# LEGISLATIVE COUNCIL

**Monday 20 November 2006**

**The PRESIDENT (Hon. R.K. Sneath)** took the chair at 2.17 p.m. and read prayers.

## VON EINEM, Mr B.S.

**The Hon. CARMEL ZOLLO (Minister for Correctional Services):** I seek leave to make a ministerial statement on behalf of the Minister for Health in another place, and myself.

Leave granted.

*An honourable member interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** Like all South Australians I was outraged to learn that convicted murderer Bevan Spencer von Einem received a Viagra-type drug in prison three years ago. Three months after the drug was prescribed by the doctor, and paid for by the prisoner, the treatment was discontinued. This appalling decision should never have been made, and I cannot believe that any doctor would consider it necessary or appropriate to provide these sorts of drugs to prisoners. It simply defies commonsense. This case is the second occasion that Cialis has been prescribed in our prisons by the Prison Health Service; the first was to a prisoner in 2001, when I understand Rob Brokenshire was correctional services minister and Dean Brown minister for health.

*Members interjecting:*

**The PRESIDENT:** Order! The minister has the call.

**The Hon. CARMEL ZOLLO:** I am advised that Viagra-style drugs have not been prescribed by the Prison Health Service since 2003, and this government is taking action to ensure that no prisoner will ever be prescribed any such drug in South Australia's prisons. As of last Friday all Viagra-style drugs have been banned. The health minister and I first learned of this incident last Friday—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** I am advised that the doctor from the Prison Health Service who prescribed the drug was not required to inform the Department for Correctional Services. Although protocols have been developed between the Department for Correctional Services and the Department of Health since then, I have asked the chief executive of correctional services to review the new protocols to ensure that the emphasis is on disclosure rather than prisoner privacy. The matter has been referred by the health minister to the Crown Solicitor's Office to conduct an investigation and advise whether there has been any breach of law or regulation or any improper or unprofessional conduct by any employee. I am informed that this morning the matter was also referred by the Central and Northern Adelaide Health Services, which manages the Prison Health Service, to the Medical Board to investigate the professional conduct of the doctor in question.

The Department of Health is leading a review of how clinical decisions are made in prisons. This will check that there is appropriate supervision and peer assessment of treatment decisions. Meanwhile, the doctor who prescribed Cialis to von Einem and who is employed in the public health system has been suspended pending the outcome of these investigations.

Again, I wish to emphasise that the government is outraged by the staggering lack of judgment of a doctor working in the Prison Health Service. This matter first came to the attention of the government on Friday, as a result of media inquiries based on a witness statement provided to the police. It is not appropriate for police to provide statements or other material relating to criminal investigations to ministers.

# QUESTION TIME

## CORRECTIONAL SERVICES, PROTOCOL

**The Hon. J.M.A. LENSINK:** I direct the following questions to the Minister for Correctional Services on the subject of joint system protocols between Prison Health Service and the Department for Correctional Services:

1. Has the minister viewed a copy of the protocol between the Prison Health Service and the Department for Corrections?
2. Did the minister approve the terms of the protocol?
3. Will the minister assure the public that no prisoner can be provided with sex performance enhancing drugs without the department and/or the minister being informed beforehand?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services):** I really do not want to read my ministerial statement out again. I do not think I should have to, Mr President.

*Members interjecting:*

**The PRESIDENT:** Order! Perhaps if members opposite had been listening to the ministerial statement they would have heard what was said. Perhaps they ought to listen to the answer to the question in silence so they know what is said and then we might not get so many supplementary questions.

**The Hon. CARMEL ZOLLO:** I said I probably should not have to read out my ministerial statement again, but certainly—

*The Hon. R.P. Wortley interjecting:*

**The Hon. CARMEL ZOLLO:** Especially about 2001, I am reminded by the member behind me. Yes, we do have joint system protocols and, as I said in my ministerial statement, I have asked that they be further reviewed to ensure that something like this does not happen again. Obviously, that drug has now been banned.

**The Hon. J.M.A. LENSINK:** I have a supplementary question. Is the minister confirming that she has sighted a copy of the joint system protocol?

**The Hon. CARMEL ZOLLO:** I have been provided with the downloaded version of the protocols. An enhanced version was put in place in 2005. They were revised between the Department for Correctional Services and the South Australian Prisoner Health Service, and they were about improving the sharing of information to ensure that prisoners were appropriately managed. The protocols, as they stand, do not eliminate patient-doctor confidentiality; therefore, a doctor would still not disclose the type of medication prescribed to a prisoner but would advise prison management on any medical issues that are relevant for the day-to-day management of that person.

For example, if a prisoner is diagnosed with severe depression and is medicated, the doctor will advise staff of the fact that the prisoner needs to be closely monitored. They

will also advise of possible effects that the medication regime might have and how they impact on the prisoner's behaviour. As I said, those protocols are about to be reviewed again, and any Viagra-type drug is now banned.

**The Hon. R.D. LAWSON:** I have a supplementary question. Under the protocols referred to by the minister, and given her statement that von Einem paid for the Viagra-like drug, are payments by prisoners made directly to officers of the correctional services department or to some other; if so, which officer?

**The Hon. CARMEL ZOLLO:** I guess the honourable member is going to the heart of how he obtained this drug, and for me to comment I think really would prejudice the investigation that is occurring. This matter has been referred for investigation, and crown law advice is sought. It is not normal for prisoners to pay for their medication in the manner in which this prisoner obtained his.

**The Hon. NICK XENOPHON:** I have a supplementary question. Are the protocols publicly available; if not, will the minister release the protocols referred to?

**The Hon. CARMEL ZOLLO:** I am happy to release the protocols that are available now. However, you need to bear in mind that they are subject to review.

**The Hon. R.I. LUCAS (Leader of the Opposition):** As a supplementary question, under the protocols can the minister indicate which minister or person is responsible for approving the list of banned drugs for use by prisoners in South Australia?

**The Hon. CARMEL ZOLLO:** Prisoner health services are provided by the health department, so my colleague the Minister for Health in the other place imposed a ban last Friday. Very obviously, those services are provided by that department.

**The Hon. R.I. LUCAS:** I have a supplementary question arising from that answer. Does that mean that the Minister for Health alone is responsible for banning drugs within the system, or does the Minister for Correctional Services have an advisory role in any decision taken by the Minister for Health in terms of which drugs may or may not be banned for use by prisoners within prisons in South Australia?

**The Hon. CARMEL ZOLLO:** I am awaiting advice from my CE in terms of that review, and I will bring back some more information for the honourable member.

**The Hon. R.I. LUCAS:** As a supplementary question arising out of the answer—

**The Hon. P. HOLLOWAY:** I rise on a point of order, Mr President.

*Members interjecting:*

**The PRESIDENT:** Order! A point of order has been raised.

**The Hon. P. HOLLOWAY:** The opposition can ask three questions at the start of question time. My point of order is: how many supplementary questions is the opposition able to ask before it becomes a new question?

**The PRESIDENT:** It probably results in the number of questions being fewer, of course.

*An honourable member interjecting:*

**The PRESIDENT:** That is a ruling by the President, and it is out of order for you to make any comment on that. The Hon. Mr Lucas has the right to ask a supplementary question if it derives from the original answer.

**The Hon. P. HOLLOWAY:** On a point of order, Mr President, if that is the case, how did that question relate to the original answer? This is the point: if members can keep asking supplementary questions on the supplementary answer, then the whole of question time could go through with one rolling supplementary question. I suggest that it is about time in this place that supplementary questions truly related to the original question. My point of order is that this question has nothing whatsoever to do with the original answer.

**The PRESIDENT:** Members opposite know that supplementary questions must derive from the original answer. I have ruled that the Hon. Mr Lucas's supplementary question derived from the original answer, not from the supplementary answer.

**The Hon. R.I. LUCAS:** It arises from the original answer which related to the protocols that exist. Under those protocols is any officer of the correctional services department, including the chief executive officer or any other officer, involved in discussions with officers in the heath department in relation to which drugs are banned or not banned for use on prisoners in our prisons in South Australia?

**The Hon. CARMEL ZOLLO:** As I mentioned, the prescribing of drugs is the responsibility of medical staff of the SA Prison Health Service. They are subject to the standard code of ethics for the medical profession.

*An honourable member interjecting:*

**The Hon. CARMEL ZOLLO:** We are talking about the prescribing of drugs. There is a list in place that contains a range of medications that cannot be prescribed to prisoners, for example, strong pain-killers and the like. As I have mentioned many times already, we now have protocols in place which were strengthened last year.

*Members interjecting:*

**The PRESIDENT:** Order! The honourable minister might want to start her answer again because I could not hear most of it.

**The Hon. CARMEL ZOLLO:** Thank you, Mr President. Even now, as I have mentioned, those protocols will be subject to review.

## VON EINEM, Mr B.S.

**The Hon. R.D. LAWSON:** I seek leave to make a brief explanation before asking the Minister for Correctional Services a question on the subject of von Einem.

Leave granted.

**The Hon. R.D. LAWSON:** On 8 December 2004, a prisoner in Yatala wrote a letter in which he alleged, amongst other things:

> . . . last year. . . von Einem was openly involved in a sexual relationship with another prisoner, some. . . years younger. Not only did correctional staff condone this behaviour, but a number of correctional staff encouraged it.

He went on to say:

> . . . von Einem regularly preys on other prisoners (and the younger the better). Those of whom he desires and intends to seduce, he pampers with gifts from the canteen and the promise of thousands of dollars; in an attempt to coerce them into sexual compliance.

He went on to say:

> . . . von Einem has been housed in a cell adjacent to the unit staff office for over eight years and having been incarcerated in Yatala for over 20 years, he is regularly privy to much sensitive information. Employed as the only education tutor (for protective custody), he has

unlimited and unsupervised access to the education classroom (computers and printers, etc.) and can do as he pleases. Furthermore, von Einem has unrestricted movement within the entire protective custody unit; even regularly visiting the main laundry to make scones for staff and prisoners.

The government on that occasion expressed outrage at these allegations, just as the minister is expressing outrage today. The then minister said that von Einem was in high security and that 'for a long time he has been subjected to a very restricted regime.' He went on to condemn the opposition for raising these issues. A statement was issued to the public in which the minister and the government said, 'Prisoner von Einem is afforded no special privileges', and the opposition was attacked for raising these matters.

In August 2005, the Premier sought to reassure the public in relation to these matters by saying that the government was considering legislation to ensure that von Einem stayed in prison. In January of this year there were allegations about his sexual activities in the prison and, more recently, there were further allegations, not denied by the government, about the treatment being received by von Einem in prison. The minister again expresses outrage at the latest revelations. My question is: is it not the case that this government has done nothing to ensure that public concerns about the treatment of von Einem have been addressed?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services):** I think we should place very firmly on the record that all these allegations go back to 1999 and that all the allegations occurred between 1999 and 2003. Certainly, it is on the record that this government—

*Members interjecting:*

**The PRESIDENT:** Order!

*Members interjecting:*

**The PRESIDENT:** Order! If members opposite do not behave, I will name them.

**The Hon. CARMEL ZOLLO:** It is certainly on the record that this government is the only government that has taken action after allegations have been raised. First of all, in relation to the issue of the smock, we all know that an investigation took place. However, before the particular person could be dismissed, she resigned. That has been placed on the public record many times. As soon as I was advised several weeks ago about the investigations being undertaken by the department, an investigation commenced virtually the next day. As I said last week in this parliament, we will leave no stone unturned. Every investigation undertaken also aims to identify improvements to systems, processes, policies—and maybe even legislation. If I need to bring amending legislation to this place, I look forward to the support of members opposite. In relation to the sex issues, certainly, whenever they have been brought to the attention of this government, those matters have been passed on to the police immediately, because that is the correct procedure.

**The Hon. NICK XENOPHON:** I have a supplementary question. Does the access von Einem has to computers include internet access and, if so, has there been an audit of any sites he may have visited?

**The PRESIDENT:** I do not think computers were mentioned.

**The Hon. CARMEL ZOLLO:** My advice is that he does have access to some education. Generally speaking, prisoners do not have internet access, but I will seek further advice and bring back a reply for the honourable member.

## CLANDESTINE LABORATORY DATABASE

**The Hon. B.V. FINNIGAN:** I seek leave to make a brief explanation before asking the Minister for Police a question about the national clandestine laboratory database.

Leave granted.

**The Hon. B.V. FINNIGAN:** Clandestine laboratories can be located virtually anywhere and can range from crude, makeshift operations to highly sophisticated operations using technically advanced facilities. Will the minister inform the council about the proposed national clandestine laboratory database?

**The Hon. P. HOLLOWAY (Minister for Police):** I thank the honourable member for his question and for his interest in the action this government takes, as it continually does, in addressing key significant law and order issues in the community—something, of course, the former government was not particularly good at doing, as we well know. Last week I had the opportunity to chair the 51st Australasian Police Ministers Council meeting, which was held at Glenelg. At that meeting, I joined my state and federal counterparts in signing an inter-governmental agreement to establish, fund and support the construction, implementation and ongoing operation of a national clandestine laboratory database.

The number of clandestine drug labs has been increasing in Australia during the past 10 years, reflecting a global phenomenon in the use, supply and production of illicit drugs. A clandestine laboratory is where chemicals are used to make an illicit drug. As my colleague mentioned, such laboratories range from crude, makeshift operations using simple processes to highly sophisticated operations using technically advanced facilities. These laboratories can be located virtually anywhere—in private residences, motels and hotel rooms, apartments, horse trailers, houseboats, boats, vehicles, buses, trucks, camping grounds, and commercial establishments—and they are usually very portable.

The most common types are small and portable and are known as 'boxed laboratories'. These boxed laboratories are often carried in a toolbox or similar container and do not attract undue attention. Some clandestine laboratories use very simple processes such as extracting cannabis oil from plants using solvents; others use complex processes involving a number of chemicals and a range of equipment to manufacture drugs such as methylamphetamine and ecstasy. The National Clandestine Laboratory Database will be a one-stop-shop for intelligence on amphetamine cooks and other offenders. It will significantly improve national intelligence on clandestine drug labs and will assist our federal and state police forces to coordinate their investigation and enforcement activities.

Occasionally, new and unusual production methods for illicit drugs are attempted, either to market new drugs or simply to find easier ways of manufacturing known drugs. The new database will include information about new, unusual or signature chemicals, equipment, recipes and manufacturing methods used by these so-called cooks. It will also provide law enforcement agencies with information related to the suspected origin and suppliers of substances and equipment in order to identify criminals involved in the diversion of such products from the legitimate market.

South Australia Police have been aware of this trend and, during 2005-06, produced a pamphlet for distribution to chemical supply companies. The pamphlet outlines the reporting obligations when certain precursor chemicals used in the manufacture of illicit drugs are purchased. The

database will also provide improved intelligence on new illicit drugs and chemicals being imported into Australia, enabling a rapid and effective response targeting such importation. That is why it is important that an agreement be signed with the commonwealth as well as the states because, of course, the commonwealth has responsibility for the importation of goods.

Illicit drug production is an activity which is not restricted by state or national borders. There has been evidence of people involved in the manufacture of methamphetamine conducting activities in different jurisdictions. Another major concern is the physical and chemical hazard the clandestine laboratory creates. Operators have little regard for safety and may use dangerous protective measures, such as attack dogs and chemical and explosive booby traps. A typical site contains both toxic and volatile substances which can explode, ignite and emit odourless and colourless lethal gases, exposing first responders and other people living in close proximity (particularly children) to extreme risks.

Some Australian law enforcement agencies have been unfortunate enough to have seen experienced officers and support agency staff seriously injured whilst processing evidence at clandestine drug laboratories. The introduction of the National Clandestine Laboratory Database will establish a clear picture of clandestine laboratory activity within and across jurisdictions. The database will enable governments and law enforcement agencies to develop strategic approaches to resource allocation, industry engagement and the introduction or amendment of policy, regulations and legislation to address these emerging issues. I thank the honourable member for his important question.

**The Hon. A.M. BRESSINGTON:** I have a supplementary question. Would the minister consider developing a licensing system to purchase those chemicals that are precursors to methamphetamine production?

**The Hon. P. HOLLOWAY:** One of the events that took place at the police ministers conference last week was a presentation sponsored by Queensland, where a program that has been arranged through pharmacy organisations is in place to ensure that, where precursor chemicals are sold, information is collated on a database and made available to law enforcement agencies. I believe there has been some success within Queensland with this particular scheme in terms of preventing the use of those precursor chemicals. In the past, that has been largely pseudoephedrine (used in certain cold tablets), and that has been diverted into the drug-making industry. There have been efforts since then to prevent this problem by using alternative types of medication that avoid the use of pseudoephedrine.

The important point to make here is that, whereas one can take action against certain drugs such as pseudoephedrine, which are commonly available and which can be diverted into the drug-making industry, there are always criminals involved in this drug production who are on the lookout for new types of chemicals. The important thing about having a national database is that, if a new type of chemical is used to manufacture drugs within one jurisdiction, that information will be rapidly supplied nationally, so that other jurisdictions can take preventative action.

## CORRECTIONAL SERVICES, POLICE LIAISON

**The Hon. D.G.E. HOOD:** I seek leave to make a brief explanation before asking the Minister for Correctional Services questions about the Department for Correctional Services' liaison with SA Police.

Leave granted.

**The Hon. D.G.E. HOOD:** In the District Court on 4 October 2006, Judge Shaw sentenced a woman for supplying a controlled substance, namely, methylamphetamine. The aggravating factor of this offending was that the supply of drugs occurred in the visitor area of Yatala Labour Prison by way of exchange of the drug in a balloon from the woman visitor's mouth to an ice coffee carton, which was then handed to the inmate the woman was visiting. Judge Shaw then goes on to record in her judgment the prison's handling of the release of the same inmate the following day. Judge Shaw said to the woman in sentencing her that the inmate:

> . . . was due for release the following day and the conditions of his proposed release were that he be subject to a home detention order whilst living at your home. In fact, [he] was released to your home the following day but has since absconded.

The judge then goes on to note that the woman admitted to police that she had successfully smuggled drugs to an inmate at the prison once before. My questions to the minister are:

1. Was the Yatala Labour Prison aware that the inmate was to be released on home detention conditions to the same woman they had captured the day before trying to smuggle methylamphetamine to that inmate?

2. Why was the inmate allowed to be released into the care of that particular woman?

3. What steps will the minister take to ensure that this situation does not reoccur?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services):** I thank the honourable member for his questions. My staff brought this particular matter to my attention, and I have sought a preliminary brief as to what actually occurred. It may well be that Judge Shaw's comments are misleading to some extent. It is probably not appropriate to use the persons' names, but perhaps I will give them pseudonyms; I will call one person Jack and the other Mary. Jack was not released to Mary's home on a home detention order the day after she attempted to introduce the drugs into prison. It was not until after he had been seen by the court for an entirely different matter some months later that the court ruled that he should be released to Mary's home in an outer northern suburb.

Jack was released on home detention bail as a direction of the court, not a home detention order ordered by the Department for Correctional Services. So, I can see why there is some misunderstanding about exactly what happened. Even though this is largely a matter for the courts, there is one issue that, certainly, I believe the Department for Correctional Services needs to address. Under present practices, the Department for Correctional Services staff are not required to investigate or report to the courts whether or not the occupant of a house being considered for home detention bail has a police record. If they learn that the occupants have criminal backgrounds, these details may be included in their report. However, I am advised that a number of persons who offer accommodation to home detainees have criminal histories and, even when a judge is aware of that information, it is often not a deciding factor as to whether or not bail home detention is granted.

A requirement for staff to do this would not have helped in this case, because Mary had not yet been brought before the courts for the prison drug offences and had no other convictions of any sort. So, it would not have helped in this case. However, it may be valuable for future cases. I have

asked the Department for Correctional Services and my officers to consider the value of including in future reports to the courts any information that may be included on the Justice Information System (JIS) about the occupants of any house that has been considered for bail home detention accommodation. I undertake to bring back any further advice to the Hon. Mr Dennis Hood that may further complement the advice that I sought from my advisers, having taken notice of that case.

## VON EINEM, Mr B.S.

**The Hon. J.M.A. LENSINK:** I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about von Einem and rape allegations.

Leave granted.

**The Hon. J.M.A. LENSINK:** On 29 January this year the *Sunday Mail* published an article entitled 'von Einem police quiz'. It states:

> Von Einem has been at the centre of a Sex Crime Investigation Branch inquiry after police were notified of several incidents at Yatala Labour Prison. A prisoner who cannot be identified for legal reasons has given a lengthy statement to detectives detailing a violent sexual assault by the notorious killer. He has also given the Mullighan inquiry into the abuse of state wards an extensive statement detailing the alleged incidents at Yatala involving von Einem. The prisoner has alleged von Einem sexually assaulted him on several occasions.

The article goes on to quote the CEO of the Department for Correctional Services and states:

> In this particular case all proper action has been taken by the department in relation to this matter and there are currently no departmental investigations outstanding into the matter. Mr Severin said the internal inquiry had not uncovered any other evidence to enable any specific action to be taken against any prisoner.

My question is: does the minister stand by her statement earlier in question time today that all allegations have been properly investigated by the police?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services):** This allegation was first publicly aired by the *Sunday Mail*, as we have heard, on Sunday 29 January 2006, and honourable members may recall that report, which also made mention of the police investigation into the matter. The then minister (the late Hon. Terry Roberts) said in a press statement that day:

> This allegation was made some time ago by the prisoner. All such allegations are treated seriously, and Correctional Services procedure dictates that they are immediately investigated. If the allegation can be verified or if the prisoner making the allegation is prepared to make a formal statement, the matter is referred to the police. In this case an investigation by corrections staff found no evidence and the prisoner refused to cooperate. I am advised the prisoner has since verbally repeated the allegation and agreed to make a formal statement. Consequently, the matter was referred straight away to the police.

Whilst I would like to add further information, the police investigation certainly precludes my doing that. It is in the hands of the police, and it would be inappropriate for me to comment on an active police investigation which I know is well progressed, and I have no further comment to make on this matter.

**The Hon. R.I. LUCAS (Leader of the Opposition):** My question is directed to the Minister for Correctional Services. Was Bevan Spencer von Einem allowed to maintain his own supply of medication upon prescription by the doctor rather than having it administered by prison authorities in the usual way, or did Bevan Spencer von Einem have to ask—

**The Hon. P. Holloway:** No; don't you listen?

**The Hon. R.I. LUCAS:** Yes, but you have not even heard the question yet.

**The Hon. P. Holloway:** If you had listened you would not ask the question. If you actually opened your ears and listened—

**The Hon. R.I. LUCAS:** How ignorant are you?

**The PRESIDENT:** Order!

**The Hon. R.I. LUCAS:** Throw him out, Mr President. He is disorderly.

**The PRESIDENT:** The Hon. Mr Lucas has the call.

**The Hon. R.I. LUCAS:** Let me repeat the question—well, half the question. The leader interjected in an ill-advised fashion. Was Bevan Spencer von Einem allowed to maintain his own supply of Viagara-style medication rather than having it administered by prison authorities in the usual way, or did he have to ask prison authorities for his Viagara-style drug whenever he required the use of it?

**The Hon. CARMEL ZOLLO:** The Hon. Paul Holloway is correct: the honourable member who asks that question did not listen. Clearly, the question he asks goes to the heart of the investigation that will occur in relation to the prescribed Viagra-like medication.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** I can place on the record that, generally, all medication is issued by nursing staff on a dose-by-dose basis up to three times a day.

**The Hon. R.I. Lucas:** So, whenever he needed it, he rang them up and said, 'Hey, I need a Viagra-style drug—I've got the urge', three times a day.

**The PRESIDENT:** I am getting the urge to throw somebody out.

**The Hon. CARMEL ZOLLO:** I did not say that. I am placing on record—

*Members interjecting:*

**The PRESIDENT:** Order! Both sides of the council will come to order.

**The Hon. CARMEL ZOLLO:** I did not say that. I am able to say what happens within our prison system. Secondly, and more importantly, the question that has been asked goes to the heart of the investigation. Therefore, it is inappropriate for me to prejudice the investigation in relation to this doctor and his conduct. I can tell this chamber what happens with the prescription of drugs in our prisons. I will start again. When prisoners are given medication—

*Members interjecting:*

**The PRESIDENT:** Order! Members should listen so that the minister does not have to repeat it for a fourth time.

**The Hon. CARMEL ZOLLO:** It would be polite for him to listen. All medication is issued by nursing staff on a dose-by-dose basis up to three times a day. There are some smaller prisons where this does not happen, where so-called Webster-paks are used. These have sealed compartments, with each compartment containing one dose of medication. Medication in Webster-paks can be issued by correctional officers. Prisoners are not allowed to have or store medication in their cells, with the exception of medication that needs to be taken in the case of an emergency, for example, asthma puffers.

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** I am not certain why the member opposite has a smirk on his face. Clearly, I am unable to make further comment because this goes to the heart of the investigation. As to the actions of the person who prescribed the drug—

**The Hon. P. Holloway:** Use your imagination.

**The Hon. CARMEL ZOLLO:** Imagination would be nice, if he had it.

**The Hon. R.I. LUCAS:** By way of a supplementary question, if prison nurses or other staff dispensing this medication up to three times a day are asked by a prisoner for a Viagra-style drug, what on earth do they think this prisoner wants a Viagra-style drug for and does it comply with the protocols and regulations for prisoners in Yatala Labour prison?

**The Hon. CARMEL ZOLLO:** I think I will have to read some parts of the statement again because the honourable member did not listen. The Viagra-type drug was prescribed by the doctor.

**The Hon. R.I. Lucas:** And administered by the nurses.

**The Hon. CARMEL ZOLLO:** Most people's logic—

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** I spoke—

**The Hon. R.I. Lucas:** Your prison staff—asked three times a day.

**The Hon. CARMEL ZOLLO:** Many prisoners are ill in prison and I outlined the procedure for prescribing drugs to those who are ill. At the heart of the investigation announced by the Minister for Health in the other place was the manner in which this drug was prescribed to prisoner von Einem.

**The Hon. R.I. Lucas:** Who administered it—your staff?

**The Hon. CARMEL ZOLLO:** Mr President, this really does prejudice the investigation, which makes it very difficult for me.

**The PRESIDENT:** The minister has answered and said that it is under investigation. We have all heard.

**The Hon. CARMEL ZOLLO:** We were not aware that this drug had been—

**The Hon. R.I. Lucas:** Your staff were: they administered it three times a day.

**The Hon. CARMEL ZOLLO:** We were not aware that this drug had been prescribed by the doctor in question. It is very difficult for me to place anything else on the record.

*The Hon. R.I. Lucas interjecting:*

**The PRESIDENT:** Order! It has been indicated clearly by the minister that part of this is under investigation, so members should refrain from asking questions about the investigation and what is taking place with the investigation.

**The Hon. J.M.A. LENSINK:** I have a supplementary question. Is the minister aware of whether von Einem has a Webster-pak?

**The PRESIDENT:** That hardly arrives out of any previous question. What is a Webster-pak, perhaps?

**The Hon. CARMEL ZOLLO:** I am unaware whether prisoner von Einem is currently taking medication or whether he uses a Webster-pak. However, as I said before—obviously the honourable member did not listen—Webster-paks are used only in our smaller prisons, so it would not be my information that the Webster-pak would be used at Yatala.

**The Hon. R.D. LAWSON:** I have a supplementary question. Does the protocol to which the minister referred require prison officers to make a written record when they hand out drugs to prisoners?

**The Hon. CARMEL ZOLLO:** The protocols as they stand at the moment—and, as I said, they were revised last year—do not eliminate doctor-patient confidentiality. Therefore, a doctor would still not disclose a type of medication that is prescribed to a prisoner but would advise prison management of any medical issues that were relevant for the day-to-day management of that person. I gave an example of someone who was suffering from depression and the need for the staff to know the type of medication used. As I said, I used that as an example, and I do not think it is funny. I do not think any of this is funny. We are outraged. These incidences occurred under their watch as well. We are outraged; we have done something about it.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** I place on record how disgraceful it was that the Leader of the Opposition in this state actually managed to have a smirk on his face in the media. How disgraceful!

## GAMING MACINES, HOTELS

**The Hon. NICK XENOPHON:** I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Gambling, a question about an exemption under the Liquor Licensing Act.

Leave granted.

**The Hon. NICK XENOPHON:** I refer to section 32(2)(b) of the Liquor Licensing Act which makes it a licensed condition of any hotel to provide a meal at the request of a member of the public between 12 noon and 2 p.m. and between 6 p.m. and 8 p.m. on any day on which licensed premises are open to the public for the sale of liquor. However, section 32(3)(c) provides that 'the licensing authority may exempt a licensee from the obligation to provide meals wholly or to a specified extent'. I am advised that a number of hotels particularly in the Adelaide CBD which also have a licence to operate poker machines are exempt from this requirement to serve meals. I am concerned, as are problem gambling experts, that venues which are exempt are marketing their premises more aggressively towards being gambling venues and that there are fewer opportunities for a break in play if no meals are provided at the venue. My questions are:

1. How many hotels in South Australia have either a total or partial exemption of the requirement to provide meals to patrons and what proportion of those have a poker machine licence?

2. How many applications have there been in the past three financial years for such an exemption?

3. What criteria, if any, are there for exempting a venue holding a liquor licence from the requirement to provide meals? Is the fact that a venue also has a poker machine licence considered as a criterion in relation to this?

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** I am happy to take those questions on notice, refer them to the appropriate minister in another place and bring back a response

## SCHOOLIES WEEK

**The Hon. I.K. HUNTER:** I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about Schoolies Week.

Leave granted.

**The Hon. I.K. HUNTER:** It is almost the time of year when thousands of school students around the state finish school and start thinking about celebrating that important milestone. Heading to Victor Harbor to mark the end of school has been a popular choice for many Year 12 students,

with approximately 10 000 young people likely to visit during the 2006 Schoolies Week. Will the minister advise what is being done to ensure the safety of young people during this year's Schoolies Week festival?

**The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse):** I thank the honourable member for his ongoing interest in these important policy areas. Safe partying and looking out for friends is vitally important for up to 10 000 young people who may take part in Schoolies Week festival celebrations at Victor Harbor, which are planned for this weekend. Students should enjoy their end-of-year celebrations after the exams. No-one is denying them a right to celebrate and let off a bit of steam. However, they need to be responsible for their actions. Alcohol consumption is the biggest risk factor for young people during Schoolies Week, and this year we are again reminding parents of the key role they can play in helping young people to make responsible decisions about drinking.

It is important for parents to talk to their children about issues such as health and safety and the legal aspects associated with alcohol consumption to help them understand the risks involved. Parents can educate their teenagers about the dangers of binge drinking and the likely effects of excessive alcohol consumption on their health, wellbeing and personal safety. Parents can also provide transport for their teenagers and their friends, while schoolies should ensure that they do not get into a car with a person who is under the influence of alcohol or other drugs. There will be a number of bus services, including some free bus services, to and from Victor Harbor in order to ensure that our young adults arrive and return safely.

Since 1999 the event organisers Encounter Youth Inc. has worked in partnership with leading agencies, such as Drug and Alcohol Services SA, SAPOL and the SA Ambulance Service to host safer and well-supervised events for these students. Whilst every effort is made to ensure the safety of young people attending the event, it is important they are provided with information and support to assist them to recognise the risks and make decisions about their own health, safety and wellbeing. The end of school is a time for students to have some fun with their friends and let off a bit of steam after what is a very stressful and gruelling year. It can be an exciting experience, one which many will remember for the rest of their life. We hope that those memories are positive and good memories.

Encounter Youth works with local liquor licensees to prevent under-age drinking and promote the responsible consumption of alcohol among adults. It will have more than 400 volunteers roaming popular areas to ensure that revellers stay safe. The work of Encounter Youth will be a coordinated operation involving a number of agencies to ensure that help is close at hand. Drug and Alcohol Services SA will provide information and support on the ground. SAPOL will provide voluntary breath testing and tests for alcohol and drugs at venues, on surrounding roads and along the beaches. The SA Ambulance Service will provide medical and health-related emergency care. Australian Red Cross, through the Save a Mate program, will provide first aid and peer support. Inspectors from the Office of the Liquor and Gambling Commissioner will ensure that licensees are acting responsibly.

## BRADKEN FOUNDRY

**The Hon. D.W. RIDGWAY:** I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Bradken expansion.

Leave granted.

1 **The Hon. D.W. RIDGWAY:** On Saturday 18 November at a public meeting held to discuss the Bradken Foundry expansion (which, incidentally, was held at the Progressive Hall, 49 LeHunte Street, Kilburn), the gathered group heard from South Australia's chief medical officer, Professor Chris Baggoley. In response to some questions in relation to air quality monitoring and health tests he said that, in his view, it was a waste of time to undertake more monitoring and tests of the area and that what the community needed was solutions. He went on to say that he has provided advice to the government with respect to possible solutions. My questions are: what is that advice, and will the minister make that advice public?

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** The meeting was well attended, and I was very pleased to be there and listen first-hand to people's concerns. Many of those concerns had also been relayed to me by the local members of parliament, both federal and state. Professor Baggoley (the government's chief medical officer), when asked about further health testing, informed residents at the meeting that the surveys, which involved such a small sample size, were likely to be inconclusive, and I believe his words (whilst this might not be verbatim) were something to the effect that, in his view, resources were better spent fixing the problem that has already been identified. In terms of the information we have relating to advice from the Department of Health, I understand that what Professor Baggoley was referring to was getting on and fixing the problem; that is, improving the air quality in that area. My recollection is that that is the only information I have in relation to this matter at this point of time. I will double check, but that is the only matter that I can recollect.

Professor Baggoley is quite right. Due to inconclusive health data in the past, instead of continuing to collect further inconclusive data, we need to get on and fix the problem and, of course, that is the commitment that this government has made. We have done so by monitoring air quality in the area. A year or so ago, we put in place a monitoring caravan that monitored for a period of time a range of pollutants in the ambient environment. So, we went out and conducted that monitoring. As we know, there was good news and bad news. The good news was that a number of aspects were measured that were well within the national and international standards. The bad news (as already has been reported here) was that we have high levels of dust, or particulate matter (PM10). These were found to be likely to exceed standards.

Both the technical report and the plain English report have been made available publicly and, in relation to that, the EPA has acted promptly. It was found that the air quality problems were likely to be affected by a range of industries in the area. There are currently 15 relevant licensed industries in the area, and I believe that an audit was undertaken by the EPA of all 15 licensed industries that could potentially be contributing to this problem. I am advised that action has already been taken.

From that the EPA identified that, of those industries, 11 have an impact on air quality. Action to be taken with respect to those 11 industries includes, first, environmental improvement programs, which involve potentially substantial

investment by a company in reducing environmental impacts. I am advised that, if the companies are not able to lower their emissions quickly, some improvements being asked for are likely to become EIPs. Secondly, the EPA is able to revise licence conditions. The EPA has issued directions to comply as a general environmental duty, and this could lead to a revision of licence conditions or orders if the EPA is not satisfied with the companies' responses to those directions. The EPA is working with those companies in relation to those directions.

Thirdly, voluntary programs have been put in place. For example, the EPA has written to each company asking for expressions of interest with respect to training courses from the EPA on improved management. In relation to that third strategy (the voluntary part of the strategy), the EPA has also set up a Kilburn/Gepps Cross industry group that is working on going beyond compliance to improve air quality in the region. Early indications are that most of the industries in the area are cooperative and very keen to contribute to this group and to be involved in actions that will provide positive outcomes for that area.

In relation to some of the key outcomes from the group so far, I understand that each company has agreed to draw up a list of key issues on the site in order to act on certain projects that are likely to impact on improving air quality. An example of that is to develop links between companies in respect of waste stream production and beneficial reuse of materials which are likely to result in a beneficial impact on—

*The Hon. D.W. Ridgway interjecting:*

**The Hon. G.E. GAGO:** I cannot believe that the member opposite could be so ignorant that he does not understand the link between these important environmental measures and air quality outcomes. I am just gobsmacked.

This group is continuing to meet. As I have outlined, action has already been taken at three levels with respect to air monitoring, specific industry auditing, environmental improvement programs, reviewing of licence conditions and setting up a voluntary industry group to assist companies to work through improved compliance beyond what is regulated.

**The Hon. D.W. RIDGWAY:** As a supplementary question arising early in the minister's answer, when the minister double-checks whether advice has been provided, if it has been provided will she make it publicly available?

**The Hon. G.E. GAGO:** We are an open and transparent government.

**The Hon. M. PARNELL:** I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the proposed Bradken Foundry expansion.

Leave granted.

**The Hon. M. PARNELL:** I was pleased to attend the meeting on Saturday also; and I acknowledge that the Hon. Nick Xenophon did a fine job chairing that meeting. It was important that the minister was in attendance, and she brought with her Dr Paul Vogel, Chief Executive Officer, Environment Protection Authority, and Chair of the EPA Board. At the meeting the minister referred to advice the government was yet to receive from the EPA about whether or not, in the EPA's opinion, the proposed foundry expansion should go ahead.

Under the Environment Protection Act, the EPA is obliged to report on the basis of whether or not the proposed expansion will be consistent with the objects of the act, which include the precautionary principle and the general environmental duty. However, under the act the EPA is only independent of the minister in certain prescribed circumstances, and in all other cases is subject to the direction of the minister. In matters involving the enforcement of the act, such as prosecutions or the issuing of orders, the EPA is independent, but in relation to every other matter is subject to the direction of the minister. On Saturday the minister issued a press release in which she said:

> The Major Developments Panel, on the advice of the EPA, has required proof from the company of a net environmental gain from the proposed expansion. The EPA has already asked for further independent monitoring to occur at Bradken. If the EPA is not satisfied that Bradken can meet its net gain or other requirements, or the company cannot provide the requested information, the EPA will recommend refusal of the project.

My questions are:

1. How does the minister know which issues are non-negotiable for the EPA, as these issues are not identified in the issues paper released by the Major Developments Panel?

2. If a list of non-negotiable criteria has been issued by the EPA, will the minister provide a copy of that to the chamber?

3. Has the minister given any direction to the EPA as to the contents of its advice to government?

4. Most importantly, will the minister assure the council that she will not seek to give any direction to the EPA in relation to the advice that the EPA provides to government over the proposed Bradken Foundry expansion?

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** I was very pleased to see the honourable member in attendance at the meeting, which was indeed chaired very well by the Hon. Nick Xenophon. One thing that is really important to put on record is that, while we know that the expansion is currently under a major projects planning proposal, whether or not that does go ahead, whether that is successful or not, the EPA will be requiring Bradken to improve its performance on dust, odour and noise. There might be different mechanisms used, but that is what will occur. The expansion is required to provide a net beneficial environmental outcome as well. In terms of the further monitoring of Bradken that will occur, it is part of the major projects planning proposal.

The EPA has already asked for this as part of that assessment process and, if the EPA is not satisfied with either the quality of the information or the content of the monitoring in terms of dust or air, noise and odour emissions, it has indicated that it will recommend refusal of that project. In relation to direction of the EPA, I understand that as minister I am required to put any of my directions in writing to the EPA. Of course, all those matters would be subject to FOI, but save your money: I have not directed the EPA in relation to any matters to do with the expansion planning proposal or the monitoring required within that planning process.

It has been declared a major project and Bradken is currently preparing that PER. Again, these are matters for the minister for planning, but he has advised me that that PAR is expected in December. It will be available to members of the public and anyone else who is interested, and there will be a period of consultation with both the public and other government agencies. The dates of this consultation period will be determined once the PER has been received. The PER is expected to contain plans that result in a net beneficial environmental gain. If there is any other matter that has not

been included in my response I am happy to follow that up and bring back an answer.

## REPLIES TO QUESTIONS

### PREGNANCY ADVISORY CENTRE

In reply to **Hon. D.G.E. HOOD** (6 June).

**The Hon. G.E. GAGO:** The Minister for Health has advised:

1. Of the clients who requested counselling between 2001 and 2004, the percentage of clients who proceeded to termination of pregnancy was 55 per cent in 2001;
60 per cent in 2002; 61 per cent in 2003; and 42 per cent in 2004.

2. Ultrasound is always available to clients who request it at the Pregnancy Advisory Centre.

### SHINE SA

In reply to **Hon. A.L. EVANS** (20 June).

**The Hon. G.E. GAGO:** The Minister for Health has advised:

1. The State Government is contributing $3.75 million to SHine SA to develop facilities to strengthen the provision of, and improve access to primary health care services in the western suburbs. The new GP Plus facility will locate a range of primary health services in one integrated centre comprising SHine SA services, GPs, mental health counselling, adolescent counselling and drug and alcohol counselling.

2. The Kensington SHine SA site has been sold and the lease with the new owners expires in July 2007. As a significant proportion of attendees to SHine SA at Kensington come from the western suburbs, the move to Woodville will improve access for these clients. The new location at Woodville is readily accessible by public train and bus services, which is important as residents of the western suburbs have lower car ownership than other areas of Adelaide.

3. Upgrading the Kensington site was considered but not pursued as it would not address access issues of clients residing in the western suburbs. The additional benefit of relocating to Woodville is the opportunity to develop a cost effective primary health service centre for the western suburbs.

4. There will be no abortion services or facilities provided at the new health centre. SHine SA will continue to provide counselling as part of its sexual health service.

As part of a comprehensive primary health care service, Drug and Alcohol Services SA (DASSA) and SHine SA are in discussions regarding what drug and alcohol services will be at the new centre. Any program that goes ahead will be administered by DASSA as per the policies and guidelines that operate for all needle and syringe programs in South Australia.

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## STATUTES AMENDMENT (JUSTICE PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 984.)

**The Hon. R.D. LAWSON:** I rise to indicate that the Liberal opposition will be supporting this bill, which contains a number of amendments to legislation. It has no unifying theme, and many of the amendments are minor and correct issues that have either been overlooked or have been unintended effects of existing legislation. Of the more significant amendments, there are amendments made to the Criminal Law Consolidation Act in relation to unlawful sexual intercourse where, we are told (as a result of a request from the Director of Public Prosecutions), amendments are required to clarify the age provisions appearing in section 49 of that act. The expression 'of or above the age of 14 years' is deleted from the legislation, and we are satisfied that it is appropriate to support that amendment, having regard to the concerns of the Director of Public Prosecutions

There is an amendment in relation to the appointment of more traditional auxiliaries. This is an amendment of the Judicial Administration Auxiliary Appointments and Powers Act. The amendment is to facilitate the appointment in South Australia of a judge from another jurisdiction to hear, for example, a case which might involve a South Australian judge with whom most other judges might be on friendly or certainly professional terms.

Whilst we certainly support the notion that there ought be a capacity to bring in an auxiliary judge from another jurisdiction in that eventuality, we would certainly not welcome the notion that any attorney-general could go looking across other jurisdictions to find a judge who might either be looking for a bit of additional part-time work or who might have some political or other association with an attorney of the day. We are satisfied, however, that the provisions ought operate appropriately.

We note that the government, late in the day, introduced an additional series of amendments which were incorporated in the assembly—in particular, an amendment to enable the Industrial Relations Commission to handle certain disputes previously heard by the District Court. That is an issue about which we have some concerns and which we will pursue during the committee stage of the bill. However, as I say, these are, by and large, minor amendments and we will be supporting them.

The opposition will be moving an amendment which I have asked to be tabled and circulated today. It is an amendment to clause 50 dealing with licensed security persons. This matter was brought to our attention by the member for Flinders who has a constituent who is licensed under the security legislation. Persons who hold licences under that legislation are required to have fingerprints taken which are then recorded on a national database. Ms Penfold's constituent has no problems at all with that; however, as the constituent is registered not only in South Australia but also in the Northern Territory he finds himself in a position where he has to pay a $100 fee to have his fingerprints taken in Darwin, and then another fee in South Australia.

Given that these fingerprints are put onto a national database, he considers that it is unfair that he should be subjected to this double imposition. There must be a number of persons in a similar situation, some of whom might be in the South-East of South Australia or in the Riverland, where there is some interjurisdictional activity across borders, but there might also be others who have specialist roles in the security industries and maintain licences in more than one jurisdiction.

This particular business employs a number of staff in South Australia and, of course, in this case the business itself pays (although it does not have to) any licence fees above $120, as is required by an industrial award. Where one has a number of employees in this situation, obviously the cost imposition on any such business is considerable. Accordingly, during the committee stage we will move an amendment which will provide that, if the Commissioner of Police is able to obtain a satisfactory record of fingerprints previously taken, the Commissioner need not request a further set of prints, thereby avoiding the not inconsiderable expense of obtaining fingerprints. I understand that there are to be amendments from the government, but they are not yet on

file. My amendments, however, have been circulated. We will be supporting the second reading.

**The Hon. B.V. FINNIGAN** secured the adjournment of the debate.

## EVIDENCE (USE OF AUDIO AND AUDIO VISUAL LINKS) AMENDMENT BILL

Consideration in committee of the House of Assembly's amendment.

**The Hon. P. HOLLOWAY:** I move:

That the council do not insist on its amendment but agree to the alternative amendment made by the House of Assembly.

When this bill was previously before the council it was amended at the instigation of the opposition, in particular the Hon. Stephen Wade, to provide a right for the victim of a crime, or the victim's family members, to require the prosecution to object to the use of an audio or audiovisual link. That amendment would have applied in all cases, including simple remands, which are the main focus of this bill.

The government sees no public benefit in giving the victim and his or her relations such a right in the case of a remand hearing. In fact, the delays that will occur to compel appearance will ultimately delay the administration of justice, and I would have thought that honourable members would want to reduce court delays. The former amendment does not provide this benefit. A remand hearing will usually be short and simple; it is unlikely that any evidence will be taken. The victim is entitled to be present in the court, if he or she wishes, and will therefore be able to see and hear the accused, if that is important to the victim, using the audiovisual link.

It is not sensible that the victim be able to request that the accused be brought physically into court in these cases. In the absence of any clear benefit to the victim or the public, the cost of transporting the accused to court for this purpose simply cannot be justified. The government has therefore amended this bill in another place so that the right of objection that the council wishes to give to the victim and his or her relatives will not apply in remand hearings.

The government was also concerned that the former amendment proposed to give the right of objection not only to the victim but also to his or her family—the spouse, parent, child, sibling, grandparent or grandchild. In many cases there would be half a dozen people each entitled to object to the use of the link, even against the express wishes of the victim herself. Further, the objector would be entitled to the support of the prosecution at public expense. That might be particularly problematic for the prosecutor in a case that relies heavily on the cooperation of the victim (as many do). The government did not think it could be justified that families should be bound by the wishes of the victim herself in such a matter.

The bill has therefore been amended in another place to provide that the proposed right of objection should belong to the victim alone, except where the victim is under a legal disability. Where the victim is a child, clearly the right should belong to the victim's parents or guardians. Where the victim is incapacitated, the government is content to leave the matter to the relatives. The government hopes that this amendment can resolve matters so that the bill can now pass.

When this bill was debated, there was obviously some misunderstanding about the original intention of the Hon. Stephen Wade's amendment. I hope that, with the amendments that have been made now, we have incorporated what he wished to do, without this impacting upon the intention of the bill, which was to simplify remand hearings. I trust that the consideration that was given to this bill between the houses reflects the objectives that the Hon. Stephen Wade intended, whilst achieving the objectives of the government; that is, to have a smoother passage in relation to remand hearings. I commend the motion.

**The Hon. S.G. WADE:** This is the second time this chamber has considered this bill, and I take this opportunity to remind the committee of the circumstances. Firstly, the opposition needed to act because the government overlooked the interests of victims in the original bill. I think it is worth commenting that the depth of the government's commitment in relation to victims is shown by the extent to which it considers the interests of victims almost as a matter of second nature. That did not happen in this bill, and the opposition needed to act to remedy this omission.

Secondly, I remind the committee that the government, having had its attention drawn to this omission, still refused to accept the wisdom of the opposition's amendment. The government had good notice of the amendment, and no attempt was made to work cooperatively to craft it. None of us is perfect; oversights do happen. However, this government lacks the humility to accept that its bills can be improved. I am reminded of the words of the Hon. Sandra Kanck, who said, if I can paraphrase, that this government thinks an idea is a good idea only if it is the government's idea.

What I also think is disappointing is the length to which the government went to deny its oversight. Minister Holloway responded to the amendment as though the bill related only to remand proceedings, which is not the case. This is demonstrated by the opening clause of the government's amendment which is now before the committee. In the other place, the Attorney-General chose to misrepresent my amendment as though it provided a veto for victims. Cross-bench MPs would do well to remember this episode when they next seek to rely on government advice.

The original Legislative Council amendment gave victims the right to make representations on the use of audio and audiovisual links in court proceedings. The government's amendment is basically a re-arrangement of the original amendment, with two substantive changes, one being that it precludes the right to object in remand proceedings. I humbly suggest to the committee that it accept this amendment, given the nature of remand proceedings, in the interests of efficient administration of justice.

The second substantive change in the government's amendment is that it only allows the family of a victim to object where the victim is dead or physically or mentally incapacitated. I suggest that the committee accept this element of the amendment also. The victim is the key stakeholder in this process, and I accept that the amendment ensures the primacy of the victim's voice.

I thank my Liberal colleagues and the cross-bench MLCs who supported my original amendment. With their support, a minor but nonetheless worthy enhancement of the rights of victims has been made. Let us be clear: without their support, the government was willing to let the opportunity pass to improve a law and to enhance the rights of victims.

Motion carried.

## CRIMINAL LAW CONSOLIDATION (DRINK SPIKING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 985.)

**The Hon. S.G. WADE:** As indicated by my colleague the member for Heysen in another place, the opposition supports this bill to create the offence of spiking food or beverages. The issue of drink spiking is certainly one of some concern. The Australian Institute of Criminology estimates that in Australia there are approximately 3 000 or 4 000 incidents of drink spiking per year. Whilst in many of these cases no harm was caused to the victim and there were no long-term or serious effects, even innocent, prankish drink spiking can potentially lead to serious mental or physical harm and, in the most extreme cases, it could be fatal.

At the most distasteful end of the spectrum, drink spiking is sometimes an intentional act as a precursor to further criminal acts, such as sexual assault. The AIC report estimates that approximately one-third of drink-spiking incidents involve sexual assault. There is no doubt that drink spiking is a serious issue and one that requires a response from the government and law enforcement services. The opposition, however, has concerns with the bill. First, I am concerned about the scope or, rather, the ambiguity of the bill. The bill in its current form covers the act of spiking food or beverages with the intent to cause, or being recklessly indifferent as to causing, impairment of the consciousness or bodily function of another.

Concerns have been raised as to the potential charging and imprisonment of friends merely playing pranks by adding a substance or additional alcohol to a beverage or food. Considering the risks arising from spiking, the opposition agrees that we should not be creating incidences where drink spiking is permissible. However, I am concerned that the bill may be drawn too broadly and could inadvertently capture innocent acts, depending on the application of the term 'recklessly indifferent' and the lack of detail on the issue of the level of impairment. We are all aware that substances such as caffeine and sugar can have a negative effect on some people. If I add caffeine or sugar to a food or beverage which is then consumed by a person particularly susceptible to these substances, would I be guilty of an offence? I may be aware of the effects of such substances but not aware of the effect that it might have on a particular person. But would being aware of the potential effects, nevertheless, make me recklessly indifferent and therefore guilty of an offence?

It is not just alcohol and drugs that are covered: what of cordials and other substances? If I put red cordial in a person's glass of water, is that being recklessly indifferent to the effects it might have? It would seem to me that there is some ambiguity which could potentially capture the innocent, well-meaning individuals who are not playing a prank. I hope the government has worked through this legislation thoroughly and is aware of the potential impacts. I hope it is not another cause of flawed legislation where we will be asked to revisit the legislation in the not too distant future. As legislators, we must be cautious in passing legislation to ensure that it does not impact on the innocent. The opposition also considers that this bill is an opportunity to seek to prevent spiking in a high risk context, that of licensed clubs. Our concern was flagged by the member for Heysen in her contribution in another place relating to the possession of prescribed or controlled substances whilst on licensed premises. I will be moving an amendment relating to this concern. I acknowledge the openness of the Attorney-General in another place to this amendment.

Whilst the opposition certainly supports the move to prohibit the addition of prescribed or controlled drugs to another's food or beverage, we think it would be judicious to prohibit the possession of such drugs on licensed premises in the first place, rather than simply attempting to catch would-be drink spikers in the act or after the act has been committed. Surely prevention would be more sensible. Of course, some drugs used for drink spiking are also legitimate medicinal drugs, and there are some circumstances where a person may need to carry such a drug with them. The amendment addresses this by specifying that the possession of the drugs is an offence only when it is 'without lawful excuse'. Naturally, if one requires drugs for medicinal purposes, that would constitute a lawful excuse and possession would not be an offence. I hope members will agree that prevention is better than reaction and support the opposition amendment in the committee stage. As I said earlier, drink spiking is a serious issue, and the opposition supports the move to combat drink spiking in South Australia.

**The Hon. R.D. LAWSON:** I support the second reading of this bill. There has been a good deal of discussion in political and legal circles about the necessity for some new statutory provisions relating to drink spiking. Certainly, in the public consciousness drink spiking is an issue, and it is perceived to be a fairly new issue which requires the attention of legislators. There have been a couple of extensive reports on the subject of drink spiking. The national project on drink spiking was commissioned by the Ministerial Council on Drug Strategy, as part of the national drug strategy.

That national project on drink spiking resulted in a report in November 2004 investigating the nature and extent of drink spiking in Australia. It contains much useful information about the incidence of drink spiking, its prevalence, and also about the laws in various jurisdictions which cover drink spiking. They cover, it must be said, a wide range; indeed, there is a plethora of laws. This law, of course, will not produce uniformity, although we are, by enacting this law, going down a route taken by other jurisdictions. I am pleased to see that the state of Queensland has introduced a law which is now in operation, notwithstanding the oft heard claim that South Australia is leading the field in this and practically every other area.

I think it is worth putting on the record the police data relating to the nature and extent of drink spiking. The Australian Institute of Criminology, which contributed to the report to which I referred, conducted a survey which led it to conclude that, in relation to drink spiking, four out of five victims are female, and about half of drink spiking victims are aged under 24 years, while about a third are aged between 25 and 34. The majority of suspected drink spiking incidents have no additional criminal victimisation. It is not clear whether these incidents result from (a) prank spiking, (b) the inability of the offender to carry out additional victimisation, or (c) people being unaware of how much alcohol they are consuming and misattributing to the effects of alcohol.

Based on the views of stakeholders and anecdotal evidence, the AIC concluded that it is likely that at least some of these incidents involved drink spiking. I think it is important that, whilst we are addressing a serious issue, we ought to also recognise that there will be cases of conduct that should not be stigmatised as criminal conduct. We should not

draw our laws so widely that activities, which may be regarded as foolish, are stigmatised as criminal. The purpose of criminal law is not to make people who are not criminals—but fools—criminals. The AIC survey concluded that between 20 per cent and 30 per cent of reported incidents involved sexual assault, and that is a most alarming statistic.

In the public consciousness, it is quite probable that people believe that most instances of drink spiking lead to some form of sexual assault. That is not the case. However, the figure of 20 per cent or 30 per cent of reported incidents involving such assaults is indeed alarming. Two thirds of drink spiking incidents occur in licensed premises, although, for sexual assault victims, the location is just as likely to be in the victim's or offender's home, or another location. Many victims do not know who the offender is. Where offenders can be identified, drink spiking in general is equally likely to be perpetrated by a stranger or a known acquaintance, while incidents involving sexual assault are more likely to occur with an unknown offender. Many victims experience memory loss after drink spiking. Apprehension of the offender is very uncommon.

Forensic testing of blood and urine samples is relatively rare and does not conclusively prove that drink spiking has or has not occurred. Finally, the ARC survey reported that the vast majority of incidents of drink spiking are not reported to police. They conclude that in the year ended 30 June 2003 between 3 000 and 4 000 suspected incidents of drink spiking occurred in Australia. So it is a serious issue that is required to be addressed.

This matter has also been the subject of an examination by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General. That committee produced a discussion paper in April 2006 entitled simply, 'Drink Spiking'. It is a very thorough examination and, I think, a dispassionate and objective examination of the need for laws in this area. I commend the committee report to the parliament because it draws attention to a developing trend which is, in effect, to do with the politicisation of the criminal law rather than its rationalisation and simplification.

The Model Criminal Code Officers Committee notes the earlier report and the fact that prank spiking is an issue that is identified. I believe it makes a similar point to what I myself was making a little earlier in this speech. It goes on to identify the various offences that exist in the statutes of the states which catch drink spiking. These are offences at the most serious end of the spectrum such as acts done to a person with intent to murder, using poison to endanger life, administering poisons with intention to injure or annoy, administering drugs to facilitate an offence, unlawfully administering a poison to a person with intent to harm, and administering a noxious thing, and it points to the plethora of these offences which exist across the statute books of the various states. The officers go on to say:

> . . .in the last decade or so, some serious thinking has taken place about the nature of these and other such offences and, indeed, the whole received Imperial and Victorian ad hoc style of offence making. Whatever the specific reason for these separate offences, and no doubt there were some, why did we have these great lists of offences which were merely specific examples of the same thing? To take one example, why have offences of endangering life by shooting, wounding, administering poisons, garrotting, placing stones on railway lines and so on? If the idea was to prevent conduct that recklessly endangered life or grievous bodily harm, what did it matter how it was done? Surely one general offence of recklessly endangering life with an included general offence of recklessly endangering grievous bodily harm would do.
>
> The idea that all such behaviour should be criminalised in a general endangerment offence originated in the 1962 draft of the American Model Penal Code. That offence was committed where a person 'recklessly engages in conduct which places another person in danger of death or serious bodily injury'. It was further provided that recklessness and danger would be presumed where any person knowingly points a firearm at another, whether or not the actor believed that the firearm was loaded. In the 1970s the South Australian Mitchell committee recommended the enactment of an offence in the following terms: A person commits an offence if he recklessly engages in conduct which places or may place another person in danger of death or serious inquiry.

The committee went on to say:

> The point is this: the reduction of dozens of offences to one or two general offences based on an examination of the general principle at work in an area may be referred to as parsimony in the use of the criminal sanction. There is no point in having 20 different offences if two will do.

I am afraid that, as the officers note, by creating a special offence of drink spiking we are really reverting to a trend that characterised legislators of the 19th century.

Bringing the point to South Australia itself, there are some offences which already might cover drink spiking. These are pointed out by the Model Criminal Code Officers Committee. They point out, first, that as part of the process of rationalisation some of our offences have already been removed, for example, section 25 of the old Criminal Law Consolidation Act relating to choking or stupefying to commit an indictable offence, which still exists in our statute, and the familiar poisoning offence at section 27, namely, 'maliciously administering poison with intent to injure, aggrieve or annoy any other person'.

The other three poisoning offences that were in our legislation have disappeared and were replaced by the new style general endangerment offences in 1986. They are contained in section 29, acts endangering life or creating a risk of grievous bodily harm. Last year we passed the Statutes Amendment and Repeal (Aggravated Offences) Act 2005, which I believe is shortly to come into operation, if it has not already. When it is proclaimed it will repeal the two remaining choking and stupefying offences. Indeed the basis of the law will be a series of offences based on the intention and reckless causing of harm and serious harm. The point for present purposes is that harm will include unconsciousness, and serious harm will include 'serious and protracted impairment of a physical or mental function'. There can be little doubt that serious drink spiking will be caught under those existing categories of offence.

In addition, in this state we have two drug administration offences in the Controlled Substances Act, namely, section 18, sale, supply, administration and possession of prescription drugs, and a more serious offence in section 32, entitled 'Prohibition of manufacture, sale, etc.', and includes administration of a drug of dependence or a prohibited substance. Some other states have an even longer catalogue of offences dealing with the subject of drink spiking.

I put on the record the conclusions of the Model Criminal Code Officers Committee, wherein they say:

> It is a clearly discernible trend across the common law world, and hence analogous jurisdictions, for law makers to abandon the practice of enacting very specific statutory offences which deal with just one narrow aspect of a more general social or behavioural problem. There is good reason for this trend. The Victorian criminal legal system was mired in very unnecessary specifics and high-technicalities of both procedure and substance. The generalising of the criminal prohibition makes the law easier to understand, simpler to prosecute and defend, more accessible to the citizen and more sensible overall.

The understandable desire to add and add specific criminal offences to the criminal law as a response to an immediate demand to 'do something' about an emerging behavioural problem, or the resurfacing of an old one into public consciousness, should therefore be resisted unless there is clear evidence that the criminal law does not address the problem—or, at least, all of it. There is no point in piling Ossian onto Pella if there is no substantive gain, and there is much to be lost. It is not good social policy to end up with criminal legislation which resembles the complex mess that resulted in the consolidations of the early to mid nineteenth century. It is not good policy—it is bad policy—to recommend the enactment of a specific criminal offence merely 'to raise the profile of the issue in the community'. Revisiting or re-enacting the legal conventions and structures of nearly 200 years ago is not a good idea.

I believe this is a very worthy warning. However, I note that our provision for serious food and beverage spiking is very specific. I believe it comes close to infringing the principles to which I have just referred, but it is, I believe, a provision to which, in principle, reasonable exception cannot be taken.

The important element of this new offence is that the person who adds a substance or causes a substance to be added either to food or beverage in order to commit this offence must have done so with the intention of causing, or being recklessly indifferent to causing, impairment of the consciousness or bodily function of another. The important requirement of actual intention to cause impairment is significant. I note that the Queensland legislation, which is incorporated in that state's criminal code, is expressed in somewhat different terms. That offence is described as unlawful drink spiking, and the essential element is that the offender must have an intention to 'cause the other person to be stupefied or overpowered'. That, to modern ears, is rather strange language, although it is language which already has appeared in the criminal code which applies in Queensland and has applied for more than 100 years.

The Queensland section is a lot longer than ours in its explanation, but I believe the explanation is not required, but the legislation does make the following specification:

The following matters are immaterial:

(a) whether the lack of knowledge of the substance is a lack of knowledge of the presence at all of the substance or of the particular quantity of the substance.

That is immaterial. It is immaterial if one spikes another's drink if one is not precisely aware of the particular quantity of the substance. It is immaterial whether the substance is capable of having the effect intended. If one mistakenly adds a substance thinking that, for example, it is a date-rape drug but it is actually mineral water, that does not go to the important issue of the intention. The intention to commit the crime is the important element.

Finally, it is immaterial in the Queensland legislation as to whether a particular person is intended to be the person to whom the substance is administered or attempted to be administered. That is a relevant point to make. The Queensland section also provides that it does not apply to an act lawfully done in the course of the practice of a health professional, or the carrying out of a function under an act, or the performance of the responsibilities of a parent or carer. I would not think a statement of that kind is necessary where it is important to prove that the intention of the person charged was actually to cause impairment or, in the Queensland case, to cause stupefaction or the person to be overpowered. I would ask the minister to indicate whether or not these Queensland provisions have been considered and the reason that it has not been thought appropriate in the South Australian bill to include provisions of the kinds I have just mentioned. This is a significant issue, and I support the second reading.

**The Hon. R.I. LUCAS (Leader of the Opposition):** I rise to support the second reading of the drink spiking legislation. My colleagues the Hons Stephen Wade and Robert Lawson have outlined in detail the provisions of the legislation and, in the case of the Hon. Robert Lawson, some of the legislative principles on which this change ought to be viewed. I want to spend a brief time looking at the practical consequences of the legislation and the practical consequences of what is currently occurring. In so doing, I express my concern at what I think is perhaps the inadequacy of the government's legislative proposal and why something stronger, perhaps along the lines outlined in the proposed amendment from the Hon. Mr Wade, should be contemplated by the parliament if we are serious about this issue of drink spiking.

The first point is that there is a view among many that, as a general rule, drink spiking relates to young women. That is the first issue we ought to clarify; that is, there is a significant number of examples of young men having their drinks spiked and there are also examples, although obviously not as many, of older men and women who have been victims of drink spiking in recent years. I was given the details of an example in the past couple of years of a middle-aged male from the education sector drinking with his mates at a suburban hotel in Adelaide. After what he thought was a modest consumption of alcohol in the early part of evening, he felt terrible in terms of blurred sight, seeing visions of strange things in his mind, feeling unwell, difficulty in standing, and a variety of other symptoms, as well. Afterwards, he recounted that he had no recollection of how he managed to get himself in a taxicab outside that hotel, but he got himself home. He has no recollection of how he got into his house. However, his wife obviously knew that something was amiss and called the ambulance and had him taken to hospital. It was only after some period of time that he had any recollection of what transpired between the hotel and the experience of being assisted in hospital. Subsequently, the blood test analysis diagnosed that his drink had, indeed, been spiked with some drug-like substance. As I said, society might deem him to be a relatively responsible person, in the education sector in his mid 40s.

Another example that was relayed to me in the past few years also involved someone in the education sector. This person was a female in her 40s who was at a function related to the school (so, it was not in a hotel). Again, she had similar symptoms and problems as a result of some sort of drink spiking. I am not suggesting that those examples are the majority, because the majority probably do relate to younger people, and to younger females, in particular. As I said, some examples have been passed on to me through friends and acquaintances of young males also having their drinks spiked.

I think we also have to accept that some of the examples of drink spiking that are claimed to have taken place may not be the result of drink spiking. Certainly, young men, and women, in particular, who drink too much and find themselves in a state probably pretty close to alcohol poisoning, when confronted by parents, may well automatically cling to the life raft of drink spiking as the possible explanation for what occurred. So, when one sees examples in the media in relation to claims of drink spiking (and I am not sure of the percentage), I suspect that the majority are probably true and there may well have been drink spiking. However, we have

to accept that there are some examples where young people just drink too much and then find themselves in hospital, where they are put on an intravenous drip, or something else (I am not sure what the treatment is), and treated for excessive consumption of alcohol, and the convenient reason given to parents or guardians is drink spiking. Of course, the subsequent blood tests are a good indicator of whether or not there has been spiking with a drug-like substance.

There is also the sort of middle ground, Mr President (which you might be aware of through general discussions), that is, drink spiking in relation to excessive proportions of alcohol being included in mixer drinks—again, particularly with respect to young females—where perhaps they think they are drinking only a certain percentage of alcohol in a drink but there is an excess quantity of alcohol, where perhaps it is not immediately apparent in terms of what percentage of the drink is alcohol. That is another form of drink spiking, because young girls—and young boys, in particular—could be caught out where they think they have had five standard drinks in a number of hours and find out that they have had 10 or 15, or whatever, because someone has been increasing the alcohol percentage of their drinks.

I think that this legislation seeks to address a range of circumstances. However, my concern, as I said at the outset, is that I do not think that what the government is doing is anything more than perhaps an attempt at window dressing on this important issue. If we are to be serious, we really have to look at something along the lines of the amendment that is being moved by my colleague the Hon. Mr Wade, or, indeed, there may well be an alternative proposition which toughens up the legislation.

Let me distinguish: it is not just licensed clubs; I believe it ought to be licensed premises and, from my viewpoint, I cannot see any excuse for anyone on licensed premises having one of these date-rape drugs in their pocket or on their person. As my colleague canvassed, there may well be some particular reasons why a person might; but, certainly, from my discussions it is hard to countenance why that ought to be the case. From my viewpoint, at the very least something along the lines suggested by the Hon. Mr Wade ought to be supported by this chamber to try to toughen up the legislation.

If someone who is at the extreme of the continuum about which we are talking (that is, they do have a date-rape drug, they are intent on mischief and they will try to drug someone without their knowing) and who is caught on licensed premises with that date-rape drug, they should be punished—and punished in a significant fashion. As my colleague the Hon. Mr Lawson said, this legislation hinges on the importance of being able to prove intent which, I suspect, will be difficult in relation to this legislation. That is why I expressed my concern about how strong this legislation will be and whether or not it is not just the government's attempt at window-dressing what is an important issue.

If someone is found on licensed premises with a date-rape drug, as I said, from my viewpoint, I cannot see any logical reason why they should have it on their person, and there ought to be a specific penalty for that set of circumstances. I hope that government members would contemplate it, but I suspect that might not be the case even though the Attorney-General indicated that he was prepared to have a look at it. I hope that government members will be prepared to look at toughening up this legislation; but, if not, I hope that the independent third member parties of this place will look favourably upon the amendment that is to be moved by my colleague the Hon. Mr Wade, support the legislation and amend it. Hopefully, that can then be resolved in subsequent discussion between the two houses.

**The Hon. I.K. HUNTER** secured the adjournment of the debate.

## PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL RETIREMENT AGE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 1003.)

**The Hon. R.I. LUCAS (Leader of the Opposition):** I understand that I am the only speaker, so I will speak and seek leave to conclude my remarks tomorrow.

*The Hon. G.E. Gago interjecting:*

**The Hon. R.I. LUCAS:** Well, yes, it may be a reasonably significant contribution, at least from our viewpoint. Before referring to the specific provisions of the bill and debate about the reasons for supporting, not supporting or amending the legislation, I want to make some general comments about the position of the Auditor-General, the office of the Auditor-General and the operations of auditors-general in this and other states, and that is without referring in the first instance to the specific provisions of this legislation.

The Liberal Party's position has been and remains that we have the greatest respect and support for the position of the office of Auditor-General. As we have indicated on a number of occasions in the past, that does not mean that there will not be occasions on which political parties, Labor and Liberal, will disagree with the actions of a particular auditor-general or the views of a particular auditor-general in any healthy and functioning democracy. Again, if I can speak generally rather than specifically, I think that there is a danger for democracy if there is this view that the auditor-general, whoever or wherever he or she may be, whether in South Australia or in some other state, is infallible; that everything that the auditor-general ever says on any issue is always right.

I have previously recounted the story of when the now Treasurer, on a particular issue where I know his private view was very similar to mine, smiled after I had put a point of view to him—when we were in government and the now Treasurer was in opposition—and said, 'I understand your position on this, but whatever the Auditor-General says we will agree with.' As I said, there is a danger in a blind acceptance of the infallibility of any person or auditor-general, and all parliamentarians, all political parties and others must ultimately make judgments and then make a call in relation to whether they agree or disagree with the views expressed. By and large, I suspect, most political parties, probably on most occasions, would support the views of their auditor-general in relation to the issues, out of due deference for the fact that the auditor-general, with considerable staff and resources, is in a position, hopefully, to provide some independent oversight of whatever the financial issue might be.

There are important issues also—and again I am still speaking generally—not only in South Australia but elsewhere about what is the appropriate role for an auditor-general, where are the demarcation lines. There was previously a bill before the parliament in which we flagged amendments modelled on amendments from some other jurisdictions which, in essence, look at describing or clarifying the role of the Auditor-General; that is, being the financial

watchdog of the particular jurisdiction. The interesting debate comes—and in some other jurisdictions they have had that debate and clarified it—from the fact that some jurisdictions do not see the appropriate role of the auditor-general as being the second-guessing of policy decisions of the government of the day.

That is, that some jurisdictions have basically clarified that the government of the day makes policy decisions but that the Auditor-General's role, once those policy decisions have been made, is to be the financial watchdog on behalf of the parliament and of the community for the finances and accounts, the expenditure of that particular state and jurisdiction. That is an important debate. As I said, it was before the parliament and the government decided not to proceed with that bill or that issue, but I think that it is an issue that ought to be debated. It is also important, in terms of the Auditor-General, that the office of the Auditor-General and also the person who holds the position at any time ought to have the confidence of all sections of the parliament.

Still speaking generally, without addressing any specific issue, it would be a dangerous set of circumstances in any jurisdiction in which either the Auditor-General or the office of the Auditor-General lost the confidence of a section of the parliament. I guess we are talking about the government or the alternative government of the day. In the end, that might not be avoidable if a particular political party is angry about what the Auditor-General is doing. However, by and large, I think the confidence of the parliament in the incumbent is important in terms of the integrity of the position. I think it would also be dangerous—and I am still speaking generally—if we ever got to the position of where a decision was taken because the perception was that those on one political side of the fence believed it was to their advantage and to the detriment of those on the other side of the political fence.

Again, speaking generally, we should look at the circumstances of the role of auditors-general. I have looked at New South Wales and Victoria. Referring to Victoria, the former auditor-general, Mr Baragwanath, caused considerable discomfort for the former Liberal government in Victoria during his term of office. I think it is also fair to say that in recent times the current Auditor-General in Victoria has caused considerable discomfort for the Labor government in Victoria. The former Auditor-General in New South Wales, Mr Harris, caused considerable discomfort for the government of the day. I think it was in the early stages of the Labor government but it might also have been in the latter stages of the Liberal government—I am not sure.

The current Auditor-General certainly has caused considerable discomfort to the current Labor administration. In both those states, if we look at the past four or five years, we have seen very significant exposés revealed by the work of the Auditor-General, and I think that is an indication that the Auditor-General's efficiency, effectiveness and productivity in those particular states is working pretty well. I do not believe there is any administration or government—Liberal or Labor, with the greatest respect to the incumbent government which believes itself to be without fault—that, with a properly resourced audit office, would not be subject to significant exposés of significant problems within its administration over a period of five years.

I think any independent observer of that period in New South Wales and Victoria, including journalists, would certainly reflect that position, that the Auditor-General, as a result of the work of that office, has exposed significant failings in administration in those states. I think that is a good thing. That is the job of an Auditor-General. That is what we are paying for, in essence, and it is a significant cost we pay.

I turn now to the specifics of South Australia because, as I said, my comments so far have been of a general nature about auditors-general. As the President of the Legislative Council, sir, you are probably aware of the significant fees the Auditor-General charges for his audit function. If one compares the hourly or daily cost of audits by the Auditor-General with the four big companies in South Australia, the fees charged by our Auditor-General's office here in South Australia are significant. We, the taxpayers, are paying significant sums of money for the work of the Auditor-General.

That is our input and, whether it be a Liberal or Labor government, the expectation is that the South Australian Auditor-General's staff should be exposing significant failings of government administration, as they do in New South Wales and Victoria on a regular basis. I will not go through all my issues and concerns here but, to give one example, there is the fact that in South Australia the very significant problems of what is known as 'stashed cash' were not discovered by the Auditor-General's office and were revealed only as a result of issues being raised in particular departments. That raises significant questions for those of us who support the principle that the Auditor-General's office is there to expose failings of government administration.

The issue of the 'stashed cash' is now the subject of a long-running and important inquiry by the Legislative Council (that you, Mr President, would be familiar with) in relation to very significant concerns and criticisms of maladministration within government departments and agencies, and it is not an unreasonable expectation that that matter should have been exposed by audit staff in the normal auditing of government department accounts. There will be more detail on that when the committee ultimately reports and we can speak frankly in relation to those issues, but I give that as an example. It is a bit like New South Wales and Victoria, where we have seen significant exposure.

The point I am making is that there are significant issues within administration in South Australia that should have been, and still need to be, exposed by audit staff. 'Stashed cash' is one example but, as I am sure you would be aware, Mr President, there are other examples within government administration that should have been revealed in terms of audit function. As I said—and I will conclude on this—it is not an unreasonable expectation. I had separate discussions with a couple of leading journalists who have had long experience in South Australia, and they reminded me of the days of former auditor-general Tom Sheridan. They recounted the very significant issues exposed by the audit office under Mr Sheridan and, while I will not go through the detail of what those issues were, they also recounted their perception of audit function and performance in comparison with Auditor-Generals in the past.

I now turn to the specifics of the legislation. The background to the legislation is that approximately 16 years ago the current Auditor-General signed a contract (I assume), or at least agreed to terms of employment, which set out that he would be employed for 16 years. In essence, it is a contract of agreement on 16 years of employment to retire in the year 2007—I think the date is 22 February or something like that, when the current Auditor-General turns 65.

When employed in 1990 the Auditor-General, in essence, signed up to a contract of 16 or 17 years, knowing that it would not be renewed when he reached his retirement age of

65 in February of 2007. I am not sure what the original terms were but, in current terms, the Auditor-General has a package of probably around a quarter of a million dollars a year. That is considerably more than members of parliament receive. I think his salary component is about $230 000 or so, but there are obviously other parts of a package of employment and, I would imagine, superannuation. I am not sure, for example, whether or not a car or other benefits are provided, but certainly there would be other benefits of a package which, in today's terms, is worth about a quarter of a million dollars plus. So, in relative terms, over 16 or 17 years, in today's dollars, that is around a quarter of a million dollars a year or so. That is not an unattractive package to accept.

What this legislation ultimately is offering the current Auditor-General (if you put the bottom line on it) is, in essence, an additional $1.25 million or more over a five-year period, to continue being the Auditor-General until age 70. As I have said, it may well be more than $1.25 million, but that is a reasonable bottom line estimate of the additional financial benefit to the incumbent. I am not sure what impact, if any, that will have on superannuation. I am not aware of the particular superannuation arrangements of the Auditor-General (nor should I be, I guess) but at the very least, anyway, we are talking about $1.25 million as the bottom level of additional financial benefit—and possibly additional other benefits as well, if superannuation were to be impacted. So, in financial terms, we are talking about a very significant decision, not only for the state but also for the individual concerned.

For some time there have been rumours doing the rounds of Parliament House that the current government might be contemplating looking at options for allowing the current Auditor-General to continue. Mr President, you might or might not recall some discussions that you and I had on one or two occasions in relation to this particular issue, but certainly there had been rumours running through the corridors of Parliament House for some time before the Premier's announcement on 18 October (to which I will refer in a moment).

Just to that end I can indicate that the Attorney-General was at a function with one of my colleagues a couple of months ago and, when my colleague indicated that the current Auditor-General would soon be retiring, the Attorney-General's response was, 'Over my dead body.' The Attorney-General made it quite clear to my colleague even at that stage (as I said, this was a couple of months ago) that—I cannot put it more bluntly than that quote—the Auditor-General (from the Attorney-General's viewpoint anyway) would be retiring over the attorney's dead body. We can perhaps explore later in this contribution, or on another occasion, what might have prompted the Attorney-General to adopt such a strong personal stance in relation to this particular issue. Nevertheless, as I said, I give that as an example of the dog who has been barking for some time. This government, and the Attorney-General in particular, was looking to see how the current Auditor-General's term might be extended. On 18 October, there was an announcement by the Premier, as follows:

> Auditor-General's term to be extended.
>
> The Auditor-General Ken MacPherson will not be forced to retire when he turns 65 early next year—and will be able to work on for another five years.
>
> Premier Mike Rann says the legislation governing the Auditor-General contains an anomaly in that it has a retirement age of 65, which means it was never amended to recognise changes made to age discrimination laws in the early 1990s.
>
> 'Cabinet has decided the Auditor-General's Act should be amended to provide a retirement age of 70—in line with the retirement age of Supreme Court judges.
>
> 'The Auditor-General, as an independent lifetime statutory officer, is governed by his own legislation.
>
> 'I'm sure it was nothing more than an oversight that the legislation wasn't amended when compulsory retirement was outlawed in South Australia in 1993.
>
> 'At the very least, the Auditor-General's Act should have been amended at that time to bring it into line with other independent lifetime appointments, such as Supreme Court judges.
>
> 'I believe it is still an important safeguard to have a retirement age for independent officials. That's because if, due to age and consequent ill-health, that officer is not able to perform his or her duties, or at least perform them to full capacity, it would be virtually impossible to dismiss them.
>
> 'In any case, our current Auditor-General, Ken MacPherson, is still doing an outstanding job as an independent watchdog on our state's finances and is still very enthusiastic about his role. He shows no signs of slowing down.
>
> 'We will be delighted if he makes the decision to stay on and not retire at the beginning of next year,' Mr Rann said. The amending bill will be introduced into parliament on 26 October.

When the minister handling the bill replies, it is important that they confirm that there was no discussion between the Premier or, indeed, any minister of the government, any officer of the government, or any of the Auditor-General's staff, with the Auditor-General prior to the announcement of 18 October that the government was intending to take the decision that the Auditor-General's term was to be extended. I assume that that is the case, but I think it is worth while the government's confirming that that was the case.

When the second reading of the bill occurred in the House of Assembly on 26 October (just eight days later), the Treasurer stated:

> The Auditor-General is appointed by the Governor under the Public Finance and Audit Act 1987. The office of the Auditor-General is independent of politics and operates to ensure that the public finances of South Australia are used appropriately and for the best possible benefit of the state. Clearly, the role of Auditor-General is a significant instrument of democratic accountability and transparency. The role is essential to effective governance.
>
> This bill raises the retirement of the position from 65 years to 70 years so that occupants of the office of Auditor-General can continue to make their valuable contribution to the people of South Australia. I commend the bill to members.

I want to address some of the claims made by both the Premier and the Treasurer in supporting this legislation. The first relates to the claim made by the Premier when he said in his press statement:

> I am sure it was nothing more than an oversight that the legislation wasn't amended when compulsory retirement was outlawed in South Australia in 1993.

That claim from the Premier is transparently wrong. There was no oversight in 1993. In fact, it was legislation introduced by the then Labor government in 1993 and supported by the Liberal opposition. A reading of the second reading explanation of the Statutes Amendment (Abolition of Compulsory Retirement) Bill makes it quite clear that it was not an anomaly or an oversight when it was introduced. I quote from the second reading explanation, as follows:

> It should be noted that even with these amendments a number of people will still be subject to compulsory retirement ages in South Australia. With respect to the positions of Valuer-General, Solicitor-General, Auditor-General, Electoral Commissioner, Deputy Electoral Commissioner and Ombudsman, the working party has recommended a review as to whether or not it continues to be appropriate to impose a compulsory retirement age. In reaching this decision the working party took into consideration the fact that similar principles apply to these positions as to the judiciary regarding requirement of independence from control by the executive. In particular, this is

reflected in the procedures for removal from office, which contain similar characteristics to that of the judiciary.

It is clear from the Labor government legislation in 1993 that there was no oversight at the time, as claimed by the Premier in his press release of 18 October. The kindest way one can put it is that it was misleading—deliberately misleading, I suspect—of the Premier to make that particular claim in that press statement.

Let me compare this to the position of the Ombudsman, because we have two positions, both the Ombudsman and the Auditor-General, that report directly to the parliament. The Ombudsman Act makes it quite clear that the Ombudsman's term expires on the day that he attains the age of 65 years. Here, we have the government coming before the council, supposedly on a great matter of principle, supposedly on the basis that there has been this oversight in the legislation back in 1993, and it seeks to extend the term of the current incumbent in the Auditor-General's position by five years but does not do the same thing for the current incumbent in the position of Ombudsman.

I think there is an argument against the issue of extending for an incumbent, anyway, which I will address later on in this contribution. However, if the government's position is that it is okay to extend for an incumbent, why has it just selected the position of Auditor-General rather than the other positions that exist, in particular the position of the Ombudsman? If this is a principle that the current government is supposedly espousing and supporting, why is it selectively applied just to the position of the Auditor-General and not to other positions, such as the Ombudsman, in particular, who reports to parliament? As I said, quoting from that 1993 second reading, a number of other positions still have retirement ages. I do not know whether I referred to it earlier, but I am also advised that, under their legislation, industrial commissioners and magistrates are also required to retire at 65. The Solicitor-General, the Ombudsman, the Electoral Commissioner, the industrial commissioners and magistrates are all required under the legislation that applies to their particular position to retire at 65, so that claim is wrong.

The Premier makes some comparison of the Auditor-General's position to the position of a Supreme Court judge, although I am not sure why the government is arguing that the Auditor-General's position relates to that of a Supreme Court judge. I suspect the Auditor-General would be delighted if the government were to follow that principle through, because Supreme Court judges are paid at a level higher than the Auditor-General and that would require an even further increase in the salary of the Auditor-General. My legal colleagues advise me that one of the arguments put forward at the time for a retirement age of 70 for Supreme Court judges related to the fact that, in general terms, they were not appointed until fairly late in life and, at that time, the pension scheme required 15 years' service to qualify. Both those factors obviously do not apply to the current position of the Auditor-General. My voice is failing me, so I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

## TOBACCO PRODUCTS REGULATION (SMOKING IN CARS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 1018.)

**The Hon. NICK XENOPHON:** I indicate my support for the bill. The government has quite rightly acknowledged that passive smoking, that is, breathing second-hand tobacco smoke, or environmental tobacco smoke, is a danger to health, that it increases the risk of asthma, bronchitis, pneumonia and chest infections, as well as lung cancer and cardiovascular disease, and that children and babies are especially vulnerable because their lungs are less developed. I certainly welcome this bill and indicate my support for it. However, it would be remiss of me if I did not mention briefly what I see as a double standard on the part of the government in that it is prepared to act decisively with respect to dealing with tobacco smoke in people's cars but it has been dragging the chain with respect to passive smoking in poker machine venues, because the risks are still significant for hospitality workers and patrons of those venues.

When tobacco legislation was being considered by this place some 2½ years ago, Anne Jones, the Chief Executive Officer of ASH (Action on Smoking and Health), based in Sydney, came to Adelaide for lobbying purposes. She made the point that by delaying the smoking bans by three years it was estimated that there would be 125 premature deaths in South Australia. And why would there be such a delay? Because, by bringing in smoking bans earlier in pokies rooms, it would affect the Treasury's coffers. I think Treasury figures indicated a 10 to 15 per cent estimated decline. There is a double standard, and it would be remiss of me not to mention that.

I have some questions for the minister in relation to this particular bill, which I welcome. First, there is a punitive component in relation to penalties, but will there also be an education campaign prior to this legislation coming into force in terms of government advertising? I am critical of government advertising which bears the face of the Premier or ministers, because it is seen as being party political. In this case, I think it is important that there be a comprehensive advertising campaign to get the message across to the community that this legislation, if passed, will be enforced and to re-emphasise the risk of passive smoke to young children.

I also ask whether, in respect of the health effects of passive smoking, there will be a broader campaign to get the message across, not just through the mass media but perhaps in schools and through other fora. Also, will the enforcement be by the police, or will others, such as health department officers, be delegated to enforce this legislation? How will the enforcement operate and to what extent will there be a concerted enforcement of this legislation? I would be very concerned if it was just a case of window-dressing, if the enforcement regime was not effective and meaningful. That follows comments made earlier today by the Hon. Mr Lucas and others in relation to ensuring that the drink spiking legislation will be effective and enforced. Will the legislation have any teeth? We need to get the message across that it is irresponsible to subject young kids to passive smoke in the confined space of a vehicle. I support the bill and look forward to the committee stage.

**The Hon. R.P. WORTLEY** secured the adjournment of the debate.

## CHILD SEX OFFENDERS REGISTRATION BILL

Consideration in committee of the House of Assembly's message.

(Continued from 16 November. Page 1046.)

**The Hon. P. HOLLOWAY:** I move:

That the Legislative Council do not insist on amendment No. 5.

The House of Assembly has agreed to amendments 1 to 4 and 6 to 10 that were made by the council, but amendment No.5 was the amendment to which the house disagreed. This amendment, which was moved by the Hon. Nick Xenophon when the bill was last before the council, inserts new clause 72A into the bill. Proposed new clause 72A will require the minister, not more than one year after the commencement of the provision, to appoint an independent person to carry out an investigation and review of electronic monitoring. This independent review is to be required to examine the systems available for electronic monitoring, whether any of the available systems would be of benefit to the monitoring of registrable offenders or any particular class of registrable offender, and the feasibility and cost of introducing such a system. The minister must provide assistance to the independent person to allow for a trial of any available system if the person considers a trial to be necessary or desirable. The independent person must report within two years, and the minister must table the report in both houses within 12 sitting days of receipt.

I have already put to the council the government's arguments against this amendment but, at the risk of being repetitive, I will restate them briefly. First, it is completely unnecessary. The government promised at the last election to carry out a review of technology for electronic monitoring of offenders, and $200 000 was committed to a review by the Department for Correctional Services (DCS) in the last budget. Although the review is scheduled for 2007-08, I understand work has already commenced. Secondly, it will involve duplication and, therefore, unnecessary additional costs irrespective of whether an 'independent person'—whatever that term is supposed to mean—conducts a review of technology. DCS will have to conduct its own review. DCS is the customer. DCS will be the organisation using the technology. It will have to see how the technology fits with its current or proposed practices and determine whether the technology adds value in that context.

Thirdly, the amendment itself has problems. What does an 'independent' person mean? Presumably, this means someone free of government control. This would rule out the DCS, the police, the parole board, etc., in other words, those agencies with the expertise and experience in monitoring offenders. 'Independent' would also mean ruling out an industry expert who had connections with any of the companies developing the type of technology under consideration. This reduces the pool considerably. Fourthly, it would be expensive. A truly independent person would charge the government for his or her services, which are likely to be very expensive. It would more than likely have to be an industry expert who would charge consultancy rates. Furthermore, proposed new clause 72A provides that the minister must provide all the necessary assistance if the independent person decides to conduct a trial. The minister, therefore, has no control over the amount spent on the trial. Given the second point, that DCS will still have to conduct its own review, this could end up being a very expensive duplication.

Fifthly, the amendment is irrelevant to the bill. The bill is about (a) compelling certain sex offenders to provide personal details to police so that a police register can be compiled and kept up-to-date, and (b) restricting certain sex offenders from listed types of jobs. No form of electronic monitoring is relevant to these objectives. It needs to be firmly understood that, while electronic monitoring, whatever the form, may be relevant to probation, parole and bail—conditional forms of release—this bill has absolutely nothing at all to do with conditional forms of release.

Lastly, unlike proposed new clause 72A, other legislative requirements for a review, for example, section 194 of the Gene Technology Act 2001 or section 38 of the Construction Industry Training Fund Act 1993, are concerned with a statutory regime, body or regulatory system established by the relevant legislation, or with the operation of the legislation itself. Clause 72A does not require a review of the Child Sex Offenders Registration Act, or even a review of the operation of the act: it requires a review of technology. For those reasons, I ask that the committee does not insist on its amendment No. 5.

**The Hon. NICK XENOPHON:** I do not resile from my position. I will deal with the minister's statement that this amendment has nothing to do with the bill. With respect to the minister, I believe it is relevant. This is a statutory regime that is being contemplated with respect to the registration of child sex offenders, and electronic monitoring certainly would be of assistance in many cases with respect to those who have been registered as child sex offenders. There may be some conditions on these offenders for which electronic monitoring would be absolutely invaluable.

The amendment allows for an independent person to carry out an investigation and review. It is not prescribed who an independent person is but it would be anticipated that it would be a person at arm's length from the department. That, to me, seems to be a reasonable interpretation. It is not entirely restrictive or prescriptive but just allows, on its ordinary meaning, for that person to be at arm's length from the department. It simply allows for an investigation and review of the systems available and whether it be of benefit for monitoring the movements of registrable offenders or any other particular class of registrable offenders and the feasibility of introducing such systems.

It would give an opportunity for parliament to look at the important issue of the way technology can be used to make our community safer. I commend the government for introducing this bill, but I see this amendment as enhancing this bill, and any suggestion that the government would not want to proceed with it if this amendment was carried, to me, is very disturbing because I see this as enhancing the workability of this bill in the longer term. So, I do not consider it to be onerous.

In terms of it being very expensive, I do not see that at all. This is about undertaking a review that I believe could well end up saving the state a lot of money—let alone, more importantly, reducing the human cost to the community in terms of a registered child sex offender behaving in a recidivist manner and reoffending. I think that is why it is important that we do this. It would be false economy not to do it, and there is no reason an independent person, to fulfil the terms of this legislation, could not review the existing material of the department and seek advice as he or she might think fit.

Also, I think it is important to look at what I believe is the big picture. I believe one of the key reasons the government opposes this measure is that it does not like being told by the legislature what the executive arm of government should do. That is a point that was eloquently put by the Hon. Robert

Lawson—that is, that in the United States there has been a trend for legislatures to be prescriptive about certain programs and certain things that need to be done. Governments of any persuasion do not like it, but I think this is a good precedent. If this particular amendment is carried it is a good precedent because, ultimately, the parliament should, I believe, have the ultimate say on these issues.

Requiring something as prescriptive as this is an example of legislation working in a very positive way to make the legislative scheme work better in the longer term, but this government should not have the hang up it seems to of being required to do something that is not unreasonable. The Hon. Robert Lawson is correct: it happens in the United States and more of it should happen here where it is clearly in the public interest to do so.

**The Hon. R.D. LAWSON:** I urge the committee to insist on our amendment. The amendment was moved by the Hon. Nick Xenophon. He has modified an original suggestion to accommodate some of the concerns expressed by the government. This is, however, a very modest proposal and, notwithstanding the special pleading of the minister about the cost and inconvenience that would be occasioned by this requirement, I simply do not believe that the inconvenience to which the minister refers will accrue. True it is, you can make any simple task complicated and expensive. The honourable member's amendment does not require anything that is not simple or is complicated. It is simply to appoint an independent person to carry out an investigation and review—the sort of things governments do all the time at their own insistence when it happens to suit their own agenda.

The honourable member has said that this is part of the agenda of the legislature in relation to this important issue. We notice there are developments happening in the United States and we, the legislature, think they should be closely examined here. The examination is one that need not be expensive or protracted and would not necessarily interfere with the running of the department's organisation. If as a result of the review it is seen that the systems cannot be easily adapted to South Australia, no doubt the review will say that and we in this place will be satisfied that the matter has been objectively examined. On the other hand, the review might well—quite possibly will—suggest some further avenue of inquiry to be pursued, which will be important for us as legislators to understand.

From the beginning we have commended the honourable member for this initiative and we will support it. I can only hope that members in this place are not put off by the statements of the government, the threat by some government that if this happens it will be a terrible precedent, and the threat that it will be very expensive, that it will delay. Often we hear the threat that 'if you put this in we'll pull the bill', the usual threat of—

*The Hon. P. Holloway interjecting:*

**The Hon. R.D. LAWSON:** We are hearing the minister. The government has some form in this regard. When the civil liability bills were going through the parliament, there was a question about continuing to have what is called the highway immunity rule. Some other states had abolished it and we had not. The government said it would have an inquiry, and this minister undertook to this chamber to have a review in two years so that the parliament can have an answer to some of the questions being raised principally by the Hon. Mr Xenophon. No legislation was required and we accepted the minister's undertaking, but we have never seen the review.

It is necessary to have legislation of this type in place to hold the government accountable. I think it is disappointing to hear the minister inventing all these excuses for why the government does not want to do something. The plain fact is, if he is honest enough, he would say, 'We simply do not want to do this. We might do it ourselves, but we do not want you to force us to do it.' I believe that it is entirely appropriate that they be held accountable.

**The Hon. P. HOLLOWAY:** Let me make it quite clear that no self-respecting government will accept an amendment which requires a government to undertake an executive action that is irrelevant to the purpose of the bill. We have just heard an appalling contribution from someone with the qualities of the Hon. Robert Lawson. This amendment would require a trial of bracelets in relation to people who are not subject to any court orders. These are not people who are on some conditional form of release. This amendment has nothing at all to do with conditional forms of release. It is about trialling a particular type of technology in an application which I do not think it is being suggested should be used anywhere else in the world. Why would you use these sorts of things unless people are subject to some conditional form of release? These people are not on probation, parole or bail.

As I pointed out in the debate the other day, even if you did have this technology, what good would it do? If you had all the costs and you trial this out, what will you do with the information? In relation to people on probation, parole and bail where conditions are set, it does make sense for the Department for Correctional Services to have a form of detention where you know where those people are. However, in relation to this particular register, how will you use it, particularly when these people are not subject to any type of conditional form of release? In any case, as I said earlier, it is just unprecedented to provide a legislative requirement for a review of a form of technology, rather than a review in relation to the act itself. For that reason, the government cannot and will not support this amendment.

I make it quite clear that, sadly, this state will remain the only state in the country that does not have a sex offender review, if the opposition insists on totally unacceptable things, which it knows are totally unacceptable, in this bill. Members can see that the Hon. Rob Lucas is fired up. He has had 25 years in this place and he is excited. Here it is half past five on a Monday afternoon when everyone else is at home, and the Hon. Rob Lucas is excited. He has the legislation. He thinks, in his rather shallow little life, that he has some point and some purpose. He can continue a debate now, but we know what he will say. He will be going on about history. He will be finding all sorts of red herrings, but the fact is that, if the opposition supports this amendment, it knows what it will be doing with the bill. It will be held accountable and this government will make sure it is held accountable. Let every person understand what their action will mean, if they do this.

I guess we will now have to go through the rest of the afternoon listening to the Hon. Rob Lucas, who I am sure will tell us all sorts of stories about other bills and things that have absolutely no relevance—

*The Hon. R.I. Lucas interjecting:*

**The Hon. P. HOLLOWAY:** I have been around here long enough to know the sort of things he deals with.

*Members interjecting:*

**The Hon. P. HOLLOWAY:** No, he didn't. The fact is that this bill is about a child sex offender register. It is about people who are not on conditional forms of release. This bill

has nothing to do with conditional forms of release. This government is prepared to conduct a trial in 2007-08 which will look at the sorts of technology that the Hon. Nick Xenophon wants us to consider. We will do that, anyway, but that will be in relation to conditional forms of release. Even if we do this trial, all the legal issues in relation to how it might affect such a register would have to be addressed.

This government wants a child sex offender register. It is long overdue. Let not such an important measure, which is important for the people of South Australia, be held up by the sort of political games that are played by this place. All they do is scar the reputation of this house of parliament. It shows just how irrelevant this is.

**The Hon. R.I. LUCAS:** The Leader of the Government is getting all the insecurities and foibles of the Treasurer. So far it has been only the Treasurer who, even before I get up to make a contribution, says, 'Rob Lucas will say this and will say that'—before I have even said it!

*The Hon. P. Holloway interjecting:*

**The Hon. R.I. LUCAS:** The only other point I make about the Leader of the Government is that when he resorts to personal abuse and denigration we know the substance of the argument he is pushing is sadly lacking.

*The Hon. P. Holloway interjecting:*

**The CHAIRMAN:** Order! The minister will come to order and the Hon. Mr Lucas will direct his remarks to the amendment.

**The Hon. R.I. LUCAS:** Sadly, the Leader of the Government loses control of himself on these issues. He goes white in the face, grabs himself as tightly as he can and resorts to personal abuse on these issues. I am only interested in the facts in relation to this matter. When I hear a minister of the crown get up in this parliament and say something that is untrue, I want to stand up on the issue and put the facts on the record. That is all I am doing in relation to this particular issue. The Leader of the Government can denigrate me as much as he likes about going back over history, but we do not have to go back too far. I refer to the legislation in relation to gaming machines, which was debated only two years ago. We do not have to go back over 25 years. The Leader of the Government is saying in this chamber to other members—newer members in particular—that this is unprecedented, outrageous and unacceptable and that we have never ever had such an example. No self-respecting government—

*The Hon. B.V. Finnigan interjecting:*

**The Hon. R.I. LUCAS:** I suspect by definition it excludes this government. Anyway, no self-respecting government would ever accept an amendment in relation to a review which looks at technology. I refer the Leader of the Government and other members to section 90 of the gaming machines legislation. It refers specifically to a provision that was accepted ultimately by the government, the minister and the Leader of the Government in this chamber under the heading, 'Minister to obtain report on smart card technology'. Even the word is used in the terms of the amendment supported by the Leader of the Government.

In relation to this 'unprecedented' amendment, which has been moved by the Hon. Mr Xenophon to this legislation, the Leader of the Government stands up in this chamber and says, 'This is unprecedented, outrageous and never before been done,' and then stands up before I even make a contribution and says, 'How dare the Leader of the Opposition refer to the facts of the history of this parliament in any way.' All I am doing is drawing the Leader of the Government and members back to the facts; that is, the statement made by the Leader of the Government is wrong. It is palpably wrong.

This parliament—the Leader of the Government and other members who were here two years ago (the Hon. Mr Xenophon reminds me)—specifically included a provision in the legislation which provided that within six months after the Governor assented to the Gaming Machines (Miscellaneous) Amendment Bill 2004—so it was an even tighter deadline—'the minister must obtain a report from the authority (the Independent Gambling Authority) on how smart card technology might be implemented with a view to significantly reducing problem gambling' (a split infinitive, I might suggest to the Hon. Mr Xenophon).

That is the only point that I want to make. As I said, I think it should be important that we in this chamber can respect the truthfulness or otherwise of the words that ministers (or, indeed, any member) offer in a debate. Integrity ought to be important in terms of public debate. We will not be cowered by personal abuse from the Leader of the Government or anyone else. Those are the facts of the situation. It is not unprecedented. The Leader of the Government himself supported the amendment. It is part of our statute law. There is a precedent. This issue ought to be debated on the facts, not on claims about whether or not it is unprecedented.

**The Hon. P. HOLLOWAY:** It is completely different to have an agency such as the Independent Gambling Authority do a report on things for which it must be responsible than to require an independent person to do a report that has very little relevance, to which the legislation applies. Smart cards may have potential with respect to gaming machines. However, again, I make the point that it has not been proposed in this bill; no-one has moved an amendment to say that people on the child sex offender's register should be subject to some sort of condition in relation to which one of these devices should apply.

*The Hon. R.I. Lucas interjecting:*

**The CHAIRMAN:** Order! The minister is responding to the member's contribution.

**The Hon. P. HOLLOWAY:** If it ultimately means the end of this bill, it is important that the Liberal opposition be held accountable for the decision it takes. It is important that that position be put on the record. The Leader of the Opposition has tried to say that, somehow or other, some amendment made to an independent gaming bill to get the agency itself—the Independent Gambling Authority—to look at something somehow sets a precedent to get an independent person to have a look at technology that would only apply, in all the cases that we know of where this sort of technology has been applied around the world, to people who are subject to a court order.

It is one thing to have a requirement for an agency to undertake a course of action. It is another thing, of course, to have this open-ended inquiry, which would be undertaken by an independent person—whatever that means. In any case, as I have indicated, one would have to get the consumer or the agency to undertake that study independently. If the Independent Gambling Authority decides to recommend smart cards, it is the agency that would have to regulate it. However, in relation to requiring bracelets, the agency that would be responsible for doing it would have to conduct its own review, anyway. For this government to support something which would be open-ended, which would just waste taxpayers' money and which, in any case, would leave a whole lot of questions unresolved as to whether or not that

technology would apply to people who were not subject to those sorts of court orders would be irresponsible. It is for those reasons that the government opposes the amendment.

The committee divided on the motion:

AYES (10)

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|---|---|
| Evans, A. L. | Finnigan, B. V. |
| Gago, G. E. | Gazzola, J. M. |
| Holloway, P. (teller) | Hood, D. |
| Kanck, S. M. | Parnell, M. |
| Wortley, R. | Zollo, C. |

NOES (9)

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|---|---|
| Bressington, A. | Dawkins, J. S. L. |
| Lawson, R. D. | Lucas, R. I. |

NOES (cont.)

| | |
|---|---|
| Ridgway, D. W. | Schaefer, C. V. |
| Stephens, T. J. | Wade, S. G. |
| Xenophon, N. (teller) | |

PAIR

| | |
|---|---|
| Hunter, I. | Lensink, J. M. A. |

Majority of 1 for the ayes.

Motion thus carried.

## ADJOURNMENT

At 5.43 p.m. the council adjourned until Tuesday 21 November at 2.15 p.m.