward on the Council of the City of Charles Sturt.
>
> Although the ALP does not endorse candidates for local-government elections, two ALP members are among the five candidates. They are Jens Smith and Chris Taylor.
>
> Jens Smith, of Woodville Park, has been a member and helper of the Spence ALP Sub-Branch for more than 15 years. He has handed out how-to-vote cards in State and Federal elections, scrutineered for us at polling booths and letterboxed thousands of ALP leaflets. He and his family have spent many hours at ALP working bees folding letters, putting them in envelopes and addressing the envelopes.
>
> Chris Taylor, of Pennington, is a member of the Price ALP Sub-Branch and has been a help to former Albert Park MP Kevin Hamilton. Chris Taylor is an accomplished councillor who, we hope, will go on to be the Mayor of the City of Charles Sturt. . .

He goes on to say:

> However, I believe their support for the ALP is an important indicator of the values they bring to the. . . City of Charles Sturt.
>
> I warmly commend them to you and I encourage you to vote when your ballot papers arrive by post. . . Monday, 14 April.

My questions are—

The Hon. R.K. Sneath: You can't stop now.

The Hon. D.W. RIDGWAY: I would not want to take up other members' valuable question time. My questions are:

1. Will the Minister for State/Local Government Relations immediately respond to the questions I asked on 18 October about these serious matters?

2. Given the current investigations being carried out by the police into the actions of certain members of this council at the deputy mayoral election, is it acceptable for the council to proceed with the motion to review its ward boundaries?

3. Should the council be moving to reduce its numbers and thereby resident representation for this council before the conclusion of the police investigation and the results of the investigation are reported to council and the residents of Charles Sturt?

4. Can the minister confirm when the meeting was held by councillor Anna Rau and her supporters in the member for Croydon's office?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I will refer that—

An honourable member: All under parliamentary privilege—

The Hon. CARMEL ZOLLO: Yes, all under parliamentary privilege. I will refer that amusing explanation and lengthy question to the Minister for State/Local Government Relations in the other place and bring back a response for the member.

AUSTRALASIAN ROAD CRASH RESCUE CHALLENGE

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the Australasian Road Crash Rescue Challenge.

Leave granted.

The Hon. J. GAZZOLA: The Australasian Road Crash Rescue Challenge was recently held in New Zealand. Can the minister advise the council whether South Australia sent any

teams over to participate in the challenge and, if so, will the minister tell us how they performed?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his question about this very important training event. Training, of course, is an important component of our emergency services sector. It aids with retention of volunteers in the emergency services agencies and in the preparation for these people to do the wonderful things they do for the safety and protection of the community. This recent significant training event was held in Hamilton, New Zealand from 8 to 15 October this year.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: No; unfortunately, I did not attend. Twenty-two teams participated in this year's challenge in New Zealand. A total of 50 000 spectators attended the event over the seven days. South Australia sent teams of six people from the Salisbury MFS station, the Blackwood CFS brigade and the Laura SES unit. SAFECOM chairman, Mr Vince Monterola, and MFS Chief Officer, Mr Grant Lupton, also attended the challenge. The Laura SES unit was named as the top SES team in Australasia and won the right to go to the next world championships, which will be held in South Africa next year. The unit will be the first South Australian emergency services team to represent the state internationally. It came 12th overall among all the emergency services groups in the competition.

To win the honour of first overall in the SES category, the unit had to compete three 'evolutions' of road crash rescue scenarios using limited tools, unlimited tools and rapid intervention. The Laura team has been entering the highly competitive Road Crash Rescue Challenge since 2000, but the unit has 25 years of first-hand experience in road crash rescue in the district. I am sure that the Laura community joins with me in congratulating the SES volunteers on their win, and I think that I came across a newspaper clipping recently that did just that. It is very fitting recognition of their hard work.

This was the first year that the MFS had participated in the challenge. Its team finished third in the unlimited category, fourth in the limited category, third in the best crew leader category, fourth for tool use and 11th overall. The Blackwood CFS team reached seventh position overall in the competition. We should all be very proud of the efforts of all our participants in the challenge. In particular, I wish the Laura SES unit the best of luck for the world championships in South Africa next year, and we will proudly follow its progress. South Australia will host the Australasian Road Crash Rescue Challenge in Adelaide in July next year. The valuable knowledge gained from this year's Road Crash Rescue Challenge will assist the organising committee in planning this event.

Q FEVER

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Mental Health and Substance Abuse, representing the Minister for Agriculture, Food and Fisheries, a question about Q fever vaccine.

Leave granted.

The Hon. IAN GILFILLAN: On Sunday, an ABC news item informed broadcast the following:

> The Rural Doctors Association of Australia says that there is a real risk of a Q fever outbreak across Australia if production of a preventative vaccine stops. The RDAA President, Dr Ross Maxwell, says CSL should reconsider its plans to stop manufacturing the Q fever vaccine from March 2007.
>
> The disease is a serious occupational hazard for livestock handlers, abattoir workers, shearers and veterinarians. Dr Maxwell says rural workers must be protected. 'It's quite easily contracted if you work in the meat and livestock industry at the moment', he said. 'There's been a program to vaccinate those workers in those industries, and if that program is removed these workers will be exposed to developing Q fever which is quite a severe, debilitating illness.

Yesterday, an item in the ABC rural news stated:

> The only company in the world producing the Q fever vaccine says it will halt production because it would cost more than $10 million to upgrade facilities. Bio-pharmaceutical company CSL Limited will stop producing the vaccine in March 2007. About 300 human cases of Q fever are reported in Australia every year, spread through animals including sheep and cattle.

Many people in rural South Australia will know that a well-known ABC radio reporter contracted Q fever by attending the Jamestown sheep market. The item continues:

> It causes flu-like symptoms and, in severe cases, death, by inflaming the heart and lungs. Dr Rachel David, from CSL, says only a government-funded laboratory would be likely to take on vaccine production. 'I very much doubt that another commercial organisation would be interested in taking on the technology because of the financial situation with it,' Dr David said. 'But, that being said, it's possible that a non-commercial entity could do it with the correct amount of assistance.'

This is a serious threat to many hundreds of South Australians. It is, in the rural communities' opinion, quite outrageous that the only producer of Q fever vaccine in the world is arbitrarily planning to terminate that production in March 2007, less than two years away, and that will then leave a gap. It is important to remind honourable members (and I am sure many do remember) that CSL stands for 'Commonwealth Serum Laboratory'. In its previous history it was a government controlled and funded entity that produced world-class serums and vaccines under the government's instruction, but it was sold and the commercial aspect now has meant that thousands of Australian rural workers will be exposed to the risk of very serious disease. My questions are:

1. Will the minister as a matter of urgency insist that the federal government take whatever steps are necessary to ensure that the Q fever vaccine be produced after March 2007?

2. Will the minister remind the federal government that it sold off the Commercial Serum Laboratory previously, a government controlled laboratory, and that it now has a responsibility to continue to protect rural workers, even if it requires government funds to produce the vaccine?

3. Will he insist that he get a clear undertaking from the federal government that it will not leave rural South Australians exposed to a very dangerous disease, Q fever, through its lack of support?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I thank the honourable member for his questions in relation to Q fever. I will refer them to the Minister for Agriculture, Food and Fisheries in another place and bring back a response.

ABORIGINES, STOLEN GENERATION

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question concerning Mr Robert Guest, a survivor of the stolen generation.

Leave granted.

The Hon. A.L. EVANS: Earlier this year, as a result of a meeting between my staff and Mr Robert Guest and his advocate, Mr Trevor Shepherd of Disability Action, I asked three questions of the minister representing the Minister for Health on 1 June 2005. To this date I have not received a reply to the three questions I asked. More recently, Mr Robert Guest and Mr Shepherd met with me. During that meeting Mr Guest explained that he had provided eight years of competent, intelligent and relevant contribution to various government inquiries, parliamentary select committees and reports about how the South Australian health care system could be changed so that it could accommodate and implement culturally effective and appropriate health care for indigenous people, specifically the stolen generation fathers.

Mr Guest has also been a carer by default for his brother for a number of years, because the existing health system has abdicated its responsibilities and not met his brother's needs in a culturally effective and appropriate manner. In turn, this has had a negative impact on Mr Guest's ability to focus attention on, first, the need of his immediate family and the unresolved healing need arising from the abuse he received during childhood.

Mr Robert Guest contributed to the Select Committee on the Status of Fathers in South Australia in September 2004. He is concerned that he has not received a response relative to his contribution from the select committee. He is also concerned that the various government departments responsible for implementing South Australian health care do not appear to have taken any steps to address the many issues he raised and certainly do not appear to have implemented any of the recommendations made to establish a culturally effective and appropriate health care system for indigenous stolen generation fathers. My questions are:

1. Will the minister provide answers to the three questions I raised here in June this year?

2. Will the minister acknowledge that there is a real cost associated with people who become carers by default and that there are legal obligations on the government to provide culturally effective and appropriate medical support for indigenous stolen generation fathers?

3. Will the minister undertake to ensure that culturally effective and appropriate medical support and health care services will be established in the immediate future for stolen generation fathers? If so, will he undertake to ensure that the stolen generation fathers are consulted?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I thank the honourable member for his questions in relation to Mr Robert Guest. As chair of the Select Committee on the Status of Fathers in South Australia, I remember him appearing before us. Given that the questions are so specific in relation to the stolen generation, I will refer them not just to the Minister for Health in another place but also to minister Weatherill.

In relation to carer support, I am not certain of Mr Guest's actual situation, so it is rather difficult to comment. But, of course, we have made some money available as part of the mental health budget—the non-government organisation money—a component of which was being directed towards carers. The Social Inclusion Unit has also worked very closely with our indigenous community. I think it best if I take some advice and bring back a response for the honourable member.

AUDITOR GENERAL'S REPORT

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the minister representing the Minister for Aboriginal Affairs and Reconciliation, who represents the Minister for Administrative Services, a question about the Auditor-General's Report.

Leave granted.

The Hon. J.F. STEFANI: I refer to the Auditor-General's Report for the year ended 30 June 2005. In particular, I refer to matters of concern which he raised in relation to the operation of the DNA database. In his report, the Auditor-General stated that, in his opinion, the operation of the DNA database was not in strict compliance with the relevant statutory requirements. In particular, he referred to the important matters of the destruction and removal of DNA profile information as stipulated in the Criminal Law (Forensic Procedures) Act 1998 from all electronic and hard copy records, including temporary files and backup media.

The Auditor-General also raised concerns regarding the security and control arrangements applying to the system which, in some important aspects, did not meet the government's required security standards. Despite the system having operated for some years, the Auditor-General observed that the administrative arrangements for the internal audit review of the operation of the DNA database system were only initiated in recent times. In view of the important issues raised by the Auditor-General, my questions are:

1. Will the minister advise what action he has taken to address the concerns raised by the Auditor-General?

2. Will the minister advise parliament whether he has discussed problems with the Minister for Police regarding the management control of the operation activities within SAPOL as identified by the Auditor-General?

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

ABORIGINES, DAVENPORT

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse, representing the Minister for Aboriginal Affairs and Reconciliation, a question about Blaxter.

Leave granted.

The Hon. KATE REYNOLDS: On Wednesday, 23 November, the *Transcontinental* newspaper in Port Augusta carried a story about the transitional housing facility at the Davenport community near Port Augusta. The story described how Aboriginal community members are angered by a fence that has been erected around this facility. The fence, which is eight-foot high, surrounds the perimeter and has three rows of barbed wire at the top and a lockable gate at the entrance. It is also floodlit at night. So, you can see, Mr President, why local Aboriginal people have begun calling it 'Blaxter'.

The TAFE Education Manager, Joseph Hull, who is a local resident (as I understand it), said to the newspaper that he believed the facility was a good idea, but he is frustrated and angry about the construction of the fence. He states:

> I don't have a problem with the accommodation but this fencing really eats at my heart.

He continues:

We are talking so much about reconciliation these days but when you see something like this being set up, it sets you back 40 years, it's all about segregation, racism and discrimination.

In a media release sent out on 15 November, I think by minister Karlene Maywald, which focused on the dry zone that is coming into operation in Port Augusta, there was this comment:

In addition, the council has recently embarked on a number of positive initiatives to effectively deal with people moving into Port Augusta during the summer period. This includes working closely with the state government on the newly developed Port Augusta Transitional Accommodation Project which will be operational the week beginning 12 December. This will provide short to medium-term accommodation for transient Aboriginal people visiting Port Augusta, and will be linked to a range of government and community support services.

As I understand it, there is significant support for there to be some sort of transitional accommodation, but I have been contacted by a number of constituents who share the concerns expressed by Mr Hull about the size and look of this fence, and I have some photographs here in front of me should any members be interested in seeing those. I also note that last week all of the members of the Port Augusta Council's Aboriginal Advisory Committee resigned en masse, saying that their views on a number of issues had repeatedly been ignored by the Port Augusta council. So my questions to the minister are:

1. Given that the state government is 'working closely with the Port Augusta council on a number of services and projects for Aboriginal people,' what action will it take about the mass resignation of the Port Augusta Council's Aboriginal Advisory Committee?

2. Will the minister take action to ensure that by December 2006 the Aboriginal Housing Authority reviews the need for an eight-foot high fence with three layers of barbed wire at the Transitional Housing Project and commit to acting on any recommendations for alterations to that fence to make it more reasonable?

3. Will the minister take action to ensure that the Aboriginal Housing Authority, perhaps in conjunction with a community organisation, immediately or as soon as practicably possible, given the climatic conditions, plant a screen of bushes or shrubs around that fence?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I indicate to the honourable member that I will refer her questions to the Minister for Aboriginal Affairs and Reconciliation and bring back advice for her.

CHARLES STURT CITY COUNCIL

The Hon. D.W. RIDGWAY: I seek leave to make a personal explanation.

Leave granted.

The Hon. D.W. RIDGWAY: On 18 October 2005 I asked the Minister for Emergency Services, representing the Minister for Local Government, a question about the City of Charles Sturt. In that question, I referred to some advertisements. In fact, in that question I said, 'It would appear that only one small advertisement was placed in the Messenger newspaper in English.' In fact, I was contacted by the City of Charles Sturt and they pointed out to me that advertisements were placed in the Messenger Press, the *Weekly Times* and *Portside* newspapers, the *South Australian Government Gazette* and *The Advertiser* in accordance with requirements of the Local Government Act, and a further advertisement was placed in the Weekly Update column in the Messenger Press advising of an additional workshop being held to explain the periodic review process to the public. It went on to say, 'Over the period of the review, a number of articles were also published in the Messenger Press.' I draw honourable members' attention to that and ask them to correct the record, as I have done today.

STATUTES AMENDMENT (VEHICLE AND VESSEL OFFENCES) BILL

Adjourned debate on second reading.

(Continued from 28 November. Page 3297.)

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the second reading of this legislation, a considerable amount of the contents of which have emerged from the Kapunda Road Royal Commission. There has been a large degree of complacency about road deaths which we find disturbing. Whilst we see frequent updates of the national road toll and police exhortations for drivers to behave in a responsible and safe manner, we also see all too frequently cases where dangerous driving has resulted in death or deaths, yet the penalties for causing death by dangerous driving certainly seem low. If members are paying any attention to what I am saying or have any recollection of our normal approach, they would know that it is rare that the Democrats deplore penalties that are too low. It has always been our tradition to analyse the appropriateness of penalties as far as their effectiveness is concerned and, in this case, we believe the penalties are absurdly low.

I have always believed that escalating penalties for criminal offences will have little impact on behaviour because criminals do not make a reasoned calculation of the risk of being caught and the size of the potential penalty before making a decision to commit a criminal act. However, I am forced to consider the possibility that a person who has had a collision with a pedestrian, a cyclist or another vehicle may make a deliberate decision to flee the scene of the crime rather than stop and render aid. I am sure that we all agree that this is reprehensible, and in light of the recent events which led to the Kapunda Road Royal Commission I indicate that this kind of calculation can be made. People who make those sorts of calculations may well take into account the fact that the penalties for such actions have been absurdly low.

Hopefully, the changes embodied in this bill and the subsequent public debate will affect behaviour and convince people of three things: it is not okay to drink and drive; it is not okay to drive recklessly; and it is not okay to flee the scene of a collision. Please note that I am choosing my words with care. There is a trend in traffic safety research to refer to collisions rather than accidents, and there is a reasoned position that all collisions between vehicles or between vehicles and pedestrians or cyclists are the result of human error. Where a driver is impaired through the consumption of drugs or alcohol, driving while angry, racing or indulging in that appalling self-indulgent behaviour known as road rage, all these things are indications of someone who is not treating driving with appropriate seriousness.

Similarly, collisions caused through inattention while lighting a cigarette, fiddling with the radio, sending text

messages on a mobile phone, talking on a mobile phone, arguing with other occupants of the vehicle, or doing anything that distracts attention from the fundamental activity of driving the vehicle in a calm and safe manner, all these things are indications that the event was anything other than an accident. I would be prepared to entertain an argument that contributing factors like these would be to varying degrees evidence of reckless endangerment: a basic willingness to expose a random stranger to the dangers of a hurtling tonne or more of steel and glass.

This bill looks at driving behaviours that are dangerous, foolhardy and reprehensible. Engaging in a car chase with the police, fleeing the scene of a collision, and driving while grossly intoxicated, all these things are chosen behaviours that put the public at large at risk. It is often put forward by anti-car activists that it would be impossible to get a product on the market today if it was understood that it would embody the level of risk and harm that we see in a modern motor vehicle. Yet, we have built our societies around them, and the accident or collision consequences are horrendous.

We support this bill, and we hope that the government will actively attempt to engage the wider driving public to change its opinions and risky behaviours. Surely, no more cyclists and pedestrians need to be killed or maimed for us to recognise that things must be changed. We support the second reading.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the Deputy Leader of the Opposition, the Hon. Ian Gilfillan and also the Hon. Mr Evans for their indications of support for this bill. There have been no new issues raised during those responses seeking matters of clarification—although, in dealing with the penalties for the cause of death, etc., the Hon. Mr Lawson referred to the penalties in the original bill of the House of Assembly rather than the amended bill introduced into the Legislative Council, and this might need some clarification.

The bill as amended in the other place provides that the maximum penalty for a first basic offence of cause death will be 15 years' imprisonment, with licence disqualification for 10 years. The maximum penalty for any subsequent offence or an aggravated first offence will be life imprisonment with licence disqualification for 10 years. This is consistent with the recommendation of the Kapunda Road Royal Commission that the penalty for driving in a manner dangerous causing death should be the same as the penalty for manslaughter. Life imprisonment is the maximum penalty for manslaughter, and similar penalties will apply to the new section 19AB offences. I again thank members for their support for this important measure.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.D. LAWSON: I have a general point. I thank the minister for his summing up and for noting the fact that in my second reading contribution I was referring to the bill as originally introduced by the government on 4 May 2005, and I was relying on the second reading explanation given at that time by the Attorney-General in another place. I overlooked in my notes the fact that very late in the day (in fact, on 7 November, shortly before the bill went into committee in another place) the government introduced extensive amendments to the penalty clauses. In fact, I received a briefing from officers of the Attorney's department on those amendments, and I thank them for that briefing. I indicate that I accept the simplified penalty regime which is now incorporated in the bill as introduced in this place.

Clause passed.

Clause 2.

The Hon. R.D. LAWSON: Can the minister indicate when the bill will commence? Specifically, is there any proposal to delay the commencement of the bill; if so, for what reason?

The Hon. P. HOLLOWAY: I am advised that the government would like to get the bill proclaimed as soon as possible, but there are some issues in relation to aggravated offences. That bill has now passed, so that matter can be dealt with reasonably quickly. However, there is also the possibility of amendments to the drug driving bill before this council, if that is passed, which could alter these things. Depending on what happens with that bill this week (and there may be some reconsideration), the government does have the option of bringing particular parts of this bill into operation. However, generally speaking the government would like to get this bill into operation as soon as possible.

The Hon. IAN GILFILLAN: I heard the shadow attorney's comments on clause 1, when he indicated that he had had a briefing. Did that briefing cover the amendments to the bill now on file in the Legislative Council?

The Hon. R.D. LAWSON: No.

The CHAIRMAN: I have no indication of any amendments to this bill on file. The Hon. Mr Gilfillan has thrown the chamber into confusion.

The Hon. IAN GILFILLAN: It seems that I am on the wrong bill. In that case, I quite understand why the honourable member has had no such briefing.

Clause passed.

Clauses 3 to 8 passed.

Clause 9.

The Hon. R.D. LAWSON: This clause deals with an amendment to section 19A of the Criminal Law Consolidation Act, which describes the offence of causing death or harm by dangerous use of a vehicle or vessel. I imagine some people might be bemused by subclause (2)(b), which imposes a penalty 'where neither a motor vehicle nor motor vessel was used in the commission of the offence'. I presume this is intended to cover the situation where the rider of a bicycle might cause death or harm—and I imagine this is a matter in which the Hon. Ian Gilfillan, being a well-known cyclist, might be interested. I believe that would cover the situation of a horse-drawn or other animal-drawn vehicle, but would it also cover the situation of a trailer, for example, that had come adrift from a motor vehicle? Perhaps the minister could indicate what that particular subclause is intended to cover.

The Hon. P. HOLLOWAY: The provision has obviously been put in there to cover a situation where a motorised vehicle was not involved. It could include a bike or something that is attached to the vehicle, such as a surfboard, or some other part of the vehicle that had come adrift. I am advised that it would also cover a situation where a trailer had come adrift, or something like that.

The Hon. R.D. LAWSON: Can the minister indicate why a lesser penalty should be imposed for someone who causes death or harm by dangerous use of a vehicle or vessel which depends upon the nature of the motor power of the vehicle?

The Hon. P. HOLLOWAY: I am advised that there is no penalty at all for such a situation where a death occurs. It was obviously felt that that was a situation that had been overlooked within the law and should be suitably addressed.

The Hon. R.D. LAWSON: What is the logicality of imposing a maximum 15-year penalty on a motorcyclist who causes death or harm by dangerous use of his motorcycle but a penalty of only seven years for a cyclist who causes death or harm by dangerous use of his bicycle?

The Hon. P. HOLLOWAY: My advice is that at present the penalties are staggered. For example, where a motor vehicle was not used in the commission of the offence, the offence attracts a term of imprisonment not exceeding two years. So, it is effectively following the existing scheme, with a proportionate ramping up of penalties.

The Hon. R.D. LAWSON: Surely a penalty should be proportionate to the culpability of the person whose dangerous use of the vehicle causes someone's death or harm. Surely, the criteria for penalty should not be the type of vehicle but, rather, the culpability. That is why in the new scale of penalties there is one penalty for a first offence and a higher penalty for an aggravated offence. It is simply because of a recognition of that degree of culpability. I find it surprising that a distinction can be drawn between these two classes of persons.

The Hon. IAN GILFILLAN: I rise to defend the implied demonic cycle riders the shadow attorney-general is portraying—these predatory threats to life and limb, who push themselves along, quite often against head winds, at a dangerous speed of about 14 or 15 km/h. I would compare it with someone who may be recklessly throwing a tennis ball in someone's direction as compared with someone who recklessly uses a firearm. The gap between the actual degree and potential for damage is enormous; therefore, it is reasonable for the relevant penalty to reflect the propensity of the vehicle, vessel or whatever form of propulsion is being used, in relation to its hazard.

The Hon. R.D. LAWSON: The honourable member clearly does not live at the foot of a rather steep hill (as I do) which cyclists are very fond of descending, many of whom actually pass motor vehicles as they go down. However, I am convinced by the compelling nature of the honourable member's logic to withdraw any reservations or objections I might have to this clause.

The Hon. IAN GILFILLAN: I think that it is appropriate to acknowledge the constructive sensitivity shown by the shadow attorney-general. But, having strayed into dangerous ground and made somewhat ignorant comments, he has virtually retracted them, for which the cyclists of South Australia thank him.

The Hon. P. HOLLOWAY: All I wish to add is that, traditionally, motor vehicles have been considered the more dangerous form of transport—and probably with good reason—as far more people are killed by motor vehicles than by other forms of transport. If the purpose of penalties is to send a message to the public in relation to potential users, I can understand why, traditionally, parliaments have had this hierarchy of offences. Apart from that, I do not know that one need really draw much more from it.

Clause passed.

Clause 10.

The Hon. R.D. LAWSON: I notice that in new section 19AB, entitled 'Leaving accident scene after causing death or harm by careless use of vehicle or vessel', subsection (2) provides:

> (2) A person who—
>
> (a) drives a vehicle or operates a vessel without due care or attention; and
>
> (b) by that conduct, causes physical harm to another;

Can the minister explain why that harm is limited to physical harm and whether consideration was given to making it an offence to cause harm other than physical harm?

The Hon. P. HOLLOWAY: The reason we restrict it to physical harm is that, obviously, if one requires a person to stop after an accident, one would not expect the person to know whether, down the track, they might suffer some sort of mental harm or form of mental trauma in relation to the accident. Physical harm is readily apparent; therefore, we believe that it is reasonable that 'physical harm' should be the definition in use here.

The Hon. R.D. LAWSON: Will the minister explain why this provision has the heading 'leaving accident scene' when the offence created by subsection (1) relates to a person who drives without due care and attention and causes death, and is therefore guilty of an offence? That is a particularly new offence, and it has nothing to do with leaving an accident scene. Subsection (2) relates to a person who drives a vehicle, and so on, without due care and causes physical harm, which is another discrete offence which has nothing to do with leaving an accident scene. These are new offences inserted into the Criminal Law Consolidation Act, as I understand it, there previously being a similar offence in the Road Traffic Act. Is not the description of these offences inappropriate because the specific offences to which I have referred do not relate to leaving an accident scene?

The Hon. P. HOLLOWAY: My advice is that new clause 19AB(1)(c) provides:

> (1) A person who—
>
> (c) fails to satisfy the statutory obligations of a driver of a vehicle or an operator of a vessel (as the case may be) in relation to the incident,

That statutory obligation is set out in section 43 of the act as amended—page 12 of the bill, clause 18. That is the statutory obligation referred to.

The Hon. R.D. LAWSON: I thank the minister for that explanation. I think I misread my own notes. Is the statutory obligation referred to in subclause (3) the only statutory obligation now imposed by section 43, or are there other statutory obligations in relation to incidents?

The Hon. P. HOLLOWAY: New clause 19AB(3) provides:

> (3) For the purposes of subsections (1) and (2)—
>
> (a) a person fails to satisfy the statutory obligation of a driver in relation to an incident if the person commits an offence against section 43 of the Road Traffic Act 1961 in relation to the incident; and
>
> (b) a person fails to satisfy the statutory obligations of an operator of a vessel in relation to an incident if the person commits an offence against section 75 or 76 of the Harbors and Navigation Act 1993 in relation to the incident.

Subclause (3) covers it.

Clause passed.

Remaining clauses (11 to 26) passed.

Clause 9—reconsidered.

The Hon. R.K. SNEATH: Mr Chairman, I draw your attention to the state of the committee.

A quorum having being formed:

The Hon. NICK XENOPHON: I move:

> Page 6, after line 19—
>
> Insert:
>
> 10(a) Section 19A—after subsection (7) insert:
>
> 7a) If, at the trial of a person for an offence against this section it is proved that—

> (a) the defendant's conduct as the driver of a motor vehicle caused the death of, or harm to, the person; and
>
> (b) having caused the death of, or harm to, a person, the defendant committed an offence against section 43 of the Road Traffic Act 1961,
>
> it will be presumed, in the absence of proof to the contrary, that the defendant drove a motor vehicle in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public and that the death or harm was caused by that culpable negligence, recklessness or other conduct.

I move this amendment following discussions that I have had with the family of Ian Humphrey, the cyclist killed in a collision involving Eugene McGee almost two years ago. One of the concerns expressed to me was that, whilst this bill is clearly a significant improvement and, I believe, picks up on some of the considerations and recommendations of the royal commission, as does the other bill that is associated with this, there ought to be a reverse onus of proof in cases where a person has been involved in an accident that has 'caused the death of, or harm to, a person', and, having left the scene of the accident, there ought to be a presumption that, in the absence of proof to the contrary, 'the defendant drove a motor vehicle in a culpably negligent manner, recklessly, or in a speed or in a manner dangerous to the public'.

It is quite a radical step. I believe it is worthy of debate. I indicate that, on the proviso that I have obtained the views of the government and the opposition and, indeed, any other honourable members, I am not seeking to divide on this, but I think it is worth raising. I believe this is something that we may well need to revisit. It is something that I have raised publicly in the past. I know that the Attorney-General and the Premier have responded to this at media conferences. I do not know whether the shadow attorney has responded to this, but I want it to be raised in the public arena and in the context of this bill.

I believe that this is something that we may have to revisit, depending on the effectiveness of the legislation that has been passed, whether there will still be cases of individuals who will take their chances in the belief that they will get a lesser penalty given the way the courts may deal with leaving the scene of an accident, notwithstanding the significant increase in penalties for leaving the scene of an accident, rather than facing a successful prosecution for causing death by dangerous driving.

I will not go beyond that, but I believe that it is something that ought to be raised. This is something that, in particular, the brother of Ian Humphrey, Graham Humphrey, has raised with me, and I believe it is, at the very least, worthy of debate, and I urge honourable members to consider this.

The Hon. P. HOLLOWAY: The suggestion in the Hon. Mr Xenophon's amendment is to reverse the onus so that there is an assumption that, if the person leaves the scene, he or she was driving dangerously, unless he or she can show otherwise. The government opposes the amendment. It could certainly be problematic for a defendant if there were no witnesses, and it is less relevant given new section 19A(b). The presumption of innocence lies at the heart of our criminal justice system. It is appropriate only in exceptional circumstances to override the presumption by legislation.

The fundamental principle is that a defendant is presumed to be innocent. This means the prosecution must prove each element of an offence beyond reasonable doubt. There are also general principles against self-incrimination. Traditionally, the fact that it is difficult for the prosecution to prove an element of an offence is not a reason in itself for reversing the onus of proof. In some cases, where a matter is particularly within the defendant's knowledge as compared to the prosecution, it may be legitimate to reverse the onus. Matters identified by the commonwealth where it may be more readily justified are if the matter is not central to the question of culpability for the offence, the offence carries a relatively low penalty or the conduct prescribed by the offence poses a grave danger to public health or safety.

The offences in the bill are indictable offences with maximum penalties of between five and 20 years imprisonment. This makes them serious criminal offences. There have been papers prepared by the then Senate Standing Committee on Constitutional and Legal Affairs and a Victorian parliamentary committee on the burden of proof. If necessary, I could go through those papers to give those particular views, but perhaps at this stage I will not go through them, other than to refer to their existence and to point out that the committee has taken a restrictive view as to when the onus of proof can appropriately be reversed. The fact that the matter is within the defendant's knowledge has not been considered sufficient justification. The committee is most inclined to support reversal where the defence consists of pointing to the defendant's state of belief. I could enlarge on those senate views, but I think I have said enough to indicate that this amendment violates some pretty sacred principles and, for that reason, the government opposes it.

The Hon. R.D. LAWSON: Could the mover of this amendment indicate whether he would suggest that, if this provision had been in the legislation at the time when Eugene McGee was tried, the outcome of the trial would have been any different?

The Hon. NICK XENOPHON: The only reluctance I have in answering that question is that Mr McGee is currently before the courts for matters arising out of this incident, and I would couch it in general terms rather than referring to that particular case, because I am mindful of the fact that his matter is before the courts.

The Hon. R.D. Lawson interjecting:

The Hon. NICK XENOPHON: Yes, I have, but I am not prompted by the case. I am somewhat reluctant to reflect on the circumstances of that as there is currently a matter that is before the courts. I would couch it in the terms that I imagine the intent of this is to capture those cases where a person leaves the scene of an accident; is not breath tested or a breath test cannot be made, given that a number of hours have passed and that there are issues there that, for whatever reason, a breath test has not been given; and the circumstances are such that the driver's state of intoxication—and I am referring in general terms—may well have been a relevant matter for any jury to consider, in the context of that person's conduct leading up to the particular collision. In those circumstances the defendant in such a case would need to show that their driving was such that it was not dangerous or reckless or culpably negligent, so it would clearly make it more difficult in cases where someone has left the scene of an accident to escape a successful prosecution, that is, a finding of guilty.

So the elements include not just conduct but also the conduct in leaving the scene of an accident, and certain presumptions are to be made so that it makes it very clear that, from a public policy perspective, there ought to be adverse consequences flowing from a person leaving the scene of an accident by abandoning that very basic principle

of stopping, exchanging details and rendering assistance to a person who has been injured.

The Hon. IAN GILFILLAN: I am disappointed that this amendment has come before us. I am not sure just how fervently the Hon. Nick Xenophon is putting this forward, because it flies in the face of virtually every principle that we have applied. I am a layman in terms of legal matters, but I am certainly alert to the fact that this involves an assumption of guilt unless the person is able to establish some rather ill-defined fact. Under the circumstances, it is doubly unfortunate that this has come forward, because I believe it may have been prompted by some sort of impression given to the family involved in that tragic event that this was appropriate and likely to be successful. I cannot believe that, without there having been some emotive background to it, the Hon. Nick Xenophon would have seen fit to put forward such an inappropriate amendment to what otherwise is a very serious and well-constructed piece of legislation.

The Hon. R.D. LAWSON: My understanding of the intent of this provision and that of comparable provisions is that they require the person charged to give evidence and they are very often used for the purpose of ensuring that the person charged cannot avoid giving evidence by casting upon that person some onus to discharge. It is my understanding of the facts in the McGee case from the report of the royal commission—I note that the royal commissioner did not suggest an offence of this kind—that this provision would not have had any material effect in that particular case. For the reasons given by the government, we do not support the amendment.

Amendment negatived; clause passed.

Title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

DIRECTOR OF PUBLIC PROSECUTIONS

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

STATUTES AMENDMENT (CRIMINAL PROCEDURE) BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 3260.)

The Hon. R.D. LAWSON: This bill has its genesis in a process which began, certainly in South Australia, in 1998 with the establishment of a committee chaired by Brian Martin QC and subsequently adopted by the Standing Committee of Attorneys-General. More recently, the work of those bodies has been taken up by a working group chaired by Justice Duggan and also, in part, by the report of the Kapunda Road Royal Commission. But, indeed, as the Attorney's second reading explanation (which is a long, historical excursive) says, the origins of proposals of this kind are found all around the common law world.

This bill makes a number of significant amendments to the Criminal Law Consolidation Act. The first is a provision which will allow the defence in a criminal case to be given a notice requiring it to admit facts. Proposed section 285BA is a new provision empowering the court to serve on the defence a notice to admit specified facts. This is a procedure commonly used in the civil courts, but it has not hitherto applied to criminal trials. Under this new procedure the Director of Public Prosecutions must apply to the court for an order which allows the prosecution to require the defence to admit a fact. The court, after hearing argument, may make such an order. If the defendant does not admit the facts and is subsequently convicted, a failure to make the admission should be taken into account in fixing sentence. In other words, if the trial has been lengthened or made more expensive, the judge can increase the sentence.

It should not be thought that this notice can be issued for the oppressive purpose of requiring an accused person to admit guilt: rather, as I envisage, the facts are likely to be formal—for example, that the accused was employed by a particular company for a particular period; or that he or she was married to some specified person; or that on a certain day he attended for a medical appointment at such-and-such a doctor's rooms; or that an x-ray was taken at that appointment. These are facts which the prosecution can always establish by calling witnesses from the doctor's rooms, or from the Registrar of Births, Deaths and Marriages, or someone who was a witness at the marriage, etc., but to do so is often inconvenient and expensive. It is a method by which, in certain cases, an accused person can make it difficult for the prosecution in the hope that the prosecution will fail for want of a minor technical witness. The primary purpose of this procedure is to save time and expense, and we notice in the headlines of the newspaper today that there is already an unacceptably long backlog of criminal trials. The Chief Justice is saying that trials are now being lengthened by reason of greater technicality. It should be our objective as policy makers to ensure that the passage of justice is hastened.

The second major amendment to the Criminal Law Consolidation Act is new section 285BB, which will empower the court to require a defendant to give the prosecution written notice of certain offences. At the present time, a defendant can be required to give notice of a proposed alibi. However, generally speaking, the defendant is not required to indicate in advance what defence, if any, will be raised. For many, this principle goes to the heart of our system of criminal justice—a system which always places upon the Crown (namely, the prosecution) the onus of establishing that the accused person is guilty of an offence. The onus is on the prosecution to call evidence to establish that, and there is no onus on the defendant.

The defendant in our system is entitled to sit quietly in the court and hear the prosecution's evidence and not say what his or her defence might be. There is no onus on the defendant to do anything in our system of justice, and there have been some who have argued long and hard that any requirement that the defendant, in advance, be required to divulge what defence might be raised, if any, is contrary to the essence of our system. I do not take such an extreme view. I believe that there are areas where, if a defence is to be raised, it would be appropriate for a defendant to be required to indicate that. Only particular areas are specified in this new section, and they are as follows:

- mental incapacity;
- self-defence;
- provocation;
- automatism, which, in my experience, is now more often described as being in a dissociative state, a term not

widely known in the wider public until the Kapunda Road Royal Commission;

- the defence of accident, which is not often used but which is available, and this new provision will allow notice to be given requiring statement of that particular defence;
- the defence of necessity or duress, both of which are fairly rarely found—or certainly necessity;
- claim of right; and
- intoxication.

It is interesting that the Attorney-General should introduce a bill requiring a defendant to give notice that he or she is raising the defence of intoxication when, according to all the press releases and statements on Bob Francis' program, the defence of intoxication has been wiped from the statute book of South Australia.

The purpose of this new requirement is to avoid the prosecution being ambushed and to enable it to call evidence to answer a defence before it closes its case. Failure to comply with this requirement will not mean that a defendant cannot produce evidence of such a defence; however, both the judge and the prosecutor will be able to make adverse comments to the jury about the failure to comply with such a requirement. I ask the minister to indicate whether the government envisages that there will be general directions given by the courts to defendants in all criminal cases requiring them to give notice of these defences because I suspect that is the intention, although it is not specifically provided for in the bill.

The new section also includes a power of the court to require the defence to indicate whether it consents to dispensing with the calling of certain former witnesses. These are usually witnesses in relation to the taking of photographs, the making of recordings, and other technical issues which are required to be proved formally, and which quite often take up a considerable part of a criminal trial. They are obviously expensive and inconvenient to the witnesses concerned, some of whom have to suspend their employment and sit around waiting to be called; police officers, who move around the state fairly regularly, are often required to come from the far north of the state to be available at a criminal trial in Adelaide. It would be to the advantage of the system to dispense with the calling of those former witnesses. I envisage, for example, that the consent would be to dispense with the calling of, say, a photographer and rather simply allow the photograph itself to be tendered. Of course, if there is any contest or serious question about the admissibility of evidence, I envisage that the witness would still be required to be called.

Thirdly, a new section 285BC will require the defence to give written notice of intention to introduce expert evidence, including the name of the proposed expert and the general nature of the evidence to be adduced. This provision arises because of the notorious situation which arose in the McGee case, and it is clearly supported by the recommendation of commissioner James. Certainly, some at the criminal bar are opposed to this type of measure; however, those who practise in the civil jurisdiction of the court are well used to rules which require prior notice of experts, the exchange of experts' reports, and the like. Much as the legal profession might have railed against these intrusions to the old style of trial, the system there has worked well and we support commissioner James' recommendation in this regard.

Section 288A of the act will now give the defence the opportunity to address the court after the opening address of the prosecution but before the prosecution calls its evidence. The defence cannot be compelled to address the court, and the prosecution cannot comment adversely to the jury if the defence does not take up the opportunity. This formalises a process which is sometimes informally adopted in criminal trials; its purpose is to enable the jury to better understand what is to come. I indicate our support for this, especially as it is not a mandatory requirement. There will be cases when defence counsel will take up the opportunity to address the court in advance; there will the others where counsel deems it inadvisable to do so.

Fourthly, there will be an amendment to the Criminal Law (Forensic Procedures) Act, which is intended to overcome the ambiguity regarding alcohol testing in that particular act—an ambiguity which is fairly obvious when one reads the provisions of the Criminal Law (Forensic Procedures) Act but which was specifically identified in the Kapunda Road Royal Commission. That act will also be amended to confirm the previously held and, I think, appropriate belief that a simple search of a person, as opposed to an intimate or strip search, is not a forensic procedure which requires, in certain circumstances, the formal authorisation of a magistrate.

The sixth amendment relates to the disclosure of information to the defence, and this is an important provision. There have been cases where prosecuting authorities, especially police, have not met their obligation. It is an obligation which currently exists to provide an accused person with all information at their disposal, that is, not only the information which forms part of the prosecution case (which, of course, the prosecution will divulge to an accused person) but also other information the police may have gained during the course of their investigations but which may assist the defence case. There is an obligation to disclose that, and this bill formalises that obligation by requiring the police to disclose all information to be disclosed by the police to the DPP, who in turn is obliged to pass it on to the defence, and for that information to be disclosed during the preliminary examination procedure, that is, during the procedure when the magistrate determines whether or not a person should be put on trial.

There have been cases, and R v Ulman-Naruniec, decided in 2001, is a recent South Australian example which is provided in the second reading explanation and which was referred to by the Duggan committee. Seventh, the Summary Procedures Act is amended to require that a person who is committed for trial must be provided with a written statement of their procedural obligations. These will be obligations to provide notice of defence or to comply with a notice to admit facts. Presumably, that notice will also outline the sanctions that will apply in the event of their failure to comply with the obligations.

At the time I first received this bill, I had not received any communication from the Criminal Law Committee of the Law Society concerning it. I gather from the comments made by the Attorney in another place during the committee stage that something has been received from the Law Society. I gather also that there has been some communication from the Police Association in relation to this bill. I have not seen those communications; that has not been disclosed. I ask the minister to confirm that amendments on this bill are now being proposed by the government; they were foreshadowed in another place. These are the amendments to bill No. 137, to which the Hon. Ian Gilfillan referred a little earlier today. I saw those amendments that were circulated at 2:42 p.m. today. Clearly, I have not had an opportunity to study them,

and I make no comment upon them. We look forward to the committee stage, and we support the second reading.

The Hon. IAN GILFILLAN: It is not often that legislation such as this is introduced in this place, particularly something with the title 'Statutes Amendment (Criminal Procedures) Bill 2005.' The opening sentence from the government's report states:

> Criminal trial reform is not usually either newsworthy or controversial. It excites only the aficionado, but this bill is controversial, and it is exciting.

It then goes on to say that it proposes major reforms. I can sense the degree of excitement in this chamber as I open up the Democrats' second reading contribution: you can feel the electricity in the air!

An honourable member interjecting:

The Hon. IAN GILFILLAN: You've missed it? Well, perhaps it is not washing up that far. We support what we hope will be the swift passage of this legislation through this place. It stems, at least in part, from the McGee case and the Kapunda Road Royal Commission, and in the government's contribution there is reference to it. It is no secret that I am cyclist and, like many other cyclists, I keenly felt the anguish expressed by the cycling community at the outcome of the McGee case. The feeling of anguish and outrage expressed by the community may have encouraged the government to establish the Kapunda Road Royal Commission, and this bill is one of two bills which have resulted from the commission's recommendations; we have just debated the first.

In the past, I have waxed lyrical about the dangers of legislation being amended as a knee-jerk reaction to individual cases. However, in this case, with the wealth of material from eminent jurists on the subject, I feel that the government has mustered a compelling argument for these changes. I would emphasise that, were we to be convinced that this is purely window-dressing and a knee-jerk reaction, we would not be nearly so supportive and would want to look more penetratingly at the long-term effects of the changes.

If I were to paraphrase these arguments in layman's terms, the two areas of particular concern to me would be as follows. First, there is a long-established tradition that everyone has a right to muster as capable a defence as possible and, with this in mind, prosecutions are not allowed to ambush the defence with an argument that has not been nominated in advance. I can understand why the shadow attorney indicated that some of his profession felt aggrieved that this would, in effect, interfere with some of their games—that is, with the adversarial system we have, it tends to be how well a particular participant plays the game, either in prosecution or defence.

Because it is quite clear in relation to the legislation that the DPP has established for some time that the main aim is to establish the truth of the matter, there is no advantage in seeking the truth of the matter by allowing one party to 'ambush the defence', to coin a phrase. This bill seeks to develop that principle in reverse, a trend that has been observed widely in the world; that is, the prosecution should have a similar opportunity to prepare a rebuttal to any defence that is to be tendered. I would imagine that members of this place would be familiar with the standard police warning, as presented in the UK police drama *The Bill*, where suspects hear the standard caution in accordance with the Police and Criminal Evidence Act 1984, which provides:

> You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.

In the case of the McGee trial, the defence tendered an argument about the state of mind of Mr McGee in terms of a psychological disorder and produced an expert witness. As this defence was notified at a very late stage in the case, the prosecution was unable to secure a rebuttal witness of similar stature. Clearly, the purposes of justice would be better served if both the defence and prosecution cases were prepared with adequate notification of the intended prosecution and defence.

The second area of particular concern to me is the provisions intended to clarify the relationship between the Criminal Law (Forensic Procedures) Act and the Road Traffic Act in regard to drug and alcohol testing. It appears that there was some confusion about the provisions in these acts that led to Eugene McGee's not being administered an alcohol test. It is important that the police understand their role and responsibilities with respect to drug and alcohol testing, and this bill removes any possibility of doubt about their power to administer these tests under the Road Traffic Act—a change the Democrats feel is vital. However, it is unfortunate that the bill has arrived in the Legislative Council with so little time for debate. I think that this reflects a degree of inefficiency in the way in which parliament deals with significant and substantial legislation.

With the shadow attorney's background of practising in the legal field, much of the detail he went through, including a detailed analysis of the legislation before us, covered a large area of the contents and ramifications of the bill. However, I believe that, for those of us who are not familiar with court processes in South Australia and some of the complications and niceties in the way in which the legal profession exercises its role, it is difficult for us, in a quick process of listening to a couple of second reading contributions and leaping into the committee stage, to receive and give a balanced and in-depth assessment of the legislation.

The shadow attorney-general mentioned that somewhere in the ether is an opinion given by the Law Society. I think that he also implied that the Commissioner of Police had made some observations. If that is the case, the Democrats have not been provided with these comments they felt appropriate to make available to the Attorney-General. If the minister sums up the second reading debate, will he refer to the comments made by the shadow attorney-general, namely, that opinions were provided on this legislation by the Law Society and the Commissioner of Police to the Attorney-General? If that is the case, why were those opinions not circulated to both the opposition and the Democrats? I hope that the minister will address these questions. However, I repeat: the Democrats support the legislation and hope that it will proceed through all its stages in this parliament.

The Hon. NICK XENOPHON: I indicate my support for the bill. I will confine my remarks largely to the recommendations made by commissioner James with respect to the Kapunda Road Royal Commission. I note that, in the government's report on the bill, the reforms have a long history and relate to the Standing Committee of Attorneys-General, its deliberative forum, the Martin committee and the Duncan committee, as well as the New South Wales Law Reform Commission recommendations and the Roskill and Auld inquiries in the United Kingdom. It would be fair to say that the catalyst for these reforms has been, to a significant

extent, the Kapunda Road Royal Commission as a result of the terrible circumstances involving the death of Ian Humphrey.

I note that one of the recommendations made by commissioner James was to prevent the ambushing of parties, particularly the prosecution, in the context of expert reports at the eleventh hour without an opportunity to obtain a report in rebuttal. I note that the family of Ian Humphrey was particularly aggrieved by this, and it is pleasing that a recommendation of the commissioner has been implemented in the bill. I will not reflect on the other amendments, but I believe that the bill strengthens our criminal justice system. It will make it fairer. These reforms are a long time coming, and I look forward to their being enacted and put into practice.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the Hon. Robert Lawson, the Hon. Ian Gilfillan and the Hon. Nick Xenophon for their indication of support for the bill. I need to respond to a couple of matters. First, in response to the Hon. Robert Lawson, it is not intended that the defence disclosure regime on the new section 285BB be invoked in all or even a majority of cases. In many, if not most, cases the questions at issue will be clear at or shortly after the directions hearing. It is only where there is confusion and absence of clarity and/or excessive complexity, such as the 'bodies in the barrel' case, that these procedures are contemplated. That has been the case in New South Wales which has these provisions and on which these are modelled.

The Hon. Ian Gilfillan asked about the opinions from the Law Society and the Commissioner of Police. My advice is that opinions have been received from both. In relation to circulation, the government believes it is not its role to circulate opinions from others, particularly in relation to the Commissioner of Police. Obviously, one would normally expect from the Law Society in particular that it would circulate its views on these matters to all members or at least to the representatives of members, and I cannot answer for the Law Society as to why that has not happened.

In relation to the Commissioner of Police, the government needs to respect the confidentiality of his correspondence. They are the only matters that I need to address at this stage. I am happy to address other matters in committee. I understand the Hon. Robert Lawson would like a little more time to look at the amendments, so I will move that the debate be adjourned on motion and perhaps we can come back to it later this evening or later in the week when he has had a chance to look at them. For now, I commend the bill to the council.

Bill read a second time.

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 3129.)

The Hon. IAN GILFILLAN: In speaking on this bill I observe that this has been a long time coming. The Retirement Villages Act was enacted in 1987. In 2000 there was a review of the act, which resulted in amendments to the legislation in 2001. Following the 2002 state election a further review was begun and it is the results of this second review that form the basis of the bill currently before us. The bill makes a number of changes to the legislation, including: clarification of definitions; increased powers for retirement villages to be investigated; requiring all retirement villages to be registered; prescribing minimal requirements for contracts; clarifying obligations in relation to disclosure of financial statements and access to invoices; and requiring consultation on any redevelopment of retirement villages.

In 2000 I had a report prepared by Ms Kathy Knowles from the South Australian Parliamentary Internship Scheme at the University of South Australia. The report, entitled 'Consumer Protection—What's that? An Assessment of Consumer Protection in Retirement Villages in South Australia', followed a series of grievances made by residents at a number of poorly run retirement villages. These were situations where residents' rights were ignored, their money squandered or misappropriated and their long-term health put at risk. In one case a man and his wife paid $70 000 for their unit and a $15 000 donation to the village, which they understood to be for maintenance. However, they have since been told that if they want their unit painted or garden maintained they have to pay for it themselves.

The report found that many of the misunderstandings and disputes that occur in villages were as a result of there being no clear contracts between the relevant parties. It also found that some residents failed to continue fighting disputes for fear of retribution. The report's recommendations included: a set of conditions and terms for all retirement villages and the licensing of all retirement villages; that the government develop a standard minimum contract for villages and their residents; a legal advocate to be appointed to guide residents during the contract process and advocate on their behalf if a problem should arise; and that the enforcement procedures of the tribunal be strengthened.

The 2001 amendments were a step forward, and the bill currently before us is another good step forward, but there is still a long way to go to ensure residents' rights are properly protected. I must remind honourable members that those recommendations that I have just read out came from the report that I organised in 2000; and, here we are, at the end of 2005. It is unfortunate that the government has waited until this late in the parliamentary session to bring this legislation before us. If we had more time available, I believe that there are a number of worthwhile amendments that could be discussed.

One issue that this bill has failed to adequately address is that of the disclosure of invoices. Under the bill, residents may require the administration of a retirement village to present interim financial reports, including 'copies of invoices substantiating expenditure for the relevant accounting period'. However, it is the practice of retirement village administrations to charge residents for this service. What is needed is a mandatory annual report that includes copies of these invoices. This is not an overly onerous requirement. I am aware of one village where these invoices are made available on a regular basis throughout the year.

Having said that, the South Australian Democrats will support the bill without amendment. We do this for the principal reason that we believe that it will bring substantial changes to the retirement villages legislation, and it is important that residents are assured of these benefits before parliament is prorogued. However, I must stress that this is not the complete answer, and I assure those residents of retirement villages that the South Australian Democrats will continue to fight for amendments and improvements to their situation as the opportunity arises in this place.

The Hon. R.D. LAWSON: I indicate on behalf of the Liberal Party that we will be supporting the passage of this bill. The shadow spokesperson on this subject, the member for Heysen (Isobel Redmond), made a very comprehensive address in another place outlining in great detail the reasons for our support of this bill. I have had some experience in the operation of the Retirement Villages Act. I held a portfolio in the previous government which included responsibility for the Retirement Villages Act, and I do recall the discussion paper that was introduced at that stage through the auspices of the Department of Human Services.

When I first came into office, retirement villages were dealt with under the responsibility of the Office of Consumer and Business Affairs (OCBA). It was felt by many in the retirement villages arena, especially residents' associations, that they were not receiving a fair go from the Office of Business and Consumer Affairs. It was their belief (and it was accepted by the government) that the sort of issues that arise in retirement villages could be more appropriately dealt with by a human services agency such as the Department of Human Services, as it then was, and specifically through the Office of Ageing. As a result of that discussion paper, a number of amendments were made not only to the regulations but also to the act itself in 2001.

In that role, I had quite a bit to do with Isobel Redmond, who was a solicitor in practice at the time. She had a good deal of experience in endeavouring to assist residents of retirement villages whose operators or administrators were not behaving in the way in which the residents and most reasonable people would have expected. It was undoubtedly true that the legislation at that time gave them little opportunity for redress. We will be supporting proposals for the registration of retirement villages, notwithstanding the suspicion which we generally have about bureaucratic requirements for registration. We find that, very often, registration is seen by government as just another way of raising revenue, and that the government is quite keen to send out renewal notices every year and collect renewal fees every year. It keeps a few public servants busy, but it does not actually provide much real benefit to the community, and it imposes impediments to the efficient running of businesses without any corresponding benefits.

It should also be understood that retirement villages are a specific form of real estate investment. Retirement villages are not, as many people in the community seem to think, akin to a nursing home or an aged care facility. A retirement village provides an opportunity for a person to make a capital contribution to acquire a licence to occupy, exclusively, premises for their life and, upon their death, provides a mechanism for the resale of that unit, the repayment to the owner of the village of a certain proportion of the sum realised, and the payment of a certain part of that capital contribution, very often then to the estate of the resident. Certainly the sale of these units does give rise to concern, especially when there is a market downturn. When there are within a village a number of units available for sale, very often there are people who might have moved on, for example, to another form of accommodation—a nursing home perhaps—and there is a need for capital funds for that purpose. If those funds are not made available because the operator is unable, unwilling or perhaps not all that keen to sell the particular unit, certainly that does give rise to a number of disputes.

I indicate that, whilst we do have reservations about increasing the bureaucratisation of this form of accommodation, there is ample evidence that reform is needed, and this bill has been through a lengthy consultation process. It is supported by the Retirement Villages Review Reference Group, which comprises representatives of retirement residents' associations, consumer and industry groups, departmental administrative staff and legal staff. It seems to us that the bill strikes a fair balance between the necessity to ensure that residents' rights are respected while also respecting the fact that the operators of retirement villages are engaged in a legitimate business. It is a service business which provides a valuable service, but it is a business nonetheless, and the arrangements in relation to retirement villages are largely a matter of contract, as regulated by this overarching legislation.

I do not propose to go through the specific clauses. As I say, my colleague in another place has done that in great detail. I do, however, commend the inclusion of provisions relating to the arrangements to occur if a resident leaves the village or enters a residential aged care facility and needs funds for an accommodation bond. The provision of a statutory provision in relation to that matter is welcome, as is the provision of interim financial reports. The Hon. Ian Gilfillan mentioned this in his contribution, and I certainly acknowledge that the Hon. Ian Gilfillan has long been an advocate for better support for the residents of retirement villages. We will be supporting the second reading and look forward to the rapid passage of the bill.

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

DUST DISEASES BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: Just briefly, this bill has been widely discussed in this place and outside. I just wish to briefly indicate, from the government's perspective, how we intend to proceed with the bill. The government intends to move some amendments in the other place, and the Hon. Nick Xenophon himself has three amendments to this bill. I will indicate the government's position on those amendments when we debate the particular clauses. However, I am advised that the Chief Judge has advised in the strongest terms that clause 6 of the bill would create an unworkable situation. He has written to the Attorney-General saying that he is willing to establish a special list and that the District Court can and will expedite the hearing of urgent dust diseases cases. The government, therefore, will move an alternate clause. As I said, we will do that in the other house and that can then be brought back here. To expedite the bill, I indicate it will be handled in that way. The government will move an amendment to limit the bill to 'disease caused by the inhalation of asbestos'. These are the cases that are causing anxiety.

The government will also move to delete clauses 11 and 12. Defendants and insurers were not consulted and are objecting most strongly to these clauses that change their rights vis-a-vis each other without consultation. The government will look at the changes made from 1 July 2005 to the New South Wales dust diseases legislation. This bill does not incorporate any of those changes to facilitate the resolution of disputes between defendants. The government will move an amendment to amend the Limitation of Actions Act so that

the three-year time limit will run from when the plaintiff first becomes aware of the injury he or she suffers.

The government will support the provision that will allow provisional damages. This means that a person who suffers an asbestos related disease may sue and have liability determined and damages assessed. Then, if the plaintiff later suffers a more serious asbestos related disease such as mesothelioma, the plaintiff can go back to the court for an award of further damages. The government will substitute a different clause for clause 9. In particular, the government does not agree with prohibiting the court from ordering the parties to attempt to mediate a settlement unless the plaintiff requests it. Many cases are not urgent and there is no reason to give the plaintiff a veto about whether he or she will participate in any alternative dispute resolution procedures.

I thought it was important at least to indicate the position that the government will take later but, as I said, we will deal with those matters in the House of Assembly, not here. For now, we will seek the speedy passage of this bill.

The Hon. A.J. REDFORD: Bearing in mind that it was back in July when this issue was raised with us and I am sure with the government—it is a shame we are having to deal with such an important piece of legislation in this fashion—we recognise that it is the government's right to move whatever amendments it wants, and it has chosen to do that in another place. With that in mind we will not hold up the process of this bill for any detailed discussion at this point in time.

The Hon. P. Holloway: We will have that opportunity later.

The Hon. A.J. REDFORD: As the minister interjects, we will have that opportunity at another time. In general terms, we support pretty much all of this bill. I understand there may be an issue regarding exemplary damages, but as that is not included in this bill I will not raise that matter at this moment. We have what appears to be a very preliminary draft of some government amendments. In order to give me the protection and support of my parliamentary colleagues, I brought to my party room this morning a paper based on that preliminary draft. So, at least I now have some instructions from my party room as to which way to proceed.

I appreciate this is a moving feast. I rather hope that this preliminary draft is consistent when it comes back to us, because I do not want to have to call an urgent party room meeting. I give this chamber an assurance that the opposition will do everything in its power to make sure that asbestos victims have a piece of legislation through this parliament by the end of this week so that they can get on with their lives, such as they are. Finally, consistent with that approach, we will support all the Hon. Nick Xenophon's amendments: in the case of the first two amendments, simply on the basis that we do support them but, in the case of the latter amendment, simply to keep the debate alive so that when it comes back here we can have a full-on debate about whether it is an appropriate amendment.

The Hon. T.J. STEPHENS: I will make a brief contribution. Given my background in the city of Whyalla where I have lived for most of my life, sadly this shocking disease has touched many people there and I, for one, certainly as a member of the Liberal Party, am desperately keen to see this issue resolved as quickly as possible so that we can have some legislation which will help these people.

The Hon. NICK XENOPHON: In the context of this clause which allows a broad discussion on the principles of the bill and the bill generally, I want to put on the record my appreciation for the goodwill that has been shown in the way the parliament is dealing with this bill and to express my gratitude for the comments made by the Hon. Angus Redford and the Hon. Terry Stephens who have both seen first hand the devastation that asbestos related diseases have caused in Whyalla.

It is worth reflecting on what we are actually doing here. Until 7 December when the BHP Billiton Limited v. Schultz decision was handed down by the High Court, South Australian victims of asbestos related diseases almost invariably would have their claims dealt with by the Dust Diseases Tribunal, a fast track system where the costs were inevitably lower than what they would be here because of the evidentiary requirements. It was not a lawyer's feast, as some politicians might say, but it meant that matters could be dealt with expeditiously and fairly and give peace of mind to victims. Also, the provisions of that tribunal gave certainty to dependents.

I note what the Leader of the Government has said about the reforms in July this year involving mediations and those sorts of issues. I do not have a problem with that but, at the end of the day, it is important to put into context that, whilst some large companies and insurers are complaining about these changes, the fact is that up until December last year they knew what the rules were. To a large degree, this measure redresses the imbalance that has been caused by the Schultz and BHP decision, and that must be borne in mind. It is not as though we are imposing an additional burden on these companies, because they dealt with this for many years when their workers or consumers were exposed to their products with devastating consequences, particularly mesothelioma.

Another point that I want to put into context relates to the issue of services. The case of Mrs Melissa Haylock has been widely reported in the media. Mrs Haylock is a very courageous and brave woman who was diagnosed with mesothelioma on 30 December last year. She is 42 years old, she has nine-year-old triplets, and her husband Garry is a firefighter. In Mrs Haylock's matter there was a cross-vesting application made by a company (in effect, James Hardie), sending it from the Dust Diseases Tribunal back to South Australia. That is the consequence of the Schultz decision. In that case there was not a costs order against her but, if there were, it could have cost her tens of thousands of dollars—I hazard a guess at $50 000, $60 000 or $70 000, but it would have been a significant costs award.

A significant component of her claim relates to the cost of looking after her children and replacing her services after she passes away—and I hope and pray for a miracle that that will not occur. But, in the event that it does, the common law was changed by the decision of the High Court in CSR Limited v. Eddy, which I referred to in my second reading contribution. That overturned the decision of Sullivan v Gordon, a New South Wales Court of Appeal decision. This bill seeks to remedy that.

The CSR Limited v. Eddy case, handed down on the 21st of last month, is a recent development but it is a development that all legislatures have to deal with. The ACT dealt with it in its own way several years ago, and the Tasmanian government is looking at dealing with it. From the information I have been given, I understand there are moves afoot for New South Wales and Queensland to deal with it. We all need to deal with it, but now is the time to do it here, because there is a clear loophole in the common law, given what has occurred with the CSR Limited v. Eddy decision.

In effect, the High Court was saying that this is up to the legislatures of Australia to deal with. There is an anomaly in relation to services, because children of a person killed in a motor vehicle accident where there is a wrongful death claim can be covered. If there is a motor vehicle accident where the mother becomes a quadriplegic and there is a loss of the mother's services, the children can be covered, but they cannot be covered in this case, for the reasons I covered in my second reading contribution, because of issues of joinder of action. Once the claim of Mrs Haylock is finalised, Sullivan v Gordon damages cannot be claimed as a result of the decision in CSR Limited v. Eddy. It is an essential component of this bill to ensure that people such as Mrs Haylock, and particularly her children, do not miss out.

Again I indicate my appreciation for the enormous goodwill on both sides of the chamber—from the government, the opposition and the crossbenches (including the Australian Democrats)—to get this through. I am also heartened by the private words of support from a number of members on both sides of the chamber, and I accept fully the sincerity with which those words have been given—including those members who met Bernie Banton from the Asbestos Diseases Foundation of Australia, and also those members who met Melissa Haylock in parliament when she was here to speak in support of this bill.

Clause passed.

Clauses 2 to 9 passed.

Clause 10.

The Hon. NICK XENOPHON: Mr Chairman, I seek leave to move my amendment in a slightly amended form, and I will obtain directions from you and the Clerk, if necessary. I move the amendment with the words 'or pathological condition', wherever appearing, being struck out.

Leave granted.

The Hon. NICK XENOPHON: I move:

Page 4, lines 33 and 34—
Delete subclause (1) and substitute:
(1) If it is proved or admitted in a dust disease action that an injured person may, at some time in the future, develop another dust disease wholly or partly as a result of the breach of duty giving rise to the cause of action, the Tribunal may—
(a) award, in the first instance, damages for the dust disease assessed on the assumption that the injured person will not develop another dust disease; and
(b) award damages at a future date if the injured person does develop another dust disease.

This amendment relates to provisional damages, which is a very important part of this bill. One of the key issues here with respect to asbestos-related conditions (and I know the Hon. Bob Sneath is a former secretary of the AWU and has seen first hand, and his union has given enormous support to, those afflicted with asbestos diseases) is that what can happen, although not always, is that a person can be diagnosed with asbestosis, which can be quite serious or relatively benign in the sense that it causes some disability but not an enormous amount of disability, but that disability can increase as years go by.

In the past, a person who settled their claim for damages for asbestosis (and I understand that BHP did this in the Whyalla shipyards, and the Hon. Terry Stephens may be aware of this) could not bring a claim for further conditions that arose, such as mesothelioma, 10 or 15 years later. So, allowing for provisional damages acknowledges the injury that has already occurred to the plaintiff. Often, it would be asbestosis. This particular provision would allow an action to be brought for subsequent conditions.

The reason I move this amendment is that this is closer in form to the position adopted by the Dust Diseases Tribunal of New South Wales where there has been a body of case law that has developed, and there was a concern with the initial clause that an argument could have been mounted by insurers or defendants that the asbestosis would in some way have to be, for instance, linked to mesothelioma. It does not work like that in terms of the medical evidence, because they are two distinct conditions.

The condition of asbestosis arises from being exposed to asbestos, but it does not necessarily mean that you will suffer from mesothelioma. There was a drafting consideration that there may have been an argument that the two would have to be linked in some way, and that was not the intention. That is the purpose of that; and the words, 'or pathological condition' have been deleted because that is referred to in the definition of dust disease and would clearly be superfluous. This is a 'tidying up' amendment to make it clear that there are no unforeseen consequences as a result of the original version of this clause.

The Hon. P. HOLLOWAY: The government will support the amendment in its amended form.

The Hon. A.J. REDFORD: The opposition also supports the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (11 to 13) passed.

Schedule.

The Hon. NICK XENOPHON: I move:

Page 6, after line 26—
Delete 'hearing' and substitute:
trial

This is, in a sense, an amendment of terminology to delete the word 'hearing' and substitute the word 'trial'. I believe it is self-explanatory in the context of the legislation.

The Hon. P. HOLLOWAY: The government supports the amendment.

The Hon. A.J. REDFORD: The opposition also supports the amendment.

Amendment carried.

The Hon. NICK XENOPHON: I move:

Page 6, after line 26—
After subclause (2) insert:
(3) To avoid doubt, it is the intention of parliament that the amendments made by this act that confer substantive rights on a person apply in an action commenced by the person (in the state or elsewhere) before the commencement of this act unless there has been a final determination of the plaintiff's rights by judgment or the plaintiff has agreed to a settlement of the action.

This relates to transitional provisions in respect of the operation of the bill. It is what I would term a clarification provision to avoid any doubt as to the intention of the parliament, and it simply clarifies the intent of subclauses (1) and (2). As I understand it, at this stage the government (which can shortly speak for itself) is not supporting the amendment; however, I would like to think that the amendment could be kept alive and further debated in the other place—and if there were other issues, obviously it would be brought back here. I see this as an amendment to clarify the intent of the transitional provisions, and I cannot state it any better than that.

The Hon. P. HOLLOWAY: The government must oppose the amendment. It would change the substantive rights and liabilities of the parties mid-trial. This type of provision is unheard of, and it would be grossly unfair. The parties would have prepared their cases according to the existing law and would not have obtained evidence or prepared arguments about new rights and liabilities for damages. It would be particularly unfair for defendants who would become liable, for the first time in South Australia, for Sullivan v Gordon damages.

Also, for the first time, the financial benefits passing to the relatives of the injured person would not be set off against the financial detriments consequent upon the death in a wrongful death action by relatives. The parties would not have pleaded claims for and defences against the award of these damages, no party would have had a right to discovery of documents about them, no party would have been able to obtain leave to interrogate about them, and no party would have served a notice to admit facts in relation to them. Expert evidence would not have been obtained, and the parties are unlikely to be properly prepared.

Offers of settlement made under rules of court or otherwise by plaintiffs or defendants would have been made on a different basis; they would have to be reviewed but, because of time limits of rules of court offers, it would be too late to make fresh rules of court offers. Defendants would probably ask for an adjournment of the trial to meet these additional claims; and some plaintiffs might ask for an adjournment to obtain evidence to support a claim for additional damages. If an adjournment is granted by the court, the determination of the case would be delayed, and delays are one of the two major things that the bill is intended to redress. For these reasons the government opposes the amendment.

The Hon. A.J. REDFORD: The opposition has not had an opportunity to consider this in any detail and, consistent with giving us that opportunity, it will support this amendment—reserving the right to change our position once we have heard the full debate on the issue.

I would like to make a couple of preliminary comments that the government might want to take into account. If one looks at this bill carefully, I am not sure that there are any substantive rights being given. It seems to me that the bulk of the provisions contained within this bill are, in fact, procedural rights, and my recollection (from many years ago now) is that if parliament passes a law that affects substantive rights then the presumption is that it does not have retrospective effect, whereas if it affects procedural rights it is unobjectionable if it has some effect on already existing legislation.

I know that the distinction between what is a procedural right and what is a substantive right can be blurred in many cases and can be the subject of some argument. One of the consistent themes contained within this bill is to remove as many technical arguments from these sorts of cases as we possibly can. Certainly, I have some sympathy for what the Hon. Nick Xenophon is intending to do here in the sense that it would remove the capacity to have those sorts of arguments. But I have to say that, when I look at this bill closely, it seems to me to be more about giving procedural rights. However, what I think the Hon. Nick Xenophon is attempting to do is to make it absolutely clear that we are not going to have interminable debates about whether some provision contained in the bill is a substantive change to the law or whether it is a change to procedural rights. As I have said, we are reserving our position.

The Hon. P. HOLLOWAY: I want to address that one point made by the Hon. Angus Redford. The right to Sullivan v. Gordon damages is a new substantive right in South Australia, and our courts have never awarded them. Similarly, there are also amendments here to the Wrongs Act. So, I make the point that, in fact, there are substantive amendments. The government does not wish to delay the bill at this stage, but we make it clear that we oppose the amendment. Given that I understand the opposition's position in that it has not had a chance to look at it, we are happy to see it go through to the other house, rather than divide on it now. However, I want it clearly on the record that the government opposes this amendment and will do so in the House of Assembly, but we will not divide at this stage so that we do not unnecessarily delay the bill.

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the amendment, comfortable in the assurance that it will be looked at in more depth by the opposition before a final decision is made in the other place. On the face of it, it reads as a reasonable consideration of those people who would benefit from the more enlightened approach of this legislation. It is a minor point, but I know these amendments were made available only today—according to this schedule, at 3.43 p.m. Obviously, the opposition has not had a chance to consider the matter in depth, but it appears that the government has. I thought the government's response was in some detail and reflected the government's capacity of having seen the amendment and considered it in depth. I ask the minister: was there any discussion between the government and the Hon. Nick Xenophon about the ramifications of this amendment prior to the discussion in this place in the committee stage?

The Hon. P. HOLLOWAY: Clearly, the government has been negotiating with the Hon. Nick Xenophon in relation to this bill, which has been publicly obvious and which is desirable. I do not have any details; maybe the Hon. Nick Xenophon wishes to add something. Obviously, the Attorney and the Hon. Nick Xenophon have been working very hard to try to get a compromise here that addresses the essential issues but does not provide any unpleasant surprises in the bill because we have not worked it through properly.

The Hon. NICK XENOPHON: I would like to add to the minister's response. An enormous amount of work has been done in relation to this bill, and I appreciate the tireless work of the staff of the Attorney's office, including Diane Gray, the Managing Solicitor of Policy and Legislation. In relation to the specific question put by the Hon. Ian Gilfillan, this arose out of discussions over the past few days. However, there were further discussions this afternoon. So, it was not a question of holding back any information. There have been ongoing discussions with the Attorney's office in relation to this, and my preferred course is to move this amendment to avoid any doubt.

I understand that the opposition has reserved its position about supporting the amendment for the sake of further debate, and I appreciate that. An enormous amount of work has been done by my office, and I am grateful to Connie Bonaros from my office for the work she has done in relation to this and, of course, the Asbestos Victims Association. It was not a question of holding back information from honourable members; it was just the way in which it evolved in the course of this afternoon.

The Hon. IAN GILFILLAN: I appreciate the explanation from both the government and the Hon. Nick Xenophon. The Democrats' support for this is not necessarily qualified, but

we have quite a concern about where it appears to have a retrospective effect. It may not be in the classic case of retrospective legislation, but I suspect that its effect is virtually the same. However, I support the amendment on two grounds: first, it appears to be offering some justice in a circumstance which has not existed before, and we are in favour of that; and, secondly, it will be able to be reviewed in the other place. It is on those two grounds that I support the amendment.

The Hon. NICK XENOPHON: I want to address the issue of retrospectivity. The Hon. Angus Redford outlined the procedural and substantive issues. When this parliament passed amendments to the Survival of Causes of Action Act (and I am very grateful for the support of the Australian Democrats back in 2001), that was similar in a sense in that it was there to put an end to death bed hearings. Some would argue that it may have been retrospective in its scope, but there are all sorts of arguments with respect to retrospectivity.

I know the Attorney, in discussions I have had with him on issues of retrospectivity—not with respect to this bill but with respect to other issues in the past—has pointed out to me that there are often compelling reasons why something that may appear to be retrospective ought to be supported, given the context of the matter. I see this, in a sense, as procedural in its scope. However, with respect to the 2001 amendments, which, in effect, put an end to death bed hearings, some would say that they were retrospective. I wanted to put that in context. Of course, for me the overriding concern is the justice of the situation in the circumstances in which asbestos victims find themselves.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

CHILD ABUSE

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I table a ministerial statement on the prosecution of a person charged with child sex offences made today by the Attorney-General.

HUMAN RIGHTS MONITORS BILL

Adjourned debate on second reading.

(Continued from 19 October. Page 2791.)

The Hon. R.D. LAWSON: This bill was introduced by the Hon. Sandra Kanck last month. For some years, there has been agitation for the appointment of community visitors whose function is to visit institutions where mental patients and people with mental or intellectual impairment reside. The purpose of these visits is to enable an independent person to ensure that the patients or residents are being treated appropriately. The movement received some impetus with the 1993 Burdekin report commissioned by the Human Rights and Equal Opportunity Commission of the Commonwealth of Australia.

In 1995, I was delighted to have a parliamentary intern, Judy Clisby, who wrote a very good report entitled 'Community visitors in South Australia: a strategy for ensuring high standards of care and protecting the human rights of people with mental illness'. At that time, Judy was a student at the School of Social Work and Social Policy at the University of South Australia. She produced an excellent report, and it was the basis of quite some discussion in community circles at the time. When I held the portfolio of minister for disability services, it was a matter of some regret to me that we were unable to fund the establishment of a community visitors program.

However, the situation now is that all states and territories, except South Australia, have established some form of visitors scheme, and the commonwealth has a scheme for monitoring aged care facilities that receive commonwealth funding. The bill arises from a forum convened by the honourable member in June this year, which, according to her, was attended by representatives of some 25 groups. The bill provides for the appointment of monitors, who are given, I think, the somewhat grandiose title of 'human rights monitors'. Their function is:

- to inspect facilities and inquire into the adequacy of services;
- to make inquiries about treatment, care, control and detention of persons with a disability or a mental illness, including inquiries into whether their human rights are being respected; and
- to inspect medical and other records.

Monitors may report matters to the commission for equal opportunity. The bill contains a schedule which outlines the civil and political rights of persons and which is adapted from the International Covenant on Civil and Political Rights.

The bill provides that the monitors will be paid such remuneration or allowances as the Commissioner for Public Employment agrees. The Hon. Sandra Kanck in moving this bill acknowledged freely that this was her version of a gold plated community visitors scheme, and I would have to agree that it is certainly an all encompassing visitors scheme, giving visitors the very widest range of powers. The Liberal Party has some reservations about adopting a measure of this kind unless the government is prepared to commit resources to ensure that it can be facilitated.

We support the concept of independent inspectors of facilities. We believe it might be possible to achieve this worthy objective by granting that function to the public advocate or to a delegate of the public advocate, because the public advocate already fulfils roles that are very similar. We believe also that this bill is perhaps flawed in its insistence upon what might be termed the rather loftier and amorphous notions of civil and political human rights. We would prefer to see the role of the visitor as ensuring that standards of care, which should be laid down and already mandated, are being met. We see the role of visitors as ensuring that appropriate standards are being fulfilled and that operators are meeting their obligations and that people who reside in these facilities are being provided with the standard of care that is appropriate and already laid down. We think it dangerous to give to monitors a role in relation to the rather loftier standards of human rights.

We are not dismissing human rights at all, but we think that the function and role of examining human rights issues are vested in the Human Rights and Equal Opportunity Commission, which has that responsibility. Visitors should be closer to the people. Whilst we will support the second reading of the bill, we would be interested to know what commitment the government has to this scheme and whether it will commit to it the sort of resources that will be necessary in order to have a workable scheme. Whilst we support the second reading of the bill, we look forward with great interest

to the government's indications in relation to its attitude to it.

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

EQUAL OPPORTUNITY BILL

Adjourned debate on second reading.

(Continued from 28 November. Page 3299.)

The Hon. KATE REYNOLDS: I rise to summarise the second reading debate on this bill and to offer my thanks to the Hon. Robert Lawson for his contribution and for indicating that the opposition will support it. As the Hon. Robert Lawson pointed out, unless we return in January or February, there is not sufficient time to progress the bill through all stages. However, I very much appreciated the indication of the opposition's support for at least getting some debate about reforming our equal opportunity laws back into the parliament. In the few weeks since I introduced the bill there has been considerable discussion about equal opportunity laws, both in regard to the Statutes Amendment (Relationships) Bill we have now finished with in this place for the time being and also in relation to changes to industrial relations laws. This is clearly still a very topical issue.

My office continues to receive calls, letters and messages from constituents about discrimination on the basis of mental illness and disability in particular. Members would realise that Saturday is the International Day for People with a DisAbility (spelt with a capital A in the middle of it, thus focusing on the ability and not just on the 'dis'). These issues of access to services, of equal treatment in the eyes of the law, are still very important to citizens of South Australia.

I will comment on the contribution by the Hon. Bob Sneath on behalf of the government. Members will remember that initially I asked that this bill be taken to a second reading vote last week, but the government had not bothered to prepare itself. We had a contribution from the Hon. Bob Sneath last night, and I appreciate that. I would like to refer to a couple of his comments, particularly the comment that the government has not introduced a bill this year as it had planned to do. Honourable members will recall, I hope, that I outlined the sorry saga in the first part of my second reading speech. I will summarise that to refresh the memories, particularly of those on the government benches.

Twenty-one years after the Equal Opportunity Act was first proclaimed, five years after committing to update it, four years after making it a public pre-election promise, three years after the government was elected (that is, this government), two years after announcing it would take action, 18 months after more talking about it, one year after receiving submissions from the public, and the year following the one where it said the law would actually be changed, cabinet decided to dump the idea of updating our equal opportunity laws.

I remind members that a draft bill was taken to cabinet in March, but cabinet decided not to proceed. It did not announce that and, in May, the South Australian Democrats made the announcement for the Rann Labor government. You will recall that in recent weeks we have also had the Equal Opportunity Commissioner and various other people coming out and stating very publicly that laws in this state are very much out of date—we say disgracefully out of date. Given our nearly 30 years history of fighting for equal opportunity, as I said, we will not stand back and wait for the Rann Labor government to decide to kickstart the spin cycle on equal opportunity.

In referring to introducing a bill, in his contribution last night I note that the Hon. Bob Sneath said—and I am taking this as a pre-election promise on behalf of the Rann Labor government—'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 ALP has had four years to do that. It has not done so, and we cannot expect that its credibility on the issue of equal opportunity law reform has any weight at all. I thank the opposition for indicating its support. I place on the record my thanks to those people who contacted me in recent weeks and encouraged the South Australian Democrats to proceed with this as far as we possibly can take it.

I express our disappointment, but not surprise, that the Rann Labor government has chosen to indicate its opposition to the reform of the equal opportunity legislation in this state. At the earliest opportunity, I shall be progressing this in whatever way I can, whether it be through the committee stage, or by restoring the bill to the *Notice Paper*, and proceeding should I be returned after the 18 March election. I thank people for their contributions, and I urge those honourable members who support equal opportunity law reform to support the second reading.

Bill read a second time.

[Sitting suspended from 5.57 to 7.50 p.m.]

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3317.)

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I thank honourable members for their contribution. The Hon. Ian Gilfillan has indicated that the Australian Democrats will support the bill without amendment. However, he says the bill does not address the issue of the disclosure of invoices. I am advised that the proposed amendments to the act will enable residents to request copies of invoices related to the expenditure of resident funds for their own village. A mandatory annual report is considered unnecessary and an additional impost on administering authorities, and has the potential to incur costs for residents without adding any value to information already available under the amendment. The Hon. Robert Lawson has indicated the opposition will support the bill, also without amendment. On the issue of the registration, he has indicated the opposition has some concerns with the proposal for registration, believing it may be a way of bureaucratising the retirement village industry. I know the Minister for Ageing in the other place made the same reassurances.

The registrar is a standard legislative formality required to effect the implementation of a register. The registrar is essentially a delegated power and requires no additional resourcing funds or bureaucracy. What is important here is the formalising of the department's capacity to collect information about those facilities that are captured by the act. Both residents and the industry are supportive of the introduction of a registration process. As the honourable member has said, the bill has the support of both the Retirement Village Residents Association and the Retirement Villages Associa-

tion. Again, I thank all honourable members for supporting this important piece of consumer protection legislation.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.D. LAWSON: When does the government propose that the bill will come into operation and are any regulations necessary to accommodate the bill?

The Hon. CARMEL ZOLLO: The bill will come into operation on 1 July 2006. I am advised that that period of time will be necessary to properly liaise with industry. There will be regulations, and as soon as this legislation goes through drafting instructions will be prepared.

The Hon. R.D. LAWSON: What is the subject matter of the proposed regulations?

The Hon. CARMEL ZOLLO: I am advised that they will cover the details of residents' contracts, which is very important for the residents, and some very minor amendments to the forms which will affect things such as registrations. The right of residents to have a person of their choice present at a meeting with an administrative authority where a dispute has arisen will be reinforced.

The Hon. R.D. LAWSON: I thank the minister for that indication. I will pursue the question of the regulations in response to clause 31.

The Hon. IAN GILFILLAN: Has there been any consultation with representative retirement villages on the proposed regulations?

The Hon. CARMEL ZOLLO: The retirement village industry has been consulted throughout this entire process, including on the regulations.

The Hon. R.D. LAWSON: Does that include the fees which are proposed to be prescribed by regulation? Will the minister indicate the level of fees proposed to be included in the regulations; for what will those fees be payable; and has the industry agreed to the level of fees proposed by the government?

The Hon. CARMEL ZOLLO: Yes, I understand that fees have been nominated for registration. They will be nominal, and one-off. They were suggested by the industry, and they are based on a scale of the number of units per village.

The Hon. R.D. LAWSON: Will there be any provision which prevents the village owner passing on those fees directly to residents?

The Hon. CARMEL ZOLLO: I am advised that the regulations will be explicit, that this is a cost that is to be met by the administering authority. It is an operational cost and, even if it were to be passed on, it would be very minimal, indeed.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

The Hon. R.D. LAWSON: I rise to indicate that the Liberal opposition has very real concerns about the establishment of a bureaucracy to meet the registration requirements of this legislation. We will not divide on this issue but, just as we did in another place, we indicate that we accept the government's assurance that the bureaucracy being established to service the registration requirements will be very minimal and that it will not result in increased costs to residents or to administering authorities. We are prepared, in the interests of expedition, to support this proposal, but we want to have it placed on the record that we have reservations about this registration requirement.

The Hon. CARMEL ZOLLO: I can reassure the honourable member that the issue he raises is a delegated power to effect a registrar; there is no bureaucracy in relation to the registrar. It is a standard legislative formality required to effect the implementation of a register. The registrar, as I said, essentially is a delegated power and requires no additional resourcing, funds or bureaucracy. What is important is the formalising of the department's capacity to collect information about those facilities that are captured by the act. Again, I reiterate that both the residents and the industry are supportive of the introduction of a registration process.

The Hon. R.D. LAWSON: Within this clause there appears, under division 3, Authorised Officers, proposed section 5H, the appointment of authorised officers. It provides that the minister may appoint suitable persons to be authorised officers for the purposes of the act. Proposed section 5J describes the general powers of these authorised officers to enter and inspect any place or vehicle; to require a person to produce documents in the person's possession; to require a person to keep records; and to require a person whom the officer reasonably suspects has committed, is committing or is about to commit an offence against this act to state the person's full name and usual place of residence and to produce evidence of the person's identity. That is almost shades of the terrorism legislation. My questions to the minister are: how many authorised officers is it envisaged will be appointed pursuant to these provisions; and are there any particular forms of transgression that it is envisaged these inspectors will be seeking to police?

The Hon. CARMEL ZOLLO: I can advise the honourable member that there are no authorised officers as such. It is simply about providing capacity for the department to investigate. It is about reinforcing enforcement capacity. The main need that the review identified was this capacity for the department to investigate, and that is essentially the reason for this legislation.

The Hon. IAN GILFILLAN: I am not sure about the degree of unease that the opposition is expressing about this, but the Democrats feel that even if there is a cost involved the belated peace of mind and proper supervision and surveillance of the retirement village industry, being long overdue, must be properly scrutinised. There need to be compliance factors in place to ensure that the legislation is not just a paper tiger that drifts through and is not applied. So, although I am sure that there are reasonable grounds for asking the questions, I want to make it quite plain that the Democrats are prepared to recognise that there will be (I cannot see how there will not be) an increase in cost in some way or another to properly scrutinise—and, in fact, I would say police—the implications of this legislation.

The Hon. CARMEL ZOLLO: In response I would like to thank the Hon. Ian Gilfillan for recognising that this is a critical issue for the residents, and for indicating support for not letting operators get away with what would, essentially, be poor practice.

Clause passed.

Remaining clauses (7 to 33), schedules and title passed.

Bill reported without amendment; committee's report adopted.

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I move:

That this bill be now read a third time.

The Hon. R.D. LAWSON: Very briefly, I would like to acknowledge the excellent and capable assistance of the minister's advisers during the committee stage of this bill.

Bill read a third time and passed.

CHILDREN'S PROTECTION (KEEPING THEM SAFE) AMENDMENT BILL

In committee.

(Continued from 21 November. Page 3107.)

New clause 10C.

The CHAIRMAN: On the last occasion, the Hon. Mr Xenophon moved an amendment to insert a new clause after clause 10. I am also in possession of an amendment (insert new clause after clause 10) in the name of the minister, which has not been moved. Does the minister want to move her amendment and discuss the amendments jointly?

The Hon. CARMEL ZOLLO: Perhaps I should respond to the amendment moved by the Hon. Nick Xenophon first. We have discussed these amendments with the honourable member, and the government agrees that some children are at severe risk of harm in some households where adults are involved in chronic drug abuse. The government supports mandatory drug testing, where it is required. Accordingly, the government has filed an amendment to make sure that this can occur when a child is at risk in these circumstances and when it is the most appropriate course of action. It is important to note that this will not always be necessary. For example, there will be cases where the family circumstances are such that the child is at risk for a number of reasons, including drug abuse. In these situations it may be necessary for immediate action to protect the children.

The Hon. NICK XENOPHON: I appreciate and value the opportunities I have had over the past few days to discuss this matter with the minister and the minister's officers. A further discussion occurred earlier today. The difficulty I have with the government's amendment is that, whilst the minister says that it provides for mandatory testing, it does not mandate drug testing in all cases; there is still a very wide discretion there. My amendment provides that, if the chief executive suspects on reasonable grounds that a child is at risk as a result of the abuse of an illicit drug by a parent, guardian or other person, the chief executive must apply for an order directing the person to undergo a drug assessment.

I urge honourable members to consider the following. As long as you have the suspicion on reasonable grounds that a child is at risk as a result of drug abuse, there ought to be a drug assessment—and I emphasise the words 'as a result of drug abuse'. I do not consider that to be too unreasonable in the circumstances. I believe that, if this bill is about the protection of children—and I accept the minister's very good intentions in this regard—this would give an additional tool to deal with the issue of neglect, or a child being at risk, as a result of the drug abuse of a parent. The provision we are dealing with now simply requires that there be a drug assessment.

I know there are arguments (and no doubt the minister can elaborate on them) that requiring someone to undergo such an assessment may be counterproductive, and that is one of the arguments that has been put up in this debate. I am not saying that it is coming from the minister or, indeed, the minister whose bill this is in the other place. However, I am suggesting that, if you are dealing with a person who has a serious drug problem, issues of free choice and behaving rationally, and issues of doing the right thing by themselves and, ultimately, by the children (which is what the focus of this legislation should be) do not apply because of that person's drug problem. So, for those reasons, I cannot in good conscience and good faith accept the government's amendment in this regard.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition supports the amendment moved by the Hon. Nick Xenophon. We believe that, if there is suspicion on reasonable grounds that a child is at risk as a result of drug abuse by a parent, the very least this legislature can do is to require the government to insist that the person undergo a drug assessment, except in the exceptional circumstances mentioned in the amendment. If this community is to address the issue of illicit drug abuse, it is about time that governments took a stand in relation to that issue. Here is one opportunity, especially in the child protection area, to show that the government is genuinely interested in addressing this serious issue in our community. We support the amendment.

The Hon. CARMEL ZOLLO: The reason is that it is never straightforward. These families have multiple issues. Although we acknowledge that it is a factor and that currently there is no power for individuals to undertake drug testing, this amendment allows that power in some circumstances. We do not think it appropriate that we do it in every single case. We want to be able to retain the discretion for it not to be used universally; sometimes it may not be the best option.

The Hon. NICK XENOPHON: I acknowledge that yesterday in the council the minister (who is also the Minister for Mental Health and Substance Abuse) gave us her view in relation to rave parties, pill testing and discouraging people from taking drugs. I commend the minister for her remarks, because I think it is the only way to go in relation to this issue. I appreciate that the minister has a very genuine concern about the impact that drug taking can have on the community. However, I think that this is where the argument of the government falls down. The hurdles in relation to my amendment are quite straightforward: there must be reasonable grounds to suspect that a child is at risk. It must be as a result of the abuse of an elicit drug. So, there are a number of inherent hurdles.

Once those hurdles are overcome, I do not understand the idea of a discretion as to whether there ought to be a mandated drug test. I would have thought that the hurdles were sufficient to ensure that this would not be used frivolously or lightly but that it would be used as a tool for the protection of children. I understand that there is a divide between me and the government in relation to this issue, and I appreciate the time I have had with the government to discuss it. However, in good conscience I cannot resile from my position.

The Hon. A.L. EVANS: We support the amendment.

The Hon. KATE REYNOLDS: I have spoken previously on this amendment, but I want to clarify the government's intentions in relation to its amendment. Is the government proposing to move its amendment, or is it flagging it as an alternative?

The Hon. CARMEL ZOLLO: I indicate that it will be an alternative amendment to that of the Hon. Nick Xenophon.

The Hon. KATE REYNOLDS: I indicated previously that we would not support the amendment of the Hon. Nick Xenophon. We agree that his amendment is well intentioned, and I do not intend that to sound patronising. By prodding this debate along, the Hon. Nick Xenophon has made a valuable contribution, and I acknowledge and appreciate that.

However, the advice I have taken on his amendment and the amendment the government has cobbled together (and I think that is the appropriate term) has led me to believe that the government's amendment is more acceptable and slightly better. However, the arguments put on the record so far by the government against the amendment of the Hon. Nick Xenophon have been lacking in substance and persuasion.

I would like the record to show that I have had to take advice from a whole range of external sources in order to form my opinion and that it is not based on what the government has said to me, either in the chamber or in the very last-minute briefings we have had. I reaffirm that we will not support the amendment of the Hon. Nick Xenophon. Provided that the government does not put forward any more fallacious arguments in speaking for its amendment, we hope to support it.

The Hon. CARMEL ZOLLO: I move:

New clause, after clause 10—Insert:

10A—Amendment of section 20—Application for order

Section 20—after its present contents (now to be designated as subsection (1)) insert:

(2)If the Chief Executive—

(a) knows or suspects on reasonable grounds—

(i) that a child is at risk as a result of drug abuse by a parent, guardian or other person and;

(ii) that the cause of the child being at risk is not being adequately addressed; and

(b) is of the opinion that an assessment (including a drug assessment), in pursuance of an order under this Division, to determine the capacity of the parent, guardian or other person to care for and protect the child is the most appropriate response,

the Chief Executive must apply to the Youth Court for an order under this Division for such an assessment.

I can only reiterate that the government agrees that some children are at serious risk of harm in some households and that we support mandatory drug testing when it is required. The amendment ensures that this can occur when a child is at risk in these circumstances and when it is assessed to be the most appropriate course of action. It is also important to note that this will not always be necessary. For example, there will be cases when the family circumstances are such that the child is at risk for a number of reasons, including drug abuse. In such situations, it may be necessary for immediate action to protect the child.

The Hon. NICK XENOPHON: I want to make something clear. In my discussions with the minister, I think that there is common ground for all those who have followed this debate closely. My amendment in no way derogates from the ability of the minister to take away children at imminent risk. It does not do that at all; it is simply an additional tool. If the minister is of the view that children are at imminent and grave risk, he can take immediate action and, indeed, he does so on a regular basis. There is no issue with that. I do not want there to be any suggestion whatsoever that this amendment in any way takes away from the minister's duty, in a sense, to take immediate action if he is of the view that there is imminent and significant danger to the child.

I also raise the issue of the family circumstance the minister raises where there could be a whole range of factors in the family as to why a child is at risk, but my amendment provides that if the child is at risk as a result of drug use there ought to be a drug assessment, and that is something that enhances this legislation rather than impedes the effective operation of the intent of this bill.

The Hon. R.D. LAWSON: The Liberal opposition will not support the minister's amendment. We are content to support the amendment as moved by the honourable member in the terms in which it is moved for the reasons I gave earlier.

The committee divided on the Hon. Nick Xenophon's new clause:

AYES (8)

Dawkins, J. S. L.	Evans, A. L.
Lawson, R. D.	Lensink, J. M. A.
Ridgway, D. W.	Stefani, J. F.
Stephens, T. J.	Xenophon, N. (teller)

NOES (6)

Cameron, T. G.	Holloway, P.
Kanck, S. M.	Reynolds, K.
Sneath, R. K.	Zollo, C. (teller)

PAIR(S)

Schaefer, C. V.	Roberts, T. G.
Redford, A. J.	Gago, G. E.
Lucas, R. I.	Gazzola, J.

Majority of 2 for the ayes.

New clause 10C thus inserted.

Clause 11.

The Hon. NICK XENOPHON: I move:

Page 9, line 10—

After 'authorising' insert:

or directing

This amendment is to essentially give effect to amendment No. 6. This will be a test clause, and I am not sure whether the Hon. Mr Lawson agrees with it. Amendment No. 4 would be a test clause for the next step. This relates to giving effect to the next part of these amendments, which relates to authorising a treatment order, including submitting for periodic testing for drug use and authorising the release of information about the treatment and results to the chief executive.

As I see it, this is a test clause with respect to taking the matter a step further, after a mandatory drug assessment, to seek a treatment order. Again, there must be the threshold where the minister must be of the opinion—not reasonably suspect—that the child is at risk as a result of drug abuse. I have not yet arrived at amendment No. 6 where I will need to make an amendment similar to the amendment to my amendment No. 3, so that it would read 'the abuse of an illicit drug,' given the compromise reached earlier. That is essentially what this amendment is about.

The Hon. R.D. LAWSON: I accept the member's assurance that this is a test clause principally leading into his amendment No. 6. It is necessary to actually go into that amendment to understand the amendment presently before the chair. Amendment No. 6 will provide the following:

If the minister is of the opinion that a child is at risk as a result of drug abuse by a parent, the minister must apply to the Youth Court for an order under this division, requiring the parent, guardian. . . to enter into a written undertaking. . . in relation to the drug abuse.

We do support this proposal of the honourable member. So far as we are concerned, whilst it is somewhat unusual to have a mandatory requirement, namely 'the minister must apply', we are reassured by the fact that the court itself will be the ultimate determinant of whether or not these orders are made, and the court in exercising the judicial discretion which is reposed in the court may agree with the minister that it is appropriate in these circumstances for a written undertaking. The court may, however, not agree with that and may make

some modified formal order, but we think this is an improvement to the bill. It is consistent with the drug assessment provision to which the committee has already agreed and it is the next step in a package of measures designed to ensure that parents who abuse illicit drugs and who thereby place a child at risk should suffer stringent conditions.

The Hon. A.L. EVANS: I support the amendment. I have had some dealings with such cases and there must be swift action for results to save the children. I therefore support the amendment.

The Hon. CARMEL ZOLLO: In relation to the amendment moved by the Hon. Nick Xenophon, I would say that, in view of the points I made earlier, the government opposes the amendment.

The Hon. NICK XENOPHON: Whilst we had a fruitful discussion about the other provisions, I have been advised that amendments Nos 4 and 5 are consequential to amendment No. 3. Amendment No. 1 is consequential to give effect to amendment No. 6. I apologise to the committee for that. So, amendments Nos 4 and 5 are consequential. The debate about the mandating of treatment is something that will arise in the context of amendment No. 6 and, further to that, amendment No. 7 of Xenophon-1 and amendment No. 1 of Xenophon-3 are consequential to amendment No. 6. I hope that, in some way, gives some clarity to what I am trying to effect.

The Hon. R.D. LAWSON: I thank the honourable member for that change of mind. Accepting that his amendment No. 4 is consequential on amendment No. 3, I can indicate that we will be supporting amendment Nos 4 and 5, and for the reasons I gave a little earlier we will certainly be supporting amendment No. 6.

The Hon. CARMEL ZOLLO: The Hon. Mr Xenophon's amendment No. 6 to which we are now speaking refers to section 37 relating to applications for care and protection orders as a further amendment put by the honourable member. If the minister knows or suspects on reasonable grounds that a child is at risk as a result of drug abuse by a parent, guardian or other person, and that the cause of the risk is not being adequately addressed, the minister must apply.

The CHAIRMAN: The Hon. Mr Xenophon has not yet moved amendment No. 6.

The Hon. CARMEL ZOLLO: He was speaking to No. 6, though, or other members were. I can speak to it later when we get to it.

The CHAIRMAN: Are you indicating that the two amendments are inextricably linked?

The Hon. NICK XENOPHON: Yes, Mr Chairman, I am suggesting that in amendments Nos 4 and 5—

The CHAIRMAN: The minister is having difficulty handling this. She thinks she needs to respond to No. 6.

The Hon. NICK XENOPHON: Yes, I apologise. I am not sure whether amendments Nos 4 and 5 have been—

The Hon. CARMEL ZOLLO: We are not supporting those.

The CHAIRMAN: Let us dispatch amendments Nos 4 and 5 so that you can move amendment No. 6 and the minister can put the position of the government.

The Hon. NICK XENOPHON: Yes, very well.

Amendment carried.

The Hon. NICK XENOPHON: Amendment No. 5 is consequential. I move:

Page 9, after line 13—Insert:

Example—

Such an order could, for example, direct a parent, guardian or other person to undergo a drug assessment.

Amendment carried; clause as amended passed.

New clause 11A.

The Hon. NICK XENOPHON: I seek leave to move my amendment in an amended form.

Leave granted.

The Hon. NICK XENOPHON: I move:

After clause 11—Insert:

11A—Amendment of section 37—Application for care and protection order

Section 37—after subsection (1) insert:

(1a) If the minister is of the opinion that a child is at risk as a result of the abuse of an illicit drug by a parent, guardian or other person who has the care of the child, the minister must apply to the Youth Court for an order under this division requiring the parent, guardian or other person to enter into a written undertaking for a specified period (not exceeding 12 months)—

(a) to undergo treatment for the drug abuse; and

(b) to submit to periodic testing for drug use; and

(c) to authorise the release of information regarding the treatment, and the results of the tests, to the chief executive,

(unless the minister is satisfied that the parent, guardian or other person is undergoing, or is to undergo, such treatment, is submitting, or is to submit, to such testing and has authorised the release of such information and the results of such testing to the chief executive).

I touched on this a few minutes ago. This new clause follows on from the application for an order for drug assessment and takes it a step further. If the assessment indicates that there is a drug problem and if the minister forms an opinion—rather than simply reasonably suspecting as in new clause 10C—that a child is at risk as a result of the abuse of an illicit drug, the minister must apply to the Youth Court for an order requiring the parent, guardian or other person to undergo treatment for drug abuse, submit to periodic testing, and to authorise the release of information regarding the treatment.

So, this takes it a step forward. The test is different from the earlier clause which required the minister to suspect on reasonable grounds. There must be an opinion formed by the minister that a child is at risk as a result of the abuse of an illicit drug and then certain things have to happen: essentially, a mandatory treatment order. So, again there are those thresholds or criteria that have to be met, and the bill goes a step further because an opinion must be formed by the minister. I believe that opinion would, of necessity, be formed as a result of a positive drug test. It would simply be a positive drug test and you would need to show that the child is at risk as a result of that. So, we are talking about chronic situations where a child is at risk. That is what this new clause envisages.

The Hon. CARMEL ZOLLO: We do not support the amendment. The government's amendment to insert a new clause, which I will now not move because it was consequential on our previous amendment which we lost, was to provide for the possibility of treatment orders. In consultation with the Youth Court judges, we expressed the desire for all parties to work in partnership with families, and I think it is important to put that on the record.

The Hon. R.D. LAWSON: We support the Hon. Mr Xenophon's new clause. I reiterate the point I made earlier that merely making an application to the Youth Court does not necessarily mean that such an order will be made automatically; there is a judicial discretion which will be appropriately exercised by the court.

The Hon. NICK XENOPHON: I am grateful to the Hon. Mr Lawson for reiterating that. A positive drug test is not enough. You need to fulfil these other steps, and there is also the judicial discretion as to whether an order will be made. At least it will require a more rigorous approach than I believe exists at present or is contemplated by this bill to deal with the significant problem of drug abuse in the community insofar as it affects children.

I refer again to the UN World Drug Report figures. From memory the 2004 figures show that Australia is at the top of the tree in the use of illicit drugs, particularly amphetamines; a 4 per cent prevalence rate for those aged 15 and above; I think cannabis is 15 per cent for those aged 15 and above; and, whilst heroin is about .6 per cent for those who have worked with or who have had experiences with people with a heroin problem, it is a very serious problem and there are some very real concerns about the capacity of those parents to look after their children if they have a heroin problem.

New clause inserted.

Clause 12.

The Hon. NICK XENOPHON: I move:

Page 9, after line 16—Insert:

(a1) Section 38(1)(a)—delete 'any guardian of the child' and substitute:

'a parent, guardian or other person who has the care of the child'

(b1) Section 38(1)—after paragraph (a) insert:

Example—

A parent, guardian or other person could, for example, be required to enter into an undertaking to undergo treatment for drug abuse, to submit to periodic testing for drug use and to authorise the release of information regarding such treatment, and the results of such testing, to the chief executive.

This amendment is consequential upon the previous amendment that has just been passed relating to the issue of treatment orders, and it encompasses not simply any guardian of the child but includes a parent, guardian or other person who has care of the child. So, if honourable members supported the previous amendment, they ought to support this amendment so that the amendment is encompassing, as it should be.

The Hon. R.D. LAWSON: The Liberal opposition supports it.

The Hon. CARMEL ZOLLO: I indicate the government opposes it, in view of the points that I made earlier.

The Hon. KATE REYNOLDS: I indicate that it is with a heavy heart that the South Australian Democrats oppose the amendment. As I think the Hon. Nick Xenophon said to me as an aside earlier, we will support the government's position despite its arguments on this.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14.

The Hon. KATE REYNOLDS: I move:

Page 10, after line 12—

Insert:

Part 7AA—The Commissioner

52AA—The Commissioner

(1) There is to be a Commissioner for Children and Young Persons.

(2) The Commissioner is to be appointed by the Governor on terms and conditions determined by the Governor.

(3) Subject to this section, the Commissioner holds office for the term (not exceeding 5 years) stated in the instrument of appointment and is then eligible for re-appointment.

(4) The office of the Commissioner becomes vacant if the Commissioner—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns by notice of resignation given to the Minister; or

(d) is convicted either within or outside the State of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more; or

(e) is removed from office by the Governor under subsection (5).

(5) The Governor may remove the Commissioner from office for—

(a) breach of, or non-compliance with, a condition of appointment; or

(b) failure to disclose a personal or pecuniary interest of which the Commissioner is aware that may conflict with the Commissioner's duties of office; or

(c) neglect of duty; or

(d) mental or physical incapacity to carry out duties of office satisfactorily; or

(e) dishonourable conduct; or

(f) any other reason considered sufficient by the Minister.

52AAB—Staff and resources

The Minister must provide the Commissioner with the staff and other resources that the Commissioner reasonably needs for carrying out the Commissioner's functions.

52AAC—The Commissioner's functions and powers

(1) The Commissioner's functions are as follows:

(a) to promote an understanding of, and informed discussion about, the rights, interests and wellbeing of children;

(b) to promote the participation of children in the making of decisions affecting their lives;

(c) to encourage government and non-government organisations to promote the participation of children in activities appropriate to their age and maturity;

(d) to ensure that where decisions affecting children are made by Ministers, or by government or non-government organisations, the rights and interests of children are properly taken into account;

(e) to make recommendations to government or non-government organisations about legislation, policies and practices affecting children;

(f) to monitor and review laws, policies and practices that relate to the provision or delivery of services to children;

(g) to promote and monitor awareness amongst children about advocacy bodies, complaints agencies and other relevant government and non-government organisations;

(h) to conduct, promote, coordinate, sponsor and participate in research about the rights, interests and wellbeing of children;

(i) to inquire into, and report to the Minister on, any matter referred to the Commissioner by the Minister or any other Minister.

(2) The Commissioner has the powers necessary or expedient for, or incidental to, the performance of the Commissioner's functions.

52AAD—The Commissioner's reporting obligations

(1) The Commissioner must report periodically to the Minister (as required by the Minister) on the performance of the Commissioner's statutory functions.

(2) The Commissioner must, on or before 31 October in each year, report to the Minister on the performance of the Commissioner's statutory functions during the preceding financial year.

(3) The Minister must, within 3 sitting days after receiving a report from the Commissioner, have copies of the report laid before both Houses of Parliament.

52AAE—Confidentiality of information

Information about individual cases disclosed to the Commissioner or a member of the Commissioner's staff

is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.

Now for a complete change of topic. This amendment, assuming I am looking at the right one, intends to create a new position to be known as a commissioner for children and young persons. By way of background, honourable members will remember that, back in March 2003, the much-referred-to Layton report was published. This was a review of child protection in South Australia. It was not a review of the act, I note, although a significant number of comments were made about the act, but it was a review of child protection in South Australia. The very first recommendation made by Robyn Layton QC, as she was at the time, was that a statutory office of commissioner for children and young persons be created to include the functions of advocacy, promotion, public information, research and developing screening processes for work with children and young persons; that it be based largely on the model in the Children's and Young People's Act 2000 in Queensland; that it include sitting as a member of the South Australian Young Persons Protection Board; that it be independent of government; and that it report to parliament.

The reason given by Robyn Layton QC (now Justice Layton) in the section containing recommendation 1 is as follows:

A commissioner is needed to give the voice of the child. This model includes the best features of the commissions in Queensland and New South Wales. It specifically does not include the function of deciding complaints and grievances.

And I note that, since the time that this report was published, we have established in South Australia a commissioner to deal with health and community services complaints, and members would remember that the South Australian Democrats supported that move and, in fact, had been agitating for a number of years for that. The report goes on to state:

It is part of an overall framework of protection of the interests of children and young people. It incorporates recognition of the special concerns of Aboriginal children. It also incorporates commitment by all political parties to protecting children.

That was the very first of the 206 recommendations made by the reviewer appointed by the Rann Labor government to look at child protection in South Australia. It is one of the most significant recommendations in that report that has not been acted upon.

Yesterday I received correspondence that was sent to the minister some time ago, I think back in September, from the Law Society in South Australia. It was a submission made in September commenting on the Children's Protection (Keeping Them Safe) Amendment Act, and it is a very significant submission. I wish that I had had access to that submission earlier, because I think there probably would have been even more amendments than I put up, and some of my other contributions might have been a little bit longer, but you will be pleased to know, Mr Chairman, that it was too late for that.

On page 20 of its submission to the government, the Law Society says:

Finally, the committee believes it is an appropriate time for the government to reconsider the appropriate place for a commission for children within South Australia. We are now one of the last states in Australia not to address this issue. The committee commends the government on the change in emphasis in the child protection bill to be far more child focused but believes that the bill has not gone far enough and that there should be far more resources placed into looking at an independent unit reportable directly to government which houses a commissioner for children.

It goes on to include a model that it developed some years ago.

The South Australian Council of Social Service also made a number of submissions to the state government, and I think it included in its budget submissions in previous years a request that the state government establish a commissioner for children and young people. In its written comment to the minister recently (and I do not have that written comment in front of me, unfortunately), I recall that it used the words that this was 'a missed opportunity' that the government had not taken. So it was also arguing very strongly that there should be a commissioner for children and young persons.

I note that the Hon. Mr Lawson has said, at various points in the opposition's arguments for and against amendments, and that the government's own bill has said, that at certain times they will not deviate from the recommendations of the Layton report. I hope that on this occasion they will support the recommendations of the Layton report and support this amendment for a children's commissioner.

I will just summarise the functions and powers and will not go through all of the amendment. Essentially, I have put together what I see as the best of the functions of commissioners from interstate—bearing in mind that we are now almost the only state not to have one. As Robyn Layton suggested, I have avoided any reference to investigating complaints and I have also avoided any reference to the role that is currently taken by the Guardian for Children in Care. So, as I have suggested, the Commissioner's functions are:

- To promote an understanding of and informed discussion about the rights, interests and well-being of children;
- To promote the participation of children in the making of decisions affecting their lives;
- To encourage government and non-government organisations to promote the participation of children in activities appropriate to their age and maturity;
- To ensure that where decisions affecting children are made by ministers or government or non-government organisations that the rights and interests of children are properly taken into account;
- To make recommendations to government or non-government organisations about legislation, policies and practices affecting children;
- To monitor and review laws, policies and practices that relate to the provision or delivery of services to children;
- To promote and monitor awareness amongst children about advocacy bodies, complaints agencies and other relevant government and non-government organisations;
- To conduct, promote, coordinate, sponsor and participate in research about the rights, interests and well-being of children; and
- To inquire into and report to the minister on any matter referred to the commissioner by the minister or any other minister.

The amendment then goes on to talk about staffing and resources and all those usual sorts of things. I commend this amendment to honourable members, to ensure that this very first recommendation from the Layton report is taken up by the government as a matter of urgency.

The Hon. CARMEL ZOLLO: The government will not be supporting this amendment. The establishment of an Office of the Commissioner for Children and Young Persons was the subject of much consideration and debate during the preparation of the government's response to the Layton review, and also in the drafting of the bill; however, at that point in time this option was not supported as a first priority.

The Layton review identified a number of pressure points within the child protection system which limited our capacity to deliver services. In response to this review the government had to move quickly to strengthen the resources in areas of identified need, and one area requiring urgent attention was the provision of greater support to children under the guardianship of the minister and strengthening care arrangements. The bill also provides for the establishment of a Child Death and Serious Injury Review Committee and the Council for the Care of Children, whose mandate extends to all South Australian children—not just those within the child protection system. These mechanisms have been proposed to ensure independent monitoring and review of the care and protection system, and advocacy for the interests of children.

The government is also establishing a child protection unit within the Office of the Health and Community Services Complaints Commissioner. A children's commission would require a minimum of $1.4 million per annum, and this needs to be balanced with the need to make sure that vulnerable children are protected from harm and assisted to recover from abuse or neglect. In this regard, priority has already been given to improving direct services to vulnerable children and their families by increasing the capacity of Children, Youth and Family Services to respond to child protection matters, by establishing the Office of the Guardian for Children and Young Persons, by increasing therapeutic services to children who have been abused and to those young people who abuse children, and by the 'Strong Families, Safe Babies' program.

In light of this suite of responses and the need to prioritise services to children, the Guardian for Children and Young Persons has not recommended the creation of a commission for children and young persons at this time. Further discussions are likely to occur in the future as we reflect upon the learnings from established initiatives as well as from the Children in State Care Inquiry under commissioner Mulligan. This will guide us in developing the role and function of any potential commissioner's office within the South Australian context. Any decision to establish the office will be influenced by competing priorities and identified needs within the system at the time.

In summary, a commissioner for children is not out of the question in the future, but our first responsibility is to make sure that appropriate services are in place to protect children and make sure that they are assisted to recover from any abuse or neglect. It is also important to note that the Council for the Care of Children has responsibility for promoting all children's rights.

The Hon. KATE REYNOLDS: I have a couple of questions for the minister. First, can the minister confirm or deny that it is official Labor Party policy to establish a children's commissioner?

The Hon. CARMEL ZOLLO: I will endeavour to get a more substantial response for the honourable member, but it is not something that is out of the question in the future. However, we have identified that at this time our first responsibility is to make sure that appropriate services are in place to protect children and to make sure that they are assisted to recover from any abuse or neglect. I could reiterate everything we have already put in place but, as I have already mentioned them to the honourable member, I suspect it would not be of too much value at this time. It really is in light of the responses already made and the need to prioritise services to children that the Guardian for Children and Young Persons has not recommended the creation of a commissioner for children and young persons at this time.

The Hon. KATE REYNOLDS: Perhaps while we are waiting for someone to advise the minister about whether or not it is her party's policy, we could continue on with a couple of other questions. The Minister for Families and Communities has told me that this is something that he intends to do but not yet. Minister Zollo has reinforced that statement, and I appreciate that. However, I wonder whether the minister could give us some indication about what might trigger a decision to establish a commissioner for children and young people, given that it is Labor Party policy, which I think the minister will confirm in a moment.

I have just mentioned three of the bodies that have been calling for the establishment of that position well and truly since the Layton report was published and since this bill was introduced into the parliament, and so on. People are well aware of the changes in recent times, but they are still calling for that position to be established. Can the minister give some indication of the circumstances which might persuade the government to say, 'Yes, we will establish a commissioner for children and young people.'? Can the minister also please comment on where the prevention approach fits into the government's position? The minister has said there are all these other bodies and individuals that will be taking some oversight for children in care. However, if the government is serious about prevention and early intervention, can the minister please provide a response about why the government will not support a position of commissioner, given that it is very much focused on strengthening families and preventing child abuse and neglect, which I would have thought would make everyone else's job a little easier?

The Hon. CARMEL ZOLLO: The services will be evaluated in the next year or so, and we will need to be satisfied that enough is being provided. The child safe environment provisions in the bill set out the creation of a far more friendly society in all spheres in children's lives.

It is probably worthwhile putting on the record the functions of the council itself, which are as follows: to report to the government on progress achieved towards keeping children safe from harm and ensuring that all children are cared for in a way that allows them to realise their full potential; improving the physical and mental health and the emotional wellbeing of children; improving access for children to educational and vocational training; improving access for children to sporting and healthy recreational activities; ensuring that children are properly prepared for taking their position in society as responsible citizens; maintaining the cultural identity of children; creating environments that are safe for children, as well as raising community awareness of the relationship between the needs of children for care and protection and their developmental needs; initiatives involving the community as a whole for the protection or care of children; policy issues that may require government action or legislative reform; and policies for research. So, it is really to investigate and report to the minister on all matters referred to the council for advice.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition is sympathetic to the recommendation in the Layton report that a commissioner for children and young persons be appointed. We are generally sympathetic to the recommendations of the Layton report, and they are, generally speaking, commendable. However, we are unable to support the honourable member's amendment because, as is clear from the indications given by the minister, either the government would not support such a commissioner, if appointed—and by support, I mean support with appropriate

resources—or, if resources were to be devoted to the commissioner for children and young persons, they undoubtedly will, on the attitude expressed by the government, be taken from other services.

We believe that resources are already stretched in this area, and the actual service delivery is a higher priority than the creation of an office of this kind. For that reason, we will not support the establishment on this occasion of a commissioner for children and young persons. It may be that at some time in the future it is appropriate to do so, but we will not support it at this time. It matters not to us whether or not it is Labor Party policy. We believe that the issue is: is this an appropriate use of resources at this juncture? We cannot support it on the basis of the information provided to the opposition.

The Hon. KATE REYNOLDS: Is the minister in a position to tell us whether or not this is official Labor Party policy?

The Hon. CARMEL ZOLLO: I reiterate what I said before: we may well be in a position in the future to support an office for the commissioner of children and young persons. It is about prioritising resources, and I have already placed on record the progress that has been made thus far. It is our position, and there is not much to be gained by continuing.

The Hon. KATE REYNOLDS: Do I take it that that is no; the minister is not in a position to tell us? Is that how you interpret it, Mr Chairman?

The CHAIRMAN: I am not here to interpret. I cannot instruct a minister to give any response other than that she wishes to give.

The Hon. R.D. LAWSON: The committee can draw its own conclusions from the failure of the minister to acknowledge the fact. As I say, we do not regard this as a relevant matter, although no doubt it is entirely appropriate for the Hon. Kate Reynolds to raise the point and highlight that we hear a lot of rhetoric from this government about the implementation of its policies but that it becomes conveniently silent when it chooses not to support a proposal that is part of its policy.

The Hon. CARMEL ZOLLO: I place on record that this is not a matter of rhetoric. The bill is a very good response. We have taken some very serious action in relation to the Layton review; indeed, it is why we are here debating this legislation. So, I think that the honourable member's question is at this time somewhat irrelevant. We have been quite up front. We are prioritising the services we need to deliver.

The Hon. KATE REYNOLDS: In closing, I place on the record that children's commissioners currently exist in Queensland, Tasmania and New South Wales. The ACT has just passed legislation establishing a commissioner for children and young people, and Western Australia has just introduced a bill to do the same. I find it intriguing that the Rann Labor government thinks that it is so particularly different that it does not need to have a one-stop shop to advocate for children generally—not just children in care but all children. It is again disappointing but not surprising that the Rann Labor government has taken this position.

Amendment negatived.

The Hon. KATE REYNOLDS: I move:

Page 10, after line 17—Insert:

(2a) Subject to this section, the Guardian holds office for the term (not exceeding 5 years) stated in the instrument of appointment and is then eligible for re-appointment.

(2b) The office of the Guardian becomes vacant if the Guardian—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns by notice of resignation given to the Minister; or

(d) is convicted either within or outside the State of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more; or

(e) is removed from office by the Governor under subsection (2c).

(2c) The Governor may remove the Guardian from office for—

(a) breach of, or non-compliance with, a condition of appointment; or

(b) failure to disclose a personal or pecuniary interest of which the Guardian is aware that may conflict with the Guardian's duties of office; or

(c) neglect of duty; or

(d) mental or physical incapacity to carry out duties of office satisfactorily; or

(e) dishonourable conduct; or

(f) any other reason considered sufficient by the Minister.

This amendment is intended to provide some security and some independence for the office of the guardian. As I understand it, these arrangements are not currently in place. It is important to the South Australian Democrats that there be a more transparent and formal structure for the term of office of the guardian for children and young persons. This amendment also specifies the terms upon which the guardian can be removed or re-appointed. It is really quite straightforward.

The Hon. CARMEL ZOLLO: I indicate that the government supports the amendment.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 10, after line 24—Insert:

(ab) preventing or restricting the Guardian from communicating with any body or person; or

Similarly, this amendment ensures that the government of the day, through the minister of the day, cannot unreasonably prevent or restrict the guardian from communicating with any body or person. Again, it bolsters the independence of the position.

The Hon. CARMEL ZOLLO: I indicate government support.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 11, lines 19 and 20—Delete 'suffer from disabilities' and substitute:

have a physical, psychological or intellectual disability

We move this amendment because we find the term 'suffer from disabilities' highly offensive. Had they been involved, anybody working within the disability sector would have advised the government of this. It is a fairly straightforward amendment, and I assume that all honourable members will support it, especially given that Saturday is International Day of Persons with a Disability.

The Hon. CARMEL ZOLLO: I indicate government support.

The Hon. R.D. LAWSON: I indicate opposition support.

Amendment carried.

The Hon. KATE REYNOLDS: I seek leave to move my amendment No. 14 in an amended form.

Leave granted.

The Hon. KATE REYNOLDS: I move:

Page 11, line 26—Delete '12' and substitute '6'

This amendment is intended to reduce from 12 to 6 the number of days the government has to table reports from various officers covered by this bill.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 11, line 37—Delete 'under subsection (2)' and substitute 'from the Guardian'.

This is a technical amendment designed to ensure that the guardian has the independence and appropriate time requirements for various reports.

The Hon. CARMEL ZOLLO: I indicate government support.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 12, line 5—Delete 'up to' and substitute 'not less than 5 and not more than'.

This is a similar amendment.

The Hon. CARMEL ZOLLO: I indicate government support.

The Hon. R.D. LAWSON: The opposition supports it also.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 15, line 10—Delete '12' and substitute '6'.

This amendment provides that the government has only six sittings days after serving a report to have it laid before both houses of parliament.

The Hon. CARMEL ZOLLO: I indicate government support.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 18, line 28—After 'injury,' insert 'under the guardianship, or in the custody, of the Minister or was'.

This amendment intends to ensure that children who were under guardianship or in the custody of the minister at the time of death or serious injury have their death investigated. This is where we are talking of the functions and powers of the Child Death and Serious Injury Review Committee. A number of people who work in the child protection area were concerned that the legislation would not spell out that, regardless of the circumstances of that death or serious injury, there should be some sort of investigation. Clearly if the death was as a result of a car crash and it was obvious to the police investigating that there were no other circumstances except the crash that led to the death or serious injury of that child, and it was nothing to do with their care arrangements or other circumstances for which the state might be responsible, then that investigation would proceed and I imagine be closed very quickly.

Given some of the recent controversies around the death and serious injury of children in care, particularly those coming to light through the Mullighan inquiry, we thought it was particularly important that it be spelt out and made absolutely explicit that any child under the Guardianship Board or in the custody of the minister who is seriously injured or dies should have their death or serious injury investigated.

The Hon. CARMEL ZOLLO: I indicate government support.

The Hon. R.D. LAWSON: I indicate opposition support.

Amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 20, line 2—Delete 'or relative' and substitute:

, relative or foster parent (within the meaning of the Family and Community Service Act 1972)

My amendment is intended to ensure that foster carers are provided with more recognition within the Children's Protection Act. Mr Acting Chair, you would have heard me speak in this place on many occasions about the difficulties that foster carers find as they attempt to operate within the child protection system, but are frequently left sitting on the doorstep excluded from both discussion and decision making about the children that they care for, and also excluded from services that could either help them to manage their responsibilities of caring for a child, or help them provide better care for that particular child. Wherever I can throughout the act I have sought to ensure that the considerations that are given to relatives are also given to foster carers.

The Hon. CARMEL ZOLLO: I indicate that we will not be supporting the Hon. Ms Reynolds's amendment; we will be moving our own amendment. I place on the record that the review is not about individuals but about systems. We believe that it is highly unlikely that individual parents or foster parents would be asked to submit documentary evidence for review, as the focus is not on cause of death. It does not need to be protected because individual action is not the subject of the committee's review. We believe this is the role of SAPOL and/or the Coroner. We need to ensure that the alternative system is effective so the committees will, from time to time, have to access alternative care records. For example, when an infant dies because it has been put to sleep on their tummy (I am using SIDS as an example) by a foster carer, why the foster carer would not have been trained to understand the importance of sleep positions.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition will support the amendment proposed by the Hon. Kate Reynolds. Presently, proposed section 52V deals with the powers of review of the Child Death and Serious Injury Review Committee. The proposed section requires people to produce documents; however, the proviso in (3) provides:

However—

(a) a parent or relative of the child cannot be compelled to comply with the request under subsection (1). . .

The honourable member's amendment seeks to extend that term to 'parent, relative or foster parent', and we believe it is appropriate for that extension to be made.

The Hon. CARMEL ZOLLO: I move:

Page 20, lines 2 to 4 (proposed paragraph (a))—
Delete paragraph (a)

The Hon. Carmel Zollo's amendment negatived; the Hon. Kate Reynolds' amendment carried.

The Hon. KATE REYNOLDS: I move:

Page 20, line 31—Delete '12' and substitute:
6.

The Hon. CARMEL ZOLLO: The government indicates support.

The Hon. R.D. LAWSON: The opposition indicates support.

Amendment carried; clause as amended passed.

Clause 15.

The Hon. KATE REYNOLDS: I move:

Page 21, lines 16 and 17—Delete clause 15 and substitute:
15—Substitution of section 55
Section 55—delete the section and substitute:
55—Provision of assistance after leaving alternative care
(1) The Minister is to provide or arrange such assistance for children who leave alternative care (other than alternative care of a kind prescribed by regulation)

until they reach the age of 25 years as the Minister considers necessary having regard to their safety, welfare and wellbeing.

(2) Appropriate assistance may include—

(a) provision of information about available resources; or

(b) assistance based on an assessment of need, including financial assistance and assistance for obtaining accommodation, setting up house, education and training, finding employment, legal advice and accessing health services; or

(c) counselling and support.

(3) The Minister has a discretion to continue to provide or arrange appropriate assistance to a person after he or she reaches the age of 25.

This amendment is intended to require that the state offer and, if the offer is accepted, provide or arrange assistance for children and young people who leave alternative care. I will explain why in a moment but I would just like to put on the record the explanation for the term 'children who leave alternative care'. When I was discussing this with parliamentary counsel and with others we shared some frustration that the term 'children' has to be used in the legislation because we are making amendments to the Children's Protection Act which has been in place for some 20-odd years; perhaps not quite that long, but certainly back in the days where children were still called children when they were 15, 16 and 17.

The situation nowadays is quite different. I know that my 17-year-old son, who will be 18 early next year, objects very much to being called a child. He is quite comfortable and wants to be called a young person, and I do not feel at all comfortable calling 15, 16 and 17-year-old young people 'children'. If I had my way, the amendment would talk about assistance for young people who leave alternative care, so we are talking about young people in the transition to adulthood, but unfortunately the advice provided to me was that we have to stick with the word 'children'.

The reason I have moved this amendment is the experience that I have had, working in the community sector and the stories that have been brought to me and the research that I have done and the correspondence that comes across my desk every day, shows that in South Australia we are well and truly lagging behind in how the state assists young adults who are leaving the alternative care system and attempting to make that transition to independence and to adulthood.

I would like to draw members' attention and perhaps also the attention of the government to a piece of research work that was done and recently published by the Centre for Excellence in Child and Family Welfare, and this was following a research project that was undertaken in 2003. This is a report called Investing for Success, and it is subtitled The Economics of Supporting Young People Leaving Care. I would like to quote just a little bit from the introduction to this extremely comprehensive report. As I understand it, the bulk of their research was conducted in Victoria, but many of the factors that they describe are equally relevant here in South Australia.

What the Centre for Excellence in Child and Family Welfare sought to do was to establish the long-term costs of current government policy and estimate the costs of an integrated leaving care model that would be appropriate for young people leaving care in Victoria. What their data showed is that:

. . . around a fifth of the young people who are leaving care have no plans for their future. A third of them have a case plan that releases them straight into programs run for homeless people, leaving them in a vulnerable and dependent state, ironically, when they are attempting to take their first steps towards independent living.

I do not know about you, Mr Acting Chairman, or other honourable members, but I would hate to think that, when any of my children left home, they went straight to homeless programs.

That is certainly not what I as a parent would choose for them, and I am a reasonably well educated, reasonably resourceful person, as is the state, and it would be quite inappropriate for our expectations to be that our kids went straight into programs for homeless people. The summary of the report says:

Less that a third [of the young people leaving care] have completed formal schooling, leaving them vulnerable to unemployment in an increasingly competitive employment market. Around three quarters are unemployed and depend on the government for income support. More than half of the young people leaving care survive on a weekly income of less than $200. Not surprisingly, over half have problems with debt. Their general health and mental health outcomes are also poor.

They then go on to provide more information along that line, so I will not put all of that on the record, but they then say:

Our research shows that this state of affairs is unsustainable, both from a human perspective and an economic one. There are long-term costs which have an enormous impact on many parts of the State's budget. Unemployment, crime, health, housing and child protection costs for the inter-generational cycle of care are estimated to cost the state $738 741 per young person leaving care over a 42 year time frame. This cost is over and above an estimated average investment of $125 000 that the State has already made in young people while they are in statutory care.

They say that, assuming an average of 450 young people leave care each year, each year's cohort of young people leaving care will cost the state of Victoria—I would imagine our figures would not be very different—in the range of $332 million per year over the next 42 years, if current policies remain unchanged. They say:

On the other hand, our model for integrated leaving-care support for young people up to 25 years of age is estimated to cost the State around 11 per cent of the cost of not putting in place any measures.

I wish the Hon. Rob Lucas was in the chamber, because it is not very often that I talk numbers. I think these numbers would appeal to him as a former and possibly again in the future treasurer. They go on to say:

The positive pathways of some of the young people in our sample provide us with a basis to assume that support programs at critical points in the first few years of transition will enhance the resilience inherent in any individual, lead to positive outcomes and a successful transition to adult life. The moral, economic and social arguments for investment in leaving-care are before the Government—

they are certainly before the South Australian government—

The message is clear—act now as a caring parent would and support the young people for whom you have assumed parental responsibility. Act now as a responsible Government would in building the capacity of its communities. Act now as a prudent economist would, spend a little more now to save a lot in the future. The cost of doing nothing is detrimental to young people, society and the economy at large.

I have received the November edition of the newsletter from the Office for the Guardian of Children and Young People. I think all members receive this newsletter on a regular basis. There is an article on the front page written by Mellita Kimber, a youth adviser. She writes about the National Face to Face Partnership Forum—The Superhero's Journey, which was convened by the CREATE Foundation and held recently. She says:

At the end of the forum each state was regrouped and asked to come up with some priorities to work towards. South Australia's representatives consisted of, most importantly, young people and non-government and government agencies and carers. We decided

our top priorities were: providing leaving-care and support services to young people up to 25 years of age.

She goes on to talk about support for foster carers around leaving-care and stable, priority and appropriate housing. I just want to draw the attention of members to the fact that we have young people writing for an office established (and often promoted) by the South Australian government saying that the top priorities are providing leaving-care and support services for young people.

As I said earlier, my amendment seeks to require the state to provide or arrange for assistance for children who leave alternative care until they reach the age of 25 years, as the minister considers necessary, having regard to their safety, welfare and well-being. The Minister for Families and Communities in a brief discussion with me some time ago—it might have been one of his staff, I cannot recall—said that the government was concerned that, if the legislation forced them to offer this, young people would be forced to accept assistance or services when they may not want them. So, I agreed to insert the words 'that the minister is to offer and if the offer is accepted provide or arrange', etc.

The amendment goes on to say that appropriate assistance may include the provision of information about available resources or it might be assistance based on assessment of need, including financial assistance and assistance in obtaining accommodation and so on. It might be counselling and support. It also says that the minister has the discretion to continue or to provide appropriate assistance to a person after he or she reaches the age of 25. I am sure there would be members in this chamber who would know that, in some circumstances, parents are required to provide additional assistance to young adults and even older adults beyond the age of 25 because of the various circumstances in which they find themselves.

I would also like to place on the record that I have a whole pile of stories in my folder from foster carers and people who work in the child protection sector as well as from young people leaving care. If it was not so late and if we did not have so much other business to get through, I would take the time to tell many of these stories to the chamber. I will bundle up some of them and pass them on to the minister or any member who wants more information.

It seems to me that, if you look at the economic argument alone, we have to take more responsibility for assisting young people who have been in care to make the transition to adulthood. They have often had a very vulnerable childhood and their teenage years have often been exceptionally tough. These people need all the support they can get to establish themselves and go on, not just to reach their full potential but to lead reasonably happy and functioning lives. It is the view of the South Australian Democrats that the state has a responsibility as would a parent to do what it can within its resources to assist these young people. So, by no means am I suggesting that they should get a blank piece of paper or the opportunity to just make a wish list, but we are suggesting that the government needs to take more responsibility and also take this opportunity to dramatically review the way it manages young people leaving care and the transition to adulthood.

As I said, I could put on the record a lot of stories about young people who have been pulled out of school half way through year 12 when they have been successfully managing secondary education, or on a pathway to further education and employment. They have been pulled out of school and set up in independent houses on their own with no support and, within months, their lives have been in absolute crisis. We have to do this more sensibly and more sensitively, and we have to assist those young people to leave care in a way that does not create an unsustainable economic burden on the state when, as everyone keeps telling us, funds for child protection are scarce.

The Hon. CARMEL ZOLLO: I indicate that the government does not support the amendment. The government recognises the need to provide support and resources to care leavers. This is a whole of government, non-government and community responsibility and is a service response rather than a legislative one. There are several initiatives already in place, such as a leaving care kit that has been developed with young people and the relevant agencies, and it is anticipated that full implementation of the kit will occur in 2006.

The Department for Families and Communities is also working closely with the South Australian Housing Trust to ensure appropriate housing options and supports are developed for care leavers. The educational sector is revising organisational policy to ensure that care leavers receive free education opportunities in TAFE up to the age of 30 years. The Dame Roma Mitchell Fund also provides grants to care leavers under the age of 30 years to assist them with developmental or personal goals and to contribute towards their health and wellbeing. So, we recognise the need to achieve independence, but also that it may take some time.

The Hon. R.D. LAWSON: The mover of this amendment makes a very convincing case, and I think she has put all that could possibly be put in support of it. However, we do not believe that this is appropriate, largely for the reasons given by the minister. I will not detain the committee by further debating the matter.

Amendment negatived; clause passed.

Schedule 1 passed.

Schedule 2.

The Hon. CARMEL ZOLLO: I move:

Page 22, items referring to sections 16, 17 and 18—
Delete these items

I indicate that this is a consequential amendment.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill recommitted.

New clause 10B.

The Hon. CARMEL ZOLLO: I move:

New clause 10B (amendment of section 19)—
After paragraph (b) of new subsection (1) insert:
and
(c) believes that an investigation is the most appropriate response,

As is often the case, the government has been in discussion with the Hons Kate Reynolds and Nick Xenophon about new clause 10B, moved in the name of the Hon. Kate Reynolds. The government had hoped to file a further amendment arising from discussions today, but that has not proved possible and, as a consequence, we seek to recommit the amendment filed but not moved at the time because we had hoped to reach a compromise. We believe this amendment is better than the provision we are currently faced with; however, we wish to make it clear that the government does not support either the amendment moved by the Hon. Nick Xenophon or the amendment moved earlier today by the Hon. Kate Reynolds, as we believe they both contradict the

findings of the Layton review. The government has gone to great lengths to accommodate both members, but that accommodation could not be reached, and I indicate that the government will not be able to support the bill in its current form.

The Hon. KATE REYNOLDS: Can the minister clarify what she meant by the amendment I moved earlier today, because the amendment that I understand we are talking about was actually dealt with last week? I want to make sure that we are all talking about the same amendments here, because there has been an enormous amount of confusion and misinformation promulgated around the traps about what my amendments have sought to do. I would hate to see that continue in this discussion tonight.

The Hon. CARMEL ZOLLO: I certainly did not mean to promulgate any misinformation; clearly, I was not handling this legislation before this evening, and I understand that you moved those amendments last week.

The Hon. R.D. LAWSON: The opposition does not support the amendment moved by the minister. We have before us an amendment to the same clause by the Hon. Kate Reynolds, her amendment No. 1 in Reynolds—5. I am advised that there were discussions today, to which the minister has referred. The member for Heysen (the Liberal shadow minister, Isobel Redmond) was present at all or most of those meetings. In consequence of her participation in those discussions, we propose supporting the Hon. Kate Reynolds' amendment rather than the minister's amendment.

The Hon. KATE REYNOLDS: The South Australian Democrats do not support the government's amendment. If passed, this amendment would have the effect of very much watering down the words we sought to have inserted previously. I cannot imagine why on earth the government thinks we might accept this amendment. I have an alternative amendment, to which I will speak in a moment, which attempts to deal with the concerns the government has brought to me. I have to say that I do not think that those concerns carry substantial weight but, as a gesture of good faith, we have sought to find some words that will, if nothing else, make the minister feel a little more comfortable. We will vigorously oppose any attempt by the government to water down any of these changes.

If the government's changes did proceed, it would have the effect of ripping open some of the holes in the safety net for vulnerable children that we have been attempting to close throughout this debate. We simply will not accept that. Yes, we had a meeting with the minister today and, whilst I think it was useful to have had that meeting, it showed very clearly that we have a different ideological approach to child protection in respect of whether or not it is okay for some children to be left without some sort of response in an instance where the chief executive suspects on reasonable grounds that a child is at risk and that those matters causing the child to be at risk are not being adequately dealt with.

It appears that the government's view is that it wants discretion, and we had some considerable discussion about what 'discretion' means. However, in the end, we could not accept the government's view that it needed discretion so that it was not forced to make some sort of response. There was considerable discussion about whether or not that response had to be in the form of an investigation, which is not defined by the act, or whether or not the response could be a different kind of response, which meant that the state was at least recognising that, where a child was thought to be at risk, the state should take some form of action. I will speak briefly to that when I speak to my amendment in a moment.

Amendment negatived.

The Hon. KATE REYNOLDS: I move:

New clause 10B (amendment of section 19)—After 'carried out' insert 'or must effect an alternative response which more appropriately addresses the risk to the child'.

I will not make that argument all over again but, as I have said, this is an attempt to make the minister feel a little more comfortable. The minister has expressed concern about the demands on the state's coffers, which I think shows something of a lack of understanding about how the child protection system works. He expressed concern that, should my amendment in its previous form stay, the state would always be forced to carry out an investigation when a child was thought to be at risk.

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Stephens and the Hon. Ms Schaefer are distracting the speaker.

The Hon. KATE REYNOLDS: The intent of my amendments has always been to ensure that the state take seriously and act responsibly in relation to child protection. I think I have placed on the record before my disappointment that the Rann Labor government has not taken the opportunity to undertake a complete review of the Child Protection Act. As I have said previously—

The CHAIRMAN: Order! I remind the Hon. Mr Ridgway about the rules concerning mobile telephones.

The Hon. KATE REYNOLDS: I have forgotten where I was and what I was saying. I think I was talking about our disappointment that all we have is the opportunity to fiddle around the edges of this piece of legislation, which is premised on a notification and investigation model of child protection. Whereas jurisdictions around the world and the rest of Australia are moving away from that kind of response, we are continuing to operate in that way.

My amendments seek not just to give the minister the discretion he requires but to ensure that there is some kind of response made when children are thought to be at risk. This amendment inserts the words 'or must effect an alternative response which more appropriately addresses the risk to the child'. It would probably be useful if I read the clause in its entirety and then, hopefully, I can very quickly finish and sit down, and we can move on.

The clause, if amended in the way in which the Australian Democrats seek to amend it, would provide:

If the chief executive suspects on reasonable grounds that a child is at risk and believes that the matters causing the child to be at risk are not being adequately addressed, the chief executive must cause an investigation into the circumstances of the child to be carried out—

this is where the new bit comes in—

or to effect an alternative response which more appropriately addresses the risk of the child.

What we are saying is that a child has been identified in some way as being at risk and nothing is being done about it at that stage, so the government has to either carry out an investigation or do something else to seek to protect that child. The 'state' might be the Department of Families and Communities, or it might be that the Department of Families and Communities worker makes contact with somebody from a different agency and checks that they are attempting to place somebody in a parenting program. They might talk to the school counsellor and ask them to keep an eye on a child who is thought to be at risk. There is a whole range of possibilities

the Chief Executive Officer can have effected in the name of the state.

In our discussions with the minister, we ran into some brick walls around the meaning of 'investigation' and so on. Unfortunately, the term 'investigation' is not defined in the act. It appears that, in this instance, some people in the department wish to interpret 'investigation' in the narrowest possible sense, whereas we hope that South Australia will catch up and, in the absence of wholesale changes to our legislation, start to interpret it in a broader way that can involve a whole range of government or non-government organisations, community groups or extended family networks. We hope that the government will see that the words 'effect an alternative response' in fact give it the discretion it claims to seek and unlock some of the agency responses from, in many cases, the rigid responses which we have had in the past and which the government says it wants to move away from. With those words, I conclude, but I am happy to answer questions if any honourable members have any.

The CHAIRMAN: When the honourable member read out her amendment, she read it differently. She said 'or to effect an alternative response'.

The Hon. KATE REYNOLDS: The filed version states 'or must effect'. The filed version does not have the whole thing, so I was referring to my notes.

The CHAIRMAN: It is a small but significant difference.

The Hon. KATE REYNOLDS: I congratulate you on your diligence and attention to detail, Mr Chairman.

The Hon. CARMEL ZOLLO: Can I clarify that the honourable member is leaving it as 'must'?

The Hon. KATE REYNOLDS: Yes.

The Hon. CARMEL ZOLLO: It is for that reason that we cannot accept the amendment. The government requires a discretion, as explained, I understand, in some discussions with the Hon. Kate Reynolds. The key plank of the government's child protection reforms is moving away from expecting one agency to take responsibility for child protection to a whole-of-government and whole-of-community approach. Already negotiations are under way with other government departments to protect children. However, the minister cannot take responsibility for the services of other agencies.

The Hon. KATE REYNOLDS: I think that the minister's response indicates that our child protection system is still resource driven. That is probably one of the reasons we are lagging so far behind the rest of the country and the world.

Amendment carried; new clause as amended passed.

Bill reported with a further amendment; committee's report adopted.

Bill read a third time and passed.

CHARLES STURT CITY COUNCIL

The Hon. D.W. RIDGWAY: I seek leave to make a personal explanation.

Leave granted.

The Hon. D.W. RIDGWAY: It appears that during questions earlier this afternoon in this place the information to which I alluded in regard to the City of Charles Sturt may have been incorrect. I deeply regret any distress I may have caused to any of the councillors of the City of Charles Sturt and apologise and withdraw my comments. However, I do not apologise for pursuing issues in my role as a member of the Legislative Council of the South Australian parliament.

The PRESIDENT: The honourable member was starting to get into debate.

ROAD TRAFFIC (DRUG DRIVING) AMENDMENT BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. CAROLINE SCHAEFER: After some consultation with various people, the opposition is withdrawing its first set of amendments and replacing it with my second set of amendments tabled this morning, all of which relate to aligning (which may not been the correct terminology) the penalties imposed in this bill with a category 2 offence for driving under the influence of alcohol. So, in fact, all the amendments that are now left, although not consequential, are aimed at making the penalties for drug driving the same as the penalties for driving at, I think, between .08 and .14. I am not proceeding with my first set of amendments and replacing it with the second set of amendments, which were tabled this morning.

Clause passed.

Clause 5.

The Hon. CAROLINE SCHAEFER: I move:

Page 4, lines 17 and 18—Delete subclause (9)

Although this is probably a minor amendment, I think we may as well use this as a test clause. Although they are not, as I understand it, strictly consequential amendments, they are all related to the same suite of amendments which, as I have just outlined, are aimed at aligning drug driving offences with a .08 blood alcohol content offence. I understand that the government will argue against that, given that the argument is, I believe, that we do not have sophisticated testing equipment at this stage and, therefore, we have less ability to work out whether someone is at the equivalent of .05 or .08. My argument against that is that we are talking about testing someone for an illegal drug. We believe that, that being the case, and given that we do not have the science, we should assume that people are in fact driving at a dangerous level.

I have heard the arguments from the Democrats and the Hon. Terry Cameron, and, while I understand what they are saying, I think we also all know of cases—and probably the majority of cases, in fact—where people currently drive under the influence of both alcohol and probably cannabis or THC, or methamphetamines. No-one has the ability to test for a combination of those two drugs. They are but some of the reasons that my party has decided and vehemently believes that, at the very least, these people should be treated as the equivalent of someone who is driving at a category 2 offence.

The Hon. P. HOLLOWAY: First, I agree with the Hon. Caroline Schaefer's contention that this is a suitable clause to use as a test clause in relation to the later amendments even though in itself it is not all that significant, but it would be an appropriate point for us to make that decision. This amendment will increase the period in which previous drug driving offences may be counted in determining whether a fresh drug driving offence should be counted as a first, second or subsequent offence. The net effect of this amendment will be to increase the penalties for second or subsequent drug driving offences. I wish to make the point that

there is no evidence to suggest that increasing the period in which previous offences were committed will discourage people from driving after consuming THC or methamphetamine.

The evidence, however, does indicate that the likelihood of being caught is a greater deterrent. Therefore, the increased likelihood of detection through random drug testing will provide a greater deterrence to drug driving than will increasing penalties. The purpose of this legislation is to trial the new drug testing regime. These amendments should be considered in the review of this legislation and scheme after the first 12 months of operation. I again make the point that the government has made during the second reading speech and response, that its bill is consistent with the Victorian model of linking the penalties to category 1 drink driving offences. Without going over the debate again—we have had this discussion at some length now—the government strongly opposes the amendment. We believe that the regime in the original bill for penalties is appropriate, given all the factors that I previously mentioned.

The Hon. CAROLINE SCHAEFER: Having read the arguments in another place, can the minister give me some reason why the government is so wedded to having exactly the same legislation as the Victorian model without in fact waiting for the Victorian trial period to finish? It seems that this government, probably due to the efforts of Mr Ivan Venning, who has been talking about this for some two years, has now decided that it is going to take on a get tough policy, but it is not quite prepared to get really tough; it is only a sort of semifinal tough. If that is the case, why did it not wait until the Victorians had finished their study?

The Hon. P. HOLLOWAY: I put the rhetorical question: does the Liberal Party want the legislation or not? The Liberal Party has been pushing for it. This government has always made it clear that it would introduce legislation. We have been observing what has happened in Victoria but, surely, it is appropriate that we support it.

The Hon. Sandra Kanck: It hasn't been evaluated.

The Hon. P. HOLLOWAY: That is right; it has not, but that is no reason why we should not be taking steps to try to reduce the incidence of drug driving.

The Hon. Sandra Kanck: Tell that to the people who opposed the bill in the first place.

The Hon. P. HOLLOWAY: That is no reason why we should not be making every effort to deal with the incidence of drug driving. The matter before us is about penalties. Given the fact it is a trial, that is one of the reasons why the government has suggested that we have these appropriate penalties. If the Hon. Caroline Schaefer is saying that her party wishes to wait until the Victorian trials are finished and we have a report, I suggest that they are being weaker than the government in relation to the testing. We know Victoria is the first state in Australia to have this legislation. It has what we believe are appropriate penalties, given what we know in relation to these offences. We believe we should take measures in this state to address this problem of drug driving, but the penalties we have should be commensurate with what we know about the problem. That is the argument here. What are the appropriate penalties given our state of knowledge on the issue at this time?

The Hon. SANDRA KANCK: I indicate that the Democrats will not be supporting this amendment. I hope that I have made my points quite forcibly in my second reading contribution and that some members looked at the scientific facts I put on the record. The Hon. Caroline Schaefer when moving this amendment said that we should 'assume'. I do not think we should assume anything. We need to be doing this on the basis of scientific fact. The Hon. Paul Holloway has admitted that the Victorian trial has not yet been evaluated. We are going down this path despite that evaluation not being completed. On that basis we cannot assume anything. In my second reading contribution I pointed out the research that has been done. I hope I showed the inconsistencies, and I indicated at the end that we would support it, effectively as a trial, but believing that we will probably have to come back later, because mistakes will be made in this climate. I do not assume anything. I look for scientific fact on something like this—and the scientific facts are simply not there.

The Hon. NICK XENOPHON: I indicate support for the Hon. Caroline Schaefer's amendment in this regard. I did refer in my second reading contribution to an article on the front page of *The Sunday Age*, I believe two weeks ago, headed 'Drug drivers face ban', a story by Jason Dowling, a reporter for *The Sunday Age*. The gist of that story is that the government in Victoria is considering that motorists caught driving while under the influence of illicit drugs will automatically lose their licence. It is coming towards the end of the trial. A number of remarks were attributed to the Victorian police minister Tim Holding. He is quoted in the article as saying:

> We thought we had a problem but the problem is even more extensive than we thought it was, in terms of the number of people who take drugs and drive a vehicle.

Mr Holding said that the penalties for drug diving had been light so far because it was a trial, but he warned that the public could expect much tougher penalties soon. So, we can learn from the Victorians. As I understand it, this is the direction in which the Victorian government is heading. It had the benefit of being first off the block in terms of this particular testing, as I understand it. I think we can learn from that model. I believe the amendments proposed by the Hon. Caroline Schaefer reflect what has already happened in other jurisdictions. I want to put a question to the minister and, if it has been answered already, I apologise for asking it again. How many police officers will be trained for drug testing of drivers, and how many tests are expected to take place in the next 12 months? In other words, how extensive will it be, how much testing will take place and how many police officers will be trained to administer such tests?

The Hon. P. HOLLOWAY: Before I answer that question, I will address a couple of points raised by the Hon. Nick Xenophon. First, it needs to be pointed out that the Victorian government is waiting for the results contained in the report that is yet to be completed. It is therefore premature to suggest that Victoria necessarily will increase its penalties. Even if it did, the Hon. Nick Xenophon says that we should learn from Victoria. I agree with him. Let us learn from Victoria. Let us start with a lower level of penalties until the public gets used to the idea and then gradually increase them. Is it not a sensible way to introduce penalties for anything?

When we first dealt with the problem of drink driving many years ago, we did not have the penalties that we have today. They have been gradually increased as the awareness of the problem of drink driving has become more apparent and as we need to make the public more aware of the need to comply with those laws. It is inevitable in these sorts of regimes that there should be some sort of cranking up. That is the sensible way to go. I am told that, for its first 12 months, New South Wales will not be issuing expiation notices at all just to get the public used to these rules.

It is a long-established principle with respect to these sorts of rules that govern social behaviour that it is sensible to introduce them at a lower level and then, if necessary, if the evidence is there later and the case is there to increase them, that can be done by parliament in a period of time. It is just a sensible way to go. Let us learn from Victoria and act in that way. In relation to the question asked by the Hon. Nick Xenophon, I am advised that South Australia Police will train a dedicated group of officers (approximately 20) to conduct testing, and it will utilise up to 10 officers at any one time to conduct random drug testing across the state using a drug bus, which will house the specialised oral fluid analysis testing equipment. The initial estimation of the number of tests to be performed in South Australia will be 1 800 tests in 2005-06, 6 500 tests in 2006-07 and 9 000 tests in both 2007-08 and 2008-09.

The Hon. CAROLINE SCHAEFER: I am indebted to the Hon. Nick Xenophon for supplying us with a copy of the article appearing in *The Sunday Age* which he has discussed and part of which, I think, is worth reading into the *Hansard*. The article states:

> Motorists caught driving while under the influence of illicit drugs will automatically lose their licence under moves being considered by the state government [this is the Victorian state government]. Roadside saliva drug testing is here to stay and penalties are set to get much tougher, the state government has said. The range of drugs tested could also be broadened as the government begins analysing the results of its 12-month trial of roadside saliva drug testing. The trial, which will conclude on December 12, has tested more than 10 000 motorists and more than 200 were caught with illicit drugs in their systems. A positive roadside drug testing strike rate has indicated that motorists are five times more likely to be driving under the influence of an illicit drug than they are to be driving with a blood alcohol reading above .05.

My initial contention was that this government is hell-bent on introducing this legislation, even though it has delayed it, knocked it out and laughed at the member for Schubert for two years. It has now decided that it is a populist thing to do, so it is introducing it in the last two or three weeks of parliament. It is then using the excuse that it must line up with Victoria. Here we have the Victorian government saying that its trial does not finish until 12 December. That is not a long time away, but it does not finish until 12 December.

So, they cannot really use the results of the trial. But, also, the initial results are such that the Victorian government will be introducing amendments such as I am suggesting right now. I cannot see what this government is playing at. It is either serious about drug testing or it is not serious about drug testing. We do not know the ramifications. We do not have a graded system. Therefore, we can only assume, as these tests are proving, that there are a number of drivers out there who are driving at dangerous levels. All we are asking is that category 2 be what is considered, that is, aligned with .08.

The Hon. P. HOLLOWAY: First, one should point out that the Hon. Caroline Schaefer really is a bit disingenuous in talking about this bill in the context of the past few weeks. I am advised that this bill was delayed in being debated in the lower house for something like four weeks, without their even taking it to their party room for a decision.

I want to come back to the point that in Victoria they built up to it. One of the things you have with drug testing, just as you would have had with drink driver testing, is to get the public used to the fact that this will occur. Is it not sensible, with the introduction of any measure such as this, that you go through a trial period? And 12 months seems as good a period as any. We did it with 50 km/h speed limits when we introduced it. You do not suddenly put in a heavy penalty for speeding at over 50 km/h overnight—you have a transition period so people get used to the new regime that is coming in. That is why I would have thought what Victoria has done is very sensible. Even if Victoria does go to heavier penalties, the fact is that people in Victoria now have had 12 months to get used to the fact that they can be tested randomly for drugs in their blood if they are driving their motor vehicle. So, if the penalties are tougher now, it will have that suitable ramp-up effect of people getting used to it.

That will not occur here if we just have the same penalties from day one. Potentially, there will be issues about people not being aware of it. It is important, when we have these sorts of measures, that we bring the public along with us. The public needs to accept that it is wrong to drive with more than the prescribed blood alcohol level and it is wrong to drive with drugs in their system, and, unless people are aware of that and unless we reinforce it, no laws will be effective. Surely the sensible way to go about any law-making is to have an introductory period.

What the government is suggesting is still fairly severe penalties—certainly much more severe than what would be the case in New South Wales. After all, the principal role of this bill is about road safety and discouraging drug driving rather than punishing illicit substance users. The Hon. Sandra Kanck has put her view in relation to how dangerous it is. The jury is out on the issue about the impairment from certain drugs—there are a lot of different drugs, and whether the impairment from one drug is the same as that of another drug is a point that can be debated.

The important thing is that this bill needs to discourage people from driving with drugs in their system. It is not to punish them for using illicit substances. There are other laws to deal with that. What we are trying to do is get people off the road, and it does not make sense to crank up the penalties so high initially until you give people a chance to adapt to this new testing regime. That is why the Victorians were sensible in the way they did it, and it is the way other states will do it, and it will be sad if we do not do that here.

This bill has gone through extensive consultation and it has the support of all major stakeholders, including the RAA and the police, because these people deal with these things. The RAA deals with these issues every day and the police traffic branch knows what works with motorists. They know how important it is to have the educative side of laws working in conjunction with the penalty side. That is why it would be just so foolish for this parliament to go against the advice of those people.

The Hon. CAROLINE SCHAEFER: I do not want to prolong this unnecessarily at this late hour, but I point out that these amendments were moved in the other place as a result of requests by the police force.

The Hon. A.L. EVANS: I support the amendment. You only have to go to the hospitals and see young people who will never walk again to begin to realise how important it is that we keep our roads free from drink drivers and drug drivers. Because we have a tough drink driving approach, we find that people are finding different ways of going home, such as catching a cab or getting a friend to drive them home, and we will never know how many accidents have been avoided by that tough approach. Drugs are an increasing menace and our young people need to get the message that if they are going to use drugs they are not going to risk the life of other people on the roads. Therefore, I strongly support the amendment.

The Hon. P. HOLLOWAY: It is interesting that in two days we will have the sad case where someone is going to be executed overseas for drugs and there are a whole lot of people in overseas countries who have been imprisoned for drugs. Of course young people should not use drugs, but even when they are facing the death penalty it seems, sadly, that some people still do that. What we need to do to make these laws effective in terms of driving on the roads is to get people used to the testing, to have the sort of ramp-up that they have had in other states such as Victoria, which will bring home to young people that it is not permissible to undertake this activity.

That very sad example I just gave illustrates the fact that penalties alone are not going to work. You need to have a random testing regime that the public relates to. The chances of that happening will be diminished if we have these changes, and that is sad. The Hon. Caroline Schaefer made a comment that the police had asked for these changes. What evidence do we have for that? There has been no indication to us that that is the case. I do not know whether the Hon. Caroline Schaefer spoke to one individual policeman who was giving his personal opinion. We will endeavour to check that out, but it is certainly not the evidence that we have. Indeed, our advice is that SAPOL has not asked for tougher penalties, and that does not surprise me.

The Hon. SANDRA KANCK: I again make an appeal for people to look at facts. The Hon. Andrew Evans was talking about young people. The people who use amphetamines are university-educated people, in the main. They have been through university, have completed their degrees and they are adults. They are the people who are going to be picked up.

The Hon. Nick Xenophon: Crystal meth?

The Hon. SANDRA KANCK: I do not know about crystal meth, I am talking about amphetamines in general. These are people up to 40 and 45, so we are not talking about children here. These are adults who are making conscious and informed decisions about their particular drug of choice, whether it be alcohol or something that is deemed illicit. Many of them make a decision that some of these illicit drugs are actually safer for them from a health perspective than the legal ones such as alcohol and tobacco.

The Hon. Caroline Schaefer read from the article in *The Age*, and the figure that was given was that something like 200 out of 10 000 people who were tested had shown that they had drugs in their system. That is only 2 per cent—a very small amount. The article has been written in a quite sensational way; what do they mean by the words 'under the influence', that they had some measurable THC? I ask the minister to clarify whether it is correct that in this legislation there will be no allowable level of THC.

The Hon. P. HOLLOWAY: I am advised that that is not the case. Only THC that has been consumed in the last six hours is likely to be detectable.

The Hon. SANDRA KANCK: I do not believe that that is medically the case. THC can be found in the blood many days afterwards and have no effect on people.

The Hon. P. HOLLOWAY: While it is true that THC may remain in the blood for a long time, I am advised that the saliva test will detect THC that has been consumed only within that six hour period.

The Hon. SANDRA KANCK: So, if THC has been consumed within that six hour period, no matter how many drags they have had, will that person then be fined?

The Hon. P. HOLLOWAY: Yes.

The Hon. SANDRA KANCK: So, effectively we are saying that there is no allowable limit of THC, yet we continue to tolerate anything below 0.05 per cent for alcohol?

The Hon. P. HOLLOWAY: For some years now a lot of research has been done to determine what levels of alcohol in the blood impair driving. In terms of statistics I have been given regarding people with THC or methamphetamine in their blood, 23 per cent of driver and motorcycle rider fatalities tested post mortem had either THC, the active ingredient in cannabis, and/or methamphetamine in their blood at the time of the crash. I think that is enough of a statistic to tell us that we should be doing something about the problem.

Unlike with alcohol, where a lot more research has been undertaken over many years, it is much harder to relate that to levels; we do not have that information at this stage. Perhaps in the future, as more work is done and as these test results become available, we may become more sophisticated in relation to the sort of legislation we apply to drugs in the blood. The science does not allow us to do anything else. The bill is about drug driving, not drunk driving. It is based on the presence of the drug, not on impairment. As I said, with alcohol the research has been done so that the amount of alcohol in the blood can be related to some level of impairment. However, we simply do not have that level of information or the testing regimes available for us to be as precise in relation to these sorts of drugs, and that is the very reason that the first offence is to be expiable.

The Hon. SANDRA KANCK: I think that the consequence of this legislation being passed, particularly with some of these increased penalties and so on that are now envisaged, is that (a) a certain segment of the community will see this as hypocrisy and (b) we are going to criminalise a lot of people who should not be criminalised. I would also like to ask the minister a question about the testing in Victoria. Is the minister aware whether or not the testing in Victoria has at all times been random testing of motorists? I understand that at different times in the past 12 months they have specifically sat outside rave parties and that they have targeted truck drivers, who are notorious for having drugs in their system. In fact, in this article from *The Age*, there is an example of how they went out after the AFL final when, of course, a lot more celebrations than usual would have been going on.

The Hon. P. HOLLOWAY: The honourable member is essentially correct. Yes, our advice is that in Victoria the police targeted heavy vehicle drivers and rave party-goers. I think that is another reason why the penalty should be somewhat less, because we are not going to be—

The Hon. Sandra Kanck: I'll be scientific about it; the figures are skewed.

The Hon. P. HOLLOWAY: Yes; I am not denying that. I will make a couple of final points here. First, under this bill, the test will not always be random; it is at the discretion of the police, and we do not interfere in their operations, nor should we, any more than we do in relation to police random breath testing. If the statistics show that people tend to drink on a Friday or Saturday night or whatever, it is appropriate that the police should be targeting their activities at those sorts of times. I have no problem with that whatsoever. I guess it is the same in relation to drug testing. The other example for which I am indebted to my colleague the Hon. John Gazzola is that, if you look at the issue of drug testing in sport or at the workplace, we can see the benefits

of introducing this testing, of having an education process in dealing with these issues.

It is important that we remove drugs from sport. It is important that we remove drugs at the workplace. That is where an educative process is very important rather than just suddenly saying, 'Okay. We will have random tests tomorrow. You will lose your job. You are gone. You have finished everything else.' It is much more important and sensible, and much more likely to be effective, if we introduce these sorts of measures in a steady, progressive way so that people have time to adjust to the new realities of these testing regimes.

The Hon. SANDRA KANCK: I thank the minister for his answer to my question. I repeat what I said when I interjected, in case it did not get on the record: the figures from Victoria are skewed. Whereas, according to this article in *The Age*, they have been able to test 10 000 motorists and find out that 200 of them had drugs in their system. They are skewed figures. It does not represent how the majority of the public are out driving when you deliberately target truck drivers and rave parties. It is pretty obvious.

The Hon. KATE REYNOLDS: I will add to that. The government deliberately refuses to allow drug testing at rave parties where they know that there are very dangerous substances made available to young people.

The Hon. CAROLINE SCHAEFER: I hope that this test debate is winding to a close, but I remind people that what we are talking about here is consuming a drug that is in fact illegal in this state. We are not talking about a legal drug such as tobacco or alcohol: we are talking about an illegal drug, which is already an expiable offence to consume. So, that is why the opposition is suggesting that we begin this at a reasonably high level of penalty.

The Hon. P. HOLLOWAY: If that is the case, why not take it to its logical conclusion and test people on the street? Why just test people in cars? I remind people again that this bill is about road safety; it is not about drug enforcement. If it was about drug enforcement, we would check people everywhere.

The Hon. CAROLINE SCHAEFER: I remind the minister that the figures in the only state that has done any sort of testing at all—and the figures the minister has quoted—show that one quarter—that is, one in four—of the fatalities in Victoria have traceable evidence of THC or methamphetamine in their bloodstream.

The Hon. P. HOLLOWAY: How important that statistic is depends, I suppose, on what sort of proportion there is in the risk population—which is normally young people, who, sadly, seem to kill themselves more frequently—compared with what you would have in a general section of the population.

The committee divided on the amendment:

AYES (9)

Dawkins, J. S. L.	Evans, A. L.
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Ridgway, D. W.
Schaefer, C. V. (teller)	Stephens, T. J.
Xenophon, N.	

NOES (6)

Gago, G. E.	Gazzola, J.
Holloway, P. (teller)	Kanck, S. M.
Reynolds, K. J.	Zollo, C.

PAIR(S)

Redford, A. J.	Roberts, T. G.
Stefani, J. F.	Sneath, R. K.

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 6.

The Hon. CAROLINE SCHAEFER: Mr Chairman, I seek your advice. I recognise that technically my amendments Nos 2, 3, 4 and 5, as I understand it, are not consequential, and I seek the advice of parliamentary counsel on that—but they are a suite of amendments. We used the amendment that has just passed as a test clause, so I am asking whether I can move my amendments—which are all amendments to clause 6—en bloc.

The CHAIRMAN: I think everyone agrees in principle.

The Hon. CAROLINE SCHAEFER: I move:

Page 4, line 26—
Delete the penalty provision and substitute:
Maximum penalty:
(a) for a first offence—a fine of not less than $500 and not more than $900;
(b) for a second offence—a fine of not less than $700 and not more than $1 200;
(c) for a third or subsequent offence—a fine of not less than $1 100 and not more than $1 800.

Page 5—
Line 2—
Delete "three months" and substitute:
6 months
Line 4—
Delete "6 months" and substitute:
12 months
Line 6—
Delete "12 months" and substitute:
2 years

The Hon. P. HOLLOWAY: Given that these are consequential, although the government opposes them, we will not be dividing on them. We accept that they are consequential to the earlier amendment.

The CHAIRMAN: On this occasion I am prepared to put the question, although it is starting to get a bit dangerous.

Amendments carried; clause as amended passed.

Clauses 7 to 10 passed.

Clause 11.

The Hon. CAROLINE SCHAEFER: Similarly, my amendment Nos 6, 7 and 8 are all amendments to clause 11, so I move:

Page 8, line 37—
Delete the penalty provision and substitute:
maximum penalty:
(a) for a first offence—a fine of not less than $500 and not more than $900;
(b) for a subsequent offence—a fine of not less than $1 100 and not more than $1 800;

Page 11—
Line 2—
Delete "3 months" and substitute:
6 months
Line 4—
Delete "12 months" and substitute:
2 years

The Hon. P. HOLLOWAY: From the government's point of view, again we regard these amendments as consequential. They do increase the penalties above levels which the government does not agree to, but given the previous amendment we will not divide on them.

Amendments carried; clause as amended passed.

Clauses 12 to 19 passed.

Schedule.

The Hon. CAROLINE SCHAEFER: I move:

Page 25—
Line 22—Delete '3 months' and substitute:
6 months
Line 23—Delete '6 months' and substitute:

12 months

Line 24—Delete '12 months' and substitute:

2 years

Page 26—lines 1 to 4—Delete 'subsection (4) and substitute:

(4) For the purposes of subsection (3), the prescribed period is 5 years.

The Hon. P. HOLLOWAY: Again, we accept that these amendments are consequential to the earlier vote.

Amendments carried; schedule as amended passed.

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.

Very briefly, I think that a bit of one-upmanship has, sadly, been seen with this bill. The amendments passed are really not based on any research and, essentially, they are the product of a deal between the Hon. Mr Xenophon and the Liberals. One wonders what happened to their amendment which was originally in their bill and which restricted civil liberties, such as car searches. All I can say is that the government's bill in its original form was the subject of wide consultation. It had the agreement of the key stakeholders and was based on interstate experience. We can only say that the government is relieved that at least this bill is reviewable after 12 months of operation so that we can, if necessary, deal with any adverse consequences then.

The Hon. CAROLINE SCHAEFER: I have endeavoured to conduct the debate with some decorum, diplomacy and decency, but the minister has not been able to restrain himself. I am sure that the Hon. Nick Xenophon is capable of defending himself, but may I say that the only deal that has been done with the Hon. Nick Xenophon or, indeed, the Hon. Andrew Evans, is that I paid them the courtesy I pay to every member of the opposition whenever I handle a bill, that is, I explain what amendments I will move and why I will move them. There is no deal, and I find it personally offensive that at this late hour the minister, because he has lost an amendment, casts an aspersion and implies that I am doing some sort of backroom deal with my colleagues in this council.

The Hon. NICK XENOPHON: No deals—no deals of any kind—have been done, Mr President. The situation is that the Hon. Caroline Schaefer informed me that she would move another set of amendments so that the nature of the amendments would be confined to penalties to bring it in line with category 2. I believe that that was the better approach, and the preferred approach, in terms of dealing with this. I believe that these amendments make it much clearer and that it sends a much stronger signal that drug use is to be discouraged because the sanctions will be strengthened further than what is anticipated by the government's proposal. If it were not for the fact that the Victorian government has been trialing this for almost 12 months, I would not have been so comfortable with the amendments. However, I believe that the matters raised by the Victorian police minister indicated that the direction of the Hon. Caroline Schaefer's amendments were appropriate and ought to be supported.

Bill read a third time and passed.

DEVELOPMENT (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1—New clause, page 3, after line 9—

Insert:

3A—Amendment of section 3—Objects

Section 3—after paragraph (d) insert:

(da) to facilitate the identification and protection of places of State and local heritage significance; and

No. 2—New clauses, page 5, after line 6—

Insert:

7A—Amendment of section 25—Amendments by a council

(1) Section 25(12)—delete subsection (12)

(2) Section 25(15)(b)—delete paragraph (b)

No. 3—New clauses, page 5, after line 6—

Insert:

7B—Insertion of section 25A

After section 25 insert:

25A—Heritage matters—council amendments

(1) Section 25 operates subject to the requirements of this section.

(2) If a council is considering an amendment to a Development Plan that may involve the designation of a place as a place of local heritage value then—

(a) the council must—

(i) before it finalises its Plan Amendment Report under section 25(3) and (4), engage a person who is recognised by the South Australian Heritage Council as being appropriately qualified for the purpose to undertake a heritage survey; and

(ii) subject to subsection (3), adopt the advice of that person as to whether or not a particular place should be listed as a place of local heritage value in the Development Plan and proceed to prepare any relevant draft amendment as expeditiously as possible (subject to the operation of section 25 and this section),

(although any advice as to the policies that should apply under the Development Plan in relation to such a place will be provided by the person who is providing advice to the council under section 25(3)); and

(b) subject to any exemption under subsection (10), the council must, before it releases a Plan Amendment Report that proposes the designation of a place as a place of local heritage value for public consultation under section 25, apply to the Minister for a declaration under section 28 so that the amendment may come into operation on an interim basis under that section (and, if the Plan Amendment Report has been divided into parts under section 25(9), then only the part that relates to local heritage will be subject to this requirement).

(3) If—

(a) the person who has undertaken a heritage survey under subsection (2)(a) has advised the council that a particular place should be listed as a place of local heritage value; but

(b) the council believes that that place should not be so listed,

the council may, with the agreement of the Minister, release the Plan Amendment Report for public consultation without that place being listed

as a place of local heritage value.

(4) If a particular place is not listed in a proposed amendment to a Development Plan by virtue of the operation of subsection (3), the council must include a note on the matter (in accordance with any prescribed requirement) in the relevant Plan Amendment Report that is released for public consultation.

(5) Subject to the operation of subsection (3), a council must release for public consultation as expeditiously as possible any proposed amendment to a Development Plan that designates a place as a place of local heritage value.

(6) If a proposed amendment to a Development Plan under section 25 (after taking into account any step that has been taken under subsection (3) of this section) designates a place—

(a) as a place of local heritage value; or

(b) as a place within a local heritage zone or policy area, or within any other prescribed kind of zone or policy area, that should be subject to additional heritage-related policies because of its contribution (or potential contribution) to the character of the zone or area,

the council must, at the time when the relevant Plan Amendment Report is released for public consultation, give each owner of land constituting the place so designated a written notice—

(c) informing the owner of the proposed amendment; and

(d) inviting the owner to make submissions on the amendment to the council within the period provided for public consultation under section 25.

(7) If the effect of a proposed amendment to a Development Plan under section 25 is that a place would cease to be designated as a place of local heritage value, the council must also give each owner of the relevant land a written notice that complies with the requirements of subsection (6).

(8) If an owner of land notified under subsection (6) or (7) objects to the relevant amendment within the period provided for public consultation, the Minister may, after receiving the relevant report of the council under section 25(13)(a), refer the matter to the Advisory Committee for advice and report.

(9) If the Minister takes action under subsection (8), the owner of the land must be given a reasonable opportunity to make submissions to the Advisory Committee (in such manner as the Advisory Committee thinks fit) in relation to the matter before the Advisory Committee reports back to the Minister.

(10) The Minister may exempt a council from the requirement to comply with subsection (2)(b).

(11) To avoid doubt, if a council fails to comply with subsection (2)(b) (and the Minister has not granted an exemption), the Minister may proceed to make a declaration under section 28 in any event.

No. 4—New clauses, page 5, after line 6—

Insert:

7C—Amendment of section 26—Amendments by the Minister

(1) Section 26(6)—delete subsection (6)

(2) Section 26(7)(b)—delete paragraph (b)

No. 5—New clauses, page 5, after line 6—

Insert:

7D—Insertion of section 26A

After section 26 insert:

26A—Heritage matters—Ministerial amendments

(1) Section 26 operates subject to the requirements of this section.

(2) If the Minister is considering an amendment to a Development Plan that may involve the designation of a place of local heritage value then the Minister must—

(a) before he or she finalises the relevant Plan Amendment Report under section 26(1), arrange for a person who is recognised by the South Australian Heritage Council as being appropriately qualified for the purpose to undertake a heritage survey; and

(b) adopt the advice of that person as to whether or not a particular place should be listed as a place of local heritage value in the Development Plan (subject to the operation of section 26 and this section), unless the Minister considers that there are cogent reasons for not adopting that advice (and subject to the qualification that any advice as to the policies that should apply under the relevant Development Plan in relation to any listed place will be provided by the person who is providing advice to the Minister under section 26(1)).

(3) If a particular place is not listed in a proposed amendment to a Development Plan despite the advice provided under subsection (2)(a), the Minister must include a note on the matter (in accordance with any prescribed requirement) in the relevant Plan Amendment Report that is released for public consultation.

(4) If a proposed amendment to a Development Plan under section 26 designates a place—

(a) as a place of local heritage value; or

(b) as a place within a local heritage zone or policy area, or within any other prescribed kind of zone or policy area, that should be subject to additional heritage-related policies because of its contribution (or potential contribution) to the character of the zone or area,

the Minister must, at the time when the relevant Plan Amendment Report is released for public consultation, give each owner of land constituting the place so designated a written notice—

(c) informing the owner of the proposed amendment; and

(d) inviting the owner to make submissions on the amendment within the period provided for public consultation under section 26.

(5) If the effect of a proposed amendment to a Development Plan under section 26 is that a place would cease to be designated as a place of local heritage value, the Minister must also give each owner of the relevant land a written notice that complies with subsection (4).

(6) The Minister may then seek the advice of the Advisory Committee on any submission made under subsection (4) or (5).

No. 6—New clauses, page 5, after line 6—

Insert:

7E—Amendment of section 28—Interim development control

(1) Section 28(1)—delete 'the Governor' wherever occurring and substitute, in each case:

the Minister

(2) Section 28(4)(a)—delete 'the Governor' and substitute:

the Minister

No. 7—Clause 12, page 7, line 13—

After 'Building Rules' insert:

and where it was reasonable, in the circumstances, to rely on the advice, skills or expertise of that person

No. 8—Page 17, heading to Schedule 1—

Delete heading and substitute:

Schedule 1—Related amendments and transitional provisions

No. 9—Page 19, after line 4—

Insert:

Part 4—Transitional provision

9—Interpretation

In this Part—

principal Act means the *Development Act 1993*.

10—Heritage surveys

A heritage survey undertaken before the commencement of this clause by a person who is recognised by the

South Australian Heritage Council as being appropriately qualified to undertake heritage surveys under the principal Act may be adopted by a council or the Minister under section 25A or 26A of the principal Act (as enacted by this Act) provided that the survey has been completed within the period of 5 years immediately preceding that adoption.

ADJOURNMENT

At 11.52 p.m. the council adjourned until Wednesday 30 November at 2.15 p.m.