LEGISLATIVE COUNCIL

Wednesday 6 December 2006

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

DIRECTOR OF PUBLIC PROSECUTIONS, REPORTS

The PRESIDENT: I lay upon the table the report of the Director of Public Prosecutions with reference to matters concerning the Auditor-General, and his supplementary report tabled in parliament on 22 November 2006.

Reports received and ordered to be published.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 16th report of the committee.

Report received.

The Hon. J. GAZZOLA: I bring up the 17th report of the committee.

Report received and ordered to be read.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Emergency Services (Hon. C. Zollo)—

Reports, 2005-06—
Children's Services
Department for Families and Communities
HomeStart Finance
Office for the Ageing
Supported Residential Facilities Advisory Committee.

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. P. HOLLOWAY (Minister for Police): I table a ministerial statement regarding the Director of Public Prosecutions made today by the Attorney-General.

QUESTION TIME

BRIMBLE INQUEST

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

Leave granted.

The Hon. R.I. LUCAS: I refer to the recent controversy in relation to the Dianne Brimble inquest and issues relating to South Australian police officers and the Police Commissioner. In an interview on 1 December, when asked about allegations relating to a nightclub known as the Soda Room and with reference to the nightclub's licensees, the Police Commissioner said, in part:

> None of these people are police officers. . . I don't know whether the allegations are extending to say. . . they're not the licensed people, there's somebody behind the scene or whatever, that's what we have to find out. But certainly in regard to the people directly involved in the premises, they're not police officers. . . police officers are not permitted to engage in other business unless they've got approval to undertake secondary employment and we virtually would not grant secondary employment to engage in a business such as a nightclub.

Matthew Abraham then asked:

> So you would take a very dim view if you did find that police officers were somehow involved in running a nightclub?

The Police Commissioner said:

> Well, we certainly would. It would be quite incompatible. . . with their responsibilities given the things that sometimes happen at nightclubs.

Then the Commissioner continued his answer, but that is not immediately relevant to the question. My questions are:

1. Has the minister now been advised by the Police Commissioner whether partners, family members or close associates of police officers were licensees of, or had a financial interest in, the Soda Room?

2. What requirement, if any, does the Police Commissioner require of police officers in relation to declaring whether or not partners, family members or close associates are licensees of, or have a financial interest in, licensed premises?

3. I am happy for the minister to take this on notice: will the minister seek advice from the Police Commissioner to indicate how many approvals have been given to police officers to undertake secondary employment, and is he in a position to provide any advice as to the nature of secondary employment that he has approved for police officers?

The Hon. P. HOLLOWAY (Minister for Police): Regarding the latter part of the question, I will take that on notice; obviously, I do not have that information. In relation to the events at the Brimble inquest, I think one needs to recognise that there was a mystery witness (code-named Mr White) who gave evidence on 30 November and 1 December 2006 via a speaker phone from a room adjacent to the court, and his voice was distorted to protect his identity. It was clear, however, that Mr White had admitted to being a drug user and had made a number of allegations that had been disputed by not just police but a number of other people involved. The allegation was that the Soda Room was owned and operated by police and, as Mr White claimed, the manager of the Soda Room told him that the club was owned by five police officers. He also alleged that the persons of interest were protected by police.

The Brimble inquest is a New South Wales police investigation; however, the South Australian police have been involved with parts of the investigation, as there are some aspects that have been brought into the case because some of the people of interest to the inquest actually come from South Australia. Counsel assisting the Deputy Coroner made announcements about what Mr White was going to say before he took the stand, and lawyers from the Crown Solicitor's Office were present when Mr White gave evidence at the inquest.

The advice that I have is that South Australian police have checked the licensees of the Soda Room and none have ever been police officers. A group by the name of Star Force Holdings was the last licensee of the Soda Room. The Commissioner of Police has advised that there is no evidence to suggest that South Australian police officers were involved with Star Force Holdings or have been licensees of the Soda Room.

As has been pointed out, that does not rule out officers having a financial interest. However, this is highly unlikely given that police officers are required to declare outside interests and such a pursuit would not be approved by the Commissioner as he made quite clear in the interview to which the Leader of the Opposition referred. My understanding is that the Commissioner has urged Mr White (and,

certainly, I would, too)—or anyone else, for that matter, who has any information with regard to corruption—to go either to the Anti-Corruption Branch or the Police Complaints Authority.

I have full confidence in the Anti-Corruption Branch, which is the body that investigates corruption and allegations across the total public sector. In relation to associates and the like, investigating that matter is somewhat more complex and difficult. I have not received any further advice from the Commissioner. Obviously, I spoke to him when these initial allegations were raised, but I must say that, before I could even get the Commissioner on the telephone, he had already initiated these initial inquiries to which I have referred.

In relation to any further follow-up (which, obviously, will be a somewhat more complex and lengthy investigation), I have no advice on that yet. Again, I make the point that I believe it would be highly unlikely that officers would be involved; and, certainly, neither the Commissioner nor I would support something like that. Obviously, Mr White's evidence might well have come about because of this group called Star Force Holdings. As I said, the information I have is that there is no evidence to suggest that any South Australian police officer was involved with this group. If I do get further information from the Commissioner I will inform the honourable member.

The Hon. R.I. LUCAS: As a supplementary question, will the minister take on notice my question about whether there is a requirement from the Police Commissioner for all police officers to declare interests of partners, family members and close associates in licensed premises? That was the second part of the question that I asked.

The Hon. P. HOLLOWAY: I will get the full details on exactly what information is required in relation to that and bring back a response.

MASLIN BEACH

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 Maslin Beach stormwater retention pond.

Leave granted.

The Hon. D.W. RIDGWAY: My colleague the Hon. Caroline Schaefer recently asked a question about water turbidity as a result of water running from a quarry site at Maslin Beach into the sea. This site also has a stormwater retention pond that was constructed over an old landfill site. When one looks at landfill sites elsewhere in the world and the information that is available one can see that, often, uncontrolled municipal solid waste landfill sites emit non-methane organic compounds which include volatile organic compounds and which contribute to ozone formation and hazardous air pollutants that can affect human health.

One of the biggest factors with these landfills emitting these types of gases—particularly because of the quantity of the gas—is the temperature and the compaction levels. Of course, the moisture content of these landfills also affects the gases. Probably the biggest risks to health and the environment relate to the uncontrolled surface emissions of landfill gases into the air. Landfill gases contain carbon dioxide, methane, volatile organic compounds, hazardous air pollutants and odorous compounds that can adversely affect public health and the environment.

It is reported elsewhere in the world that exposure to hazardous air pollutants can cause a variety of health problems such as cancerous illness, respiratory irritation and central nervous system damage. This particular retention pond was constructed on top of an old landfill site at Maslin Beach. This pond has a capacity of some 25 kilolitres, and at 7.30 a.m. on 12 November the pond was overflowing. Some 12 hours later, the pond was less than a third full, and a day or so later the pond was completely bone dry with the lining starting to crack. I am sure that the additional moisture which has flowed into the old landfill site will cause more gases to be released. My questions are:

1. Why did the EPA give approval for the council to construct a stormwater retention basin on top of a waste landfill site?

2. What monitoring is done by the EPA to assess what level of leachate movement is going towards groundwater and then eventually seeping along the groundwater out into the gulf?

3. What monitoring is being done by the EPA in relation to the hazardous landfill gases?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I was informed that the honourable member raised this matter recently with an EPA officer at a standing committee meeting. In fact, the standing committee is—

The Hon. D.W. Ridgway: Select committee.

The Hon. G.E. GAGO: I stand corrected: the select committee is inquiring into the Mobil site. I am not too sure what the honourable member was doing quizzing an EPA officer about this particular issue at that select committee meeting. It does seem incredibly unrelated to me. I would hate to think that he may have been abusing the privilege of that committee but, nevertheless, I was informed that he did ask the officer about this matter and the officer provided an answer. I refer the member to the answer that has already been given to him.

SOCIAL INCLUSION BOARD

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about Monsignor Cappo's report.

Leave granted.

The Hon. J.M.A. LENSINK: In response to a question from the member for Bragg, Vicki Chapman, in relation to the status of the report by Monsignor Cappo in parliamentary estimates on 25 October, the minister replied:

> I work very closely with Monsignor Cappo, and we meet just about fortnightly. We consult regularly, and he keeps me well informed of the progress of his work. . . As we have announced, the report will not be forthcoming until December this year. As I have said previously, budgetary considerations in relation to that report will be considered in future budget cycles.

That is consistent with the responses the minister has given in relation to the timing of the report being the end of this year. My questions are:

1. In her discussions with Monsignor Cappo, has the issue of the timing of the report been raised?

2. Has the minister received a report and, if not, when does she expect to receive it?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): Indeed, the work that the Social Inclusion Board and its commissioner, Monsignor Cappo, have been doing on a plan to reform our mental health system is most important. Monsignor Cappo has said publicly that the report

will be made available towards the end of this year, and that is my understanding. The honourable member would need to ask Monsignor Cappo about any further updates, but that is the information I have been given. I want to reiterate the importance of the work that has been done and the extensive consultation that has occurred. The Social Inclusion Board has consulted with a wide range of mental health stakeholders, service providers and NGOs. It has been an extensive consultation, and a great deal of work has been put into this. It is a most important body of work, and it will provide valuable information for the future planning of our mental health services here in South Australia. Indeed, I have very much enjoyed working with Monsignor Cappo and the Social Inclusion Board and look forward to the outcome of their work.

The Hon. J.M.A. LENSINK: I have a supplementary question arising from the answer. Is the minister confirming that she has not yet received a copy of the report?

The Hon. G.E. GAGO: Mr President, I have answered the question.

POLICE STATION, VICTOR HARBOR

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Police a question about the new Victor Harbor police station.

Leave granted.

The Hon. R.P. WORTLEY: The Rann Labor government has undertaken a $40 million public-private partnership project to build new police stations and courthouses in a number of regional centres around South Australia. Can the minister provide details of the latest facility to be officially opened as a part of this project?

The Hon. P. HOLLOWAY (Minister for Police): I thank the honourable member for his question and for his interest in protecting the South Australian community. This morning I was delighted to join Police Commissioner Mal Hyde, the new mayor of the City of Victor Harbor, Ms Mary-Lou Corcoran, local police, members of the community and some of my parliamentary colleagues to officially open the new $3.3 million police complex at Victor Harbor. As the honourable member mentioned, this is one of the new police stations and courthouses being delivered by the Rann government under the $40 million PPP project. The recently opened police stations at Mount Barker and Gawler, plus other facilities at Port Lincoln, Port Pirie and Berri, are also part of this project.

This is yet another example of the government's continual drive to improve services in the state and enhance the facilities available to our dedicated and professional police men and women. The government has long recognised that, to do their job well, our police need the best possible facilities. Initially, the plan was to build the new facilities at Victor Harbor on the site of the old police station and courthouse. However, after consultation with the local council and the community, it was decided to move the project to a greenfields site which will enable the retention of the two locally listed heritage buildings.

The features of the new building include a modern compliance cell complex, excellent staff facilities and a conference training room, with the flexibility to double as a fully functional emergency services operations centre in times of need. The new Victor Harbor police station will greatly enhance the resources available to ensure the effective delivery of policing services for Fleurieu Peninsula. And, might I say that, prior to the opening this morning, operations in relation to the schoolies celebrations had been handled from the new station, which greatly enhanced the police capacity to operate, and they will be used on occasions such as New Year's Eve and other large events in the region. As with the Gawler and Mount Barker police stations, the government has a 25 year lease arrangement with the Plenary Justice consortium and, just as occurred with the Gawler and Mount Barker police stations, Victor Harbor was completed and handed over ahead of schedule. All of those involved in this project deserve recognition and congratulations.

In addition to the new Victor Harbor police station we will shortly see the completion of a brand new police station at Aldinga and the start of a $4.3 million refurbishment of the Christies Beach police complex, both of which are located in the South Coast local service area. The opening of Victor Harbor and Aldinga police stations and the refurbishment of the Christies Beach police complex will further assist our police in reducing crime in the South Coast local service area.

South Australia Police figures for 2005-06 show crimes against the person and property fell by 1.5 per cent in the South Coast local service area. The biggest falls occurred in the areas of theft and illegal use of motor vehicles (down 19.6 per cent), rape and attempted rape (down 29.7 per cent), aggravated robbery (down 29.7 per cent), non-aggravated robbery (down 40.7 per cent), property damage caused by arson/explosives (down 17.9 per cent), and serious criminal trespass in non-residence (down 12.3 per cent). There is a clear link: more police and better resources equals a shrinking crime rate. Also, with record numbers of police being recruited, we are able to introduce new initiatives such as the police corrections services, which I announced yesterday along with my colleague the Minister for Correctional Services.

The police corrections section will be responsible for investigating crimes that occur within prisons, including drug activity, deaths in custody, escapes and extraditions, as well as the coordination of intelligence material common to both SAPOL and the Department for Correctional Services. It is expected that the enhanced intelligence gathering and exchange systems resulting from the creation of the new investigative section will also boost the monitoring of violence in sex offenders and the management of prisoners subject to orders or sanctions on their release.

The new section will be established as part of the existing SAPOL investigation support branch. Seven police officers and seven corrections officers will be working side by side, and six of these officers will be allocated out of the 400 extra police promised by the Rann government at the last election. So, the new section will significantly enhance the investigation of crimes within South Australia's prisons. It will have a more coordinated approach and will have the potential to identify possible reoffending by prisoners after they are released, which will have a direct benefit for SAPOL's crime reduction initiatives. That section is expected to begin operations in March next year. So, with those new initiatives, added to today by the opening of the new Victor Harbor police station, it shows that this government is doing its part to reduce crime in this state to make our communities in South Australia safer.

THE PARKS COMMUNITY CENTRE

The Hon. SANDRA KANCK: I seek leave to provide an explanation before asking the Minister for Emergency Services, representing the Minister for Families and Communities, a question about the future of the arts and crafts complex at The Parks Community Centre.

Leave granted.

The Hon. SANDRA KANCK: I have been approached by local people who have expressed concerns about plans by the community renewal unit of the Department for Families and Communities to demolish the current arts and crafts complex at The Parks Community Centre to make space for, of all things, a supermarket. A much smaller arts centre is to be established to replace the current arts and crafts complex. Members would be aware that the parks area is very disadvantaged and lacks access to the arts and cultural facilities, and very often the finance, which are taken for granted in the inner city and the eastern suburbs of Adelaide. The Parks is close to Arndale shopping centre, so there is an existing shopping complex, and there are a small number of retail and service businesses in the near vicinity of The Parks complex. My questions to the minister are:

1. How will the replacement of one of Adelaide's best arts and crafts complexes assist in community renewal in this area?

2. Has the Department for Families and Communities consulted with the Department for the Arts about this proposal, and what was the outcome of any consultation?

3. What percentage of people participating in consultations on this development expressed either opposition to the proposal or concern about it?

4. Will there be any form of subsidy or incentives to a supermarket developer to locate in The Parks Community Centre?

5. What will the proceeds of the sale or lease of any land be used for?

6. Has there been any assessment of the impact on existing retail businesses in the area?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for her question in relation to the future of the arts and crafts complex at The Parks Community Centre. I will refer her question to the Minister for Families and Communities in another place and bring back a response.

CONTROLLED SUBSTANCES

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

Leave granted.

The Hon. R.D. LAWSON: In September 2002, Premier Mike Rann entered into a compact with the late Ivy Skoronski, in which the Premier promised 'tougher new penalties of up to 25 years gaol for makers of precursors that go towards the manufacture of amphetamine-style drugs. Those who use children to sell drugs could face penalties of up to life imprisonment.' Subsequently, in September 2005, the government finally introduced the Controlled Substances (Serious Drug Offences) Amendment Bill amidst much fanfare, including statements widely reported by the Attorney-General that there was to be an overhaul of South Australia's drug laws, and I quote as follows:

> The Rann government is set to shake up South Australia's drug world with the introduction of proposed laws targeting trafficking, cultivation and manufacture of drugs, as well as the possession of precursor drugs and drug labs.

That legislation was duly passed and assented to on 1 December 2005, but it has not yet come into operation. This government has not proclaimed the act to come into operation.

What the Premier and the Attorney-General failed to indicate in their statements about this legislation was that, in fact, its true genesis was a report in October 1998 of the Model Criminal Officers Code Committee and the fact that other states were introducing similar legislation. Indeed, the commonwealth has introduced the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act. That act is already in operation. Victoria has enacted similar legislation, which is in operation; indeed, it came into operation in 2004. The comparable Tasmanian legislation came into operation in December last year, and similar legislation has already come into force in the Australian Capital Territory. An article by Nick Henderson in *The Advertiser* quoted the government as indicating that its excuse for failing to bring this legislation into operation was the fact that a national drug schedule was still awaited. My questions to the minister are:

1. What is the reason for the government's failure to meet its own rhetoric and introduce these measures, which were passed over a year ago by this parliament?

2. When will the legislation be introduced?

3. What resources is the government putting into the enforcement of this legislation?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the member for his important question and his very long explanation. We recognise that drugs, particularly amphetamines, can cause serious health problems, including a range of problems such as psychosis and aggression and the like, not to mention the health problems associated with the transmission of blood-borne diseases such as hepatitis C and HIV and the significant social problems caused by those diseases.

The Controlled Substances Act was amended in December 2005 to make the selling or making of a controlled precursor with the intent of using it or supplying it to another person for the manufacture of a controlled drug a serious criminal offence. This amendment will not be brought into operation until regulations are amended to specify the quantities of the drug that constitute a specific offence. Penalties and quantities will differ, ranging from commercial trafficking through to individual sales, and a national working group, chaired by the Executive Director of DASSA, is currently reviewing recommendations for these quantities. Those recommendations will then be considered by states and territories. I believe that answers the questions that were asked.

The Hon. R.D. LAWSON: Sir, I have a supplementary question arising out of the failure to answer.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Lawson has a supplementary question.

The Hon. R.D. LAWSON: When is it expected that the report of this group will be made available, and when will the regulations be brought into force in South Australia?

The Hon. G.E. GAGO: I am happy to take those questions on notice and bring back a response.

The Hon. T.J. STEPHENS: I have a supplementary question. Given that the minister is right about the harm caused by drugs, why is there a total lack of urgency with this? Is the government not serious about this at all?

The PRESIDENT: There will be no opinion or statement.

The Hon. NICK XENOPHON: I have a supplementary question. Given that the sections not in operation also refer to drugs of dependence in addition to a schedule, why has the government not proclaimed those sections? The law could still be enforced, given that what is a drug of dependence is accepted through the courts.

The PRESIDENT: There will be no statement; just a question.

The Hon. NICK XENOPHON: Would you like me to ask it again?

The PRESIDENT: It is easy enough to frame it as a question rather than as a lengthy statement.

The Hon. G.E. GAGO: I am happy to take that on notice and bring back a response.

ROAD SAFETY

The Hon. B.V. FINNIGAN: I seek leave to make a brief explanation before asking the Minister for Road Safety a question regarding community road safety groups.

Leave granted.

The Hon. B.V. FINNIGAN: Last week a community road safety forum was held in Adelaide over two days. Can the minister please advise why the forum was held, who attended, and how the government will respond to the suggestions put forward?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I thank the honourable member for his important question. The 2006 South Australian Community Road Safety Forum was hosted by myself and Sir Eric Neal, Chair of the Road Safety Advisory Council, on 30 November and 1 December, and I am pleased to report that it was a worthwhile and rewarding event. The state's community road safety groups were the focus of the forum, and the aim was to discuss and share views with government agencies and other road safety groups.

Representatives from about 20 of the state's 32 community road safety groups attended and took part in discussions with chief executives and other representatives from private organisations—including the RAA, the Motor Trade Association, the Insurance Council of Australia, and Bicycle SA. There were also speeches and presentations made by key stakeholders and experts, including: Mr Jim Hallion, Chief Executive Officer of the Department for Transport, Energy and Infrastructure; Mr Jack McLean, Director of the Centre for Automotive Safety Research; Mr Geoff Vogt, Chief Executive Officer of the Motor Accident Commission; Mr Grant Stevens, Assistant Commissioner of SAPOL; Mr Peter Hall, Coordinator of the Metropolitan Fire Service's Road Awareness and Accident Prevention Program; Mr Peter Watts, Manager of the Office of Cycling and Walking; and road safety consultant Mr Eric Howard, who is also the former Manager of Road Safety with VicRoads, who also took on the role of facilitator.

All the speakers acknowledged that the community's input is critical to helping develop future solutions if we are to meet the state's road safety target of a 40 per cent reduction in fatalities and serious injuries by the end of 2010. The resounding view from all those who attended the forum, and from the community as a whole, is that road safety is about much more than government departments and policies. By hosting this forum the government has paved the way towards giving the community a greater voice. Attendees confirmed that some of the worst behaviours—such as drink or drug driving and speeding—are simply unacceptable, and that holding a drivers licence is a privilege and not a right.

The issue of speed reduction was also widely discussed, and Jack McLean and Eric Howard both logically demonstrated how small reductions in travel speed are directly linked to significant reductions in road trauma. At the end of the forum I promised community road safety group members and other attendees that every suggestion put forward would be considered, and that the Road Safety Advisory Council would be asked to explore various proposals.

While the community road safety forum highlighted areas that could be improved, it also made us realise how much has been achieved in the past five years. I would like to formally thank the community road safety group representatives, some of whom travelled from as far away as Kangaroo Island, Naracoorte and Whyalla. These are people who know their communities well and who are often personally affected by road trauma—whether they are relatives or friends of victims, police officers, doctors, nurses or emergency services workers. They had important information and initiatives to share and wanted their voices heard by a wider audience. Equally, it was just as valuable for them to hear about issues from a statewide perspective. The input they provided and the suggestions put forward will help shape road safety policy into the future.

The Hon. J.M.A. LENSINK: Can the minister advise whether the issue of the lack of correlation between placement of speed cameras and actual road accidents was raised at all during the forum?

The Hon. CARMEL ZOLLO: Many issues were raised in the forum; indeed, that is the idea of having a forum. I attended for almost all of the day and a half and I heard all the speakers. I thought it would be inappropriate for me as the minister to sit in on the workshops, but I have asked the department to prepare for me a preliminary list of the issues that were raised whilst I was not present, and, of course, those issues will be progressed to the Road Safety Advisory Council, which will meet in February.

The Hon. T.J. STEPHENS: Given the highly topical and massive problem we have with unlicensed drivers at the moment, the minister would be aware whether this was discussed and what resolution came from that forum.

The Hon. CARMEL ZOLLO: As I have said, clearly, that was not a day for resolutions. The issue was raised and discussed—that is one of the reasons we have forums—nonetheless, it is obviously an issue this government is across, and I refer the honourable member to the response I made yesterday. In the interim, before legislation is introduced into this place, the government has taken some other measures. In relation to the question the honourable member asked yesterday with respect to country residents, I said that I would take advice about whether we could put in some interim measures, and I will do so.

The Hon. J.M.A. LENSINK: Will the minister provide for the parliament a copy of all the issues raised?

The Hon. CARMEL ZOLLO: I have not yet received that information, but, certainly, those issues will be fed into

the Road Safety Advisory Council, and I will take advice on whether Sir Eric Neal wants that information to be publicly circulated. The council, which is a high level council, does not have any ministerial representation; it has government representation and private members representation.

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

The Hon. CARMEL ZOLLO: In the past five years since this government has been in power, I think we have done more for road safety than any other previous government. In particular, we have seen a raft of government legislation passed by the parliament, as well as many other initiatives—and we will continue with those initiatives. We know what has to be done, and we are working towards that end. We also know that, in relation to road safety, many other things can be done and we will work towards doing everything we possibly can.

FAMILIES SA

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Families and Communities, a question regarding the investigative procedures of Families SA.

Leave granted.

The Hon. A.L. EVANS: From what I have been told by a number of constituents, it is evident that there are often discrepancies in the recollection of events that take place in interviews and meetings conducted by Families SA. South Australia Police and Transport SA interviews are recorded electronically. While they are recorded in this manner for the purpose of prosecution, Families SA interviews often occur in the context of deciding whether a child should remain in their parent's care. The impact of the removal of a child is arguably equal to, if not worse than, the consequences of a prosecution. However, I understand that Families SA has not adopted this practice. My questions are:

1. What procedures are currently in place to ensure that what is stated by all parties in investigations conducted by Families SA is accurately recorded?

2. Will the minister introduce mandatory electronic recording of all investigations conducted by Families SA, with copies provided to all parties involved; and, if not, why not?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his question in relation to investigation procedures for Families SA. I will refer his question to the Minister for Families and Communities in the other place and bring back a response.

NATIVE VEGETATION COUNCIL

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Native Vegetation Council.

Leave granted.

The Hon. J.S.L. DAWKINS: I understand that a number of rural local government bodies are experiencing difficulties in their dealings with the Native Vegetation Council. These difficulties and the resulting delays often relate to the process and timeliness of applications relating to the need to remove trees adjacent to roadways. However, they can also result from policy conflicts between the Native Vegetation Act and the CFS Act and the lack of resources available to the Native Vegetation Council to adequately service rural councils. My questions are:

1. Will the minister confirm that one rural council has matters that it took to the Native Vegetation Council in September 2003 still unresolved?

2. Will the minister confirm that the Native Vegetation Council has a fast-track option where an applicant, including councils and other road authorities, can engage—at their own expense—an accredited consultant to collect scientific data and assist in preparing the application to the Native Vegetation Council?

3. Does the minister endorse this example of cost shifting to road authorities, including councils, which are required to construct and maintain safe roadways under their own legislation?

4. Will the minister explain why scientific data needs to be collected in the case where one tree needs to be removed simply to ensure that a roadway is safe?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his important questions. There are a number of issues that he has raised. In relation to the Native Vegetation Council seeking ways to improve the efficiency of the native vegetation approval processes, it has initiated a number of new initiatives: one is a one-stop shop process that has been put in place where the Native Vegetation Council has delegated responsibility for the administration of significant environmental benefit guidelines to mining and the rehabilitation branch. PIRSA has a significant role there. There are also discussions under way with the petroleum operations section to develop and implement a similar delegation procedure that seems to be working pretty well.

It has also reviewed native vegetation management processes to develop mechanisms whereby native vegetation applications, including exemptions, can be processed within eight weeks of the date of receipt of a completed application. It has put a range of things in place, including developing mechanisms to assist landholders to complete those applications; and it has developed mechanisms for rapid assessment of applications that are likely to have minimal or fairly trivial impact on biodiversity, and for these to be processed rapidly. It is working very hard on a range of initiatives to help speed up processes, to make it simpler and easier for applicants to process their needs. In relation to the specific incident, or the specific application that the honourable member mentioned, I would need to get further details about that, and I am happy to take that and other questions on notice and bring back a response.

The Hon. J.S.L. DAWKINS: I will provide that detail but, as a supplementary question, how often does the Native Vegetation Council achieve the eight week turnaround which the minister has mentioned? Certainly, that has not been the case with local government.

The Hon. G.E. GAGO: I understand that these are recent initiatives in response to concerns that have been raised. The Native Vegetation Council attempts to be as responsive, timely and efficient as possible, and it continues to look at ways in which to improve that efficiency. I understand that, currently, it is in the throes of developing mechanisms so that these matters can be processed within eight weeks. My advice is that this is currently underway.

NATURAL RESOURCE MANAGEMENT

The Hon. I.K. HUNTER: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about natural resource management.

Leave granted.

The Hon. I.K. HUNTER: Natural resource management, and particularly reform of the state's NRM systems, is a key feature of the Rann government's environmental focus. Since first taking office in 2002, this government has embarked on a bold raft of reforms, with a focus on bringing together local knowledge with the expertise of government institutions. This includes forging partnerships with the traditional Indigenous people of the state's Far North so that they can manage their traditional lands and food sources. I was very pleased this morning to attend a ceremony over which the minister officiated when she handed over some wonderful paintings to the parliament from, I think, participants in one of these programs. Will the minister please inform the council of the latest developments on this unique approach to natural resource management?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I am pleased to report that, earlier today, I had the honour of officiating at a ceremony in recognition of a partnership this government has formed with the Anangu and Watarru community. Indigenous artists from the Far North community today presented two artworks to the state government, which now take pride of place in the halls of Parliament House in recognition of the groundbreaking land management partnership that has been occurring as a result of this initiative. These paintings are a recognition of the culturally inclusive work that has been done in managing our natural resources.

Certainly, they add some real colour and indigenous identity to the halls of Parliament House. The Kuka Kanyini Watarru project (which these paintings depict) is a joint land management project, which has been operating for several years between the Watarru community and the Department for Environment and Heritage. Loosely translated, Kuka Kanyini means looking after traditional food sources. The project also aims to increase levels of biodiversity within the region and provides extensive training and valuable employment for Anangu men and women.

For the Watarru people, protecting their traditional food sources, such as the perentie, mallee fowl, Great Desert skinks, wild figs and desert raisins has the added benefit of ensuring that these species and their habitats have a better chance of survival. The project involves feral animal control programs, the provision of artificial water points, threatened species management, traditional fire management practices and the establishment of a sanctuary area for the re-establishment of threatened species and preferred food species.

This is an ambitious and innovative land management project that combines traditional Indigenous knowledge and skills with contemporary science to enhance biodiversity, revitalise traditional culture and land management practices. The paintings gifted to our parliament this morning hang in the hallway near the offices of the Premier and the Speaker. I am sure that many members have seen them as they have been hanging there for approximately a month, but today was the first time that the artists themselves were personally able to visit Adelaide for the official handover. Again, I express our deepest gratitude to the people of Watarru for these magnificent works. I urge my colleagues in this chamber to take the time to enjoy these fantastic pieces, which are a great addition to Parliament House. I understand that it is the first time that Indigenous artworks have been hung in the hallways of Parliament House, and I am very pleased to see them there. They are indeed very beautiful pieces of art.

DRUG POLICY

The Hon. A.M. BRESSINGTON: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse questions about South Australia's input into Swedish drug policy.

Leave granted.

The Hon. A.M. BRESSINGTON: Yesterday, I asked the minister a series of questions regarding misleading information given by her office to a constituent about Sweden's drug policy. In particular, my constituents tells me that she was informed by the minister's office—this was confirmed by a staff member of the minister—that Sweden was going back to a harm minimisation approach. I asked the minister to confirm whether she was aware that her advisers were giving misleading information and what steps would be taken to correct that. In her answer the minister stated that Swedish drug policy is evolving. She said:

> . . . the national coordinator of the Swedish drug policy has, in fact, approached drug and alcohol services here in South Australia seeking advice about the approach that this state has taken in managing our methadone program—in particular, in relation to how they successfully decrease a wide range of problems associated with IV drug use, such as hepatitis C spread and HIV.

I sent my colleague in Sweden a word-for-word account of the answer the minister gave yesterday in relation to the issue. Today I received a response, and I will read it verbatim. Mr Peterson states:

> I read out the passage highlighted by you in your email (to the National Drug Policy Coordinator) and I also translated it into Swedish to make sure there would be no misunderstanding.
>
> Bjorn Fries, who is the Swedish National Drug Policy Coordinator says 'The statement is a bluff. I have never approached any drug and alcohol services in South Australia on any issue and I have no intention to do so.

Further, I note that the minister in answer to a supplementary question yesterday stated that her source of information about Sweden approaching South Australia for advice was the Chief Executive of the Drug & Alcohol Services, Mr Keith Evans. My questions are:

1. Does the minister acknowledge that the information she provided yesterday was incorrect and misleading; that the comments of Mr Fries cast serious doubts on her answer to the council yesterday; and that the information given to a constituent was in fact not accurate?

2. Given the comments of Sweden's national drug policy coordinator, which are fundamentally at odds with the minister's answer and, in turn, with the advice she stated she received from Mr Keith Evans, will she provide to the council all correspondence and documents between Mr Keith Evans, Mr Bjorn Fries and any Swedish government agency dealing with drug policy, and will she do so as a matter of urgency, given the serious inconsistencies involved in this matter?

3. Will the minister explain what steps she takes to confirm information and advice given to her by her advisers and, given this particular situation, will she endeavour to research and confirm further any future claims made by her advisers regarding international drug policy?

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the honourable member for her important questions. I am happy to follow up and provide the details of the advice that was given to our officers from the Drug & Alcohol Services of South Australia. I am happy to provide that.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: In relation to the information about Swedish drug policy, I can further add that I have been informed that Swedish drug policy is viewed as part of a welfare and social policy and that drug treatment is administered through local government. That is the advice that I have received. Further, the information I have is that Swedish drug policy is evolving with an emphasis on increasing the availability of harm reduction programs and a wider range of treatment options on an increasingly voluntary basis.

Pharmocotherapy programs such as methadone, in conjunction with detoxification and rehabilitation services, are also becoming more available. I am also provided with advice which states that on 1 July 2006 a new law took effect in Sweden that permits regional health authorities to run needle exchange programs provided they are endorsed by the local community—and the authority describes how it will provide detoxification and treatment programs. So these are examples—

Members interjecting:

The Hon. G.E. GAGO: Members fail to make the connection that these are in fact methods, if you like, that we would categorise as harm minimisation, that is, needle exchange programs and methadone programs. Further advice I have is that Sweden's policy of compulsory or coerced treatment is often promoted, but the report I referred to identifies a reduction in the proportion of people entering treatment under coercion. So, this is going to the question of the evolving of the Swedish model. As I said, there has been a reduction in the proportion of people entering treatment under coercion, at least in part because of budgetary constraints. Again, I am informed that as at 1 November 2005 only 6 per cent of people in residential treatment were in coercive care.

This shift emphasises that a compulsory treatment care model is expensive, and I understand that problems have been identified in relation to that—problems that impede the capacity to respond to requests for voluntary entry, maintaining a balance between residential and outpatient treatment, and coercion such as through the drug courts. Obviously we believe that voluntary entry allows more people to be treated within a defined level of resource. So, that is further information in relation to the way that I understand the Swedish model has evolved, and I am happy to provide details about the specific sources of that information and bring that back to the parliament when I have it available.

The Hon. A.M. BRESSINGTON: I have a supplementary question. Is the minister aware that Sweden, in 1966, was the first country to introduce a methadone maintenance program in Europe and that that methadone maintenance program has run—

The PRESIDENT: Order! There will be no statement made. Just ask the question.

The Hon. A.M. BRESSINGTON: Well, is the minister aware that Sweden was the first country in Europe to introduce a methadone maintenance program—and it has nothing to do with South Australia?

The Hon. G.E. GAGO: I raised the issue of methadone programs and the Swedish model yesterday so, obviously, I was aware. The member failed to listen to my answer yesterday.

The Hon. A.M. BRESSINGTON: Is the minister also aware that Sweden has had needle and syringe programs in place for the past 18 years—again, nothing to do with South Australia?

The PRESIDENT: I do not see how that derives from the original answer.

MARATHON RESOURCES

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about PACE grants.

Leave granted.

The Hon. CAROLINE SCHAEFER: In the minister's press release of yesterday regarding the latest drilling grants under the PACE program, it is noticed that one of the recipients was Marathon Resources. As the minister himself discussed yesterday, Marathon's proposal to explore for copper, gold and uranium on Fleurieu Peninsula has caused consternation among the local communities, with particular disquiet being expressed that this could occur close to the Myponga Reservoir. My questions are: what is the nature of Marathon's drilling proposal which has been awarded a grant; where will the activity occur; and will the minister table all information relevant to this proposal?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am happy to provide the honourable member with details of the grant to Marathon Resources, but Marathon Resources does have a number of prospects in various parts of the state, particularly in the north. My understanding of this support is that it is for one of its drilling programs in the northern region of the state. It has resources in the Curnamona Province region. I will get exact details of the area for the honourable member. It is certainly not to do with any exploration in the Myponga region.

SELECT COMMITTEE EVIDENCE

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

Leave granted.

The Hon. D.W. RIDGWAY: During question time the Minister for Environment and Conservation referred to a select committee meeting held on 27 November 2006 where she suggested that I abused the privileges of that committee. During that meeting of the fuel select committee we had an officer from the EPA giving evidence—

The Hon. G.E. Gago interjecting:

The PRESIDENT: Order! The honourable member is making a personal explanation. We will hear him in silence.

The Hon. B.V. Finnigan: Resign!

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: The Hon. Ian Hunter was chairman of the committee on that particular day. I asked his permission if it would be okay for me ask the EPA officer a

question. He indicated that, if the EPA officer was happy to answer it, I could ask it. We then inquired whether the EPA officer was happy to answer the question and he indicated he was. Therefore, with the consent of the select committee, I asked the EPA officer a question. I cannot see how that is an abuse of the process of the select committee when the chair and all committee members and the witness consented to the asking of the question.

MATTERS OF INTEREST

INDUSTRIAL RELATIONS

Members interjecting:

The PRESIDENT: Order! Members will be silent and listen to matters of interest or leave the chamber.

The Hon. J. GAZZOLA: Every now and again the media provides some interesting snippets of information on the practice of companies who do not do the right thing by their employees. I say 'snippets', because the media is reluctant to comprehensively explore the real issues and problems posed by the federal government's IR laws as they affect people who are at risk under these new laws. The company in question in this particular instance is a fast food company, which was fined a substantial amount for working two children, who were both under the age of 15, after 10 p.m. It is interesting to compare this with the media coverage given on the same page of the paper to Laura Csortan and the sacking of fellow female television presenters.

I raise this issue not to bash employers, as the opposition habitually protests in its role as the fully paid up franchisee of Business SA, but to raise a fundamental issue. I point out that there are many good companies out there who respect their employees as individuals as well as realising the mutual and commercial value of looking after them. No; the issue is far more important than this, and indeed it can affect even those employees who currently enjoy good personal and working relationships with their employers.

The issue is the legal rights of vulnerable workers as a hallmark of a fair and just society and not allowing these rights to exist under the umbrella of an employer's sense of social responsibility or generosity, no matter how well intentioned the employer may be. Society owes protection on fair and just terms to employees, especially the vulnerable. It is through just laws guaranteeing the rights of the vulnerable and those without power that a society mandates and justifies its worthiness. It is about protecting those, should the need arise, who are powerless. We do not live in a perfect society, and just laws properly recognise the rights of the powerless. Just laws are the only voice these people have.

The opposition might reply that these are isolated cases, but this pragmatic reply is misleading and fanciful. Market forces should not be the primary determinant of equality in a matter as fundamental as the welfare and economic well-being of vulnerable employees. Many Australians recognise this and demonstrated their concern last Thursday with their attendance at the 'Your rights at work' rally across Australia. Bickering about the actual numbers and relevance of the rally as characterising the substance of the federal government's response also misses the point. The relevant reply to the federal government's predictable protest was grasped by Professor Andrew Stewart, Professor of Law at Flinders University, who stated the following, in regard to WorkChoices on wages and conditions:

> . . . it's about creating flexibility downwards. . . but there have to be losers in that process. . . people who are out there in call centres, or video stores or restaurants or shops, in banks. . . there are already signs that in the figures we've had in the first couple of quarters that we are starting to see at the bottom end a drop in wages. . .

The reply by minister Hockey was to point to the recent ruling on wages for the lower paid by the Fair Pay Commission. However, in response to the long-term effects of this legislation, Professor Stewart raised the relevant issue regarding the perennial plight of vulnerable workers when he said:

> . . . the great majority of Australian employers are not using these laws right now to drive down conditions, but the point of the Government's change is to make that possible and the question is, over time, how many employers are going to do that. . .

The appraisal by Professor Stewart starkly underlines the difference between Labor and Liberal on the issue of workers' rights and directly points to the realistic concerns of vulnerable workers. I know that I would not like to rely solely on the generosity and good intentions of any employer in trying to raise a family and pay off a mortgage.

Time expired.

TREGENZA AVENUE AGED CARE SERVICE

The Hon. CAROLINE SCHAEFER: I wish to speak about the Tregenza Avenue Aged Care Service of Elizabeth South and its imminent demise. The mental and physical health of 71 elderly and frail residents is at risk as a result of the Rann government's plan to shut a nursing home at Elizabeth South. Tregenza Aged Care Service is the home of these elderly citizens, and the Rann government has callously ruled out any attempt to find a provider that would allow the residents to stay there, despite the impact that the move will have on these people's lives.

There are 31 high care residents, who are wonderfully cared for, and there are 40 low care residents, housed in small homes of five people. Staff monitor all these residents constantly. A young woman who is employed by an agency and who has worked at Tregenza has told us that the care in this nursing home is excellent and that facilities for the elderly there are better than average. There is better storage than in most places, and also lifting machines, and so on, which are not common across all facilities. The residents also have their own rooms, which is not necessarily the case elsewhere. Tregenza is the last state-owned nursing home, and it is only 18 years old, yet the government appears not to want to maintain funding or upgrade the facilities to meet the revised standards set by the commonwealth government, in spite of the fact that these upgrades do not need to be in place before January 2008.

One resident, who is 98 years old, has lived there for 16 years, firstly in low care accommodation and subsequently in the high care facility. She has now lost her sight but, because she has been at Tregenza and used it as her home for 16 years, she is able to mentally visualise where she is going to be and look after herself in her wheelchair. This will not be the case when she is relocated elsewhere.

The CEO of the Central Northern Adelaide Health Service, Tony Sherbon, has claimed in the press, I believe, that the government has no plans for the site. However, residents and their families have reported that building works have commenced on the campus, and new equipment is being delivered daily, with instructions that the residents may not touch it. The *News Review Messenger* of 1 November 2006

featured the headline 'Tregenza Avenue doomed. No money to fix aged care complex', and yet the low care homes in the complex have recently been upgraded: $15 000 has been spent on carpet and $85 000 on five large heavy-duty wheeled beds, new dishwashers and cookers and industrial type heavy duty toasters. Staff appear to have new uniforms. In fact, it is very reminiscent of *Yes Minister*!

I believe it is a disgrace that the Rann government is prepared to sacrifice the wellbeing of these elderly residents simply because it refuses to put any effort into finding a way for them to stay in their homes. The cost to relocate residents has been estimated at $7 million, and that was quoted on the Leon Byner show by Tony Sherbon. The estimate to upgrade existing facilities to comply is $3 million. Mr Sherbon has said that the state government is not a long-established aged care provider and is not geared to provide residential care to aged people, particularly in the metropolitan area; it is not a government core business. He said that better care is available privately—which, of course, flies in the face of Premier Rann's promise of no more privatisation. Tony Sherbon has stated on radio that private companies do it better. This is de facto privatisation without consultation with those involved.

Even more distressing to families is the fact that, as relatives of the residents, they have been asked to sign forms agreeing to have their loved ones relocated with no idea of when or to where they will be shifted. They have been offered a bus to visit their relatives after they have shifted. How ridiculous; they will all have to visit on the same day and at the same time. Tomorrow I will be tabling a petition of some 4 000 signatures pleading for funding for the continuance of Tregenza, yet I have heard nothing from their local member Lea Stevens. I would like to know where the Social Inclusion Board is now.

Time expired.

SCHIZOPHRENIA

The Hon. R.P. WORTLEY: I rise today to draw attention to the condition of schizophrenia. According to issue 25 of the *Pfizer Australia Health Report*, this disease affects around one in every 100 Australians. Despite this, research published in this health report indicates that misconceptions about schizophrenia are common in Australia. This research also notes that the vast majority of Australians are confused about the definition of schizophrenia—for example, 50 per cent of respondents to the survey mistakenly believed that schizophrenia is related to 'having a split personality'. Furthermore, according to this research, almost 90 per cent of Australians believe that schizophrenia is a highly disabling condition; however, the health report states:

> In reality, only 15 to 20 per cent of people with schizophrenia will have an extremely disabling illness; some recover, and with early intervention and the right treatment many will live fulfilling lives and engage with their communities.

It is heartening to learn that recovery may be possible for some, and that the correct treatment of the illness may lead to improvements for those with this condition.

A fine example of this is author Rich McLean. Mr McLean states that he still experiences the symptoms of schizophrenia; despite this, and his description of the disease as 'a ghastly and horrendous experience', Mr Mclean has written a book entitled *Recovered Not Cured: a journey through schizophrenia*. In his own words he describes the book as follows:

> A book of hope for the 37 000 people newly diagnosed with schizophrenia each year—it needn't be a life sentence.

It is important that the wider community learns from advocates such as Mr McLean so that our understanding and knowledge of this condition may increase.

The importance of increased understanding has recently been expressed by Ms Margaret Springgay, executive director of the Mental Illness Fellowship of Australia (MIFA). In the recent Pfizer report Ms Springgay highlighted the need to communicate that those with schizophrenia are able to live full and successful lives with the assistance and support of both medication and the community. She also noted that the challenge is there for advocates to improve people's attitudes concerning this condition, and I would like to discuss initiatives being carried out in South Australia towards this end.

MIFA has a number of state member organisations, including the Mental Illness Fellowship of South Australia. This organisation is a non-profit community organisation providing both support and advocacy for people living with mental illness, such as schizophrenia, and their carers. According to the sixth issue off MIFA's newsletter *Engage*, the Mental Illness Fellowship of South Australia has used grant money funded from the Labor government to develop a number of positive mental health programs. These include a carers education program which aims to improve the ability of families and carers to provide effective care to those with mental illness. Another program that has been developed is the Peer Support Program. According to the newsletter, peer workers are defined as people who are living 'well' with mental illness and are being trained to provide mental health services. The goal of this program is to develop a coordinated process regarding the recruitment, training and supervision of these peer workers.

The third program being implement is the Psychosocial Groups Program, which aims to take an innovative approach to mental health services delivered via local community groups. These services will promote general health and self-management, in addition to recovery and relapse prevention. The hope is that the use of community centres will also aid in greater engagement between the community and those with mental illness. The *Engage* newsletter states that the Mental Illness Fellowship of South Australia is encouraged by this generous grant from the South Australian government. The newsletter indicates that one of the aims of the programs is to reduce the strain placed on the state's acute mental health services. I wish these programs every success.

It is pleasing to learn about the work of community organisations. We must endeavour to ensure that community organisations and the state government are increasingly successful in improving services and increasing awareness of mental health issues. I hope this will assist in educating our society about schizophrenia and improving services for those living with this condition.

Time expired.

DRUG POLICY

The Hon. A.M. BRESSINGTON: In this place yesterday, the Minister for Mental Health and Substance Abuse implied in her answer to my question that Sweden was, in fact, looking to South Australia for advice on drug policy. I wish to speak to her comments today to provide clarification to members in this place. Mr Torgny Peterson, who is the Executive Director of European Cities Against Drugs, is

involved in advising the Swedish government on drug policy, as well as overseeing and evaluating treatment services. Last week he said:

> Since the beginning of the 1970s Sweden has promoted a restrictive drug policy, regardless of what political party has been ruling the country. Even if politicians might have different views on most political problems there has been and still is consensus about keeping and developing restrictive drug policy. For 18 years syringes were handed out in two cities Malmo and Lund in the south of the country.

The government does not impose the introduction of syringe exchange schemes anywhere in the country. It is up to each and every county council to decide whether or not they want to introduce such a scheme, and so far the interest has been very low. However, if and when such schemes are introduced in other cities or regions, the introduction of such practices are combined with strict rules and regulations, such as fulfilling demands for detox, care and treatment. If the requirements outlined by the government are not in place, a syringe program scheme cannot be introduced.

In April 2006, the Swedish government presented the National Drug Plan for 2006-2010, which states:

> Swedish drug policy is built on the fact that people are entitled to a worthy life. . . A society without drugs increases public health and wellbeing, and drug policies are part of the Government's public health policy to create a drug free society. The main ingredients of achieving such a goal is to reduce the recruitment of drug users through prevention, to help people to stop using drugs through treatment and care, and to decrease supply through law enforcement.

The United Nation's Office of Drugs and Crime Report, September 2006, stated:

> In 1966, Sweden became the first country in Europe to carry out methadone maintenance treatment, long before it became an established and accepted form of drug abuse treatment. The National Methadone Maintenance Program operated in Sweden under the same conditions for 23 years and was the longest-running in Europe. The program was rather extensive, even in comparison to such programs in other countries known to be favourable towards harm reduction policies. The program has generally been judged as being very successful.

The minister stated in this place yesterday that methadone programs, in conjunction with detox and rehabilitation services, are becoming more available in Sweden. As we can see from the United Nation's Office of Drug and Crime report, their pharmacotherapies have been managed very well for a very long time. However, it is a fact that they do manage their programs and that there is a better integration of programs and cooperation between services. I still find it astounding that the minister believes that this country is looking to South Australia for advice and guidance. It seems they have been doing just fine without our input.

On a number of occasions, it has been the case that, in the debate on drug policy, there has been a tendency to stretch the truth. Perhaps South Australia was asked to fill out a survey or participate in an international study conducted by the Swedish National Drug Coordinator and that has been misconstrued by some as Sweden seeking our advice.

The minister stated that the country's drug policy is evolving and that they are not faced with the social, mental health, criminal or health costs that we are. What does Sweden do differently from Australia? They retain needle exchange rather than handing out needles ad infinitum. They have a structured methadone program; methadone maintenance for long-term hard-core drug addicts; and methadone reduction for those who require a stepping stone to abstinence. They have expectations of clients on their programs to stick with rules. They adequately fund non-government organisations to deliver services.

They have mandatory treatment orders for problematic drug users. They target the street dealing of cannabis and amphetamines. They do not allow possession of any amount of an illegal drug for personal use. They do not have an expiation system. They do not allow the sale of drug-using paraphernalia. They do not allow one plant to be grown for personal use. They do not have amphetamine replacement therapies after their failed experiment in 1965 to 1967, where over four million doses of amphetamines were distributed.

There are many other differences that contribute to the success of Sweden's drug policy compared with our efforts. I quote from a statement of Antonio Maria Costa:

> Drug use in Europe has been expanding over the past three decades. More people experiment with drugs and more people become regular users. Societies have the drug problem they deserve. In Sweden's case, commitment to prevention, law enforcement, demand reduction and treatment over the past 30 years has made a significant difference. Long-term and cohesive policies backed up by sufficient funding and the support of the civil society have proven vital for success.

Time expired.

AUDITOR-GENERAL AND DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. R.I. LUCAS (Leader of the Opposition): We have seen extraordinary scenes in the past 24 hours involving a dispute between the Auditor-General and the Director of Public Prosecutions and, in particular, the Auditor-General's extraordinary actions in seeking an injunction and then even more extraordinary actions in trying to suppress that particular decision. There are many MPs in this place, Mr President, as you well know (from the government, Independent members and Liberal members) who, at the very least, are shaking their head at these attempts by the Auditor-General to suppress the action that he was seeking to take in the courts.

We now know that there was a secret meeting between the Auditor-General and the Attorney-General's office on Monday where, amongst other things, the issue of the suppression order was evidently discussed. We are also aware that, for a long time, there has been a steady process of undermining the Director of Public Prosecutions by the Rann government. In the initial stages it was fuelled by ministerial officers in the Premier's own office and in the Attorney-General's own office. We have previously placed on the record the examples of selective briefing of journalists by those officers and also the leaking of confidential letters from the Director of Public Prosecutions to the Rann government.

It is clear that the Rann government, from the Premier down, has made the decision that this Director of Public Prosecutions, their very own Eliot Ness, has become far too independent for the government's liking, and they want to see the end of him. In the past five days we have seen this steady undermining of the Director of Public Prosecutions turned up to a significant degree by the Rann government. The attacks on the Director of Public Prosecutions (directly and indirectly, overtly and covertly) have become much more pronounced and, as I said, much more explicit now, even by the Premier himself and the Attorney-General.

When asked in the house this week by the Leader of the Opposition, 'Will the Premier now say that he has the greatest and most profound respect for the state's Director of Public Prosecutions, just as he said about the Auditor-General,' the

Premier refused to give that commitment and indicated, 'I think I have made my views of the DPP very well known,' and left it at that.

It is clear that, right from the top, they are seeking to undermine the DPP. The question clearly is: why? I think in part it is intriguing to note another little-publicised series of events in the past five days. I refer to an article by Jeremy Roberts in Saturday's *Australian* which, in part, when referring to an Independent Commission Against Crime and Corruption, talked about explosive claims that a Labor front-bencher was using boys for sex in a city park, which had led to a protracted criminal defamation case.

There was another article on Tuesday of this week from the same journalist, Jeremy Roberts, headed 'DPP takes dismissed case to highest court'. It states:

> The South Australian Director of Public Prosecutions wants several politicians and political staffers to give evidence in the state's highest court to dispute claims of paedophilia in high places. In an extraordinary move, DPP Steve Pallaras has ignored a magistrate's decision in August to toss out seven charges of criminal defamation because of lack of evidence and now wants the three defendants tried in the state's highest court.

The article states further:

> During the month-long controversy, the government made no public comment but briefed media organisations that any media which published the name of the Labor MP would face charges of criminal defamation.

Further in the article, Mr Hinton from the DPP's office states:

> It is entirely within contemplation that the Crown will call, for example, one of the defamed or all of the defamed people and they will be put in the witness box and questions will be put to them as to their involvement in paedophilia. Suddenly, the case becomes a showcase in some ways for matters of high public interest.

It is clear that only the Hon. Mr Rann and the Hon. Mr Atkinson can answer the questions as to why, in the past four or five days, they have now turned up the pressure in relation to undermining the DPP and their campaign to try to pressure the DPP to resign. Only the Hon. Mr Rann and the Hon. Mr Atkinson can answer whether or not the events reported in *The Australian* and elsewhere in the past four or five days are another reason why they are both now openly trying to undermine the Director of Public Prosecutions and force him to resign his position.

Time expired.

BANGKOK STATEMENT OF COMMITMENT

The Hon. I.K. HUNTER: I rise today, in the week following World AIDS Day, to recognise Australia's involvement in the ongoing program of action instigated by the International Conference on Population and Development in 1994, culminating last week in the Bangkok Statement of Commitment. In 1994, representatives of some 179 countries gathered in Cairo and agreed in principle to approaching aid and development in a holistic way, recognising that sustainable development across the world goes hand in hand with education, gender equality and health, particularly reproductive health.

The goals of the program of action, which it is hoped will be fulfilled by 2015, include:

- universal access to reproductive health services (including family planning and sexual health);
- improvements in infant, child and maternal mortality;
- reductions in HIV infection rates;
- universal access to basic education, especially for girls; and
- gender equality, equity and women's empowerment.

The approach agreed to in Cairo in 1994 marks a move away from traditional notions of aid and development—that is, the pursuit of population control and demographic targets—and instead looks at individual needs and human rights.

In his address to this year's conference, Mr Kim Hak-Su, Executive Secretary of the United Nations Economic and Social Commission for Asia and the Pacific, labelled it a departure from a focus on human numbers to one that places human lives at the forefront of the developmental agenda. The Bangkok meeting last week generated its own statement of commitment, which recognised the progress that has been made in the past 12 years; and, indeed, some progress has been made. Legislation has been enacted around the world, for example, in the areas of gender equality and violence against women.

Public awareness of the nexus between human rights and sexual health has also improved over the past 10 years as has the funding for the therapeutic treatment of AIDS and other sexually-transmitted infections. However, sobering statistics remain. It is worth quoting directly from the Statement of Action, which states:

> Every minute a woman dies of pregnancy-related complications, including unsafe abortions, almost all of them in developing countries. Obstetric complications are the leading cause of death for women of reproductive age in developing countries. One-third of all pregnant women receive no health care during pregnancy; 60 per cent of deliveries take place outside of health facilities; only half of all deliveries are assisted by skilled birth attendants. Some 200 million women in developing countries have an unmet need for effective contraception. Meeting their needs would prevent 23 million unplanned births a year, 22 million induced abortions, 142 000 pregnancy-related deaths (including 53 000 from unsafe abortions) and 1.4 million infant deaths. Almost one million new infections each day from STIs (including HIV) account for 17 per cent of economic losses caused by ill-health in developing countries, and contribute to an enormous burden of ill-health and death across the globe. Fewer than 20 per cent of people at high risk of HIV infection have access to proven prevention interventions.

Funding for family planning in developing nations has dropped from 55 per cent of total population funding in 1995 to 9 per cent today. This is an appalling statistic. As well as the sheer horror of these figures, reproductive health issues are an economic burden on the developing world which could largely be ameliorated by ready access to reliable contraception. Last Friday was world AIDS Day. AIDS is a devastating collection of diseases which is tearing communities in the developing world apart. If you can afford it, it is treatable but, more importantly, it is preventable. While funding for AIDS treatment has seen a large increase over the past 10 years, funds for awareness and prevention programs are still scarce. Globally 40 million people live with AIDS currently. The total death toll from AIDS is believed to be around 20 million lives to date and, if these trends continue, that figure could reach 100 million by 2020.

It is a fact that women are now more susceptible to be infected with HIV. Women make up almost half of all HIV/AIDS cases. In many countries where AIDS has reached epidemic proportions, the primary mode of transmission is through heterosexual sex. Mr Acting President, you may know that I am not in the habit of saying nice things about the federal government, but credit where it is due. I commend the Australian government on its commitment to treating reproductive health problems in developing countries. I call on the federal government, however, to recognise that prevention is better than cure and to channel funding towards

awareness and preventative measures, particularly in relation to AIDS and other STIs.

OPEN SOURCE SOFTWARE

The Hon. D.G.E. HOOD: I would like to speak today about free and open source software, something that was once dear to the heart of the Hon. Ian Gilfillan. I would like to acknowledge the presence in the gallery this afternoon of Mr Paul Schultz, who is a key supporter of—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Members should not refer to people in the gallery.

The Hon. D.G.E. HOOD: Thank you, Mr Acting President. Last week it was reported that the French parliament was dumping Microsoft products in place of open source software. The move came after successful transmission by their Ministry of Agriculture and Police. Starting in June next year, French deputies will use desktops and servers running Linux software instead of Microsoft Windows; Mozilla's Firefox web browser in place of Internet Explorer; and Open Office—a free open source alternative to Microsoft's Office software. Documents will be saved in a non-proprietary open document format. As an aside, I note that on 31 March 2006 the National Archives of Australia also settled on the open document format to ensure long-term access to data without legal or technical barriers.

A detailed study concluded that the move will result in substantial savings, despite the associated migration and training costs. Free and open source software is being produced as I speak by developers all over the world and, indeed, many of them are operating in South Australia. The majority of these developers are volunteers, donating their time and energy to improve and give away free software. And it is free in every sense of the word—free from any licensing costs, but also free in the sense that it can be used, copied, studied, modified, improved and redistributed with little or no restriction. With developers all over the world freely and constantly improving the software, it is little wonder that many open source solutions are now outpacing Microsoft solutions.

I want to focus primarily on the Linux Open Source Operating System—a free competitor to Microsoft Windows. There are various 'flavours', if I can put it that way, of Linux, including Red Hat, Novell Suse, Mandriva, amongst others. One of the most popular at the current time is called Ubuntu, which is Linux as well. Ubuntu in the African Zulu and Xhosa languages loosely means 'humanity towards others'. First released in 2004, this software collection is backed by Canonical, a non-profit company founded by Mark Shuttleworth. Mark Shuttleworth made his fortune as a software developer in the dot com era, with a company which was built on free and open software, supplying digital encryption services internationally, primarily to banks. Mr Shuttleworth (who was also the second space tourist, in fact) decided to contribute back to the free and open source software community and Ubuntu was born.

Ubuntu distribution has topped the ranks of Linux distribution down loaded from the internet since its release and is developed by a worldwide community specifically with the ordinary computer user in mind. Indeed, I note that the business card of Mr Paul Schultz says 'Linux for human beings'. On behalf of the South Australian Ubuntu users group, I suggest two concepts to promote free and open source software as a way forward. First, that we should open the IT funding criteria. Funding for IT in schools is often focused on acquiring and maintaining software licences. The use of free and open source software allows the spending to be refocussed on education and training.

I note that it has been reported that Indiana is moving 22 000 of its students from Windows to Linux platforms. Secondly, South Australian schools and libraries need somewhere to try out Open Source software. A publicly accessible facility is required where businesses and community groups can test these technologies to learn about whether they are suitable for their purposes. Western Australia, with the Open Source WA Demonstration Centre, and Victoria have both undertaken projects to boot strap their free software sector. It will be great to see something like this in South Australia. I encourage members to try the CDs I have distributed to all their offices today and encourage a further uptake of Open Source software for South Australia, as it represents a real alternative to very expensive systems that Microsoft produces.

STATUTES AMENDMENT (REVIEW OF TERRORISM LEGISLATION) BILL

The Hon. SANDRA KANCK obtained leave and introduced a bill for an act to amend the Terrorism (Commonwealth Powers) Act 2002, the Terrorism (Police Powers) Act 2005 and the Terrorism (Preventative Detention) Act 2005. Read a first time.

The Hon. SANDRA KANCK: I move:

That this bill be now read a second time.

In two days, that is, 8 December, a year will have passed since two terrorism bills passed by the 50th parliament of South Australia received assent. This Statutes Amendment (Review of Terrorism Legislation) Bill is a very modest piece of legislation. It does not reduce or remove any of the draconian powers that parliament gave police last year in the two bills that I just mentioned or in the Terrorism (Commonwealth Powers) Act 2002. All this bill seeks to do is to introduce a sunset clause in both these acts and the 2002 Terrorism (Commonwealth Powers) Act that would see all this legislation lapse in the life of each parliament. Parliament would then choose to pass these acts again or decide that the laws were no longer needed.

These acts effectively have put our freedom on auto-pilot. This bill would force parliament to regularly renew and review our freedoms. The bill is not what I would prefer. I think parliament panicked last year and threw away our liberties in an attempt to ensure that it could not be accused of not doing enough if a bomb ever did go off in Adelaide. In fact, that very point was made quite explicitly by one of the major parties during the debate.

I do not want to make light of terrorism, but there are some figures from the US that show that lightning strikes, accidents caused by deer and allergic reactions to peanuts kill more US citizens than terrorism each year. In fact, the figures for 2004 show that the number of US citizens who drowned in bath tubs was higher than the number of people killed worldwide in terrorism attacks. I do not deny that terrorism is a threat, but so was the prospect of invasion in World War II, and we did not pass terrorism bills then. Terrorism is, however, of less consequence than climate change, or a

worldwide flu pandemic, or the number of people who die (as in thousands of them every day) from AIDS.

It is important to keep a sense of perspective when it comes to our most cherished freedoms. As was pointed out last year, there are already extensive powers under existing legislation to gather intelligence through phone tapping and the interception of emails. There is also a centuries old power to charge people with conspiracy to commit murder. After all, members might recall that the English Crown managed to foil a plot by Guy Fawkes to blow up parliament on 5 November 1606, which surely would have been one of the first acts of terrorism in recorded history. He was subsequently charged with treason and attempted murder. So, terrorism is not a new problem. Guy Fawkes, by the way, was an extreme member of an alien and threatening religious group called the Roman Catholics. Members might recall a series of vicious conflicts between the opposing civilisation of Catholicism and Protestantism that raged across Europe and the Americas at the time, which goes to show that the threat from an evil empire with a different religious world view is also not a recent phenomenon.

I remind members that last year we gave police the power to detain a person without charge for up to 14 days on the basis of reasonable suspicion. If that happens, that person is allowed to contact only one other person—for example, a spouse or employer—and tell them that they are safe but they are not able to say where they are or how long they will be or why they have been detained. We also gave police the power to close down designated areas where a terror threat may occur, and conduct widespread seizures and searches. Most telling of all, almost every MP supported section 26 of the police powers legislation, which provides:

> A special powers authorisation. . . may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

I can see some people in this chamber looking uncomfortable about this and pretending they are not hearing what I am saying, but the fact is that members in this chamber decided to accept that into our legislation. I do not accept that the validity of such an order could not be reviewed after the immediate threat, whatever it might be, has passed. The lack of any judicial review is a blank cheque for abuse of power. We lost that debate last year, so I am putting forward what is, as I said earlier, a very modest proposal.

This bill would amend the three pieces of terror legislation referred to by adding several clauses to each of them that would require the minister to cause the operation of each act to be reviewed as soon as practicable after the commencement of the first session of each new parliament following a general election, and to conduct that review within two years of the commencement of this section. The review of each act would broadly report on the extent to which the act is considered necessary, and any other matters determined by the minister to be relevant. The minister would be required to lay a copy of the report before both houses of parliament within 12 sitting days after the report is received by the minister.

I will now comment briefly on why these provisions are necessary for each of the three South Australian terror laws. The Terrorism (Commonwealth Powers) Act 2002 includes extensive powers of search and seizure, but it does not have any review provisions. The need for my bill in this case should be obvious to all with a commitment to liberty. The Terrorism (Police Powers) Act 2005 contains a number of review provisions, including the requirement to report to the Attorney-General and the police minister after the exercise of these powers and to report annually to parliament. At least this bill expires on the tenth anniversary of its commencement. However, I believe that 10 years is far too long. After 10 years, or more than two parliaments, without our liberties we will have got used to this new form of authoritarianism.

It is interesting to reflect that in this chamber alone seven of the 22 members were not members of this parliament when the two terrorism bills were passed a year ago. For the record, they are: Ian Hunter, Russell Wortley, Bernard Finnigan, Dennis Hood, Ann Bressington, Mark Parnell and Stephen Wade. Those seven members were not members of the 50th parliament.

Given that there is a 10-year sunset clause with respect to that act, it means that any new members of the 51st or the 52nd parliament will be excluded from ever considering the content of those bills. I think there would be some (one of whom, I am sure, would be the Hon. Mr Parnell) who would like the opportunity to have a say on whether or not these removals of our freedoms continue to be justified. I think every other parliamentarian who is elected, even if they do not want to do so, should be made to look at them again and see whether they are justified. The Terrorism (Preventative Detention) Act does not include the requirement to provide an annual report to parliament, and it also expires after 10 years from the date of its commencement.

My bill reflects on three very simple principles that have been tried and tested over and over again in history. They are: first, that power corrupts; secondly, that evil flourishes where there is no scrutiny; and, thirdly, that good people do terrible things when they are afraid. These lessons have been reinforced in the Soviet gulags and the Chinese Cultural Revolution, in McCarthyism and the disappearance of Pinochet's opponents in Chile.

Of course, some people might say that these examples were all long ago. So, for more up-to-date examples, consider the torture and humiliation meted out by the soldiers of the world's largest so-called democracy at Abu Ghraib—imagine how many suicide bombers were created and/or justified by that episode; or the rendition policy of the United States, where suspects have been flown to secret prisons in dictatorships beyond the reach of the media and effective protections of human rights; or the Brazilian man shot dead in the London underground last year, for no other reason than that he looked suspicious; or the 82-year old Labour Party member in the UK, Walter Wolfgang, who was evicted from the Labour Party conference for daring to heckle Foreign Secretary Jack Straw, and then arrested under British anti-terrorism laws when he attempted to re-enter the conference.

Some will argue that these examples are too far away. So, consider the Salisbury affair in Adelaide 30 years ago when the Special Branch spied on thousands of ordinary South Australians and used information against them when they applied for Public Service jobs; or, even more recently, the fate of Cornelia Rau who, along with thousands of refugees, disappeared into Australia's very own, albeit milder, gulags—the immigration detention centres. And, finally, consider the potential abuse of something like the Terrorism (Police Powers) Bill. Imagine a close election some time in the future, a ruthless premier and a faint suspicion of threat. Imagine the advantages of being able to close down the city and go on television as the strong man who saved Adelaide. Far-fetched? As far-fetched as children overboard, the Tampa

or the AWB affair, or an invasion to find weapons of mass destruction that do not exist.

This bill is not an abstract safeguard against some theoretical abuse of power. It does not need to refer to the excesses of totalitarian powers in some faraway time or place. It is a necessary protection against the mistakes and excesses that have happened regularly on our watch in the past seven years. In our still relatively peaceful times, these checks might save another Cornelia Rau or an Australian Muslim from persecution. In the event of a real crisis, these checks could save thousands of people from Big Brother. Yet this bill is not nearly enough. However, there is some small chance that enough members will support this reminder to this and future parliaments that any limitations on our freedom must be temporary and reversible. Every official entrusted with extreme powers must know that the law's protection of their actions will come under the microscope at least once every four years.

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

DRUG POLICY

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I seek leave to make a personal explanation.

Leave granted.

The Hon. G.E. GAGO: Yesterday I stated that the Swedish national coordinator for drug policy had asked Drug and Alcohol Services SA for advice about the approach this state has taken in managing our methadone program. I need to correct the record and state that I am advised that it was the deputy national coordinator for drug policy in Sweden, Ms Christa Oguz, who asked Associate Professor Robert Ali from Drug and Alcohol Services SA for information regarding our clinical approaches to methadone and buprenorphine and our drug prevention strategy. I am advised that this occurred in Sweden when Associate Professor Ali was visiting as the chair of the National Expert Advisory Committee on Illicit Drugs.

Members interjecting:

The PRESIDENT: Order!

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT ACT

The Hon. R.P. WORTLEY: I move:

That the report of the committee, 2005-2006, on the Upper South East Dryland Salinity and Flood Management Act 2002, be noted.

This is the third such annual report on the Upper South-East program that the committee has prepared and presented to the parliament and, considering the amendments agreed to in this council for the Upper South East Dryland Salinity and Flood Management (Extension of Period of Scheme) Amendment Bill, it is likely to be the last. This bill allows the transfer of the parliamentary oversight function to the Natural Resources Committee. To date, the ERD Committee has been responsible for the oversight role provided in the act. It has taken evidence from landholders and departmental staff and has visited the region to see at first-hand the progress and issues involved in the Upper South-East program.

The implementation of this program has taken longer than initially anticipated, hence the bill to extend the act in recent weeks. The committee has been informed that one of the reasons for this is a more detailed and lengthy consultation process than initially planned being undertaken for the establishment of the drains, and the committee supports this increased consultation with stakeholders, believing it achieves a better outcome. During this reporting period landholders raised concerns with the committee regarding the construction of the drains, predominantly with respect to the proposed construction of the Didicoolum drain and the Bald Hill drain.

These landholders and residents are passionate about their land and the environment, as we have seen in recent weeks through the demonstrations held on the steps of parliament. There are landholders in the region who are managing their properties well, including the salinity issue, and who are concerned that the drains will have a negative effect on their property and on their livelihoods; however, there are other landholders with salinity and inundation problems who want the drains constructed. This is a very complicated situation and one that members of the committee have, at times, had difficulty getting their heads around. We have taken evidence and talked with the various landholders and departmental staff involved with the project and there are instances where, arguably, there is no one right answer but where a variety of solutions are feasible; it depends on your land management perspective as to which solution you embrace or support.

With respect to the Didicoolum drain, the committee visited Kyeema—one of the properties where the drain is to be constructed—and spoke with a number of local residents who strongly oppose the drain. The committee advised the minister, on request, that the drain should not be constructed on this property and suggested instead that it be linked to the Wongawilli drain through the ranges. This would provide a drain for nearby properties that desired and required it while bypassing landholders opposed to the drain. Following this advice and advice from the program board, the minister decided to continue with the current plan for the Didicoolum drain. The committee was advised that the cost of the alternative it had proposed was too great, and it is the committee's understanding that consultation is still occurring as to the exact alignment of the drain.

Concerns were also raised that the Bald Hill drain construction could have the unintended effect of drying out the wetlands. These concerns include the potential loss of two nationally threatened species, because the wetlands contain the Southern Bellfrog (which committee members saw on their visit to the region) and the Yarra Pygmy Perch. Following these concerns being aired, the minister reviewed the construction of the Bald Hill drain and gave an undertaking that the construction of the drain was dependent on the construction of the Upper South-East connectors. This will connect drains constructed in a previous phase of the program with the Upper South-East drains and allow water to be diverted through these drains to the southern Coorong lakes, with the intention of preventing the drying out of wetlands.

The expansion of the Upper South-East program to include the construction of the Lower South-East connectors project has extended the time frame for construction projects. This amendment to the program seems an appropriate solution to the committee, as it too wants to ensure the continued survival of the wetlands in the region; hence, the committee does not oppose the extended time required for the program. I am pleased to advise that the minister does re-evaluate each drain prior to construction. Following consulta-

tion with stakeholders, it was determined that the Ballater East drain is not required and hence it will not be constructed.

Not all drains are built for agricultural purposes. The proposed East Avenue drain is set to be constructed for its environmental benefits in restoring environmental flows to the area. It should be noted that not all landholders are happy with the progress and construction of the drains, and some are still sceptical about the proposed outcomes; not all are convinced that the drains work, and some are still opposed to their construction.

Those who have raised issues with the Bald Hill drain are still concerned about the impact the drains may have on the wetlands. Anecdotal evidence has been provided to the committee by the department of the improvements some landholders have experienced due to the construction of the drains. As well, some had quantitative data received from the Fairview drain project completed in the previous phase of the South-East program. The committee is looking forward to seeing more evidence of the effect of these drains on the land and the environment.

This program is not all about drain construction, although this is causing the most controversy. Other projects within the program include the biodiversity offset scheme and the adaptive management framework. The officers involved in the biodiversity offset project continue to assess properties for their biodiversity value. Landholders are able to offset their levy payments by the value of the biodiversity contained on their land if they maintain it for perpetuity. The first management agreement was executed between the government and a landholder in February 2006. This management agreement is attached to the total of the property to ensure that biodiversity is maintained. Even if the property is sold, a 15-year management plan is also prepared for the vegetative areas.

By the end of the reporting period, four management agreements had been signed. The minister is considering expanding the biodiversity offset scheme to other landholders in zones D and E of the program, as significant biodiversity value has been identified in these areas. Data continues to be collected for the implementation of the adaptive management framework. This will determine the rate of water flow and frequency of discharge in the various drains in the region. This project will allow the manipulation of water around the region's areas of most need. The levy continues to be collected, with the second instalment notice being issued in May this year. There is generally good compliance with the act and payment of the levy—

The Hon. D.W. Ridgway: You should be the minister.

The Hon. R.P. WORTLEY: Thank you—with only 4 per cent of landholders not paying the levy or applying to participate in the biodiversity offset scheme. In the final quarterly report, the committee was disturbed to note that there had been some illegal interference with the drains and equipment. Compliance officers from the department are reviewing these matters and will recommend appropriate action.

I take this opportunity to thank those landholders who provided evidence to the committee, showed us their properties and took the time to explain the issues, particularly those landholders who took the time to travel to Adelaide to give evidence to the committee. The committee very much appreciated their time and commitment to the issues. I also thank the departmental staff and the minister for answering our questions, providing evidence and meeting with the committee whilst in the South-East. I thank past members of the committee: the Hon. Sandra Kanck, the Hon. Gail Gago, the member for West Torrens, and the former member for Light, Mr Malcolm Buckby. I also thank the two continuing members, who provide valuable continuity: the Presiding Member (the member for Giles) and the Hon. David Ridgway, whose experience and knowledge of the local area was invaluable in helping with this whole issue; and the current members, the Hon. Mark Parnell and the members for Fisher and Stuart. I thank them all for all their work. Finally, I thank the committee staff for their support and assistance in trying to understand the issues. I commend the report to the council.

The Hon. D.W. RIDGWAY: I rise on behalf of the opposition—and, of course, as a member of the Environment, Resources and Development Committee—to support this motion. However, I might correct the Hon. Russell Wortley—

The PRESIDENT: I don't know the area at all.

The Hon. D.W. RIDGWAY: I beg your pardon, Mr President; I'm allowed to. The Hon. Russell Wortley referred to the member for Stuart; in fact, it is the member for Schubert. The Hon. Russell Wortley covered the activities of the committee extremely well in his contribution, but there are a few issues I would like to address, and I will address them further when I speak to another item on the *Notice Paper* shortly. It is interesting that only about 50 per cent of the drains were complete at the time this report was lodged but, of course, this report was for 30 June, some six months ago, and a lot has happened since then. It is interesting that approximately 50 per cent of the drains are complete, with the environmental programs still collecting data and the biodiversity offset scheme still assessing applications.

As members would know, I was a levy payer in the biodiversity offset scheme, although I think it was on 23 July this year that settlement occurred on the property Meredith and I owned, so we are no longer landholders in that particular scheme. Two or three years ago I asked the officers involved with the biodiversity offset scheme whether I would have any suitable native vegetation or biodiversity on my property which might be assessable and which I could offset and therefore not pay a levy, and they said I would have. I doubted that I would, given that our property had been cleared for some 150 years and had remnant single trees scattered over the property but there were no actual areas of biodiversity or areas that were unique and untouched that could be fenced off. The officers assured me that they would find something.

It is interesting that, during the state election this year, when I was out campaigning—as a lot of us were for our respective parties—I had a telephone call from a young lady from the Department of Water, Land and Biodiversity Conservation in relation to the biodiversity offset scheme. She said that officers had just assessed my property and they were unable to find any biodiversity on the property that I could offset. I suggested that, because I was in negotiations with my brother (who would eventually end up buying my property), it might be better if the department approached him after settlement to work out some arrangements. I am still not sure what has happened with that case. I know that a lot of landholders would be in a similar boat to me (and eventually my brother) in not having any biodiversity that fit the criteria for the offset scheme. I will follow with interest the biodiversity offset scheme to see just how effective it really is. I think it is a very good mechanism for landholders who have

biodiversity to offset, but a number of areas do not have that biodiversity.

The Hon. Russell Wortley indicated that we visited the Kyeema property and, in particular, that we met a number of landowners on the Kyeema property, the property owned by Dean and Sue Prosser, where the Didicoolum drain is to be situated. I will touch on that, as I said, in more detail shortly. The Didicoolum drain is probably causing the most concern for landowners in the South-East, with the alignment of the drain and the effect it may have on their local groundwater, their wetlands and, in particular, the Padthaway irrigation area. As I said, I will touch on that in a contribution shortly.

I was delighted to see that the minister has reconsidered a sub-project that will give a commitment for the Bald Hill drain to be constructed, bringing in the Lower South-East connector drains. It is something that I have had a personal view about for some time, in that if you look at the geography—and former residents of the South-East know this—the water nearly all flowed from a north-westerly direction and entered the Coorong.

At the turn of the century a number of drains were constructed to drain the Lower South-East, which has turned into some very productive farmland. Unfortunately, most of that water now leaves the landscape and enters the sea, to the detriment of the wetlands further north, and the Coorong. I am delighted to see that this is now in the project. Even though the reporting process with the amendment bill that we debated some weeks ago will go to the NRM Committee, I will follow the progress of those Lower South-East connectors and the whole concept of getting water from the Lower South-East up through the Upper South-East drainage system, the wetlands and into the Coorong. I certainly think that will be of particular benefit to not only the environment but the community in general.

It is interesting to note that there were initial negotiations with the commonwealth about putting water into the Coorong, but it was believed to have been a hyper-saline environment and that fresh water going into it would have caused some detrimental effect to that environment. I am pleased to see that the federal government is now reviewing its position—to allow only 40 000 megalitres per annum on a 10-year rolling average to be discharged into the Coorong—and hopefully it will revisit that and lift that restriction.

I do not wish to go on a lot more about it at this point because, as I said, I have another contribution to make in a little while, but I would like to thank all of the committee members who participated in this matter. The visit we made would have been last spring, some 14 months ago. I think the Hon. Sandra Kanck was on that visit. I was obviously on the visit. Unfortunately, the Hon. Gail Gago could not come on that visit. Also present were the Mr Tom Koutsantonis, the member for West Torrens; Ms Lyn Breuer, the member for Giles; the Hon. Malcolm Buckby; and the committee staff. I would like to thank them for their input. I commend the motion to the council.

Motion carried.

NATURAL RESOURCES COMMITTEE: MINERAL RESOURCE DEVELOPMENT

The Hon. R.P. WORTLEY: I move:

That the report of the committee on Mineral Resource Development in South Australia be noted.

Mining and petroleum industries are vital contributors to the South Australian economy. Since the 1840s, mining has attracted large numbers of immigrants, beginning with the discovery of copper in Kapunda and Burra. As a result, there was substantial infrastructure spending, providing employment for many South Australians. In many ways this industry underpinned the successful establishment of the colony. Annually, South Australia produces approximately $2.4 billion of minerals and petroleum products. Export sales exceed $1.65 billion per annum, and resource royalty receipts in 2004-05 exceeded $120 million. Over $100 million is now spent on exploration each year, and that figure is growing.

Over 5 000 people are directly employed in the industry and, with the anticipated growth, more will be needed. The importance of the mining industry to the economic wellbeing of the state cannot be understated. Unlike some other sectors of the state's economy that are showing signs of decline, mining has the potential to grow significantly. Factors including high world prices for resources and strong evidence of substantial mineral deposits clearly point to the fact that this state is experiencing a mineral exploration boom.

An exploration boom does not, of itself, guarantee a mining boom. However, there are a number of significant mining projects that are in either the feasibility or pre-feasibility stage. One such project is the proposed expansion of BHP Billiton's Olympic Dam operation. Decisions to invest here are not solely determined on economic viability; other factors such as government regulation, the availability of infrastructure and labour and accessibility to land will influence any decisions to invest here.

The Natural Resources Committee believes that it is timely to examine the challenges and opportunities that confront this expanding industry in South Australia. One of the most important challenges that faces the state will be to ensure that mining activity can proceed without detrimentally affecting South Australia's environment assets, including native vegetation, water resources, areas of high conservation value, and items of indigenous value.

It is well known that mining activities can require large quantities of water and that this can have a significant impact on local water resources. The challenge for all stakeholders will be to ensure that this impact is minimised by future mining operations. In this regard, the committee believes that the mining industry should act as an example of best practice in the responsible use of water resources. One of the committee's recommendations is that efficient water management, including water re-use, be considered as an integral part of all mining and petroleum extraction ventures.

Our report also recommends that there be continuing monitoring of the impact of mining activities, particularly at Olympic Dam, on the Great Artesian Basin, to ensure ongoing extraction at current levels is sustainable. Mining activities can also have a detrimental impact on the environment, and of great concern are the areas of high conservation value. A significant proportion of the state is conserved within the public protected area system under the National Parks and Wildlife Act 1972, the Crown Lands Act 1929 and the Wilderness Protection Act 1992. While these areas play an important role in the protection and maintenance of biological diversity and of natural and cultural resources, they are also used for recreation and other activities.

Only some national parks and recreational reserves have joint proclamations to allow for other activities, such as exploration and mining. Areas protected under the Wilderness Protection Act 1992 are completely inaccessible for exploration and mining activities. The committee was advised that areas such as the Yellabinna Wilderness Protection Area

north of Ceduna may be highly prospective. The committee acknowledged that mining is likely to be an incompatible land use in areas of the highest conservation value, and therefore believes that mining should not be permitted in wilderness protection areas, such as Yellabinna, at this time.

Mining activities present highly significant opportunities, including strategic investment in infrastructure in remote areas and the development and application of groundbreaking technology, such as the use of geothermal energy, solar power and water treatment technology. The potential for community building, particularly in some of the remote Aboriginal communities of South Australia, is another extremely important opportunity associated with the mining industry.

The industry has already provided meaningful training and employment opportunities for Aboriginal Australians. These opportunities will grow with further mining investment, and the committee believes that this can help to break the poverty cycle in some Aboriginal communities. An important aspect of this inquiry was to examine the legislative and administrative arrangements that govern mining in South Australia. It was the committee's view to examine the possibility of eliminating red tape and unnecessary government regulation where possible, whilst at the same time maintaining appropriate protection for significant native vegetation and sites of Aboriginal significance.

There are significant recommendations within the report in relation to native vegetation management. Native vegetation clearance is regulated under the Native Vegetation Act 1991. Mining activities are exempt from the requirement to seek Native Vegetation Council approval for clearance. Such an exemption is subject to the preparation of a significant environmental benefit (SEB) management plan. Mine operators are required to produce an SEB either through vegetation schemes of up to 10 times the area disturbed or by payment into the Native Vegetation Fund, despite already being required to rehabilitate the site after mining activities have ceased.

The committee believes that native vegetation management for mining activities should be regulated under the Mining Act 1971, although Primary Industries and Resources SA (PIRSA), the specialist agency responsible for the regulation of the mining industry, already has delegated authority from the Native Vegetation Council to assess clearance applications for mining leases. The committee believes that this arrangement should be established in legislation as opposed to the current administrative arrangements. We believe that there should be a fundamental change to the approach taken to assessing native vegetation clearance.

The committee recommended that the concept of applying requirements to produce an SEB should be reviewed with a view to applying a more rational scale that currently applies a minimum SEB. Greater emphasis should be given to rehabilitation at the end of the mining. The committee was also of the view that there should be a more considered approach to the way in which native vegetation is defined, and a more sophisticated approach employed to assess applications for its clearance under the Native Vegetation Act 1991.

We also closely examined the Aboriginal Heritage Act 1988. The unanimous view from the Aboriginal community, the mining industry and the government was that this piece of legislation does not work. Unlike native title legislation, the Aboriginal Heritage Act does not have the capacity to confer the 'right to negotiate'. The effect of this can be that any party or individual can at any time assert entitlement to a site of Aboriginal heritage independent of any other heritage or native title negotiations presently or previously occurring. This causes considerable frustration not only for the proponent of the development but also for the Indigenous groups.

In light of the superior negotiation provisions of native title legislation, the committee considers that matters of Aboriginal connection to sites and land can be more appropriately addressed by native title legislation and the use of Indigenous Land Use Agreements. The committee therefore suggests that the treatment of claims pertaining to sites under the Aboriginal Heritage Act 1988 should instead be resolved through the native title processes. The report makes numerous other recommendations regarding legislative and administrative arrangements but seeks to strike an appropriate balance between protection for the state's natural environment and our economic development.

This includes recommendations relating to matters such as mining operations on Olympic Dam, accessibility to commonwealth-owned land, maintenance of appropriate buffer zones around extracted industries, infrastructure requirements in areas of mining activity and administrative matters within the Mineral and Energy Resources Division of PIRSA, as well as addressing many other miscellaneous matters. This inquiry generated a great deal of public interest. We received over 80 submissions and heard evidence from more than 30 witnesses. I wish to thank all those who took time to prepare submissions, who appeared before us to give evidence or who met with us on our visits to various mining operations.

Also, I acknowledge the contributions of my fellow members of the committee—Mr John Rau MP (Presiding Member), the Hon. Graham Gunn MP, the Hon. Sandra Kanck MLC, the Hon. Steph Key MP, the Hon. Caroline Schaefer MLC, and the Hon. Leah Stevens MP—for their contributions to this inquiry. Although the committee's report includes a dissenting statement from the Hon. Sandra Kanck MLC, I commend all members for the cooperative spirit with which this inquiry was conducted. Finally, I thank members of the parliamentary staff for their assistance throughout this inquiry. I commend the report to the council.

The Hon. CAROLINE SCHAEFER: I, too, wish to thank the staff of the committee. This has been a particularly interesting inquiry from my point of view, and I am sure that my colleagues from both houses would agree. I believe that our trip around the mining areas of South Australia was very informative for all of us. I would like to highlight some of the recommendations which I believe to be very important not just for the future of mining in South Australia but also for the future of South Australia. I refer to the committee discussion on page 5 of the report which states:

> This inquiry is not about finding a free passage for the mining industry without due regard to social and environmental concerns. Rather, the purpose is to ensure that current legislative and administrative arrangements strike the appropriate balance between protection for the state's natural environment and our economic development.

I know that the Hon. Sandra Kanck can better than adequately speak for herself, but I think she has the view that this inquiry leans too heavily towards mining. My own view is that, in fact, judicious and well conducted mining is probably better for the environment than leaving it unhusbanded and

unattended. My personal experience of that is knowing what Roxby Downs station was like prior to Western Mining and since Western Mining.

South Australia, I believe, is in a very unfortunate position in that it has a static population and, in spite of the rhetoric we hear from this government, there has not been any real economic development within this state for some time. Our real opportunity for increasing training, employment and, most of all, dollars in the economy lies with mining. It needs to be said that we are consistently told that we have a mining boom. We do not, in fact, have a mining boom; we have an exploration boom, and we all know that it will be some time between when any discovery is made and any actual practical mine eventuates. However, one only needs to visit Western Australia for a very short time to know that significant royalties from the mining industry can indeed do a great deal for the long-term environmental, economic and social development of a state.

In particular, I want to speak briefly about the recommendations regarding the Native Vegetation Act. First, the objects of the Native Vegetation Act, as they relate to mining operations, should be incorporated into the Mining Act and administered by Primary Industries and Resources South Australia, as opposed to the current discretionary delegated arrangements from the Native Vegetation Council. We have gathered considerable evidence that would suggest that even getting permission to explore is like walking through a maze, particularly the undue delays between the Native Vegetation Council and the appropriate issuing of permission. Further to that though, if that is not possible, we have given the government a number of options. If it is not possible, then we suggest that, at the very least, the Native Vegetation Act should be amended to include a representative from the mining industry in the membership provisions of the Native Vegetation Council.

It would seem that, since the mining industry is perhaps the major applicant for clearance to the Native Vegetation Council, surely they should have the right to membership of that council and express their point of view from within the council, rather than continuously knocking on a closed door. Further to that, we have suggested that, if that does not work, native vegetation regulations be amended to extend this exemption to ancillary works associated with mining operations such as infrastructure corridors, to the extent that these works are not covered by a mining lease or a miscellaneous purposes licence. Again, we received considerable evidence to say that, even when permission is gained by the Native Vegetation Council and Native Vegetation Act, buffer areas around the area require a separate consent.

Further to that, we have asked that the same exemptions be extended to Leigh Creek, which, for some unknown reason, seems to have been separated from other mining or exploratory ventures. The only other recommendation about which I wish to speak at all is recommendation 17, which recommends that an independent review of the policies and processes for the administration of the Extractive Areas Rehabilitation Fund be conducted, particularly in relation to assertions made to the committee about the difficulty some operators have in accessing the fund. I have asked a series of questions regarding the EARF over the past two to three years. The rehabilitation experts have been taken out of the equation by a change to regulation. They have suffered undue and unnecessary lengthy delays in being paid for their work.

There is some considerable concern from within that industry and, indeed, from those affected by rehabilitation about allowing the middle man, if you like—that is, those who have expertise in rehabilitation—to be taken out of the equation and allowing the mine operators or, in many cases, the quarry operators or local government to do their own rehabilitation. Whilst this might have saved money, there has been some considerable criticism of the expertise with which such rehabilitation has been conducted.

I hope the government will at least take notice of our desire to have changes made to the Native Vegetation Act which we think would facilitate a more streamlined method of allowing mining exploration without damaging native vegetation and, indeed, probably with quite some improvement to the ecology in those areas. I make a personal plea that an independent review of the EARF be conducted. With that, I, too, thank the staff. As I have said, it has been a very interesting inquiry and I look forward to our inquiries next year.

The Hon. SANDRA KANCK secured the adjournment of the debate.

PROTECTION OF PUBLIC PARTICIPATION BILL

The Hon. M. PARNELL obtained leave and introduced a bill for an act to protect and encourage participation in public debate and matters of public interest, and dissuade persons and corporations from bringing or maintaining legal proceedings that interfere with another's right to engage in public participation. Read a first time.

The Hon. M. PARNELL: I move:

That this bill be now read a second time.

This is my first private members' bill, and I have waited approximately four years for the chance to introduce it. It deals with an issue that is close to my heart, one that is of the utmost importance to our democracy. This bill provides for a level of legal protection for persons who engage in public debate on public interest issues. In this country we do not have a bill of rights and our common law right of free speech is both limited and uncertain in its scope. This bill had its origins in a law reform project that I undertook in my previous role as a solicitor with the Environmental Defender's Office. I was assisted in this task by another lawyer, Travis Bover, who worked with me as part of his postgraduate studies at the University of Adelaide. What we came up with is what is currently known in the national debate that is occurring on this issue as the Bover-Parnell model of free speech law reform.

One reason I have waited until today to introduce this bill is that I wanted to coordinate with a group of free speech advocates who have today launched a new website designed to raise awareness of the growing problem of legal attacks on those who speak out on public interest issues. The website launched today is based in the United States; however, it features South Australia prominently. I refer to a press release issued today by the Centre for Media and Democracy in the United States with the headline 'South Australia tops SLAPP list', the subtitle being 'National list of litigation against free speech launched today.' I will refer to some extracts from that press release. It states:

South Australia rates worst on a new national list of civil litigation cases which have limited free speech. The list, launched today on the Sourcewatch website by the US-based Centre for Media and Democracy, is the first comprehensive collection of 'SLAPP suits'.

Mr President, I know you know this, but other members may not. SLAPP stands for Strategic Litigation Against Public Participation, and this is the first such list in Australia. The press release continues:

> A SLAPP suit is a civil lawsuit brought in relation to a political issue which has the effect of silencing community debate or constraining political activity. The cases can range from defamation cases to the use of corporate torts like interference with business.

The list is on the website at www.sourcewatch.org—and one follows the links.

On this new website South Australia has more listings than any other state. There are 21 cases listed and eight examples of legal threats. The reason for these numbers being so high is, in part, because of the 15 defamation cases brought in the 1990s by the developers of the Hindmarsh Island marina, and the Chapman defamation cases will be well-known to members. Other South Australian cases on this list include the case of a chicken farmer who sued animal rights activists; a former minister who threatened an environment group for comments made in the 2001 state election; the Ceduna district councillors, who were suing each other for defamation; and, most recently, members of a local community group in Adelaide's northern suburbs who were sued for a letter they wrote to their local Messenger newspaper. I will come back to that example a little later.

Some of the things which have found their way into these lawsuits and which have been regarded as actionable by the plaintiffs include a statement that a person 'had rocks in their head' and a T-shirt that suggested that keeping hens in battery cages was allegedly cruel. Another referred to previous lawsuits as SLAPP suits. That particular one was quite remarkable in the context of the Hindmarsh Island bridge defamation cases because, having allegedly defamed Mr and Mrs Chapman, some people then went on to say that the flurry of legal activity aimed against them was in fact designed to silence them, and that was further grounds for yet another action against them because it impugned their motives. So, even referring to something as a SLAPP suit can, itself, be actionable.

Nationally, the list on this website has over 50 court cases and another 20 or so examples of legal threats. One of the highlights on the website is the case of the Geelong community activist group which was sued over a bumper sticker which it had produced, which said 'Barwon water—Frankly foul'. To most people that hardly sounds like a defamatory comment but, in the context of that case, which related to a community group trying to protect some native vegetation being cleared to make way for a sewerage farm, Mr Frank de Stefano, who was the chair of the water authority, decided that the bumper sticker 'Barwon water—Frankly foul' was a vicious attack on his reputation.

Through a process that commenced with the service of writs on Christmas Eve, giving protesters no chance to get any legal advice, the case was ultimately settled, with some members giving apologies; and I believe the sum of $10 000 was handed over to Mr de Stefano for damage to his reputation. What people did not know was that his reputation was in fact beyond further damage, and I understand that he is now serving a long stretch in gaol for the extortion of money from clients in his practice as an accountant—some $8 million—and I understand he is still in gaol in Victoria. That was a case where a legal suit was used for the purpose of stifling protest.

Another example is a media release in South Australia that claimed that a controversial development was 'chasing fool's gold'. That was hardly defamatory, but it was enough for a developer to set their lawyer attack dogs on to the protesters. Other cases include people in Sydney and Tasmania who have been sued as a result of having meetings in their house—that was their crime and it scored them a writ. In fact, part of the high profile Gunns 20 case, which members would be aware of, currently under way in the Victorian Supreme Court and which has been for a number of years—I still do not think they are beyond the stage of settling their statements of claim—was claiming damages against environmentalists because the woodchip company was removed from the list of finalists for the Banksia Environment Award. The fact that the organisers saw fit as a result of controversy to remove that company from the list of finalists was regarded by the company as actionable, and it sued the environmentalists who caused that to happen.

I will make a claim here. In the past I have actually written to the organisers of the Banksia Environment Awards suggesting that they had rocks in their head if they thought that a certain development was deserving of an environmental award when it was one of the most environmentally controversial developments in this entire country. Whether my submissions had any part in that company not winning the award that year I do not know, but it is hardly the stuff that should result in legal action.

One of the spokespeople for the Source Watch website in Australia is a long standing conservationist, Bob Burton. Mr Burton said:

> These sort of cases silence people, so the SLAPP list [on the website] is probably only the tip of the iceberg. But it does show that such suits are not isolated incidences and they have massive impact on ordinary people who have spoken out on an issue of public interest. Such people face stress and potential financial loss and they, and others, often become scared to participate in public debate. The obvious implication of the extent of the list is that we need law reform to protect the community's right to participate in public debate and political action.

It is that chilling and stifling effect of litigation that is one of the great harms to our democracy that my bill seeks to address. The Source Watch media release of today goes on to say:

> Legislation to protect public participation is being considered by the ACT parliament [the Legislative Assembly] and is being introduced into the SA parliament today.

It is also worth noting that the Source Watch SLAPP website uses wiki technology, so that anyone can add cases to the list, as long as appropriate references are provided. That is the great democratisation of the web through this wiki technology.

The examples I referred to there—the Gunns 20 case and the Hindmarsh Island bridge case—are probably the best known of these SLAPP suits, but there have been other cases in South Australia. One of the worst instances of legal bullying that I saw in my professional career related to a proposed development along the River Murray, where a lawyer was brought in by the developers from New South Wales. This hot shot Sydney lawyer started to make legal threats in writing to various local residents of the river up there telling them that, if they did not pull in their heads, did not withdraw their challenge to his client's development, he would chase them for substantial legal costs.

What these unrepresented local residents did not realise—and what the lawyer should have realised—was that he was making this claim in a no cost jurisdiction. The Environment Court at that stage had never ordered legal costs in a merits planning appeal. So, for a lawyer to come out and write to

people, threatening something that was never going to happen so that those people would withdraw their opposition to his client's development, is quite outrageous and bullying behaviour and one that I will speak about shortly in relation to the inability of the legal profession to actually stop that type of behaviour.

There is one other case that I want to refer to at some length. I will not do that today, but later I will seek leave to conclude because it is a case currently before the courts and I would like that to be properly resolved before I discuss it at any length in this place. I would like members to put from their mind whether or not they agree or disagree with the particular forms of protest action that might be the subject of these cases. It is not about whether you think the Hindmarsh Island bridge was a good idea and not about whether you think the wood chipping of old growth Tasmanian forests is a good idea: it has to do with the rights of citizens to engage in these public debates without fear of being sued every time they are critical of what the developers are trying to do.

It might be tempting for people to take the viewpoint that anyone who tackles a large corporation has what is coming to them. That is not good enough, and part of the job of this parliament is to protect fundamental rights, and that includes the right of people to engage. With regard to the solution to this problem of SLAPP suits, some members might be thinking that we reformed the defamation laws of this state a year ago, but that is not enough and I will explain why.

I should also point out that this call for law reform is not coming just from the Greens, and it is not coming just from me. In fact, I have here a statement that was issued a few months ago by some of the most prominent lawyers in Australia, which I will read. It is a public interest lawyers' statement in support of public participation law reform. Before I read it, I will name the signatories—and they are well known to most members. They are Julian Burnside QC, Brian Walters SC, Associate Professor Spencer Zifcak from LaTrobe, Professor Hilary Charlesworth (who spent a lot of her professional career in South Australia), Paul Heywood-Smith QC of Adelaide, Professor Rob Fowler of the University of Adelaide, Stephen Keim SC, Richard Coleman, and Bruce Donald (who some people might know as the ABC's former chief lawyer in Sydney). These prominent lawyers make the following call:

> As senior lawyers practising, advising and writing in the area of the law of public interest debate, we call on all Australian governments to implement law reform to protect the community's right and ability to participate in public debate and political activity without fear of litigation. The increasing phenomenon of litigation against community participation in public issues by comment or action has the serious effect of intimidating the community, chilling public debate and silencing voices which should be heard in a democratic society. In addition, these lawsuits against public participation create enormous stress and financial burden for the people and groups who are sued and clog our court systems with arguments which belong in political rather than legal arenas.
>
> Free speech and robust political debate, together with the ability to participate in community and political activity without fear of litigation, are fundamental rights in a democratic society. The increasing and widespread use of defamation law, trade practices laws and economic torts laws against public participation must be wound back. It is no coincidence that societies where these rights of public participation are curtailed have historically been burdened with corruption, inefficiency and often disastrous decision making. Legislation specifically to protect the community's right to public debate and participation has been introduced in 25 jurisdictions in the United States. We call on Australian governments to introduce similar laws and work together to achieve national uniform legislation in Australia.

That statement, signed by those prominent sponsors—prominent lawyers—from all states and territories, is further supported by a list, which is four pages long, so I will not read out the names of all the lawyers on this list, other than to say that 25 are prominent lawyers in South Australia. I am proud to say that I am one of them.

Members interjecting:

The Hon. M. PARNELL: I was a prominent lawyer, and I still am. I will not go through the list, but it contains the names of prominent people from both sides of parliament. Included on the list is Kris Hanna MP, a lawyer from the lower house, and Tim Stanley, who I believe is a good friend of the Attorney-General's. Some 25 lawyers from South Australia have signed that call. So, I am fulfilling the call of these prominent lawyers by bringing this legislation before the council today.

In relation to the question of why our current arrangements are not enough (and I have alluded to some of them already), first, whilst the defamation act has had some improvements, such as the removal of the right of corporations over a certain size to sue for defamation, it is increasingly being subverted by the use of economic torts as a cause of action and also by the fact that directors of these companies will often bring the action in their own names and claim that they are so closely associated with their company that a defamation of the company is a defamation of them.

The practice of many lawyers to do their client's bidding is one that brings into question the ethics of the legal profession not just in South Australia but also around the country. When I have come across bullying tactics (such as the one to which I alluded previously in relation to the Nildottie case), I have taken the step of reporting those lawyers to the Legal Practitioners Conduct Board. However, such cases invariably fail—and that is no reflection on the people who work at places such as the conduct board, but it is part of a systematic problem.

The conduct board believes it knows the mind of the tribunal, the tribunal believes it knows the mind of the Supreme Court and the Supreme Court, as a group of prominent lawyers, is largely protecting its own. It is very difficult for disciplinary action to be maintained against lawyers. Someone almost has to kill a client or steal all their money before it will be taken seriously by the tribunal. So, bullying conduct is often regarded as simply part of the tools of trade of a lawyer, whether it is aimed at other lawyers or unrepresented litigants. For the reasons to which I alluded previously, there is a case I want to talk about that is currently before the courts and, this being the last private members day of the year, I now seek leave to conclude my remarks later.

Leave granted; debate adjourned.

DIDICOOLUM DRAIN

The Hon. D.W. RIDGWAY: I move:

That the council take note of the petition presented on 5 December from 326 residents of South Australia—

1. expressing concern about the agricultural and environmental impacts of the Upper South-East Dryland Salinity and Flood Management Plan;
2. expressing their lack of confidence in the decision of the former minister for environment and heritage, the Hon. John Hill, in approving the digging for the Didicoolum Drain; and
3. strongly requesting that the present minister, the Hon. Gail Gago, immediately review that decision and suspend the digging of the Didicoolum Drain as a matter of urgency on the grounds that the need has been incorrectly established.

Honourable members will know that yesterday I presented a petition signed by 326 residents of the South-East calling for those three points. That petition was signed by a lot more than those 326 residents; unfortunately, there was a misunderstanding (for which I take responsibility, although they did contact another member of parliament's office) and they were not advised that every page had to have the prayer on it. In speaking to this motion today, I table another petition with 458 signatures of people who signed the original petition in good faith. It is the same petition but, unfortunately, does not have the prayer on it; it is just a petition to stop the Didicoolum Drain. I think it is very clear that it is, in fact, the same petition. Unfortunately, it does not comply with standing orders for the tabling of petitions, but you can see that nearly 800 residents of the South-East have signed this petition.

As I think I said in my contribution back when we extended the act to allow this program to continue—in particular, I said this to the demonstrators on the steps of Parliament House—the Liberal Party supports the drainage scheme in its original form to drain the salinity and the saline ground water from the landscape. The Didicoolum Drain is particularly interesting, and a number of landowners are very concerned about the outcome of this drain—in particular the Prossers of the Kyeema property that was mentioned earlier today when the Hon. Russell Wortley and I spoke to the ERD report into the Upper South-East Dryland Salinity and Flood Management Program. It was Mrs Susan Prosser and her husband Dean who were the instigators of the petition, and I would like to publicly acknowledge their contribution to the cause of having the minister reconsider the digging of the Didicoolum Drain.

This particular drain is of significant concern because, as the Hon. Russell Wortley said, the ERD Committee recommended a different alignment for the drain: that it should not progress through the Kyeema property or a number of other properties but should be dug back through the range into the Wongawilli Drain. That would still give the same outcome as far as drainage to the properties affected by rising salinity are concerned but would not impact on properties that do not wish to have the drain. In fact, when we visited the area with minister Hill one landowner commented that if he had a drain he would not pay his levy (some $100 000) but he would be happy to pay a levy not to have a drain. That gives members an idea of the level of feeling in the community down there.

While I do have some faith in the engineering solution to maintain the water levels in the drains with seals and weirs, my biggest concern at present is coming from the Padthaway irrigation area where, as we all know, some of South Australia's finest wines are grown. Only this morning I had a phone call from Mr Kym Vogelsang, who is very concerned about the falling ground water levels in the Padthaway area and who spoke about some of his own particular concerns. Water levels have dropped some 2.5 metres in all his bores, and he thinks that this is the same level as the water currently in the Jip Jip drain or weir—which is, if you like, at the end of where the Didicoolum Drain would be.

I am not certain whether this information is 100 per cent accurate, but I have written to the minister to ask her to go down and visit these landowners as a matter of urgency—and not in a confrontational sense. I have stressed to the landowners that this is not time for beating their chests and thumping the table, but rather a time to sit down with the minister and her advisers to try to get some clarity as to whether the water levels in Padthaway have dropped as a result of drainage that has already occurred (that is, the Wongawilli Drain) and to talk about the likelihood that the digging of the Didicoolum Drain could impact on that particular resource. Mr Vogelsang indicated that in years gone by, when the Morambro Creek ran (for those who do not know, that is a creek that runs north of Naracoorte, roughly between Naracoorte and Padthaway—you are nodding, Mr President, so I guess I have that about right)—

The Hon. D.G.E. Hood interjecting:

The Hon. D.W. RIDGWAY: As the Hon. Dennis Hood interjects, it is a beautiful part of the world. It flows into the underground aquifer through some big runaway holes at the southern end of Padthaway. Mr Vogelsang told me that when the creek was flowing properly it used to take about two weeks for the water levels on the Padthaway flats to start to come up out of the soil—a bit like springs. It would then take another three weeks or so (about five weeks of flowing) for the water to come up at an area known as Dickinson's Corner—a further 20 or 30 kilometres down the road. After about eight weeks it would come up out of the ground almost at the alignment of where the new Didicoolum Drain is proposed. That indicates that all those ground water structures are potentially linked together, and it also indicates that the Didicoolum Drain could have some impact on the Padthaway water resource.

I am not accusing anyone or saying that we are about to destroy the Padthaway water resource, but we cannot afford to get it wrong. The number of signatories (almost 800) to the petition indicates that there is a significant level of concern in the community that the drain may be having an adverse effect on the Padthaway area. As you know, Mr President, there are now some 10 000 hectares of vines in that area, as well as a whole range of horticultural crops. All I intend to do at this point is to forward this petition, with its almost 800 signatures, to the minister and ask the minister to respond to all the signatories, and I will write to all the 800 people to advise them that I have forwarded their petition to the minister.

Also, I again ask the minister, not in a confrontational sense, whether she could see her way clear to get down to Padthaway prior to Christmas to meet with these landowners and to have a frank discussion about the potential impact this drain might have on the Padthaway irrigation area and to try to at least come to some level of agreement, because there is an increasing level of concern in the community that we may be doing something we will regret for many, many years to come. With those few words, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

MOTOR VEHICLES (EXPIATION OF OFFENCES) AMENDMENT BILL

The Hon. D.G.E. HOOD obtained leave and introduced a bill for an act to amend the Motor Vehicles Act 1959. Read a first time.

The Hon. D.G.E. HOOD: I move:

That this bill be now read a second time.

This bill seeks to amend the Motor Vehicles Act 1959. Honourable members will note that it is not a thick bill. The change is subtle in form but it is, in fact, so substantial that I hope the government, the opposition and cross-bench members will join me in promptly supporting it.

For some time, I have read in the newspapers, heard on talkback radio, and listened to constituents commenting about the unacceptable delays in our court system. I was driven to look into this further when there were whispers about my bill concerning expiation of the offence of growing a cannabis plant. The whisper was that it would burden the courts to have all these cannabis growers before the courts. So, I looked into that issue and ascertained that the caseload in the courts would grow by less than 1 per cent.

I then asked my office to research the true causes for the court delays. After studying the Magistrates Court lists in four Adelaide courts over a period of seven weeks, we discovered an alarming statistic; that is, that two offences were mentioned in fully one-sixth of all matters in the Magistrates Court. I have not counted all the offences on the statute book, but for these two offences to comprise one-sixth of all Magistrates Court matters is alarming. They are: driving an unregistered vehicle and driving a vehicle without a third party insurance policy in place.

I might start by talking about why these offences are so common. The first reason is that they are easy for South Australia Police to detect. With the police's computer and radio systems, a vehicle of interest can easily be checked by operators at the base to see whether the vehicle is registered and therefore insured against third party risk. I cannot think of a much easier pinch, if I can call it that, for the police. So, first of all, it is relatively easy for the police themselves.

The other reason these offences are so common in the courts is that innocent people forget to pay their registration and, because there is no expiation system, they have to face the courts. Law-abiding citizens—in some cases, for the first and only time ever in their entire life—have to confront a magistrate to explain why they let their registration and/or insurance lapse. To my mind, these people are not real criminals at all, but our courts are bogged down with these matters. In fact, as I have said, one in six cases before our courts is dealing with these matters.

I can only wonder how magistrates find the enthusiasm to determine every sixth matter when they could probably be conducting real trials or bail hearings, or dealing with other more important matters. In some cases, the magistrate's time is taken up explaining court procedure to an unrepresented defendant or listening to the life story of these people to explain why they should receive a lesser fine—little of which, apparently, changes the eventual outcome by any substantial degree. It is my view, therefore, that these offences ought to be expiable offences; hence Family First is introducing this simple bill.

Under this bill, if a person fails to register their vehicle, they can pay a $105 expiation fee in addition to the fee for re-registering their vehicle. If they fail to insure their vehicle against third party risk (and usually both offences are committed together; or perhaps I should say that both offences are omitted together), they face an $80 expiation fee for a trailer and a $210 expiation fee for a normal vehicle or other vehicles. In most cases, the combined effect would be a fine of $315, which I note exceeds the current fine for growing a single cannabis plant in this state. So, the fine sends a very serious message to the offender.

From my investigations, it is apparent to me that there is rarely any argument the offender can raise in order to be acquitted of the offence. The court attendance is, in effect, an open and shut case, so we see no point at all in troubling the court with the majority of these cases. Why should these people go to court in the first place? Offenders ought to be able to expiate and then go through the excellent Fines Payment Unit that is now operated by the courts. Our view is that the majority of offenders will end up in the Fines Payment Unit anyway, so why bother the magistrate, but, in fact, that is what happens. Those who want to profess their innocence can elect to be prosecuted in the normal way, and therefore go before the courts. There is no disadvantage at all to the individual involved.

I think it is worth making some comparisons with what happens interstate—and I was quite surprised at some of the findings. If I can turn to interstate comparisons, I am sure honourable members would agree they are interesting. South Australia, in fact, is well out of step with other states and territories, and my proposal is even more moderate than what other states are doing. For example, in New South Wales the expiation fee is $461 for a class A (a standard vehicle) and $974, plus four demerit points, for class B or class C or heavier vehicles.

In Victoria the expiation fee for driving an unregistered vehicle starts at $110 for an unregistered motorcycle of less than 60cc, through to $500 for a two-axle vehicle and up to $900 for a vehicle with more than four axles. In the Australian Capital Territory the expiation fees are $484 for each offence or, in other words, $968 for the usual case where you commit both offences. In the Northern Territory the expiation fees are $200 if your registration and insurance are less than one month overdue; $500 if they are between one and 12 months overdue; and, if it is a trailer, a flat rate of $100 applies. I assume if you go longer than 12 months without registration or insurance then that becomes a court matter. In Western Australia and Tasmania and, of course in South Australia as well, there is no expiation system, but there is in the states I have just outlined.

I will conclude with some information from Queensland which I think gives us very strong reason to support this bill. They have given us much more comprehensive information, and they have seen dramatic rewards for introducing an expiation system for these offences which did not exist up there previously but which now do. The expiation fees are between $120 for unregistered trailers up to $1 200 for an unregistered B-double truck. For an uninsured vehicle, it is from $150 for a motorcycle to $900 for a B-double. From May 2005 to April 2006 Queensland handled some 36 124 expiations for unregistered vehicles, trailers, etc. and 21 197 expiations for having no compulsory third party insurance. That is a total of 57 321 expiations in 13 months. Imagine if all those matters had gone to the Queensland courts; it would be absolutely gridlocked.

What they have introduced in Queensland, in order to make the court system more able to deal with these matters, is what we are proposing be introduced here. Indeed, the problem here in South Australia is that our courts are handling these matters at the moment, as I said. If you think that is a little far-fetched then consider this: our research shows that, in the seven weeks that we monitored, there were some 3 347 cases involving one or both of these offences. Now, that is in just seven weeks and in just four magistrates courts. But those figures over seven weeks tell us that, for 52 weeks of the year, we are sending perhaps fewer cases, but certainly numbering in the tens of thousands, unnecessarily to the courts.

As I say, Queensland has seen dramatic rewards for introducing expiation for these offences. I guess the real issue here is that, if this bill I am proposing becomes law, then our courts will be freed up significantly and it would enable us

to pursue real criminals and, indeed, enable us to pass my other bill before the council, which is to take cannabis out of the expiation system. I am open-minded to tougher penalties if honourable members want to amend this bill in that way, having heard the interstate comparisons. However, I have tried to strike a moderate balance, and parliamentary counsel tells me that the maximum we can impose under the expiation system is a total of $315, and we are not about to try to change the maximum expiation limit for all offences; we want this bill to pass and not fail for being too complicated.

We see several considerable benefits if the bill passes. First, and most obviously, the case load in our courts would lessen significantly, leaving magistrates with the opportunity to devote more time to, frankly, matters of greater substance. As I said, one in six cases would be freed up under our statistics. If you speak to lawyers practising in magistrates courts across the state, most will be able to tell you of being told by a grumpy magistrate that there was no time to hear their client's matter as there were several hundred matters on the list that day. More time for magistrates to hear matters in turn, in our view, would drop the waiting times for trials and other hearings significantly—again, a significant reason to pass this bill.

Another benefit would be the reduction in the need to depend on special justices. The jury is out (if you will excuse the pun) on whether special justices are appropriate or necessary. This bill, in our view, will reduce the need for them. I recall the Attorney-General saying recently that the first special justice had been deployed at Elizabeth. Elizabeth Magistrates Court was the worse offender in our study, with an average of 21.1 per cent of all matters in that court featuring one of these two offences. That is one in five offences in the Elizabeth Magistrates Court featuring these offences: one day a week being taken up with something that could be expiated.

Indeed, on Tuesday 15 August this year, 44.7 per cent of all matters that day involved one of these two offences: nearly half of all matters on that day. This was the highest number recorded over the seven weeks, though for the record I note that Port Adelaide had similar shocking days. Over the four trial court jurisdictions, Elizabeth scored 21.1 per cent; Holden Hill 20.8 per cent; Port Adelaide 18.9 per cent; and Adelaide was significantly lower at 12.1 per cent. Family First cannot see how these statistics sit well with the government or with other members. We consider this reform a simple, commonsense approach to a clear problem in our courts that will create swifter justice for all users of the court system, and also a streamlining of procedure, removing unnecessary court attendances for the many people who inadvertently fail to pay their registration or third party insurance.

Interstate experience tells us that they have seen no moral barrier to introducing expiation fees offences and, indeed, very few problems at all. One case that springs to mind was of a gentleman who simply went overseas for a period of time and came back to find that his registration had been expired for some months and, as a result of that, he had to front the courts to explain himself, resulting in costs and inconvenience and, of course, the clogging up of our court system. I am sure his example would not be the only case. In summary, we say let us leave the courts to deal with the real criminals and free up the court system. Approximately one in six cases in our magistrates courts would simply not have to be dealt with if we introduced this and it became law. I commend the bill to honourable members.

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

BELAIR NURSERY

The Hon. R.P. WORTLEY: I move:

That this council recognises the achievements of SA Flora's Belair Nursery on its 120th anniversary.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wortley has the call.

The Hon. R.P. WORTLEY: It is with great pleasure that I stand here today to share in this significant celebration to commemorate the 120th—

The PRESIDENT: Order, members on my left!

The Hon. R.P. WORTLEY: —anniversary of the Belair Nursery. In 1886, 218 hectares known as the Government Farm Belair was gazetted as the Belair Forest Reserve. Within this area 4.2 hectares were set aside by the woods and forest department for the establishment of the Belair Nursery. The site was selected because of its natural protection within a gully, its deep black loam soil and its supply of water from the spring-fed creek—a unique setting for a nursery surrounded by a wonderful natural environment. One could not ask for a more perfect location for what has become a great state asset.

From its conception, the Belair Nursery propagated seedlings from the State Forest Reserve and for state revegetation. It provided free distribution of seedlings to rural landholders as part of the government's program to encourage tree planting in the colony. Within two years the Belair Nursery had raised 55 451 seedlings (mostly eucalyptus), which were planted across the state. In 1891 the Belair Forest Reserve was dedicated a national park, while the Belair Nursery remained under the auspices of the woods and forest department. During its early years a small range of exotic species were propagated. These included ash, elm and poplar trees for farms in urban areas, Pinus radiata for forest replantations and, from 1890 to 1920 (and the Hon. Mr Ridgway would be very thrilled about this), 500 000 grapevine cuttings were grown to assist with the expansion of the wine industry.

Over the later years the range tended towards Australian and South Australian native species. In the mid 1970s a new woods and forest nursery was established at Murray Bridge with a modern propagation facility. So, after many years of production at the Belair site, propagation was shifted to Murray Bridge where nearly all the state's flora plants are grown today. In the early 1990s the woods and forest department was annulled and the Belair Nursery became the State Flora Nursery—its only name change in its 120-year history. In 2003 State Flora became part of the Department of Water, Land and Biodiversity Conservation and has continued to flourish, increasing its range and diversity of Australian native plants. To give an indication of how State Flora has grown, in 1925 the Belair Nursery propagated 123 000 plants; in 1974, in its final year of propagation, 200 000 plants; and last year State Flora propagated just over 1 million plants.

Today State Flora's relevance is even more pronounced, because it propagates over 1 000 different species of native plants, many of which are very hardy and well adapted to our climate, requiring minimal water—a great achievement and testimony to the nursery's community service and solid representation. As South Australians, we should feel proud

and privileged to have such an important asset as State Flora. Whether it be for revegetation or to establish a water-saving garden, we know that State Flora's Belair Nursery offers a diverse range of reliable native plants, information and expert advice.

For 120 years the Belair Nursery has been a very special place for so many South Australians. It has grown from its early days propagating radiata pines and exotic species through to today providing South Australians with the largest range of Australian and South Australian native plants. Please join in celebrating with the Belair Nursery its success in reaching a significant milestone and look to the benefits of what the next 120 years of dedicated propagation by State Flora can provide for our future generations.

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

SELECT COMMITTEE ON COLLECTION OF PROPERTY TAXES BY STATE AND LOCAL GOVERNMENT, INCLUDING SEWERAGE CHARGES BY SA WATER

The Hon. I.K. HUNTER: I move:

That the time for bringing up the report of the committee be extended until Wednesday 28 March 2007.

Motion carried.

SELECT COMMITTEE ON PRICING, REFINING, STORAGE AND SUPPLY OF FUEL IN SOUTH AUSTRALIA

The Hon. R.P. WORTLEY: On behalf of the Hon. B.V. Finnigan, I move:

That the time for bringing up the report of the committee be extended until Wednesday 28 March 2007.

Motion carried.

SELECT COMMITTEE ON ALLEGEDLY UNLAWFUL PRACTICES RAISED IN THE AUDITOR-GENERAL'S REPORT, 2003-04

The Hon. R.P. WORTLEY: On behalf of the Hon. B.V. Finnigan, I move:

That the time for bringing up the report of the committee be extended until Wednesday 28 March 2007.

Motion carried.

SELECT COMMITTEE ON THE ATKINSON/ASHBOURNE/CLARKE AFFAIR

The Hon. R.P. WORTLEY: I move:

That the time for bringing up the report of the committee be extended until Wednesday 28 March 2007.

Motion carried.

SELECT COMMITTEE ON THE SELECTION PROCESS FOR THE PRINCIPAL AT THE ELIZABETH VALE PRIMARY SCHOOL

The Hon. R.P. WORTLEY: I move:

That the time for bringing up the report of the committee be extended until Wednesday 28 March 2007.

Motion carried

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: ANNUAL REPORT

Adjourned debate on motion of Hon. R.P. Wortley:

That the 59th report of the committee entitled 'Annual Report July 2005-06', be noted.

(Continued from 15 November. Page 972.)

The Hon. D.W. RIDGWAY: The committee has had a very active 12 months. Of course, parliament was prorogued and we had a state election so, unfortunately, there were a couple of months when the committee was unable to meet. The committee has completed two inquiries, tabled five reports, assessed five aquaculture projects and 42 plan amendment reports. The committee completed an inquiry into marine protected areas and a native vegetation inquiry into the Eyre Peninsula bushfires, which resulted in some 21 recommendations, 20 of which were supported by the minister. The marine protected areas inquiry had a high level of importance, given that currently the government has a marine planning framework in place and the marine protected areas legislation is also out for public consultation.

It was an important and interesting inquiry in that it looked at the impact that native vegetation had on the Eyre Peninsula bushfires: first, in perhaps aiding or slowing the spread of that fire; and, secondly, the importance of roadside vegetation for biodiversity links, if you like, between various remnant patches of vegetation. We undertook a field visit which was the first time that I had had a detailed look at that part of the state. I have been to Port Lincoln a number of times but have not visited the farming areas. Certainly, from a personal point of view, it was a very educational and worthwhile experience. As I mentioned earlier this evening, we also reported again into the Upper South-East Dryland Flood Management Act 2002, and that report was tabled and noted earlier this evening. Again we will have some ongoing involvement with that scheme.

It is the last time that the ERD Committee will report on it. As we know, it will go to the Natural Resources Committee, and it will be a scheme which will be of some interest to the Natural Resources Committee. We all hope—that is, everyone in this chamber and the state—that we have significantly wetter seasons so that the drainage scheme can work properly and the groundwater levels can be manipulated with weirs and seals to achieve the desired outcome and rehydrate the South-East. We did visit the South-East in September 2005. As I mentioned, we visited a number of properties and met with a number of landowners. We are faced with an interesting situation. We have a divergence of views within the community and, as I said earlier, some major concerns about the Padthaway irrigation area.

The committee also considered five aquaculture policies and has had several briefings from the department. I always think that is one of the most exciting new industries in South Australia. I also mention that it was the Hon. Rob Kerin who, as minister for agriculture, progressed the aquaculture industry in South Australia. If it had not been for his vision, foresight and tenacity in the former Liberal government and his taking that through the cabinet process, we may not have an aquaculture industry in South Australia today. It is important that the ERD Committee monitors that important industry. We need to ensure that it is developed in a sustainable manner and that the impact on the environment is kept to an absolute minimum.

I would like to thank a number of members who served on the committee. Prior to the state election, the membership included the now Minister for Environment and Conservation (Hon. Gail Gago), the Hon. Sandra Kanck, the Hon. Malcolm Buckby and the member for West Torrens, Mr Tom Koutsantonis. There are a number of new members on the committee this year: the member for Schubert, Ivan Venning, the member for Fisher, the Hon. Bob Such, and the Hon. Mark Parnell, who, being the first member of the Greens elected to this parliament, adds a valuable voice to the committee and who has had a different point of view on a number of occasions.

The Hon. M. Parnell: He never supports me, though.

The Hon. D.W. RIDGWAY: It does not mean that I do not value his contribution, though. Of course, his experience with the planning act is also quite useful when it comes to the plan amendment reports. The Hon. Russell Wortley is also a new member, and he has made an extremely good contribution to the committee. He has vigorously pursued the under resourcing of the committee, which I think is a very important aspect of the committee's work. I thank the Hon. Russell Wortley for his vigorous contribution.

We have a number of interesting inquiries for next year. We have a coastal development inquiry about which we have received some 60 or 70 submissions. That includes coastal development of any nature whether it be an aquaculture fisheries development, a residential or commercial development, or a marina. As you would understand, Mr President, there is quite a lot of interest in that particular inquiry. We will also conduct an inquiry into natural burial grounds, which was instigated by the member for Fisher. That has also created quite a lot of interest. I am sure that that is something that the committee will gets its teeth into in the next 12 months. I thank the committee staff, Mr Phil Frensham and Alison Meeks for their hard work throughout the year. I also acknowledge that Alison Meeks was on secondment from the EPA and has decided to return to the EPA. Her work and contribution has been invaluable certainly in the time that I have been a member of the ERD Committee. As I said, I thank Phil Frensham but especially Alison Meeks as she returns to the EPA. With those few words, I commend the report to the council.

Motion carried.

WATERWORKS (WATER MANAGEMENT MEASURES—USE OF RAINWATER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 974.)

The Hon. M. PARNELL: I rise to support the second reading of the first of three bills introduced by the Hon. David Ridgway to do with water conservation and helping us to cope with what is inevitably going to be a drier state as a result of climate change. When I looked at the honourable member's bill, it seemed to make a lot of sense, but I was uncertain as to the need for some of the measures that he has proposed. There are basically two main aspects to this bill, and the first is the requirement for SA Water to include backflow devices when it restores or replaces a water meter. That makes a lot of sense. When SA Water performs work on a meter, the installation of a valve to prevent water flowing from the property back into the mains makes a lot of sense.

The second part of the bill basically provides for rainwater to be allowed to flow through the same pipes as SA Water's water—in other words, avoiding the need for duplicate pipes. In some circumstances, duplicate pipes is a good idea, and the Environment, Resources and Development Committee, as the Hon. David Ridgway spoke about recently, has had a number of field trips and one of them was to look at the use of recycled stormwater in housing estates, and they in fact have different coloured pipes and different coloured taps to make sure people do not drink water from the wrong supply.

My understanding was that there was nothing in the Waterworks Act that actually prevented people doing what this bill now proposes. That is not to say I am opposing the bill; I was just posing the question whether it is necessary. For example, my understanding is that the only requirement SA Water has before you connect your rainwater tank to the plumbing in the house is that you have one of these back flow prevention devices. The need for that is fairly clear. I imagine if someone had a dead possum in their rainwater tank we do not want any diseases flowing back into the mains. The Hon. David Ridgway in his second reading speech made the point that it would be unlikely that any water would backflow, given the pressure in the mains, but technically it is a possibility, so I can understand why SA Water would want to protect itself.

Like many members here, I have recently installed more rainwater tanks at my house, and I have the rainwater tanks plumbed into the toilet and I used the existing pipes. However, I did not need a backflow device because I disconnected the toilets from the mains. The only way I can flush my toilets now is with the rainwater tank. However, a staffer in my office has had rainwater tanks tapped into all of the same pipes in his house that also receive SA Water, and when this was done the plumber installed a backflow device and that means that for about nine months of the year he and his family have been able to survive purely on rainwater, and that is the whole household—the kitchen, laundry and bathroom, as well as the garden. When the rainwater tank runs low, my staffer simply switches off the rainwater pump, turns a lever and the house is converted back to mains water.

My understanding is that these techniques are currently lawful, so maybe the honourable member's bill is out of an abundance of caution to make it absolutely clear that there is no impediment to people undertaking these sensible measures to conserve rainwater that falls on our houses and to use it to replace the increasingly scarce SA Water mains water supply. With those few words, I support the second reading of the bill.

The Hon. SANDRA KANCK: I will address all three of the Hon. Mr Ridgway's bills in this single short contribution. Clearly, these are measures designed to help reduce the impact of our demands on our very limited water resources in this state. On the issue of grey water, I find it strange that we have the current requirements in place. Anyone who is seeking to put grey water onto their gardens is, in most cases, a conservationist to begin with so they understand issues about phosphates and so on. I go through the ridiculous exercise of trying to catch the water in buckets from my washing machine when it goes onto the spin cycle, so I have two buckets and I get one filled and put the pipe into the next one and I rush out to throw it onto the garden and come running back in to try to get the next bucket.

The Hon. M. Parnell interjecting:

The Hon. SANDRA KANCK: Yes, well I think this bill is sensible. It would certainly save my doing that. It is important to recognise that, for most of us, only about 20 per cent of our water needs to be potable, so the rest of it can be recycled and reused, and so on. For instance, with my washing, I do not use detergents, I would think, 90 per cent of the time, so the water that comes out of my washing machine might have a little bit of lint in it, or something like that, but certainly no 'baddies'.

I commend the Hon. Mr Ridgway for these initiatives because I think the government is tinkering at the edges putting domestic water restrictions in place. They will certainly not solve the water crisis we face. The level 2 restrictions we have in place have made no difference to my water usage because I was already conserving and, when the level 3 water restrictions come in, it again will make no difference to my water usage. What the Hon. David Ridgway is suggesting with his three bills I think is part of the 'Waterproofing Adelaide' ideas. I think we are going to have to deal with the crisis that faces us—and I do believe it is a crisis, not just a drought. It is part of the climate change that we will have to deal with in the future, and we are not putting things in place such as making industry make some sacrifice. So, perhaps the passage of these three bills will embarrass the government into taking a more innovative approach to reducing water usage in South Australia.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. D.G.E. HOOD: I support the second reading of the bill, which seeks to amend the Waterworks Act 1932 and make a related amendment to the Sewerage Act 1929 to provide the capacity for householders to recycle their rainwater, which is a very reasonable idea. To Family First this bill makes sense. The general public may be surprised that there are legal barriers to plumbing your rainwater into your household system. SA Water's fear, I understand, is that the flow of rainwater back into the water system raises public health questions and perhaps even issues for monitoring the water intake and flow through the system. In essence, the system is for water delivery to houses, and now a two-way collection and distribution system. Nonetheless, this bill resolves the problem by ensuring that backflow valves are installed on all future properties and provides mechanisms for people to use their rainwater in the house, so long as a backflow valve is installed.

The roof of a suburban Adelaide house and, to a lesser extent, houses in regional South Australia are an incredible combined catchment area. Much of the collection goes out to the stormwater system and in other parts of the world flash floods occur because the local environment is not equipped for the collection of runoff of so much rainwater, when the soil and trees simply soaked it up. We have this catchment and a lot of useable water going down the drain, just as waste water, which the Hon. Mr Ridgway has brought before us in another bill, often goes out into Spencer Gulf.

This bill removes the red tape for householders who want to use their rainwater in the home. Family First hopes that developers like Delfin, Hickinbotham, Homestead and the like, who offer house and land packages for first home buyers usually in the outer suburbs are not ignoring water saving concerns by leaving plumbed rainwater out of the equation. It should no longer be a luxury item for those who can afford it, but rather a standard feature of all new homes, as with rainwater tanks, smoke alarms and other things the government has insisted that people install in their homes. The present drought signals the need in this dry continent to go the extra mile in new home design and to ensure the plumbing of rainwater.

I have a concern about clause 6, which ensures that the reasonable costs of installing the mandatory backflow valve can be passed on to the consumer through their water rates. I think the wording is fair, but in practice I hope it is not simply passed on to the consumer through higher water rates. We have heard allegations that the government is absorbing SA Water profits into general revenue—we are not sure if that is true—but surely in this drought, in a country prone to droughts, those profits should be reinvested into water infrastructure and in this instance SA Water carrying the burden as part of its general expenses of installing these mandatory meters.

We heard just yesterday of the situation with the Triple S Superannuation Scheme, which found itself awash with funds due to higher than necessary premiums, as it turned out, being charged to policyholders. What did Triple S do? It gave back to its policyholders by offering greater products. SA Water should do the same if this bill passes and refrain from passing the cost of these backflow valves on to consumers through higher water rates.

Having said all that, I come to the conclusion that Family First supports this bill. I would like comment from the responsible government member about whether SA Water might pass on directly the costs of the measure, resulting in increased water costs to South Australian families.

The Hon. B.V. FINNIGAN: I seek the indulgence of the council to deal with the three bills being moved by the Hon. Mr Ridgway and to put forward some information about the government's position. I deal first with the Waterworks (Water Management Measures—Use of Rainwater) Amendment Bill, which the government opposes. The bill is aimed at removing perceived legislative barriers to the interconnection of reticulated water supplies and rainwater sourced from tanks. The government opposes the bill on the basis that the government and SA Water have anticipated and introduced (or are in the process of introducing) all reasonable measures necessary for supporting and controlling mains water, rainwater and interconnected supplies. The bill offers no significant additional benefits and would, if passed, impose significant additional funding requirements upon both SA Water and government.

The Hon. D.G.E. Hood interjecting:

The Hon. B.V. FINNIGAN: I note that the Hon. Mr Hood has expressed some concern about whether costs would be passed on to consumers. Customers are already allowed to connect piping containing rainwater into the piping that supplies mains water to their house and SA Water, under current legislation and practice, has been approving interconnections of reticulated and rainwater supply since the early 1990s, subject to reasonable requirements to protect the interests of the public and the water supply. So, there are no legislative barriers to interconnections of this type.

A key feature of the bill is the requirement for SA Water to install back flow prevention. However, again, since the early 1990s, SA Water has installed back flow prevention devices to all existing properties which are known to have installed, or which are about to install, a rainwater tank plumbed into the private domestic water supply. This has been extended to all new residential properties from 1 July

this year in accordance with the government's mandatory rainwater tank initiative.

The government is strongly committed to water management, and there have been a number of recent government initiatives supporting the increased collection and use of rainwater, including the Waterproofing Adelaide strategy and the rainwater tank implementation plan, which has made the installation of a rainwater tank for all new homes and significant extensions to existing residential properties mandatory from 1 July this year. The plan reflects a March 2004 government decision to allow rainwater stored in tanks to be used for suitable indoor purposes and, further, the government's rainwater tank plumbing rebate from 1 July this year is assisting property owners with the cost of connecting tanks in existing homes to at least one toilet or laundry, cold water outlet or hot water supply.

For those reasons, the government opposes the bill, on the basis that the government and SA Water have already anticipated and introduced, or are in the process of introducing, all reasonable measures necessary for supporting and controlling mains water and rainwater interconnected supplies. As I said before, the bill offers no significant additional benefits and would, if passed, impose significant additional funding requirements on both SA Water and the government.

I turn now to the second of the Hon. Mr Ridgway's bills, the Sewerage (Water Management Measures—Use of Waste Material) Amendment Bill, which proposes changes to the Sewerage Act to establish a framework for the consideration by government of requests for access to infrastructure controlled by SA Water for the purposes of sewer mining.

The Hon. T.J. Stephens: So, you are going to support this one. I'm sure you are.

The Hon. B.V. FINNIGAN: I hate to disappoint the honourable member. The government has given careful attention to the bill. However, we will oppose it. The bill moved by the Hon. Mr Ridgway is largely a repeat of the one tabled in the previous parliament by the then member for Unley (Hon. Mark Brindal), which lapsed with the prorogation of parliament. As I said, the government will oppose this bill. Sewer mining has been the subject of consideration within government at various times over recent years. The study team for the Waterproofing Adelaide project considered sewer mining as a potential alternative water resource, and concluded in its 2004 report entitled 'Exploring the Issues—a Discussion Paper' that these schemes could have 'the benefit of reducing the overall load on the SA Water network and provide non-potable quality water where needed'. However, the report also noted that encouraging the use of sewer mining may require establishing rules and enforcing obligations on the potential user as well as the institution responsible for managing the sewerage service to ensure that community interests are best served.

The government is keen to offer all reasonable opportunities to its water customers, including councils and private scheme operators, to allow them to consider a range of possible alternative water supply options, including recycled water, with the aim of reducing South Australia's dependence on reticulated drinking water supplied by SA Water. These initiatives are particularly important, given the predicament in which the state and water customers, in particular, find themselves due to the current drought.

The government readily embraces the broad concepts expressed in the bill. Furthermore, SA Water actively supports the scheme currently managed by the Port Augusta City Council, which involves the extraction of waste material from SA Water's infrastructure, its treatment and the return to the SA Water sewerage infrastructure of concentrated by-products of the recycling process. It is considered that there is likely to be limited scope for applications of this type of private scheme.

Deciding factors could include economies of scale in producing relatively small volumes of water for plants located in urban areas where benefits to councils would be maximised; the complexity of the operations of these schemes, in terms of consistency of the product; the likely cost of construction and operation; and a range of factors, including the potential concern in the community. However, this will not prevent the government's continuing to consider opportunities in this area of increasing the use of an alternate water resource.

Turning to the specifics of the bill, as I said, the government considers that the bill should not proceed. It considers, first, that there is no need for legislation in this form at this time, because the government and SA Water are both actively supporting these types of schemes, which can be and are being done under current powers. Secondly, the government considers that, like the bill to which I previously alluded which was moved by the member for Unley in the previous parliament, there are major deficiencies in the bill, in that it does not address the critical issues of related approval, regulation and monitoring requirements of the Department of Health, the EPA, councils and any other agencies.

The government further notes that SA Water has particular responsibility for the integrity of the infrastructure that it manages. In this way, it may enter into an agreement with a sewer miner for the construction, operation and maintenance of sewer mining connections and the return of waste to sewerage systems. Any agreement would be contingent on the miner's having obtained the necessary licences from the EPA and others as necessary.

The bill sets up an elaborate licensing system to be administered by SA Water, with appeal rights to the Environment, Resources and Development Court. While controls are clearly required, under the Environment Protection Act 1993, the EPA is responsible for licensing specific activities and works. In this regard, all of SA Water's waste water treatment plants are currently licensed by the EPA to ensure protection of the environment arising from any associated discharges.

A sewer mining operation may need to be licensed under these or other provisions of the act. For example, in addition to sewerage treatment operations, a licence is required when a waste or recycling depot receives, stores, treats or disposes of waste. Proposing the establishment of another licensing mechanism would need careful attention. Earlier this year, the government announced its commitment to reducing unnecessary red tape and has set targets for such reductions to be achieved by 2008. In this context as well, the proposed licensing arrangements appear to be overly cumbersome and duplicate existing licensing mechanisms available to the EPA.

The government also considers that additional time is required for further investigation to be undertaken into the best approaches available in progressing schemes of this nature. These issues include the perceived benefits versus the actual benefits; the implications, if any, for public health; the capacity of the current infrastructure to handle the volume of possible extractions, taking into account any supply needs identified by reviews of other current systems and new initiatives of government; and the nature and the impact of the possible return to the sewerage system of concentrated

quantities and qualities of waste materials that are not required by developers of such schemes.

Finally, as part of its 2006 election proposals, the government committed to amending SA Water's legislation to ensure that it implements environmentally friendly water initiatives and policies and to modernising the WaterWorks Act 1932 and the Sewerage Act 1929 to ensure that they support 21st century ideals with regard to water conservation and recycling. A number of the issues raised in the honourable member's bill are being addressed in the proposed changes, which will take a holistic approach to a broad range of environmental and other changes relating to the use of a range of alternative non-potable water resources. Work is well advanced on the development of the proposed changes. It is therefore the government's view that, given the current and future directions outlined above, it would be unwise and potentially contrary to due diligence obligations to rush into enacting the legislation proposed by the Hon. Mr Ridgway ahead of the completion of further investigations and consideration by government, and the government opposes the bill for those reasons.

Members interjecting:

The PRESIDENT: Order! The opposition should not go to water on this!

The Hon. B.V. FINNIGAN: I turn finally to the Sewerage (Greywater) Amendment Bill moved by the Hon. Mr Ridgway. This bill proposes amendments to the Sewerage Act 1929. The government has given careful attention to the bill presented by the Hon. Mr Ridgway, which bill again seeks to remove perceived legislative barriers which are viewed as being unreasonably restrictive to the use of grey water from washing machines on residential properties. The bill as presented highlights an issue which is by no means new and which has been the subject of consideration within government at various times, over recent times in particular. Waterproofing Adelaide, for example, considered water as a potential—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order!

The Hon. B.V. FINNIGAN: —alternative resource and concluded in its 2004 report that, with some on-site treatment, grey water is a potential source for garden use and toilet flush water. There are rules in place regarding the installation and maintenance of grey water systems which are designed to protect health, water supply and local amenity.

The government is keen to offer all reasonable opportunities to its water customers to allow them to consider a range of possible alternative water supply options, including grey water, and therefore assist in reducing South Australia's dependence upon reticulated drinking water supplied by SA Water. Of course, we have seen the introduction of level 2 water conservation measures in recent times, and I believe level 3 will be introduced on 1 January next year.

The Hon. S.G. Wade interjecting:

The Hon. B.V. FINNIGAN: I thank the Hon Mr Wade for reminding me that Mount Gambier has a beautiful water supply in the Blue Lake, which is very blue at this time. The challenge identified by the government to the future is to remain open and innovative in considering options reasonably available to it to assist in its water customers.

Turning to the specifics of the bill, I draw the attention of the Hon Mr Ridgway and, indeed, all members, to the fact that, as a general rule, approvals for the discharge of grey water to other than the sanitary plumbing system are administered by the Department of Health in the first instance. Therefore, if the customer has the relevant approvals from the Department of Health and their local council, SA Water's involvement under the current legislation would normally be limited to requirements, if any, for connections to be made back into the sanitary system for overflow purposes.

I note that in his speech the Hon. Mr Ridgway referred to section 36 of the Sewerage Act 1929, when he said that it makes it illegal, in his view, for someone to discharge any waste material onto their property. I make it clear to honourable members that section 36 contains no total prohibition; it only contains a reasonable protection that waste material is not to be discharged without SA Water's prior authorisation. This protection allows SA Water to ensure primarily that, first, the customer has the relevant approvals from the Department of Health and their local council and, secondly, that any reasonable SA Water requirements for overflow purposes are met.

The government also notes that neither the bill itself nor the second reading explanation address the key issues of the manner in which these permanent connections would be made, nor do they appear to scientifically address the potentially significant risks associated with the use of grey water, even from washing machines. Advice provided to the government about the uses of grey water is that the potential consequences, if inappropriately used—

An honourable member interjecting:

The Hon. B.V. FINNIGAN: —I'm getting to that—are issues that are not as environmentally friendly and not as safe for use on lawns and gardens as most people think. This view is consistent with that held by not only SA Water but also the Department of Health, which has principal responsibility for the approval of grey water use systems and practices, and by councils, which are also involved in these matters. Some protections may continue to be necessary over the use or disposal of grey water in order to protect the environment, public health and relationships between some neighbours, where there is the potential for grey water discharged on one property to flow or seep into adjoining properties.

The current Department of Health position is that manual bucketing and temporary direction of grey water from washing machine outlets does not require the department's formal approval. This is based on its assessment that these practices are relatively low-risk, providing reasonable precautions, as outlined in its fact sheet, are followed. Further, the use of temporary application is amenable to corrective action being implemented in the event of problems, such as plants being killed or damaged or run-off occurring. Reports of this type of problem have been received by the Department of Health. The fact sheet advises that permanent devices require approval from the Department of Health. This is based on a determination of the potential for causing public health risk, aesthetic problems, such as odours, and environmental damage. It is worth noting that the new Australian guidelines for water recycling endorsed by state ministers on 24 November this year support grey water recycling but include cautionary notes, and I commend those to members. For councils, issues of interest include the risk to buildings, trees and other plants located on adjoining properties.

Members will also be aware that the government, as part of its 2006 election River Murray policy proposals, committed to amending the legislation establishing SA Water to ensure that the corporation implements environmentally friendly water initiatives and policies, as I mentioned in my previous contribution regarding one of the other bills. Following the government's re-election, steps were com-

menced to develop the required changes to those acts for consideration by government, and work is well advanced on the proposed changes, which include consideration of grey water opportunities and issues. The initiatives by the government and SA Water will take a holistic approach to a broad range of environmental and other changes relating to the use of a range of alternative water resources, including grey water.

In summary, the government's current view is that the bill to allow the unfettered use or disposal of grey water from washing machines on residential premises potentially exposes the government, the environment and public health to unacceptable risks. These risks may be significant as washing, other cleaning products and other materials that pass through washing machines will vary between customers and some will be of a nature as to be environmentally unacceptable in the medium to longer term. Clearly, it is a primary responsibility of government to ensure that adequate consideration is given to potential risks associated with an initiative before legislative change is made. The government considers it prudent that it await further advice on the outcome of the Department of Health led review of grey water regulations before determining its final opinion on the authorisation of increased grey water use.

I am not sure why the members opposite are concerned that the government wants to ensure that health issues are taken into account before we go ahead and approve a bill like this, without taking into account and ensuring that adequate consideration is given to the potential health risks. In the event that the Department of Health led grey water review outcomes are favourable towards increasing the use of grey water in circumstances as proposed by the Hon. Mr Ridgway, consultative and educational processes would still need to be followed. These include consulting with the plumbing industry regarding correct installation methods for permanent systems and with manufacturers and suppliers as to types of allowable plumbing products, and the development of an education package for prospective residential discharges in terms of appropriate washing products and practices. All these are necessary in order to protect lawns, gardens, plants, on-site soil quality and the local environment.

In the meantime, the current provisions of section 36 of the Sewerage Act 1929 will continue to provide a reasonable framework for the consideration of specific requests for the disposal of grey water from residential premises onto any garden or grassed area, the subject of this bill. For the reasons that I have outlined, the government opposes the bill.

That is the government's position on the three bills moved by the Hon. Mr Ridgway. There is no doubt that we are all concerned about the proper use of water and making sure that we have enough water for the future in our state, but the government is certainly going to take a careful and measured approach. The government has considered very carefully the bills that the Hon. Mr Ridgway has put forward, and we have concluded that, for the various reasons I have outlined, they are not the most appropriate course of action in the current circumstances, so we will be opposing the bill.

The Hon. D.W. RIDGWAY: I will be very brief, because I know we have quite a significant agenda tonight and I do not want to take up too much time. I thank members for their contributions on, initially, the first bill but, of course, in the case of the Hon. Mr Finnigan, all three bills—and I think the Hon. Sandra Kanck was referring to all three at the same time. I thank everyone for their contributions. It appears that everybody bar the government supports this. I am not sure about the Hon. Nick Xenophon, because he is not with us this evening, but it appears that he is likely to support this, like everybody else bar the government. That does not surprise me. There appears to be an attitude of 'We didn't think of this first, so we are just going to come up with a range of reasons and excuses why we can't support it.' In the first instance, that of connecting rainwater tanks to existing plumbing, the Hon. Mr Finnigan talked about the government's policy of mandatory rainwater tanks being plumbed into new dwellings—I think it was from 1 July last year or this year.

That is correct, but what he failed to include in his contribution was that it can only be plumbed into a toilet, a laundry sink or a hot water service. It does not go into the whole house; it has to be plumbed as separate plumbing into the dwelling. I think I indicated in my second reading speech that, in a house like the one I own, which is some 40 years old, it would cost many thousands of dollars to dual-plumb rainwater to the toilets and laundry, etc. This would allow a simple mechanism of fitting a backflow valve and allowing rainwater to flow throughout the house. With those few words, I thank members for their contributions and commend the bill to the council.

Bill read a second time.

In committee.

Clause 1.

The Hon. P. HOLLOWAY: In relation to clause 1, I make the comment that, as has been indicated in the reasons given by my colleague the Hon. Bernard Finnigan, the government opposes the bill. However, rather than go through each individual clause I will record that we are opposed to it. Given the other bills we have to deal with tonight, we will not prolong the debate by going through each clause, but our opposition to this and the other two bills has been well recorded by my colleague and we will not divide on them.

Clause passed.

Remaining clauses (2 to 8) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

SEWERAGE (WATER MANAGEMENT MEASURES—USE OF WASTE MATERIAL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 975.)

The Hon. M. PARNELL: I will be brief. The Greens strongly support this bill which allows for sewer mining, as it is called, for commercial and industrial purposes. This bill allows for outside parties to tap into the sewerage system to extract valuable water and then return any solids or waste materials back into the pipes. This is an absolutely sensible measure. Grey water is a resource that could well be used closer to its source of production. However, for this scheme to get anywhere it will be important for the government to put money into pilot schemes to show people in industry that it is a viable option.

The other obvious point to make is that, whilst virgin water (if I can call it that) is so cheap, at present there is very little incentive to invest in sewer mining. Why would people go to the trouble of cleaning up the dirty water when they can buy new water so cheaply? That is not to speak against this bill. It is sensible legislation, but I make the point that,

eventually, we will need to grasp the nettle on pricing of water, and we may well need to look at incentives to assist the recovery of mined sewer water as well. With those brief words, the Greens support the bill.

The Hon. S.G. WADE: I rise to support this bill. I did find the Hon. Bernard Finnigan's contribution on this and related bills rather disappointing. It seems to me to be a persistent theme that any bill that is not the government's is not a good bill and that any idea that is not a government idea is not a good idea. We would be willing to wait for a government bill to progress these ideas if we were faced with a government of action. I remind the council that we were told by the Premier at the beginning of this period of the parliamentary sittings that we would be processing 100 bills before Christmas. I think that we will be lucky to approach even 60.

We have a government which claimed it was preparing a plan for water in the Waterproofing Adelaide study five years ago, yet that planning has led to no action. Why would we wait for a government bill? We are facing a drought which, as the Hon. Mr Ridgway mentioned, the Premier described as a one in 1 000 year drought, yet we are told by the Hon. Bernard Finnigan that we should just wait for a government bill. Well, the council has indicated that, in relation to the first bill, it is not willing to wait. If this government will not act to engage in innovative programs to address the water crisis, this council will not sit by and twiddle its thumbs.

South Australia is often called the driest state in the driest continent, but we are capable of ensuring a reliable water supply for Adelaide and for our country regions. Even the government has a goal of increasing South Australia's population to two million by 2050—it just lacks the plan to provide the water for domestic, industrial and rural supply that will be needed to support that development. I am not saying that I do not think it is attainable. However, the comments of the Hon. Mr Parnell reminded me of those made by Mr Don Bursill, a former water scientist with the SA Water Corporation. Mr Bursill said that he was mindful of a government plan to double the city's population over the next 44 years. Mr Bursill said:

> Water will not hinder the growth of the city simply because the use of water in supporting Adelaide is the highest economic use water can be put to.

He further said:

> We might have to pay more for water but the capacity to pay is there. The technology is around to turn anything wet into drinking water if it is filtered through enough money so an increased population could be accommodated.

The comments are very relevant to this bill, because the Hon. Mr Ridgway's bill foreshadows sewer mining, which will involve new technologies to turn waste water into alternative uses. I think that South Australia runs the danger of having to pay the price for the Rann government's laziness on water issues. After nearly five years in office, the Rann government cannot guarantee South Australia's long-term water future. The Waterproofing Adelaide document has been five years in the making but, as the Hon. David Ridgway highlighted in question time, very little has been delivered.

South Australia needs three things in relation to water, the first of which is planning. We need planning to be more than a talk-fest—more than glossy documents and consultation sessions associated with Waterproofing Adelaide. The government needs to move forward to a long-term water plan. The lack of planning in this government was demonstrated some weeks ago when the Rann government said that we did not need a desalination plant, reservoirs, dams or weirs. The Premier was then called to a summit with John Howard and, suddenly, we have a weir at Wellington; and the Treasurer is talking about desalination plants, reservoirs and dams. This government has no commitment to planning on water, and it is evident in its public statements.

The second thing we need with respect to water is investment. The Rann government refuses to make the kind of long-term investment in water structure that we need. There was no funding in the 2006-07 state budget for the kind of long-term water initiatives we will need. There was not even the funding for any kind of comprehensive planning. I thought the laziness of the government in relation to water was typified very starkly by the contribution of the Hon. John Dawkins in question time recently when he highlighted the failure of the government to take advantage of $2 million of commonwealth funding for the Virginia pipeline scheme.

The government's inaction over a period of two years jeopardised a very valuable project. I remind the council that this project has the capacity to reduce stress on groundwater supply by three gigalitres a year and would reduce the nutrient load into the ocean from the Bolivar treatment plant by 6 per cent, yet these environmental benefits were put at risk by government inaction. The Labor Party's only response to water has been restrictions. Restrictions are being introduced earlier and increased to higher levels earlier than they need to be because of this government's inaction. The Rann government has no long-term solution for increasing South Australia's water supply. Water restrictions are not a long-term solution to South Australia's water needs. Water restrictions are socially repressive and regressive and they are economically constraining.

Thirdly, in relation to water, South Australia needs vision. South Australia needs a water strategy which is bold and innovative and which focuses on identifying and utilising new water resources. This is where the Hon. David Ridgway's bill comes in. The suite of three bills from the opposition promote greater use of recycled and non-mains water. The three bills would allow for the use of grey water, enable sewerage mining to promote recycling and legislate for easier use of rainwater in existing homes. I pause to note but not to respond to an interjection. It might be suggested that these bills have similarities to previous bills, but I would not have thought that the government would dare to draw the council's attention to that fact. Surely, if they have been on the legislative agenda for two or three years, it just highlights the inaction of this government. These proposals are not new. They were in the government's own waterproofing Adelaide regime and it did not even bother to bring in a viable, tangible program to introduce them.

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: Let us focus on sewer mining. Sewer mining is a process of tapping directly into a sewer and extracting waste water for treatment and reuse for recycled water. I remind the council that South Australia is already a national leader in the use of waste water at around 19 per cent. I also remind the council that it was a Liberal government in the 1990s which set targets for SA Water which led us to be the national leader. Unfortunately, since the Labor Party has been in government, the rate of increase has been much lower. Sewer mining gives us the opportunity to take the next step to go into the next generation of waste water

utilisation opportunities. In 2003, 18 071 megalitres of treated effluent was discharged into the Gulf St Vincent.

For the sake of the Hon. Mark Parnell, let me stress that it is not just a gross waste of waste water resources; it is also a great stress on the environment. It will be a benefit to the people of South Australia in terms of water utilisation. It will be a benefit to the environment and Gulf St Vincent if action is taken on waste water. The Hon. David Ridgway's bill gives us the opportunity to take the next step in utilising waste water. Many experts have been encouraging sewer mining, which takes effluent from sewers and treats it for reuse before returning by-products to the sewerage system. The proposal of the Hon. Mr Ridgway seeks to facilitate the practice and has been utilised in New South Wales, the ACT and Victoria. Perhaps the best known sewer project is the Sydney Olympic Park Authority project, which is currently recycling 850 million litres of water per year for the maintenance of Olympic Park and the neighbouring suburb of Newington.

I think that the Hon. David Ridgway's proposal in this bill is exciting. It is not what I would call a full-blown third party access regime such as one would expect to see under part 3A of the Trade Practices Act, but the Hon. David Ridgway does not profess that it be registrable under the national competition policy program. However, it does three things. First, it indicates a direction to shared access of water and waste water networks. Rather than SA Water's regarding its bulk water and waste water networks as the sole preserve of the corporation, it will be a statement by this parliament, and hopefully by the government in implementing it, that the essential services networks in the area of waste water and water will be shared between the private and public sectors. Secondly, it would show an openness to private sector investment. I understand that the Western Australian economic water regulator has made statements in recent days saying that the investment needs in the water industry in Western Australia will be met only through private sector investment.

The sewer mining proposal of the Hon. David Ridgway provides an opportunity for the private sector to participate in the delivery of water and waste water services in South Australia. Thirdly, this bill indicates a direction for SA Water. Of course, the government could have already achieved this by ministerial direction to SA Water. That is, after all, what the Liberal government did through performance statements and recycle targets in the 1990s, but this government just does not act. It wants to do a waterproofing Adelaide plan and then just sit it on the shelf and let it collect dust. I would encourage the council to regard this bill favourably and I commend the Hon. David Ridgway for vision, innovation and, unlike the government, action.

The Hon. D.G.E. HOOD: I support the second reading of this bill, which seeks to amend the Sewerage Act to allow mining, if you like, from sewage waste. I do note that the bill is similar in form (as has been mentioned by the Hon. Mr Wade) to one introduced by the former member for Unley in the other place on 14 September last year. It seems that the proroguing of parliament left that bill in limbo, and now, thanks to the shadow minister for water resources, we have it again. In short, Family First supports this bill. Much has been said about the way in which Family First differs fundamentally from other parties, but observers will find our environmental credentials to be strong and similar in a number of respects to some of our detractors. This bill is about making better use of water which ends up far out in Gulf St Vincent—in fact 18 071 megalitres apparently in 2003, according to the Leader of the Opposition in the other place (as published in *The Advertiser* of 21 November this year). Perhaps water also ends up in other places as well.

This bill proposes better use of water which bears the unfortunate association of being connected with human refuse. Queenslanders are in dire straits in respect of their water usage, as has been well documented. Their dams are about 25 per cent full apparently and they are on the toughest water restrictions in Australia. Recently, re-elected Peter Beattie went to the polls saying that he would have a referendum on using recycled water in that state and specifically for drinking water. Indeed, he said that he hoped it would be something they required only if they were facing—in his words—Armageddon. I think that it is unfair to give the present drought that ominous title, but it does seem that Queenslanders are in a very difficult situation, indeed.

I mentioned Queensland to show that the opposition's measure is moderate when you consider that the Queenslanders are considering drinking their recycled water. The Hon. Mr Ridgway and his parliamentary colleagues are not proposing that we drink this particular water but that we use all forms of available water more responsibly, which certainly Family First would support.

I think the former member for Unley, when he introduced his bill last September, to which I have referred, drew a fantastic analogy to inspire us. No matter how dire our water situation which might cause us to adopt innovative water use measures, he said we could become the Microsoft of water use worldwide, and that could well be the case. I assume he means we could be a world technology leader, as opposed to the malice some people hold towards Microsoft due to its market dominance.

An honourable member interjecting:

The Hon. D.G.E. HOOD: I am sure that is the case. We are positioned well with our water use technologies to adopt not just best practice but, indeed, world leading technology which, again, I am sure, is the point the former member for Unley was making. Not only that, whatever perspective you come from, you have to accept that what we currently have in nature or creation is a beautiful gift and a privilege, and we would do well to do our utmost to preserve those resources and be good stewards of what we have been given.

I think it would be fair to say that all members in this parliament, such as the member for Schubert who spoke to the adjournment debate last night in the other place, share a bipartisan concern about our water shortage crisis—or, to put it another way, the drought that we are currently experiencing. This bill opens up the potential for private enterprise to access the sewerage network and mine it for water for their own purposes. Who knows what other water-saving technology might arise from this? I commend the opposition for introducing this bill, specifically the Hon. David Ridgway, and I think it deserves putting politics aside and opening up ways to save water. Therefore, Family First thinks this measure deserves further consideration, and we wholeheartedly support the bill.

The Hon. D.W. RIDGWAY: Again, I thank members for their contribution to this bill—this important sewer mining bill. It is interesting to listen to the comments around the chamber. Again, we see the government being negative about a very important initiative. The Hon. Bernard Finnigan in his contribution talked about our needing special rules and he pointed out that this cannot just happen. The government is

in a position to do so. As my colleague the Hon. Stephen Wade mentioned, the government and the Premier advocated some 100 bills would be through parliament before the end of the year. This measure demonstrates that the opposition and the minor parties in this place are willing to support initiatives that are part of the Waterproofing Adelaide strategy. It is typical of this government that it has strategies, but that is all they are—strategies. It is all talk, it is all smoke and mirrors, it is all murky water, but there is no action. This will allow private enterprise to access the sewers and then make the decisions about cost and the price of—

The Hon. B.V. Finnigan: What about the health and environmental regulations?

The Hon. D.W. RIDGWAY: The Hon. Bernard Finnigan interjects about health and safety. That is why the EPA would be licensing it under this particular legislation. We expect that the licensing framework would be put in place to ensure that public health is protected. Look at the Parklands in Adelaide. There are a number of large sewers that go past those Parklands. If this bill was supported by the government in the other place the Adelaide City Council could put in place a sewer mining facility. In fact, I am told that in some parts of the world plants are of a modular design and almost buried in the ground—you cannot even see them. They access the sewer, take out the water, put the waste material back into the sewer and head it off to the treatment plant and use the water to irrigate parklands. But, no, this government does not want to do that. It does not want to be seen to be progressive. In fact, I think this is very much a case of, 'We didn't think of it first so we're not going to support it.'

In the face of drought the Leader of the Government interjected that you cannot stop the drought, that there is no legislation that is going to make it rain, and that is true enough, but the Premier and this government have been advocates of climate change for some time. We all knew there would be diminished rainfall. We knew this was going to happen. The Premier and this government knew we would have a drought of significant magnitude at some point in the future, yet they have done nothing. They have sat on their hands and done nothing. As I said before, this is a government with all sorts of lovely warm and fuzzy plans and strategies, but it delivers nothing. I commend the bill to the council.

Bill read a second time and taken through its remaining stages.

SEWERAGE (GREYWATER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 976.)

The Hon. M. PARNELL: The Greens support this bill also. I would like to say that I am disappointed at the approach taken by the government. Other members have said that the government did not think of it first and that its attitude is churlish. I have discovered in this place that no-one has a monopoly on good ideas and it is certainly possible for the Hon. David Ridgway to come up with a good idea. I will claim that I had this idea before him. On my computer, in the drafts folder, is my email to parliamentary counsel asking for exactly the same amendment, but I am not churlish about it, and I have not cursed the Hon. David Ridgway.

In a previous life I was a teacher of public health law at Flinders University in the course Bachelor of Applied Science (Environmental Health). As the law lecturer I used to set an assignment for my students, which was a class debate. The assignment was to read section 36 of the Sewerage Act and imagine a person who has a flexible hose out of their laundry door connected to the rinse water of their washing machine, which they are putting onto their garden. The question was: reading section 36, is this person a criminal or an environmental hero whose activities should be applauded? There was always a lot of good debate when I set that question, because most people could see that they were trying to do the right thing. They could see that there could be problems if it was not done properly, but most people thought that the law was a bit of an ass and, if I was teaching the subject now with the drought and the water restrictions that we have in place, they would think that the law is even more of an ass.

The Hon. Sandra Kanck: You'd quote Bernard Finnigan to prove it.

The Hon. M. PARNELL: Yes. I will quote the legislation, because I am not sure the government understands it. Section 36 of the Sewerage Act says that if you have the sewerage pipes connected to your house you have to put all your waste water into those pipes, unless you have been authorised by the corporation to do something else, like put it onto your land. 'The corporation' means SA Water. I can see a practical reason why the health department has taken over the running of this. Under this legislation it is not the call of the health department but the call of SA Water, which needs to individually license or grant a permit to each person who wants to divert grey water from their washing machine onto their lawn.

The Hon. David Ridgway's amendment simply takes the sensible step of saying that, if you have a washing machine and you want to connect a hose to it and put it out to your lawn, you should not have to go to some authority to get special permission just to do that, that it is authorised by legislation. Certainly there are risks inherent in the foolish use of grey water on gardens. As the Hon. Bernard Finnigan pointed out, you could kill your garden if the water contained lots of detergents and contaminants—you could cause damage to your garden. My response is that this bill is aimed at motivated people who are keen to keep their gardens alive, and it is unlikely that someone would be foolish enough to use large volumes of chemicals and direct water to the same spot every day so as to waterlog and poison that area of soil—it will not happen.

Section 36 only applies if you are connected to the sewer. People who are likely to not care about their gardens are likely to put waste water down their sewer like everyone else does. So that is not a major impediment. An education program is a necessary part of this legislation. I acknowledge that the Department of Health recently on its website (October 2006) has included a page under the heading 'Department of Health, Waste Management Section, manual bucketing of grey water.' Manual bucketing is what the Hon. Sandra Kanck referred to. It says in the departmental guide:

> Manual bucketing on to lawn and garden areas using water from the bathroom or laundry—

and this is the important bit—

> or temporary use of a hose manually fitted to the washing machine outlet hose is permitted subject to the following advice:

It then gives straightforward, practical advice, such as if you have a baby with diarrhoea and you are washing nappies you do not put that water onto your lawn, neither if you are washing the clothes of someone who is ill. I will not go

through the list, but it is a list of common sense advice aimed at helping people to adopt this sensible water saving method but to avoid the consequences that flow from it. I do not see why the government should oppose this measure other than for churlish motives.

A member of my staff who has researched this issue tells me that commercial products are already on the market to assist people to do this diversion. Nylex makes a diverter that you can fit yourself to your washing machine. The difference is the distinction between permanent diversion and temporary diversion. The Hon. David Ridgway does not use the word 'permanent' in his second reading explanation, but in the rest of the context it is the temporary fixing of the hose rather than permanent fixed plumbing, which would be a problem because it would all end up in the same spot. The secret is moving the hose around to different bits of the garden so as to not overwhelm any one section of it. It is a sensible measure. I cannot say that I wish I had thought of it first as I did think of it first. Rather than introduce my own bill, I am more than happy for the Hon. David Ridgway to have the credit for having got to parliamentary counsel first, and I commend him for his effort in bringing forward this bill.

The Hon. D.G.E. HOOD: I rise to support the second reading of this bill and, not surprisingly, to support the bill in itself, which is three in a row for the Hon. Mr Ridgway. I will be brief. The bill seeks to amend the Sewerage Act 1929 with a simple change to allow, first, the discharge of washing machine water onto gardens or lawns, with the potential for other such uses as prescribed by regulation. Water authorities we surveyed indicated that about 10 to 20 per cent of all household water consumption can be traced to the laundry. This reflects considerable water reuse gains and household budget savings, which is why people were doing this already, and doing so perhaps illegally, if that is the right term.

Family First also thinks our consumers ought to consider buying environmentally friendly detergents because, regardless of whether it goes into your lawn or garden or into the sewerage system, it ends up in our environment, and thus caution is recommended and important. If the detergents can do the same job, they are worth considering for use in the laundry. This is especially important if this bill passes because, for instance, using detergents high in sodium will add to soil salinity. In addition, it might be wise to put a cloth or stocking over the end of the laundry pipe, we are informed, to ensure that fibres, tissues and other things in the water do not end up in the lawn or the garden. I am not sure what the Hon. Mr Ridgway thinks of that but, certainly, that is the advice we have received.

Within suburbia, people ought to ensure that they move the hose regularly, as has been pointed out by other honourable members, to ensure that water flow does not run onto a neighbour's property, for example, or poison a particular area—which, again, as the Hon. Mr Parnell pointed out, is highly unlikely, considering the people who would be doing this sort of thing. Not only is there that nuisance aspect, but also I understand that letting the water pool in one place can cause a collection of fungus and insects and whatnot and will cause further nuisance and, potentially, environmental damage, although at a very low level, of course. I think that is why some experts insist upon the bucketing of this water rather than letting the hose run onto the garden, so to speak.

Given all of this, there might be a cost to the government as a result of this bill in introducing an advertising campaign to ensure responsible practices when pumping washing machine grey water onto the garden. It is important to note that this practice is allowed in New South Wales. That is the most populous state in Australia, and not only is the practice allowed but it is also taking place as we speak. So, the dangers that we heard of are very questionable, indeed. However, people in New South Wales obtain advice from their health authority to ensure that they are responsible when doing so and that the practices they carry out are healthy; in fact, they support the placing of a stocking over the end of the hose, as I mentioned. Family First supports this bill, and we believe that it has considerable merit. Given the times we are in, with increasing shortages of water, it just makes sense.

The Hon. D.W. RIDGWAY: Again I thank all members for their contributions. I acknowledge that, after I gave notice to introduce these three bills, the Hon. Mark Parnell came up to me and was a little miffed that maybe I had stolen his thunder. I had not stolen it: I had just thought of it first, in the context of introducing it, rather than maybe the initial thought. It was interesting to note the time that he spent lecturing at university. He is probably the most qualified person here to speak on the legality of this issue, in particular, and the government has chosen not to support it, which surprises me.

The Hon. Dennis Hood said that it may cost some money for an advertising campaign. I know that the government is often very reluctant to advertise to promote itself, and this might be an opportunity for it to place a photograph of me on the advertising brochure, so it is a more of a bipartisan approach. It was a Liberal initiative to introduce these bills to allow people to cope with the drought—and, obviously, the Premier is ringing the Hon. John Gazzola as I speak to confirm it. I am very pleased to see that. I thank members for their contributions. It appears as though I will receive support from the cross benches for this bill, and I guess three in a row is a bit like the English cricket team: it is a hat trick. I commend the bill to the chamber.

Bill read a second time.

In committee.

Clause 1.

The Hon. B.V. FINNIGAN: I think it was Oscar Wilde who said that one of the truly unique things is the obstinacy of an ass. However, I can assure honourable members that that is not the government's intention here. All we are saying is that we are opposing this bill, because we are seeking a balanced approach to these issues to ensure that the long-term environmental and health implications are addressed.

Clause passed.

Remaining clauses (2 and 3) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

PREVENTION OF CRUELTY TO ANIMALS ACT

Adjourned debate on motion of Hon. M.C. Parnell:

1. That a select committee of the Legislative Council be appointed to inquire into and report on—
   (a) Arrangements for the administration and enforcement of the Prevention of Cruelty to Animals Act 1985 (the act);
   (b) the appropriateness of a private charity as the principal law enforcement body under the act;
   (c) the level of funding required to appropriately administer the act; and
   (d) any other relevant matter.
2. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.
4. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 27 September. Page 761.)

The Hon. D.W. RIDGWAY: The opposition has taken some time to consider its position in relation to this bill. We are aware that the government is about to introduce an amendment or a review act; I cannot remember the exact terminology—

An honourable member: A draft act.

The Hon. D.W. RIDGWAY: No; it is going to introduce a bill, I expect in the next couple of days, so that we can look at it over the summer break.

An honourable member interjecting:

The Hon. D.W. RIDGWAY: It has been released.

Members interjecting:

The Hon. D.W. RIDGWAY: That's very good. There are so many interjections; I am getting advice from every direction. My understanding is that we had a draft bill—

Members interjecting:

The Hon. D.W. RIDGWAY: Yes, I do.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The Hon. Mr Ridgway has the call.

The Hon. D.W. RIDGWAY: I have worn out my glasses this year and they have broken, so I need to have some time to have them repaired. I thank the minister, who has just walked across the chamber to give me a copy of the draft Prevention of Cruelty to Animals (Animal Welfare) Amendment Bill 2006 information pack. I know the government put out a draft bill some time ago. There were a number of submissions, of which I have endeavoured to get copies so I that I have a full understanding, on behalf of the opposition, of the issues and concerns of the community, and I am looking at those submissions at present.

However, the Hon. Mark Parnell introduced this motion to appoint a select committee to look into the operations and functions of the RSPCA in relation to the administration and enforcement of the Prevention of Cruelty to Animals Act. It is the view of the opposition that possibly the best way to deal with this matter is that, rather than the duplication of a select committee and then dealing with a draft bill over the summer period, as well as the public consultation, and then, hopefully, in the new year the introduction of a bill, it would be more appropriate to address a range of the issues raised.

The opposition is somewhat open-minded in relation to a number of the questions raised in the Hon. Mark Parnell's motion, that is, the appropriateness of a private charity to be the law enforcement body. Of course, we are all aware that the RSPCA is grossly under-funded by this government to carry out its operations. So, maybe looking at this legislation over the next few months will give us an opportunity, in a legislative sense (and maybe in an amendment sense once we have a bill in place) to address some of the issues raised by the Hon. Mark Parnell.

I am not sure the government has any commitment to increasing the funding to the RSPCA. Whether it is the RSPCA or another body or a government department that administers the act, it will be more expensive for the RSPCA. I do not believe the RSPCA has ever been resourced well enough. The advice the RSPCA has had from the government is that the government is looking to do something in next year's budget, but I will believe that when I see it. As we know, and as we have seen on a number of occasions, the government is all talk and no action.

The Hon. T.J. Stephens interjecting:

The Hon. D.W. RIDGWAY: All hat and no cattle, as my colleague the Hon. Terry Stephens interjects. In conclusion, the Liberal Party does not support the Hon. Mark Parnell's motion. We will keenly await the legislation once we have gone through the consultation phase, and we will attempt to address with an open mind a number of the issues and concerns raised by the Hon. Mark Parnell, particularly the funding to the RSPCA and the appropriateness of a private charity administering and enforcing the act.

The Hon. SANDRA KANCK: There has been considerable disquiet amongst animal lovers in the community about the RSPCA. We tend to see it surface each year around the time of the RSPCA's annual general meeting, and that seems to have been the case for the past two or three years. Members would know that, as part of the election campaign, my party made a promise to introduce a bill to ban rodeos and, back in August, I met with John Strachan (SA President) and Mark Peters (Executive Director) of the RSPCA to discuss such a bill. I was particularly interested in meeting with them to find out what had happened in a case against a rodeo contractor in Clare Court, as I had been told that the RSPCA had withdrawn the charges. We discussed that issue, and I suppose you would say it was a technicality that caused that to happen. However, in the process of talking about that issue, Mr Strachan and Dr Peters took the opportunity, as well they should, to raise with me wider issues about their funding and some of the difficulties they face.

The state government provides an annual grant of $500 000 for the RSPCA to police animal cruelty and neglect. When that funding was first given, it represented 65 per cent of their costs of enforcement. However, that amount has not been increased over the past 12 years, and it now represents only 45 per cent of their enforcement costs. They told me that there are more prosecutions happening than ever before and that more people are contesting them in court, so it is using up more resources. They recognise that they did not always meet public expectations, but this was because they did not have enough money to employ the extra inspectors needed for them to do their job. As it was, they told me, each inspector is working two out of three weekends. In relation to rodeos, with 22 rodeos per annum and only seven inspectors, the RSPCA is able to attend only one in four of those rodeos.

After I had been to that meeting and I mentioned what I had been told to various people who are concerned about animal rights, someone advised me that the RSPCA's South Australian annual report states:

> RSPCA is respected by all parties. Unfortunately, the Greens and the Australian Democrats don't always believe we achieve enough and appear to support the animal activists.

I assume from that that being labelled as an animal activist is a pejorative but, of course, I had assumed that the RSPCA was an animal activist organisation. Anyhow, it appears that the report containing that comment had already been issued prior to my meeting with Mr Strachan and Dr Peters. Neither of them had the courtesy or the courage to let me know that this was the comment they had made effectively about me, as the one Democrat in the parliament. I was not impressed also by what I was told—in terms of some of the things others have since told me. Whereas they said that each of the

inspectors was working two out of three weekends, my sources tell me now that the reality is that the inspectors are at home on call with pagers, ready to go to something if they are told, but they are not actually working two out of three weekends.

Subsequent to me having this meeting with these RSPCA officials, the Hon. Mark Parnell moved his motion, and I have spoken with a number of other people about this wider issue of how well the RSPCA fulfils its functions under the Prevention of Cruelty to Animals Act. The South Australian police have powers under that act, but SAPOL's accountability is much greater than the RSPCA. The RSPCA is not accountable to the Ombudsman and nor are its books audited by the Auditor-General. So, if these powers were with the police rather than with the RSPCA, there would be much greater accountability.

The select committee should look at the role that the South Australian police could play as an alternative or adjunct to the RSPCA. I think there is scope for an animal inspectorate in the security section of SAPOL. Perhaps the law enforcement role could go to the South Australian police, while rescue could stay with the RSPCA. These are, I think, some of the important issues that the select committee can tease out.

The Local Government Association may even have a role to play, because dog and cat management is under its responsibility. It clearly has a role to play, and maybe its role could also be widened. Whatever the truth is, something is clearly going wrong within the RSPCA, because it has lost four inspectors in the space of six months. I had a letter from a member of the public who was very keen for me to support the setting up of this select committee. This was somebody who had been charged and fined by the RSPCA so, clearly, they are not fans of it.

I do not know whether it is true that some of the RSPCA inspectors are social workers but, again, it would be a worthwhile thing for the select committee to look at. If it is true, I think that is a matter of concern. Certainly, one of the things that the select committee should look at is the training of the inspectors and also whether or not the inspectors that it has are legally trained and whether, in fact, they should be legally trained.

Given the Minister for Environment and Conservation's announcement yesterday of the draft bill that has gone out for discussion, setting up the select committee at this time is very worthwhile because it will allow a number of issues to be canvassed. The select committee will then be able to feed back into the process of discussion on the draft bill and, in that way, we can have, in the end, a much better bill, so I indicate Democrat support for this motion.

The Hon. R.D. LAWSON: I rise to indicate my opposition to this motion and briefly to correct what I regard as inaccuracies contained in the speech of the mover. The Hon. Mr Parnell, when referring to the present president of the RSPCA, John Strachan, suggests that there is something sinister or perhaps underhand, or there is perhaps some conflict of interest in the fact that Mr Strachan is a partner in the firm of Strachan Carr and that that firm has been doing prosecutions for the RSPCA. The honourable member somewhat disingenuously says, 'Is it appropriate for the president of a non-government organisation which receives $500 000 from the public purse to benefit financially from legal work that is done?' He mentions the fact that the solicitors' fees for the past financial year amounted to what he describes as the 'not insignificant sum of $72 355'. That amount of money, in terms of legal fees these days, regrettably, is not much at all when one looks at the work that the RSPCA must undertake.

I have personally known Mr Strachan, as a legal practitioner, for the best part of 30 years. He is a man of the highest integrity and he is also (and has been for a long time) committed to the work of the RSPCA. In fact, his firm has not always done the work for the RSPCA. Until recently it was done by a firm now defunct, Messrs Murray and Cudmore, which did the work for over 20 years. The partners of that firm retired from practice and one of them, Mr Andrew Charlton, who had been doing the work for the RSPCA for many years and doing it effectively, joined with Strachan Carr and took the work with him. The suggestion—veiled as it might be—implicit in the honourable member's suggestion of some sort of venality at on the part of Mr Strachan, I think, ought be rejected, and that ought be put on the record. It is clear that there is a divide in this area. There are those who regard themselves as animal liberationists—

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: The Hon. Sandra Kanck says 'animal activists'. The divide, though, is between an animal welfare body and an animal rights body. It is true that the RSPCA has always regarded itself as an animal welfare body. That is its charter, and that is what it pursues. Animal rights is yet another issue and, undoubtedly, there are members of the RSPCA—active within the organisation—who are trying to take it over and move it in an animal rights direction. That is something that ought be discussed and fought out on the floor amongst the membership of the RSPCA.

I do not believe that we need parliamentary committees to be established for the purpose of providing a forum for one side or the other to come along to parliament—under parliamentary privilege—and make claims and counterclaims. I believe that those issues can be resolved far more effectively through the legislative review process which, I believe, is being undertaken by the government at the moment. I would not rule out for all time a select committee to examine aspects of this important subject. I refer to the reasons given by the honourable member and the circumstances in which he gives them, namely, coming to this council having attended part of the annual general meeting of the RSPCA where some of those who are supporting him were successful and some were not in getting themselves elected to the board.

I do not believe that we should establish a select committee every time contesting forces wish to have a parliamentary forum to air their grievances. I must say that I am rather disgusted by some of the activities of Animal Liberation and some of its friends in the media. Its endeavour to use the piggery at Wasleys in respect of which a federal government minister has a small financial interest is, I believe, an inappropriate, media driven, political exercise which was not designed to improve the lot of animals but which was designed to advance a particular political agenda. I am delighted that my colleagues in the Liberal Party will not be supporting this motion.

The Hon. A.L. EVANS: I rise briefly to speak to this motion. Family First is concerned about the welfare of animals and would like to see efficient investigations and prosecutions for animal cruelty. The question is whether the RSPCA, as a private charity, should operate as a principal law enforcement body under the Prevention of Cruelty to Animals Act. Currently, the RSPCA must investigate and prosecute all instances of animal cruelty. Investigations are

costly, and arranging for someone—usually a legal agent—to attend court on its behalf can also be costly.

If we were to attend at the Adelaide Magistrates Court today there is a good chance we would come across a matter regarding animal cruelty or neglect being prosecuted by lawyers retained by the RSPCA. I understand that the RSPCA responded to 2 802 reports of animal cruelty last year and prosecuted 71 complaints. That all adds up to hefty costs. At the same time, legacies fell from $1.75 million to $770 000 between 2004-05 and 2005-06. The RSPCA bind is fairly obvious. In other states, such as Victoria, New South Wales and Western Australia, police increasingly handle the job of investigating and prosecuting complaints.

I acknowledge that, in the past, I have also received correspondence from constituents concerned about the RSPCA regarding its funding and how complaints are handled. Given that the government has introduced a bill on this same topic, it may be premature for a select committee to deal with this issue as well. When the bill is introduced in this place, Family First will carefully examine how to make the RSPCA's life easier and ensure that people who hurt or neglect animals are dealt with effectively and appropriately.

The Hon. G.E. GAGO (Minister for Environment and Conservation): I rise to speak against the motion. I acknowledge the Hon. Mark Parnell's commitment to animal welfare and his interest in how animal welfare issues are best managed, but I do not believe that the select committee he has proposed is the most appropriate way of furthering animal welfare or determining the best way the government should manage its responsibilities for animal welfare. There are two categories of concern about the enforcement of the act, and this select committee does not assist with either.

They are, first, the limits on the powers of inspectors to undertake routine inspections of animal industries; and, secondly, the lack of clarity in the national codes of practice for the purposes of enforcement and, if necessary, prosecution. In speaking today I refer to the draft Animal Welfare Bill I released yesterday for public consultation. I believe that, if passed, the bill will give the government the tools to improve further the conditions of animals in this state and, combined with steps outlined in the discussion paper, it will address the two matters of priority in improving our enforcement of the Prevention of Cruelty to Animals Act. Specifically, increases in penalties, the creation of an indictable offence and widening the powers of inspectors will greatly improve the enforcement of the act.

In the accompanying discussion paper to the draft bill, I also foreshadow the government's intention to work on the national codes of practice currently in schedule 2 of the regulations and, over time, to place them into SA regulations. In the process of moving the codes into regulations, the government will be able to ensure that the language used is clear so that the mandatory requirements are unambiguous for industry, the community and the courts. The combined effect of the improvements in the inspection capacities, the increase in penalties and the clarity in regulation pertaining to individual industries will, I believe, address many of the concerns that have been expressed in the community about animal welfare enforcement.

The committee's terms of reference, as proposed by the honourable member, would have the select committee inquire into:

- arrangements for administration and enforcement of the Prevention of Cruelty to Animals Act;
- the appropriateness of a charity being the law enforcement body under the act; and
- the level of funding required.

I oppose each of these. First, the administration and enforcement of the act. There is no need to set up a parliamentary committee for members to be informed about the arrangements for the administration and enforcement of the act. Quite simply, the act is the responsibility of the Minister for Environment and Conservation. The draft bill makes it clear that the minister appoints the inspectors under the act. Current practice is for the minister to enter into a contract with the Royal Society for the Prevention of Cruelty to Animals to respond to allegations of cruelty, to investigate complaints and, where appropriate, to punish offenders.

The RSPCA employs some inspectors, other include all police officers, some park rangers and some animal health inspectors. The second term of reference is to inquire into the appropriateness of a private charity being the principal enforcement body under the act. This refers, I expect, to the contract between the government and the RSPCA. Let us be clear about the arrangements for the administration and enforcement of the act, as I have just outlined. The RSPCA is not the enforcement body under the act. The government is responsible for the act, and the Minister for Environment and Conservation has appointed police officers, park rangers and animal health inspectors to be inspectors, as well as some employees of the RSPCA.

The government can—and in this case does—choose to enter into a contract with an appropriate body to undertake specific actions, but this is not required by the act. I would like to state at this point that the society is a body that has the advantages of being independent of both government and private industries and holding the confidence of the South Australian community. It is also a financially sound organisation. Therefore it is a reasonable decision for the government to take to enter into the kind of contract that most Australian state governments have entered into with the RSPCA. Enforcement of the act has been hampered not by who holds the contract for punishing offenders but by the issues which I outlined earlier of inspection rights and lack of legal clarity in the codes. This is where animal welfare enforcement properly requires attention and this is where the government is acting.

Finally, the motion proposes that a committee investigate the appropriate level of funding to administer the act. I am sure that there could be never ending committees on all sorts of budgetary responsibilities of all ministers. However, the appropriate way to determine government expenditure is through the annual state budget, and this is subject to a separate process of parliamentary scrutiny.

To conclude, I appreciate the Hon. Mark Parnell's interest in animal welfare, but I believe the motion is misdirected. Improvements in the enforcement of animal welfare standards are required and the draft bill currently out for public consultation, combined with the foreshadowed improvements in the enforceability of codes of practice, is where the government's efforts are rightly directed.

The Hon. M. PARNELL: I acknowledge the contributions of the Hon. David Ridgway, the Hon. Sandra Kanck, the Hon. Robert Lawson, the Hon. Andrew Evans and minister Gago. Thank you for your consideration, but I should leave you in no doubt that the Greens are disappointed that we do not seem to have the support of the council, and animal lovers will also be disappointed that an opportunity to have a

thorough review into the way this important legislation is administered is lost for the time being. I do need to respond specifically to some of the points that were made, in particular by the Hon. Robert Lawson when he pointed out that, in my original speech to this motion, I posed questions about the appropriateness or the impression given by having the president's own law firm doing the prosecutions.

Whilst I can accept the Hon. Robert Lawson's claim that $72 000 is nothing for lawyers, it is a lot of money, and I think it was legitimate for me to pose those questions. If members recall, in my speech I suggested not that there was any criminality or misbehaviour, but in fact I posed a possible answer that mate rates were involved and that perhaps John Strachan's law firm was subsidising the enforcement of these public laws on behalf of the government. I was pleased to spend some time with John Strachan in the past couple of months and he confirmed, as the Hon. Robert Lawson has set out, that there was some history behind his firm acquiring the contract, if you like, for doing the legal work on behalf of the RSPCA on behalf of the government. He told me that in fact it was not a serious profit making exercise for his firm and the term 'mates rates' was fairly appropriate.

However, I do not resile for one minute from raising that issue in this place because that is what the Liberal opposition does almost every day in relation to the administration of our laws. Opposition members ask questions that go to perceptions. We have spent a lot of time talking about perceptions. For instance, if the Auditor-General asks for a bit longer on his contract and we give to him, what perception will that give? I make the point that, when the president of the RSPCA's law firm is responsible for prosecutions and makes money from it (according to their own reports), that raises perceptions, and it raises questions that are appropriate for me to ask and appropriate to be answered.

I would also like to comment on the view of the Hon. Robert Lawson that matters such as the ones that I have raised for this select committee should be fought out on the floor of the RSPCA's general meetings. That seems to me an entirely inappropriate place. Because these fights were occurring at every annual general meeting of the RSPCA, that indicated to me and others concerned about animal welfare that we need to have a deeper look at this system. It was entirely inappropriate, I think, for various critics of the RSPCA to have to front up to every annual general meeting only to be denied a spot on the board and their opportunity to engage in debate on animal welfare.

I think it would have been a good opportunity to have people appear before this committee. The Hon. Robert Lawson did not want to give one side or the other the chance to tell their story under privilege. I cannot see what the problem is, given that the stories are being told in the media. They are not being told in any forum that has any level of accountability, and the parliamentary committee would have been a good forum. I am disappointed that the Hon. Robert Lawson, as a senior lawyer in this place, did not address the primary question of the role of the private charity as a law enforcer. It is a fundamental question, and I am disappointed the opposition did not address it.

In terms of the position of the government, I fully understand the minister's position, as I understand the position of future ministers. They are on a very good wicket when it comes to the RSPCA. Imagine an area of law enforcement, an area of government, where you only have to pay less than half the cost and a private charity pitches in to do the rest of the work. It is a good deal for government. For half a million dollars you get $1.2 million worth of enforcement. I can see from a financial point of view why the government prefers to tap into the pockets of ordinary South Australian members and supporters of the RSPCA rather than taxpayers' money. I can understand it but I do not think that makes it right.

The government has now introduced a bill for discussion, and I suppose I can take some credit through my motion for at least having this bill out for public discussion earlier rather than later. The bill has been flushed out, as my colleague says. I am disappointed in some ways that the information pack on this consultation draft is fairly limited in the scope of its inquiry. Certainly, many of the amendments that are proposed are good, sensible amendments, things that would have come out of an inquiry. The government is pushing them, which is terrific. They involve issues such as the power of inspectors to be able to enter a property without having given prior notice—important powers that the RSPCA has called for for a long time. But it is not enough to just tinker with the penalties and some of the powers whilst the inquiry into the fundamental question of how these important public laws are administered for the public benefit remains unanswered.

I will certainly have more to say when this consultation draft sees the light of day as a finalised bill in this place. It may well be that some of the issues that I sought to advance through the inquiry might be appropriately incorporated as amendments, although I think it is unlikely that members of the public would be so bold because, when you look at the comments pro-forma in this bill, basically the government only wants people to comment on the actual clauses it has included. It is common practice, in my experience, for these types of things to at least have a bit of a catch-all question at the end which asks, 'Is there anything else that we have left out?' and 'Is there some other aspect of the regulatory regime that you would like to comment on?' There is no space on the pro-forma for doing that. I know the minister did have a public consultation draft for some time and there were 70 submissions, as I understand it, many of which would have raised the same issues that this inquiry sought to elicit.

With those words, I propose to proceed to a recording of support or otherwise for my motion. I am disappointed in the response of the major parties. I appreciate the support that I have had from the crossbenches and I commend my motion to the council.

The council divided on the motion:

AYES (3)

Bressington, A.	Kanck, S. M.
Parnell, M. (teller)	

NOES (17)

Dawkins, J. S. L.	Evans, A. L.
Finnigan, B. V.	Gago, G. E.
Gazzola, J. M.	Holloway, P. (teller)
Hood, D. G. E.	Hunter, I.
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Ridgway, D. W.
Schaefer, C. V.	Stephens, T. J.
Wade, S. G.	Wortley, R.
Zollo, C.	

Majority of 14 for the noes.

Motion thus negatived.

HICKS, Mr D.

Adjourned debate on motion of Hon. M.C. Parnell:

1. That the Legislative Council calls on the Australian government to insist that citizen of South Australia, Mr David Hicks, be treated the same as citizens of the United States of America—no more, no less.

2. That this resolution be forwarded to the Minister for Foreign Affairs.

(Continued from 22 November. Page 1104.)

The Hon. R.D. LAWSON: I agree with Prime Minister Howard that the case of David Hicks should be expedited. The case should have been resolved well before now, and I deplore the failure of the United States authorities to conclude the matter before now. However, I will not be supporting this motion, which is a disingenuous attempt to cause political embarrassment to the Australian government. It is also a meaningless nonsense in a literal sense. The motion is that the council calls on the Australian government to insist that a citizen of South Australia, David Hicks, be treated the same as citizens of the United States of America—no more, no less. I ask the question: why should Mr Hicks be treated as an American citizen? He is not an American citizen. Indeed, if reports about his activities in Bosnia and Afghanistan are correct, he does not particularly want to be an American citizen or, indeed, an Australian citizen; in fact, we read that his advisers applied for a British passport. Mr Hicks probably would not want to become or be treated as an American citizen.

We should be in no doubt that this motion is designed to criticise the Australian government. I believe that that particular criticism is misdirected. It should be directed at the United States government, which has failed to comply with United States law in relation to Hicks. The basis for this claim is the decision of the Supreme Court of the United States in Hamdan v Rumsfeld, decided on 29 June this year, a decision to which I will come in some detail. So, the criticism of the handling of the Hicks case comes from the highest court in the United States.

My source for these comments is not some left wing academic, not some anti-American, anti-globalisation, rent-a-crowd protester, but the highest court in the United States—a body which President Bush's detractors frequently describe as a right wing conservative body which actually delivered him a second term in office. The substance of the mover's speech is that Hicks should be returned to Australia where, because his actions did not, according to Attorney-General Ruddock, contravene Australian law at the time that he committed them, he should go free.

Why should Mr Hicks be returned to Australia? Lazlo Toth, who famously vandalised the Pieta in the Vatican in 1972, was an Australian, but was he returned to Australia? He eventually came back to Australia, but he was dealt with by the Italian courts. Should Schapelle Corby have been returned from Indonesia to Australia to face an Australian court? Should Chambers and Barlow have been returned to Australia to face an Australian court? Should the Bali Nine be returned to Australia?

There is no basis, in my view, for claiming that Mr Hicks should be returned to Australia simply because he is an Australian citizen—a country which he was happy enough to leave. Of course, if the American authorities have resolved not to charge him, they should release him to Australia or to Afghanistan or wherever else he wants to go; just as they released Mamdouh Habib in January 2005 after three years in captivity, but they released him on the basis that he did not face any charges.

Before coming to the court decision, I should mention some of the background facts, because it appears to me that, whilst a lot of people speak on the subject of Hicks, not too many bother to examine the underlying facts. I take my facts as to the background of Mr Hicks from the website of Amnesty International, which is inclined to his case and would be regarded as a pro Hicks source. According to Amnesty International, Mr Hicks trained with the Kosovo Liberation Army in Kosovo in 1999—having left Australia. He returned to Australia and then went to Pakistan—according to Amnesty International and Hicks—to study at an Islamic school. After September 11, he telephoned his father from Afghanistan and told him then, for the first time, that he was going to help the Taliban defend Kabul from the Northern Alliance. He was, in fact, captured by the Northern Alliance on 9 December 2001 and handed over to the United States forces. He was questioned by United States and Australian officials and later transported to Guantanamo Bay in Cuba.

On 13 November 2001, which was shortly before his capture, President Bush signed a military order in which named individuals, including Hicks, were authorised to be detained and tried by military commission. A number of military commission orders were later issued to establish the procedures for trial. The procedures included the following process, which I take from a report prepared by Lex Lasry QC, an observer from the Law Council of Australia, who attended a preliminary hearing in Guantanamo Bay on charges against Hicks in September 2004.

The procedures for the military commission then outlined included the following: the accused must be given the charges he faces in a comprehensible form; he is presumed innocent; and the standard of proof is proof beyond reasonable doubt. The accused must have access to evidence to be led at his trial and any evidence which exculpates him. The accused is not required to give evidence and no adverse inference is permitted to be drawn if he does not do so. Investigative and other resources are to be made available to the accused. Interpreters are required to be provided if necessary. The accused may be present, unless he is disruptive. Unless the commission orders otherwise, evidence is to be led. Sentencing procedures shall be provided to the accused. The trial of an accused person must be open to the public except where the presiding officer decides otherwise.

An honourable member interjecting:

The Hon. R.D. LAWSON: The honourable member interjects, 'Can he choose his own lawyers?' There are limitations on the legal representation available to him, but because of the exigencies of the service, security and other issues, appropriate measures are in the executive orders. Those representing him have to have particular security clearances.

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: They are precisely the sort of rules we have and which this parliament passed last year. The charges against Mr Hicks, as they originally stood, were as follows:

(a) Between January 2001 and in or about December of that year he wilfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with certain persons, including Osama bin Laden and other members and associates of the al Qaida organisation known and unknown to commit the following offences triable by a military commission: attacking civilians, attacking civilian objects, murder by an unprivileged belligerent, destruction of property by an unprivileged belligerent, and terrorism.

(b) Between 11 September 2001 and 1 December 2001, as a member of the above conspiracy he attempted to murder diverse persons by directing small arms fire, explosives and other means intended to kill American, British, Canadian, Australian, Afghan and other coalition forces, while he did not enjoy competent immunity, and such combat taking place in the context of an associated armed conflict.

(c) Between 1 January 2001 and 1 December that year, intentionally aiding the enemy, to whit al Qaida and the Taliban, such conduct taking place in the context of and associated with armed conflict.

Those were the charges that the American authorities laid against Mr Hicks in 2003.

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: As the honourable member says, he is presumed not guilty. These charges ultimately were thrown out by the Supreme Court of the United States. They have been ruled inappropriate charges in other related cases. The point I am making is that the delay caused by those charges being thrown out is actually a consequence of the United States authorities not following United States law and laying appropriate charges. If they had done so, and done so competently with a full understanding of their own laws, these delays would not have occurred.

I am not the only person to deprecate the delays that have occurred here. The commonwealth Attorney-General, the Prime Minister and the foreign minister have deprecated the fact that there have been delays. Some of the delays are in consequence of motions taken by Hicks' advisers, but the important thing to my mind in consideration of this motion, which actually seeks to criticise the Australian government, is that it is the American government that has failed to follow its own processes, point the finger and the blame where it lies rather than seeking to make political advantage here. The background, which the charge sheet lays against Mr Hicks, is somewhat more fulsome in its detail than the Amnesty International website reveals about him.

I think the background of this individual is important in the context of this military conflict and in the context of the fact that he finds himself charged before a military commission in the United States. It is said:

- Hicks joined the KLA in Kosovo in 1999 having had military training and engagement in hostile action;
- He converted to Islam in 1999;
- In early 2000 he joined . . . (LET) in Pakistan—

that is a terrorist organisation, the name of which I will not seek to pronounce—

- He trained for two months at an LET camp in Pakistan;
- He engaged in hostile action on the Pakistani side of the dispute with India over Kashmir;
- In January 2001, he travelled to Afghanistan to attend al Qaida training camps;
- In January 2001 he went on to an al Qaida guesthouse;
- He later travelled to al Qaida's al Farouq training camp and completed an eight week course;
- In April of 2001 he completed a further seven week al Qaida course;
- He had a conversation with Usama bin Ladin about translating training camp manuals into English;
- In June 2001, Hicks travelled to Tarnak Farm for an urban training course;
- In August 2001, Hicks is alleged to have participated in an advanced al Qaida course in Kabul dealing with information collection and surveillance;
- It is alleged that he was asked whether he would take part in a martyr mission although his response is not alleged;
- After being in—

The Hon. R.P. Wortley: What has he blown up? Hicks wasn't over there flying planes. You people are a joke. It's an absolute joke.

The Hon. R.I. Lucas: What about your family?

The PRESIDENT: Order! The Hon. Mr Lawson has the call.

The Hon. R.P. Wortley: I feel as much about it as you do but I won't go around screwing other people, innocent people, who had nothing to do with it—

The PRESIDENT: Order!

The Hon. R.P. Wortley: He ought to have invaded Saudi Arabia. That is where the nationalities—

The PRESIDENT: Order! The Hon. Mr Wortley will come to order.

The Hon. R.P. Wortley: You ought to be ashamed of yourself. You've been grovelling up Bush's backside for years. You're an absolute disgrace.

The PRESIDENT: Order! The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: The report continues:

- After being in Pakistan on 11 September 2001, he returned to Afghanistan 'to rejoin al Qaida associates';
- During hostilities with US forces, Hicks had been stationed at Qandahar airport and guarded a Taliban tank;
- On or about 9 November 2001, Hicks, with John Walker Lindh, engaged in combat with US forces;
- In December 2001, he was arrested.

I think it is important to place on the record the background that is alleged against this man. This is the reason why he finds himself before a military commission in a foreign land. This is why he does not, in my view, have an immediate claim to be returned to Australia where he will not be called to account for any of his actions. I am not suggesting for a moment that he is guilty of any offence but he is before a military commission and he ought be dealt with by that commission. I deplore the fact that it has taken as long as it has for those proceedings to be concluded. In September of 2004, there was a preliminary hearing in Guantanamo Bay. This was the hearing attended not only by Australian consular representatives, and I mention here in passing that Hicks has had consular access throughout, as have all other Australians who are caught up in criminal justice and other issues beyond our shores. He has not received special treatment but he has received the same treatment as other Australian citizens have received.

There were a number of challenges at that preliminary hearing. There were challenges to the independence of the officers appointed to the military commission and the process of that appointment. Once again, these are challenges which, as I read the decision of the United States Supreme Court, were upheld by that court. So, there is yet another example of the American authorities undertaking a process that ultimately proved not to be in accordance with their own law.

A number of motions were moved relating to the competence of the court. Other proceedings were taken, and Mr Lasry concluded that he considered that the all-encompassing charge of conspiracy was inappropriate, and I think the following passage accurately summarises the effect of what he is saying:

> . . . if a person in David Hicks' position is to be dealt with militarily rather than by the civilian criminal law, a trial in the form of a court martial under the Unified Code of Military Justice would be the appropriate formula. That does seem to have the obvious benefits of a more independent and impartial process and a genuine appellate process leading, ultimately, to the United States Supreme Court.

Those words of Mr Lasry are, I think, prescient, because in the decision of the United States Supreme Court a similar result eventuated.

I turn now to the decision of that court. I am a great believer in the rule of law, and I believe that this judgment of the United States Supreme Court also shows that, in the United States, the rule of law does apply and that the many people who claim that Guantanamo Bay was established for the purpose of putting the American military outside the jurisdiction of its courts and its constitution are misguided, because it is abundantly clear in this long judgment that the reach of the United States law and the rule of law extends to Guantanamo Bay.

One of the cases relied upon by the United States Supreme Court in relation to the powers of military commissions was a case called Quirin, which was decided by the Supreme Court in 1942. This was one of the uses that the military commission relied upon. That case concerned seven German saboteurs who were captured on arrival by submarine in New York and Florida in 1942. The president convened a military commission to try the saboteurs, who filed for habeas corpus petitions in the United States District Court, challenging their trial by commission. The Supreme Court in 1942 granted the saboteurs' petition for certiorari, and then went on to say that a military commission was appropriate in that case. In the course of that judgment, the Supreme Court said:

> . . . in view of the public importance of the questions raised [by the cases] and of the duty which rests on the courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, and because in our opinion the public interest required that we consider and decide those questions without any avoidable delay.

So, there we find, in the heat of the Second World War in 1942, when saboteurs were captured—aliens—they were dealt with by the American court system expeditiously, because they regarded it as appropriate then to do so. I think it is lamentable that, in this particular case, so long has expired before the Hamdan case wound its way through the American court system.

I should mention, as I imagine members would have assumed, that Hamdan is a person in the same position as Hicks in Guantanamo Bay. The first point coming out of the decision is that the justices of the Supreme Court acknowledged the need for expedition, even in matters of this kind. They refer to the common law governing military commissions, examine the very long history of these commissions and indicate that there are three grounds upon which commissions under American law can be established.

I might mention the three grounds for completeness. First, they are substituted for civilian courts at times and in places where marshal law has been declared—something that is not relevant in this present case; and, secondly, they have been established to try civilians as part of a temporary military government over occupied enemy territory or territory regained from an enemy where civilian government cannot and does not function. Clearly, that is not the situation in relation to this particular military commission.

The third type of commission is convened 'as an incident to the conduct of war where there is a need to seize and subject to disciplinary measures those enemies who in their attempt to thwart or impede our military effort have violated the law of war'. It is this type of military commission which Mr Hicks is before, and it is this type of military commission that was relied upon by the United States government in 1942 in the case of Quirin, which is described on this occasion by the Supreme Court as 'the high watermark of military power to try enemy combatants for war crimes'.

The court went on to examine whether or not it is appropriate to try before a military commission the offence of conspiracy. The United States government argued strongly before the Supreme Court that it was appropriate to do so, but in the end the court decided that conspiracies should not be permitted to be tried before these military commissions; and I quote:

> At a minimum the government must make a substantial showing that the crime for which it seeks to try a defendant by military commission is acknowledged to be an offence against the law of war. That burden is far from satisfied here. The crime of conspiracy has rarely, if ever, been tried as such in this country by any law of war military commission not exercising some other form of jurisdiction and does not appear in either the Geneva conventions or Hague conventions, the major treaties on the law of war.

I read that passage because that indicates this Supreme Court, so often criticised by those on the left, is here assiduously applying the law notwithstanding strong submissions from the United States government to the contrary. In conclusion, as I mentioned earlier, the three principal charges that I read out were the original charges against Mr Hicks and they are all charges of conspiracy. The court says:

> International sources confirm that the crime charged here is not a recognised violation of the law of war.

The court continues:

> The charge's shortcomings are not merely formal, but are indicative of a broader inability on the Executive's part here to satisfy the most basic precondition—at least in the absence of specific congressional authorisation—for establishment of military commissions: [namely,] military necessity. Hamdan's tribunal was appointed not by a military commander in the field of battle, but by a retired major general stationed away from any active hostilities. . . Hamdan is charged not with an overt act for which he was caught redhanded in the theatre of war and which military efficiency demands be tried expeditiously, but with an agreement the inception of which long predated the attacks of September 11, 2001 and the AUMF. That may well be a crime but it is not an offence that 'by the law of war may be tried by military commission'. . . None of the overt acts alleged to have been committed in furtherance of the agreement itself is a war crime, or even necessarily occurred during time of, or in a theatre of, war. Any urgent need for imposition or execution of judgment is utterly belied by the record. Hamdan was arrested in November 2001, and he was not charged until mid-2004. These simply are not the circumstances in which, by any stretch of the historical evidence or this court's precedents, a military commission established by Executive Order under the authority of Article 21 may lawfully try a person and subject him to punishment.

I believe that passage is equally applicable, on my understanding of the facts, to the situation of Mr Hicks. I think it shows, once again, that those conducting this process have not followed American processes—processes which they ought to have followed and which they could have followed.

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: The Hon. Sandra Kanck says, 'Why should we follow American processes?' The man has been captured by American forces at war in Afghanistan—a war in which this country, the United Kingdom and others were engaged against the Taliban regime which, by a resolution by the United Nations, had been declared illegal.

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: If the honourable member wants to argue that we should not have been at war in Afghanistan, that is an entirely different question. We were at war in Afghanistan and people, including Australian soldiers, were being shot at and being shot.

The next point I want to mention in passing relates to the procedures adopted by the military commission. I read them out from the report of Mr Lasry earlier, but the Supreme Court held that not those particular rules but other rules ought

to apply to these military commissions. The court said that the rules applicable in courts marshall must apply; that is, the rules which apply to American servicemen appearing before American courts marshall must apply. The court went on to state:

> Since it is undisputed that commission order No. 1 deviates in many significant respects from those rules, it necessarily violates Article 36B.

In the court below, as I understand it, it had been held that the Geneva Conventions did not apply. However, the Supreme Court overruled that conclusion. It stated:

> . . . the Court of Appeals concluded that the Conventions did not in any event apply to the armed conflict during which Hamdan was captured. The court accepted the Executive's assertions that Hamdan was captured in connection with the United States' war with al Qaeda and that that war is distinct from the war with the Taliban in Afghanistan.'

That was the rather sophisticated argument of the Bush administration. The court continued:

> The conflict with al Qaeda is not, according to the government, a conflict to which the full protections afforded detainees under the 1949 Geneva Conventions apply because Article 2 of those Conventions. . . renders the full protections applicable only to 'all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties [to the Convention]. . . Since Hamdan was captured and detained incident to the conflict with al Qaeda and not the conflict with the Taliban, and since al Qaeda, unlike Afghanistan, is not a High Contracting Party, that is, a signatory of the Conventions, the protections of those Conventions are not, applicable, it is argued, to Hamdan.

That argument by the executive was rejected by the Supreme Court. It described the reasoning of the Court of Appeals as erroneous and went on to say:

> Common Article 3 is applicable here and, as indicated above, requires that Hamdan be tried by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples. . . The procedures adopted to try Hamdan, similar to the procedures being adopted to try Hicks, deviate from those governing courts-martial in ways not justified by any evident practical need and, for that reason, at least, fail to afford the requisite guarantees. If the various provisions of Commission Order No. 1 dispense with the principles articulated in Article 75 and indisputably part of the customary international law, then the accused must, absent disruptive conduct, be present for his trial and must be privy to the evidence against him.

That aspect of the capacity to take evidence in secret in the absence of the accused person was struck down by the Supreme Court, which concluded:

> We have assumed, as we must, that the allegations made in the government's charge against Hamdan are true. We have assumed, moreover, the truth of the message implicit in that charge, namely, that Hamdan is a dangerous individual whose beliefs, if acted upon, would cause great harm and even death to innocent civilians and who would act upon those beliefs if given the opportunity. It bears emphasising that Hamdan does not challenge, and we do not today address, the government's power to detain him for the duration of active hostilities in order to prevent such harm but, in undertaking to try Hamdan and subject him to criminal punishment, the Executive is bound to comply with the rule of law that prevails in this jurisdiction.

It is a great pity that those advising the Bush administration in the establishment of military commissions and the trial of Mr Hicks did not pay greater attention to these important provisions at the outset. They should have, but they did not. The American authorities have now assured the Australian government, which has been pressing the point, that the Hicks matter will be brought to an end as soon as possible. I emphasise that this motion seeks to attribute blame in the wrong direction. I believe that it is misguided and I will not be supporting it, notwithstanding all the reservations I have expressed about the way in which the case has been handled thus far.

The Hon. SANDRA KANCK: Innocent until proven guilty is the basis of our legal system and yet, on Saturday, it will be five years since David Hicks was captured by the Northern Alliance in Afghanistan and handed over to US troops—and still he is imprisoned and still he is untried. If any person in South Australia had to wait that long for their day in court, there would be an outcry. It took 2½ years for any charges to be laid against Hicks, and he is still languishing in Guantanamo Bay with no charges having been laid against him at the present time.

This motion refers to being treated equally as a US citizen. I wonder how many US citizens remain in a prison anywhere in that country untried for more than five years. The US Attorney-General, Alberto Gonzales, recently said that the Guantanamo Bay inmates can remain in custody indefinitely. What sort of a justice system has our Prime Minister left David Hicks (an Australian citizen) in?

There are some basic principles of justice that ought to be involved in this. By doing a quick web search, I found many people who agree that basic principles of justice should be upheld in regard to David Hicks. Here are some that I pulled off from some Google searching: former Australian Governor-General, Bill Hayden; Australian Catholic bishop, Christopher Saunders; former Liberal Australian prime minister, Malcolm Fraser; British Attorney-General, Lord Goldsmith; British peer, Lord Steyn, who described what is going on at Guantanamo Bay as being 'a monstrous failure of justice'; the Red Cross—hardly a radical organisation; Amnesty International; former Federal Court judge, John Merkel; former New South Wales Liberal attorney-general, John Dowd; US Navy lawyer, Lieutenant-Commander Charles Smith; Australian Catholic bishop, Kevin Manning; *Sydney Morning Herald* journalist, Alan Ramsay; former US Army chaplain, Captain James Yee; and current federal Liberal MP, Dana Vale.

Britain has gone to the US and successfully fought for the release of all British citizens who were detained at Guantanamo Bay. Afghani and Pakistani officials have done the same with their illegally detained citizens. France, Spain, Sweden, Russia and Saudi Arabia have all gone in to bat for their citizens. Yet, to his and our shame, our Prime Minister refuses to do the same for an Australian citizen. Bin Laden's bodyguard has been released; so, too, has the Taliban ambassador to Pakistan but, still, David Hicks is left languishing at Guantanamo Bay by Australia's Prime Minister.

I want to read most of an affidavit signed by David Hicks on 5 August 2004. He says, from point (5) onwards:

> I have been beaten before, after and during interrogations.

I hope Mr Lawson is listening to this. It goes on:

> 6. I have been menaced and threatened, directly and indirectly with firearms and other weapons, before and during interrogations.

I do not know whether Mr Lawson thinks this is okay, but I do not. It continues:

> 7. I have heard beatings of other detainees occurring during interrogations, and observed detainees' injuries that were received during interrogations.
>
> 8. I have been beaten while blindfolded and handcuffed—

this is justice, Mr Lawson—

> 9. I have been in the company of other detainees who were beaten while blindfolded and handcuffed. At one point a group of detainees, including myself, were subjected to being randomly hit over an eight-hour session, while handcuffed and blindfolded.

I assume, Mr Lawson, you might have some problems with that.

The PRESIDENT: The honourable member will address her remarks through the chair.

The Hon. SANDRA KANCK: I will do so, Mr President. The affidavit continues:

10. I have been struck with hands, fists and other objects, including rifle butts. I have also been kicked. I have been hit in the face, head, feet and torso.

I imagine, Mr President, that Mr Lawson might think that this is an okay way for an Australian citizen to be treated.

11. I have had my head rammed into asphalt several times (while blindfolded).

12. I have had handcuffs placed on me so tightly and for so long (as much as 14 to 15 hours) that my hands were numb for a considerable period thereafter.

13. I have had medication—the identity of which was unknown to me despite my requests for information—forced upon me against my will. I have been struck while under the influence of sedatives that were forced upon me by injection.

Mr President, I wonder what Mr Lawson thinks about that.

14. I have been forced to run in the leg shackles that regularly ripped the skin off my ankles. Many other detainees experienced the same.

15. I have been deprived of sleep as a matter of policy.

16. I have witnessed the activities of the Internal Reaction Force (hereinafter 'IRF'), which consists of a squad of soldiers that enter a detainee's cell and brutalise him with the aid of an attack dog. The IRF invasions were so common that the term to be 'IRF'ed' became part of the language of the detainees. I have seen detainees suffer serious injuries as a result of being IRF'ed. I have seen detainees IRF'ed while they were praying, or for refusing medication.

17. I was told repeatedly that if I cooperated during the course of the interrogations, I would be sent home to Australia after the interrogations were concluded. I was told there was an 'easy way' and 'hard way' to respond to interrogation.

18. Interrogators once offered me the services of a prostitute for 15 minutes if I would spy on other detainees. I refused.

19. Failure to cooperate meant the loss of the ordinary necessities of living, such as showers, sufficient food, relief from the prospect of IRFing and other regular abuse visited upon non-cooperative detainees, access to reading material, and social contact (including receiving mail).

By now, Mr President, I would be hoping that Mr Lawson might be having second thoughts about his views. It continues:

20. During Ramadan, food was withheld from detainees after the break of the daily fast in order to coerce cooperation with interrogators. Detainees who refused to cooperate were punished regularly, and denied the ordinary necessities of living.

21. I have been told that strobe lights and extreme cold were also used to disorient detainees in order to soften them up for interrogation. I have also heard that religious detainees were exposed to pornography, and were dragged around naked in order to break their will.

22. Detainees were not allowed to know the date, day, year or time. We were deprived of any and all information and news from the world. Detainees were permitted very little exercise.

23. At one point during 2003 alone my weight dropped by 30 pounds (and I was not overweight to start).

24. Other detainees also informed me that interrogators attempted to turn them against me by spreading rumours about me. In any event, due to the way interrogations were conducted, and the physical layout of the camp, it was obvious to all of the detainees who was being interrogated, for how long, and whether that detainee emerged abused, or not (with the latter signifying cooperation). Thus, any detainee would know who was cooperating with the interrogators.

25. The interrogation process ruled the detention camps and the lives of detainees. Cooperation with interrogators offered the only means of relief from the miserable treatment and abuse that detainees suffered. Those who failed to comply suffered abuse until they gave in.

26. My conditions changed after I was moved to Camp Echo (as did the treatment afforded me by the military personnel on duty there) July 9, 2003, and then again after the visits from my attorneys began. However, at Camp Echo, I have been held in a solitary cell and have been so since arriving at Camp Echo. I was not allowed outside of my cell in Camp Echo for exercise in the sunlight from July 2003 until March 10, 2004.

I stress, in case the Hon. Mr Lawson was not paying attention, that the affidavit states, 'without sunlight from July 2003 until March 10, 2004'. The affidavit continues:

27. As noted earlier, the above catalogue of abuse and mistreatment is not complete. It is but a summary of some of the abuse I suffered, witnessed and/or heard about since my detention began. I would be able to provide further information and detail if the court so desires, but a complete account would require a substantially longer document. In fact, at my request and due to the persistence of my lawyers, I have recently met with US military investigators conducting the probe into detainee abuse in Afghanistan. Also, this is not the first time I protested my mistreatment, since on several occasions in Afghanistan and later at Guantanamo Bay I informed representatives of the International Red Cross of the abuse.

Two years after that affidavit was signed by David Hicks, Major Mori, before whom this affidavit was sworn, appeared on the Denton program talking about the solitary confinement, the fact that there was no sunlight for months and that not only had he been bashed but also sexually assaulted by guards. I wonder how it is that our federal government can stand idly by and pretend that this is not happening, or that members of that same political party in this place can defend what our federal government is doing. I note that, when passed, this motion will be forwarded to the Minister for Foreign Affairs.

This is the man who has said that justice is not being delayed for David Hicks in the US; it is the same man who has said that he does not mind what happens—it is up to the US government; and it is the same man who refused to accept delivery of a 50 000-strong petition, which states:

All Australians have the right to receive a fair trial.

Well, I thought so once upon a time. It continues:

The British, Spanish and French governments have all refused to allow their citizens to be tried in Guantanamo Bay. Even the Americans have removed their citizens from Guantanamo Bay and ensured they face a fair trial at home. As Australian foreign minister, you should have the courage to do the same. We demand that you act immediately to bring David Hicks back here to face an Australian court.

I have been a supporter of the group Fair Go for David, and over the years since it was formed I have attended many demonstrations, and sometimes no more than a dozen people attended. I want to commend Bronwen Mewett, in particular, and Kay Bilney for their extraordinary work in never giving up on this man. When Fair Go for David was formed they had four simple points of action: first, that David Hicks be treated in accordance with the Geneva Conventions; secondly, that the law of habeas corpus be applied to David Hicks; thirdly, that David Hicks be repatriated to Australia and given a fair civil trial if charged with any crimes; and, fourthly, that any other Australians in a similar situation to David Hicks be entitled to the same rights.

It was heartening to see so many people at the rally to which the Hon. Mark Parnell referred when he moved his motion. There are now thousands of people marching on the streets and signing petitions to seek justice for this Australian citizen—justice that other Australian and US citizens receive as a matter of course. I should mention that, for those who do care about justice, in terms of the rallies, and so on, there are

two this weekend: one at 11 a.m. on Saturday in Victoria Square and one at noon on the steps of Parliament House on Sunday.

A lawyer living in Maitland, New South Wales sent me an email in February. I want to read the first sentence of it because it says a lot. It states:

> Just as Bob Dylan sang in *Hurricane* of the failure of the American justice system, so too could Australians sing that David Hicks' case 'kinda makes you feel ashamed to live in a land where justice is a game'.

I am embarrassed and I am ashamed that on the international stage I am represented by a government that will not stand up for basic human rights. I strongly support this motion. Bring David Hicks home.

The Hon. S.G. WADE: I do not support the motion put forward by Mr Parnell because it seeks for Mr Hicks what he does not seek for himself. Mr Parnell's motion states:

> That the Legislative Council calls on the Australian government to insist that citizen of South Australia, Mr David Hicks, be treated the same as citizens of the United States of America—no more, no less.

Mr Hicks is not an American citizen; Mr Hicks has never been an American citizen; he does not claim to be an American citizen; he does not seek to become one. I want Mr Hicks to be treated as what he is—an Australian citizen in the hands of a foreign government, a foreign government with one of the proudest records of freedom, law and justice of any nation in the world. Having said that, I do not consider that the treatment of Mr Hicks reflects the best of that tradition.

I make no comment on the guilt or innocence of Mr Hicks; my concerns relate to the process. I would like to quote from an open letter dated 3 June 2006 written by the Hon. John Dowd, President of the International Commission of Jurists in Australia. Mr Dowd, who was a former Liberal attorney-general, states in his letter:

> Whether or not David Hicks is in fact guilty or innocent is not the issue. The illegality lies in the process of indefinite detention and unfair trial by military commission, a process which expressly has no application to any American citizen. The imprisonment at Guantanamo Bay and the unfair trial of David Hicks by military commission are an affront to the international legal standards, indeed all civilised legal standards. . . The military commissions deny the basic rights to an independent and impartial trial and the procedures do not exclude evidence obtained by coercion including the use of cruel, inhuman or degrading treatment.
>
> The system also denies the fundamental right to an expeditious trial. David Hicks was in custody for two and a half years before he was charged on 10 June 2004. He has now been imprisoned for four and a half years without a trial. It is not fairly open to attribute this inordinate delay to Mr Hicks and his lawyers. It was the unjust system of trial by military commission which gave rise to his legitimate court challenge, a process which in any event occupied a small proportion of the total period. Further, there remains no explanation for the unconscionable delay prior to Mr Hicks being charged.

It is to the great credit of the United States that, since that letter was written, the Supreme Court of the United States ruled on 29 June that the military commissions are unconstitutional. I appreciate that Mr Hicks is not a character who engenders widespread sympathy, but this is beside the point. I am reminded of a quote from Sir Robert Menzies in one of his famous 'forgotten people' addresses, where he declared:

> [The law] is that security to which a man may confidently and calmly appeal, even though every man's hand may be against him. The law's greatest benefits are for the minority man—the individual.

Mr Hicks is a minority man; nonetheless, he has the right to recourse to the law. Even if you were to assume, for the sake of argument, that Mr Hicks is guilty of each and every one of the accusations made against him, he deserves a fair and expeditious trial. In a free and democratic society every person is entitled to access to justice.

Of course, the terrorists do not believe this and that is why we oppose them. There was no justice for the 2 819 innocent people killed in the World Trade Centre towers; there was no justice for the South Australian SAS Sergeant, Andrew Russell, killed by a roadside bomb in Afghanistan in 2002; there is no justice for the millions of Iraqi people who risked their lives to vote and who seek to live peaceful lives under a democratically elected government. For their sake we need to be vigilant, upholding our values of freedom, the rule of law, and justice. In conclusion I would like to quote again from the letter from Mr Dowd:

> The menace of terrorism is real. However, to meet the danger the world needs not only a military solution, but renewed and sustained commitment to the rule of law and to fundamental principles of human dignity and respect for human rights. This is the shared heritage of a civilised world. Unless we are vigilant, terrorism may achieve the destruction of these values. We should not give it such a victory.

The Hon. D.G.E. HOOD: I rise to indicate Family First's view on this matter. It seems that we (that is, Family First) are not alone in the view that David Hicks should have had a completely fair trial by this time, indeed before this time. As pointed out by the Hon. Sandra Kanck, this Saturday is the fifth anniversary of David Hicks' detainment by the US government. Surely, by any measure, five years is sufficient time to have a fair trial, or at least the commencement of that fair trial, depending on how long that trial takes. There seems to be unanimous agreement in this chamber on that fact, and Family First holds that view. This has gone on too long and we appeal to the appropriate authorities, indeed, the Australian government to the extent that it can assert itself and certainly the US federal government, to bring this man to trial and to bring him to trial quickly and fairly.

We say that with no hesitation whatsoever. We join other members in this chamber in taking that view. However, this motion does not deal with that. This motion simply asks that David Hicks be treated as a US citizen. Family First finds no reason to treat David Hicks as a US citizen. He is not a US citizen. He has never been a US citizen. He does not seek US citizenship. Why would we not treat him as a citizen of another country?

The Hon. Sandra Kanck interjecting:

The Hon. D.G.E. HOOD: Yes, it is.

The Hon. M. Parnell interjecting:

The Hon. D.G.E. HOOD: That is right. We see no reason for that. He should be treated as an Australian citizen in a foreign country, but he should be treated fairly and a trial should happen quickly. For that reason, Family First cannot support this motion.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise at the outset to congratulate my colleague the Hon. Robert Lawson on, as usual, a comprehensive and detailed exposition of the legal arguments in relation to some of the issues. Certainly, from my viewpoint, he has covered those issues and I will not even endeavour to cover many of the issues that he has covered. I say at the outset, too, as the previous two speakers have said, that I accept that David Hicks, as indeed anyone, should be entitled to a fair trial and that should be a fair trial as soon as possible. At this stage, whilst we might have our own perceptions as to his possible

guilt or innocence, he is entitled to be assumed innocent until he is proven guilty. I accept that. I also accept the arguments from the Hon. Mr Hood and the Hon. Mr Wade in relation to the precise wording of this motion, because I must admit I do not understand the motion.

The Hon. Sandra Kanck spoke eloquently in support of her own views about bringing David Hicks home. I understand that debate but, when one looks at this particular motion, at least to me, it does not make sense. I could understand if the motion said, 'We call on whatever to ensure that David Hicks is brought home', or something along those lines—and various campaigns have been mounted. The Hon. Mr Parnell may well be able to explain it to the rest of us when he replies, but the subtlety of the drafting of his motion escapes me, although I understand the ensuing debate. The Hon. Sandra Kanck is clearly arguing that he should be brought home, I understand, as a member of that particular organisation.

In my view, there is another side to this story. I think that, on one side, some believe that Mr Hicks is a terrorist and is guilty; and, on the other side, some seem to think that Mr Hicks is an angel who has been wronged by the evil empire in terms of the Americans, and from their view point it is as white as it is black on the other side. The rest of us might have our own views in relation to this but are prepared to accept that he ought to be tried, that that should be done as quickly as possible and that he is entitled, at this stage, anyway, to a presumption of innocence.

I think some of the people who automatically believe that everything Mr Hicks says ought to be accepted and that he is as pure as the driven snow and has been wronged ought to speak to the Russell family, as the member for Waite in our previous discussion on this outlined. They are constituents of his and the family of an Australian soldier killed in Afghanistan whilst at the same time—

The Hon. Sandra Kanck: He shouldn't have been there.

The Hon. R.I. LUCAS: Well, the Hon. Sandra Kanck should go and speak to the Russell family, and others, who are in the position of losing a loved one, and on the other side of the fence, from their viewpoint, are people such as Mr Hicks who are fighting their son. That is the position that we have. I say to other members in the community who automatically think that Mr Hicks is as pure as the driven snow that they should go and speak to the families who have been devastated by the actions of terrorists all around the world in recent years. Go and speak to those families in relation to what they think ought to happen to people who are proved to be terrorists or people who have trained with terrorist organisations.

That is the other side of this story and, frankly, I am just appalled at some of the public debate that goes on at the moment. There is one side of the debate going on in the media in relation to this issue, but on the other side are the servicemen who either lose their lives or are injured and those who lose members of their family or friends as a result of terrorist activity, either in America or any other part of the world. That part of the debate does not seem to enter into it for some of the people in that position.

The other thing is the Hon. Sandra Kanck's position when she read a long series of claims made by Mr Hicks in relation to his treatment in 2004. I have to say at the outset that I accept that the Hon. Sandra Kanck believes everything that Mr Hicks says, but I am afraid I cannot accept everything Mr Hicks says. They are claims that he has made. On the other hand, I cannot say that I can prove that all of his claims are wrong. It may well be that some of the things he claims are accurate and it may well be that some of the things he claims are inaccurate. However, I think that when the Hon. Sandra Kanck said to the Hon. Mr Lawson as she went through each of the claims, 'I wonder whether the Hon. Mr Lawson is happy with that,' or words to that effect, she was unfair to my colleague the Hon. Mr Lawson. It would appear that the Hon. Sandra Kanck, as she went through each of those points trying to attack the Hon. Mr Lawson, was accepting their accuracy because Mr Hicks made the claim.

Frankly, in relation to someone with the history of Mr Hicks, I start off with a huge degree of scepticism about the accuracy of a number of claims that he would make. I do not start from the position of saying that, because Mr Hicks makes the claims, they are therefore accurate. I accept that other people can adopt a different position, but I do not accept the position and would strongly oppose the assumption that, because he says this happened to him, therefore it is true. Each of us has heard many claims about behaviour and treatment in our prisons in South Australia, for example, from prisoners, and on a number of occasions they have proved to be untrue. On some occasions—

The Hon. P. Holloway: Just like your allegations against the police.

The Hon. R.I. LUCAS: Exactly.

The Hon. P. Holloway: Just like your allegation today.

The Hon. R.I. LUCAS: There was no allegation made today in relation to police. It was a question.

The Hon. P. Holloway: A question containing an allegation.

The Hon. R.I. LUCAS: And that is true. The leader interjects out of order, but it is true that allegations are easily made against the police, politicians, bankers or whomever. They are easily made. Some might be accurate, some might not. I do not start from the position with someone in Mr Hicks' position and with his background of automatically assuming that everything he claims in relation to his treatment is true.

The Hon. G.E. Gago: You called him a terrorist before he had a fair trial.

The Hon. R.I. LUCAS: In the end that has to be proved. As I said, I accept that he is entitled to a fair trial; it should happen as quickly as possible, and he deserves the presumption of innocence. People like the Hon. Gail Gago ought to go and speak to the families—

The Hon. G.E. Gago: You called him a terrorist. You sat there and called him a terrorist without his having a fair trial.

The ACTING PRESIDENT (Hon. R.P. Wortley): Can we allow the Hon. Mr Lucas to finish uninterrupted?

The Hon. R.I. LUCAS: —of servicemen in Australia who have lost members of their family in conflicts such as Afghanistan. In talking about the background of Mr Hicks, can I briefly refer to what was for Mr Hicks a sympathetic story by Ian Munro and Penny Debelle in *The Age* on the weekend, I think, as part of the Bring Hicks Home campaign. So it is not from anyone who was opposed to his position. In their summary they included, under the heading 'Justice delayed, justice denied', his background. It states:

> May 1999
>
> David Hicks travels to Albania to join the Kosovo Liberation Army fighting for local Muslims before returning to Australia and converting from Christianity to Islam.
>
> November 1999-2000
>
> Travels to Pakistan where, in early 2000, he joined terrorist organisation Lashkar-e-Taiba (the Army of the Righteous). Later fights Indian forces near the Kashmiri border.

January 2001

Hicks travels to al-Qaeda training camps in Afghanistan. Adopts the alias Muhammed Dawood and allegedly meets Osama bin Laden.

September 2001

Travels to Pakistan where he sees TV footage of the September 11 attacks before returning to Afghanistan to join al-Qaeda fighters defending Kandahar airport.

November 2001

Joins other al-Qaeda members who are fighting coalition forces.

December 2001

Hicks is captured near Baghlan, Afghanistan. At the time he was fighting with Taliban government forces.

That report from Penny Debelle and Ian Munro which, as I said, is sympathetic to Mr Hicks' cause, highlights the fact that part of his training involved the use of explosives. Certainly, those who worry about what might have been the future for Mr Hicks ought to bear in mind that he was trained in the use of explosives by these terrorist organisations.

As I said, the Hon. Sandra Kanck interjected earlier that he does not even face charges at the moment. I refer to the commonwealth Attorney-General's website and the frequently asked questions on these issues. A quote from that states:

Mr Hicks has not yet been formally charged under the new Act. Certain procedures have to be followed in order to reconstitute the military commission, including the proclamation of regulations relating to some of the military commission procedures.

What that is saying is that, as a result of the Supreme Court decision, which the Hon. Mr Lawson highlighted, the military commission is having to be re-established and, as a result of that, until those procedures have been followed through, the charges against Mr Hicks are unable to be introduced. So, as I said, whilst the Hon. Sandra Kanck was referring to the fact that he is not even facing charges, that is as a result of the Supreme Court decision in the United States striking down the military commission.

I need to place on the record that, when this motion was highlighted, my colleague the Hon. Mr Dawkins corresponded with the foreign minister's office. I have received some information from Mr Dawkins which came from the foreign minister's office in relation to David Hicks and which outlined the government's position on the matter. It states:

Like all Australians who travel overseas, Mr Hicks is liable to the laws of foreign jurisdictions and must expect to face foreign courts if he is charged with a breach of those laws. There are no special courts or special laws for Australians overseas. Currently, there are over 200 Australians facing charges overseas.

Mr Hicks faces serious allegations arising from acts allegedly committed by him whilst overseas. Mr Hicks was charged by US authorities in relation to these allegations with three very serious offences: conspiracy to commit war crimes, attempted murder by an unprivileged belligerent, and aiding the enemy.

Mr Hicks was to be tried on these charges before a military commission in Guantanamo Bay. Military commissions are recognised as a part of United States law and their jurisdiction is set out in the United States Uniform Code of Military Justice . . . The United States Supreme Court, however, recently held that the military commission established to try one Guantanamo Bay detainee, Salim Hamdan, was unlawful because it lacked congressional authority and was inconsistent with the [United States Uniform Code of Military Justice].

I repeat that the foreign affairs minister is indicating that the military commission was, in essence, held to be unlawful because it lacked congressional authority and was inconsistent with the United States Uniform Code of Military Justice. The letter from the foreign affairs minister continues:

As a result of the Supreme Court's decision in Hamdan's case, the United States Administration needs to decide quickly on an alternative method to try Mr Hicks in relation to these allegations. The Australian government is of the view that Mr Hicks should be brought to trial on any charges that are laid in relation to the allegations against him as soon as possible in a manner consistent with the Supreme Court's ruling.

The Australian Government provides consular assistance to Mr Hicks, as we do all Australians facing court or in gaol overseas. Australian officials visit Mr Hicks at Guantanamo Bay regularly and are satisfied that Mr Hicks is being treated humanely.

In relation to that, I note from the information provided that there has been some expenditure in Mr Hicks' case—taxpayer funded expenditure—of over $200 000 to Australian consultants who have been part of Mr Hicks' defence team. So, considerable taxpayer resources have gone in to providing assistance to Mr Hicks' defence team.

The final issue I want to touch on is something that has appeared in much of the press debate (and the Hon. Sandra Kanck referred to it indirectly), namely, the Bring Hicks Home campaign. A couple of questions and answers on the Attorney-General's website provide at least the commonwealth government's response to a couple of questions relating to the issue of bringing Mr Hicks home and whether he can be prosecuted in Australia. The questions are: what about the repatriation of nationals from the United Kingdom and other countries? Can Mr Hicks be repatriated to Australia? The answer is:

The United States has indicated that a detainee will not be repatriated to their home country unless the home country can indicate that the detainee may be prosecuted or the United States has determined that the detainee is no longer of law enforcement, intelligence or security interest. The Australian Government has been advised that no prosecution against Mr Hicks in Australia is available. However, Australia and the United States have agreed to ensure that arrangements are in place to provide a means for Mr Hicks, if convicted, to apply to be transferred to serve any penal sentence in Australia.

Question: can Mr Hicks be prosecuted in Australia? The answer is:

The Government has been advised that based on available evidence no prosecution is available against Mr Hicks in Australia at this time. Making that decision is more complicated than simply identifying a criminal offence which may possibly have been contravened by a person's actions. The decision-maker must also take into account the likelihood of success, referring to factors such as available defences, the facts in question and the rules of evidence as they apply in Australian criminal law.

The Australian Federal Police considered offences existing in 2001, including offences set out in the Geneva Conventions Act 1957 and the Crimes (Foreign Incursions and Recruitment) Act 1978.

As a result of their examinations, the Australian Federal Police asked the Commonwealth Director of Public Prosecutions to consider all available evidence regarding Mr Hicks' alleged involvement with the Kosovo Liberation Army, Lashka-e Taiba and al-Qa'ida/Taliban forces. After considering the available evidence, the facts in question, the rules of evidence and available defences, the Commonwealth Director of Public Prosecutions advised that prosecution was not available.

In summary, the notion that Mr Hicks should be brought home would mean that Mr Hicks would not face charges. I think a lot of people do not understand that particular aspect of the campaign. I think the notion is: well, bring Mr Hicks home. As I said, there are some who obviously think he is as pure as the driven snow and he should not be charged with anything, but there are others who think he should be brought home and charged in Australia. The advice clearly is that if he was to be brought home he could not face charges, for the reasons that I have just outlined.

So, given this motion is intended to be a criticism of the federal government, we believed it was important—in part, anyway; I am not in a position, obviously, to argue the whole of the federal government's case—that the federal government's position should at least be put on the record. As I said at the outset, I certainly share my personal views that in

relation to this particular issue there seems to be one side of the equation which very rarely seems to get any public debate, and that is the families of Australian servicemen either killed or injured fighting terrorists and others and, also, the families and victims of terrorist activity all around the world.

The Hon. M. PARNELL: I would like to put on the record my thanks to all honourable members who spoke to this motion: the Hon. Rob Lawson, the Hon. Sandra Kanck, the Hon. Stephen Wade, the Hon. Dennis Hood, the Hon. Rob Lucas and the Hon. Ian Hunter. I would also like to record my appreciation of the Hon. Nick Xenophon who, whilst he cannot be here, thought sufficient of this motion to send me a text message expressing his support for it, which I hope the opposition will have regard to if this matter goes to a division.

I know the debate on this motion has taken some time in the second last sitting day before we break and there is a lot of business to get through, but this is a very important motion. When I reflect on the small amount of time we have spent on it, with the five years that David Hicks has spent in legal limbo in what are, by all accounts, appalling conditions at Guantanamo Bay, it pales into insignificance.

David Hicks is from South Australia. His family are still here. His father, Terry Hicks, lives in Adelaide. I might just reflect: who would not be proud to have a father like Terry Hicks (David Hicks' father)? No doubt he is as frustrated as anything with his son and the trouble his son has got into, but he has stuck by him the whole way. I think it is a great credit to David Hicks' father that he has fought as hard as he has for five years to try to get some justice for his son. Like the Hon. Sandra Kanck, I will be at the Fair Go for David rally at 11 o'clock on Saturday at Victoria Square. I will also be at the Amnesty International rally on Sunday at 12 o'clock on the steps of Parliament House—that rally calling for the Guantanamo Bay camp to be shut down.

I would like to reflect briefly on some of the comments of the Hon. Rob Lawson, who made what I think is a bold attempt to justify what is unjustifiable. Certainly, learned and academic but missed the point, I think, entirely. It made something sound more complicated than it is. The simple question is whether David Hicks is entitled to have basic standards of criminal procedure and criminal justice apply to him as US citizens had apply to them when they were in the same situation.

It is not an academic exercise but an exercise that relates to the rights of a human being. The five years of incarceration without trial, as the Hon. Sandra Kanck said, would dominate question time here for a month; if there was a person in South Australia, an inmate, on remand who had been in that predicament for five years without trial, I do not think we would have questions on any other topic in this place. It would be an outrage to all right thinking citizens. Yet, because the person who is subject to that treatment, whilst one of us—a South Australian—is beyond our reach in American custody, apparently some of these concerns evaporate.

A lot of the arguments from Liberal members missed the point. Members were correct to say that they were not implying guilt or innocence in relation to David Hicks. It is a little like something we have all experienced where someone comes up to you at a social gathering and says, for example, 'I'm not racist, but. . . ' and they proceed to give a lie to it. It is not honest for members to be able to say, 'We are not implying whether he is guilty or innocent', but to then launch into an argument that he is probably a bad person and therefore the treatment that he has been subjected to is probably okay. You cannot have it both ways. It really is not a matter of his guilt or innocence but a matter of his human rights.

The Hon. Rob Lucas found the wording of my motion subtle, maybe a little too subtle, in that it called for Hicks to be treated the same as citizens of the US. It was not to imply that he wants to be an American citizen or that somehow citizenship should be granted to him: it was inviting members here to reflect on the way the Americans treated their citizens who were found in this predicament, and inviting us also to reflect on the way other civilised countries responded when their citizens ended up in Guantanamo Bay. David Hicks will be subject to these military commissions under the Military Commissions Act 2006, an act passed in September and signed by President Bush on 7 October, and the rules are currently being finalised as to how those military commissions will operate.

The most important thing to note about these military commissions is that they do not apply to US citizens, and that goes to the heart of it. The Americans have decided that the rule of law, the ability of their citizens to be subjected to a just criminal trial regime, was important enough that they did not require their citizens to go through these unfair military commission processes. The Military Commissions Act is expressed to comply with the Geneva Convention, but at the same time it contains provisions saying that no-one who is subjected to trial by a military commission can invoke the Geneva Convention under it as a source of their rights: it is trying to have it both ways. Clearly it does not comply with international standards of criminal justice. As has been pointed out, Mr Hicks so far has not been charged with any offence under the new legislation and there is no way that he can get a fair trial under the Military Commissions Act.

The rules of such a trial would enable, for example, the prosecution to withhold its source of evidence or how that evidence was obtained. It would be up to the defence to prove the unreliability of that evidence, without knowing where it came from. It is permissible for evidence obtained under torture to be admitted into evidence. These are the types of provisions that would never be allowed under the Australian criminal justice system. The Americans will not allow those provisions to apply to their citizens, yet members of the opposition seem happy for that flawed process to apply to South Australian citizen David Hicks. The mood is changing. Even members of the Liberal Party, if today's *Advertiser* and *The Australian* can be believed, are now starting to call for some justice for David Hicks.

The Australian today carries the headline: 'Libs get behind Hicks' and *The Advertiser* today carries the headline: 'Lib MPs want to get Hicks home'. Those papers name prominent federal coalition members Barnaby Joyce, Danna Vale, Petro Georgiou, Russell Broadbent, Bruce Baird as people who are now saying to the Prime Minister, 'Enough is enough. We really need to have justice for David Hicks'. In his contribution, the Hon. Rob Lucas pointed out that bad things have happened. Yes, bad things have happened, such as terrorist attacks, 9/11, the loss of innocent lives and the bombing of civilians in Iraq. We could go through a great many bad things that have happened, but I do not think it is reasonable to say that that somehow justifies the abandonment of proper principles of criminal justice and fairness. I urge all members to support this motion. A consequence of its passage would

be that we would express our concern to the Australian government through the foreign affairs minister and we would add to the chorus of prominent Australians, international jurists and civil rights campaigners for David Hicks to receive justice. I urge all members to support the motion.

The council divided on the motion:

AYES (9)

Finnigan, B. V.	Gago, G. E.
Gazzola, J. M.	Holloway, P.
Hunter, I.	Kanck, S. M.
Parnell, M. (teller)	Wortley, R.
Zollo, C.	

NOES (10)

Bressington, A.	Dawkins, J. S. L.
Evans, A. L.	Hood, D.
Lawson, R. D. (teller)	Lensink, J. M. A.
Lucas, R. I.	Ridgway, D. W.
Stephens, T. J.	Wade, S. G.

PAIR

Xenophon, N.	Schaefer, C. V.

Majority of 1 for the noes.

Motion thus negatived.

CONTROLLED SUBSTANCES (EXPIATION OF SIMPLE CANNABIS OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 November. Page 1111.)

The Hon. J.M.A. LENSINK: I rise to indicate Liberal opposition support for this measure. I congratulate the honourable member and Family First for bringing this important issue to our attention. It is, indeed, consistent with the Liberal Party policy that we took to the last election to support this measure. I will not outline the deleterious health effects of the consumption of cannabis. I have previously outlined that in a speech in support of the Hon. Ann Bressington's bill, which I will loosely call the 'hydroponics and bongs and pipes bill', which is still on the *Notice Paper*. However, I strongly believe that the evidence has swung against the urban myth that has been perpetuated for some time, which is that cannabis is a so-called soft drug and does not cause people much harm.

It is true that, if someone smokes one joint, they are unlikely to run themselves into the same risk as a number of other drugs, such as methamphetamines and the like. However, in the long run, it involves serious risks. That evidence has been proved, and it is something that is now being expounded by organisations such as the AMA, which obviously relies very strongly on medical evidence.

Cannabis is not a legal substance, and that is a common misconception within our community. Certainly, the fact that possession of one plant could attract a meagre fine of $150 (now $300) does not send the message to the community that this is, in fact, an illegal and potentially very dangerous substance. That fine regime has been in place for some time, and it has only recently changed through the regulations. I note from the publication produced by the Australian National Council on Drugs entitled 'Cannabis: answers to your questions' that, prior to the regulations being changed, South Australia—surprise, surprise—had the most lax laws in the country in relation to possession for cannabis. So, we have gone from taking the wooden spoon award on that one and moved up slightly to being a little tougher. However, the Liberal opposition believes that this still is not a strong enough message, which is the basis for our supporting this bill.

It is well known that South Australia has a very unhealthy cottage industry of hydroponically grown cannabis. In the past three months there have been incidents of people growing it in their homes—indeed, one in my town of Bridgewater—and coming to grief because of electricity faults arising from the growing of it. Clearly, changing the law may not prevent those sorts of events occurring, but I make the point because it is well known that a number of these workshops exist around the state. They are probably cultivated by illegal groups and the people who cultivate them are placing their health at risk in a range of different ways.

Under the current regime, one offence is the same as 100 offences in the sense that it attracts only an expiation fee, so no record is kept by SAPOL in terms of being able to detect repeat offenders. In other regimes we have the police drug diversion initiative which at least puts people through counselling so they can address some of their addictions and other underlying issues, but with this particular regime the possession of one plant amounts to a slap on the wrist. When one considers the street value of one plant, we do not think it is a good message to send to the community. There is also evidence that the police have given up on continuing to use the infringement notice scheme. The number of notices has been falling over the years from a high in 2001 of close to 8 500 to 5 500 in 2003; and certainly anecdotal advice the opposition has received from hardworking members of the police force is that they do not see any point in issuing notices because there is no consequence for it.

South Australia is in the company of the ACT, the Northern Territory and Western Australia in having such a scheme. In New South Wales, Tasmania, Queensland and Victoria possession attracts criminal penalties, although those states do have systems of formal cautions and diversionary programs for first offenders. Given the late hour of the evening and the length of the agenda, I indicate the opposition's support for this bill.

The Hon. SANDRA KANCK: This bill is misguided and based on a moralistic attitude towards drug taking, cloaked in quasi science. In his second reading contribution the Hon. Mr Hood asked the question: why do we have an expiation fee for the use of this substance in our state? I hope he was not serious, because he should not have introduced a bill of this nature unless he knew the answer. The answer is that the original cannabis expiation notice (CEN scheme) was set up in order to reduce criminal convictions for recreational users of marijuana and to free up court resources for more serious matters.

Since the declaration of the failing and failed war on drugs by the United Nations in 1977 and the advent of state governments around the country which stay in power by being tough on crime, the attitude of tolerance to marijuana has been diminishing. Originally, South Australia allowed an expiation fee for the possession of 10 plants, and this was reduced to three. In 2003 the government reduced it to one. Via the media last weekend, the government has announced that the fine for having one marijuana plant has now been increased from $160 to $300. It has almost doubled the fine overnight and, whilst it might be a disincentive to growing marijuana for personal use, it is an extremely nice Christmas present for organised crime.

The Hon. Mr Hood's bill is designed to demolish the CEN scheme. Every week, 75 000 South Australians use marijuana and most of them, despite what Mr Hood might think, are not mentally ill. Over time, half a million South Australians have tried marijuana—and, again, the vast majority of them are not mentally ill. I myself am not in the habit of taking mind-altering drugs—I probably have a glass of alcohol once every three or four weeks—and I do not advocate that anyone else takes, dabbles or experiments in mind-altering drugs, whether they be licit or illicit. However, having said that, I also choose not to put my head in the sand about the prevalence of drug-taking in our community. If Mr Hood and his fundamentalist Christian party have their way, those 75 000 people who currently use marijuana each week will be forced to buy it on the streets. So, Mr Hood wants to turn 75 000 South Australians into criminals because, once they do that, that is what is going to happen. Why? Because he says that—

The Hon. D.G.E. Hood: It's not true, Sandra; it's the growing. You're missing the point.

The Hon. SANDRA KANCK: No; I am not missing the point. What I recognise is that the friendly buying of marijuana from someone you know who grows it in their backyard will no longer occur. Mr Hood says that the reason he is doing this is that it causes mental illness. The fact is that the science is not there to show a causal link between marijuana use and mental illness—and I challenge Mr Hood to show me the peer-reviewed literature that shows that causal link.

Most people who have mental illness or depression eat bread, but that does not mean that bread causes mental illness. The Hon. Mr Hood provided a list of complications of marijuana use. The reality is that almost no drug is (there may be some, but as far as I know there is no drug) without side effects. Taking antidepressants may increase suicidal thoughts and actions in one out of 50 people 18 years or younger, yet in the US, despite that evidence, the FDA approved the availability of Zoloft on prescription. The FDA also approved Prozac after 27 people committed suicide during the pharmaceutical trials. Viagra, one of the most widely prescribed drugs, causes vision loss, dizziness, nausea, hyp0rtension, stroke and cardiac arrest. The point I am making is that we do allow the use of dangerous drugs, but we regulate them.

The Hon. Mr Hood has made claims about the danger of medical marijuana use. I point out that for over 5 000 years marijuana has been amongst the Chinese herbal remedies, and it is rumoured that Queen Victoria used a tincture of marijuana to relieve period pain. In 1966, in the US, in a citizen-initiated referendum, voters in California voted for the medical use of marijuana. Arizona did the same, although that was invalidated by a court five months later. However, that certainly put the spotlight on the issue, and that then resulted in voters in Alaska, Arizona, Colorado, Nevada, Oregon and Washington passing ballot initiatives to support the use of medical marijuana. In 1999, a report was released by the US National Academy of Science, which stated:

> The accumulated data indicated a potential therapeutic value for cannabinoid drugs, particularly for symptoms such as pain relief, control of nausea and vomiting, and appetite stimulation. The therapeutic benefits of cannabinoids are best established for THC, which is generally one of the two most abundant of the cannabinoids in marijuana.

I make the point that for many people with cancer who have chemotherapy there is a large degree of nausea. For some people, having marijuana is the only way they are able to keep it under control.

In New Mexico a study concluded that, for this purpose, marijuana was not only an effective anti-emetic but was also far superior to the best available conventional drug. This has been replicated in studies in California, Georgia, Michigan, Tennessee and New York. The House of Lords in the late 1990s issued a report that indicated that the medical use of marijuana could be considered for glaucoma pressure relief, for pain relief, for bronchial asthma relief and for nausea relief. In the Netherlands it is available on prescription. An article in the *Courier Mail* of 2 September 2003 states:

> The Dutch government has given the country's 1 650 pharmacies the green light to sell cannabis to sufferers of cancer, HIV, multiple sclerosis (MS) and Tourette syndrome in a ground-breaking acceptance of the drug's medicinal use.

More recently a study that has been done in Calgary by the Neuropsychiatry Research Unit at the University of Saskatchewan in Saskatoon found that, although other studies have shown that periodic use of marijuana can cause memory loss and impair learning, the drug could have some benefits when administered regularly in a highly potent form. They found that cannabinoids promoted generation of new neurones in rats' hippocampuses. The hippocampus is the part of the brain responsible for learning and memory, and the study held true for either plant-derived or the synthetic versions of cannabinoids. Associate Professor of Neuropsychiatry, Xia Zhang, is quoted as saying that chronic use of marijuana may actually improve learning memory when the new neurones in the hippocampus can mature in two or three months.

Other scientists have suggested that depression is triggered when too few new brain cells are created in the hippocampus. One researcher of neuropharmacology said that he was puzzled by the findings. If people want to know what the full article says, it is in the globeandmail.com of 14 October 2005. I cite these examples to show that there is not a black and white case against marijuana. I do not know exactly what Mr Hood is arguing, although he may be arguing that marijuana is going to be responsible for almost anything, but there is a level of research that shows that the medical use of marijuana is a very positive thing and that it is being used in a number of places for that reason.

As the Family First party represents the Assemblies of God, I thought I should also draw attention to the fact that in the USA the Presbyterian Church in 2006 voted to support access to medical marijuana for people who have a doctor's recommendation. That is now the seventh major denomination to take a position in support of medical marijuana in the United States. The others have been the United Methodist Church, the Episcopal Church, the United Church of Christ, the Union for Reformed Judaism, the Progressive National Baptist Convention and the Unitarian Universalist Association. No denomination has officially come out against the medical use of marijuana.

I think that, if the Hon. Mr Hood spoke with people who do use marijuana, he would find out that those who have a depression problem do not have that problem as a consequence of marijuana use. Rather, these people have depression because of trauma that has occurred in their lives. They use the marijuana as a form of self-medication. Some people self-medicate with the legal drug, alcohol; others use illicit drugs such as marijuana; while others hide their pain with a

gambling addiction. Unfortunately, some sit in judgment upon them for doing so.

When I was a member of the Social Development Committee looking at the issue of gambling, one of the more interesting groups that came along to give evidence was Relationships Australia. I have not ever forgotten what they said. They said that every person that they counselled for a gambling addiction was dealing with an issue of unresolved grief. That seems to be at the heart of people self-medicating, whether it be through the monotony of gambling, or through legal drugs such as alcohol, or illegal ones such as marijuana. But, as a society, we do not do much about it, other than to blame the victim for not having enough self-control, or we blame the substance.

Last year I had a meeting with a mother whose schizophrenic son had taken marijuana and he had ultimately committed suicide. She did not blame the marijuana. Her view was that, for her son, the world was so out of control that it was easier to take the marijuana to mask what was happening in his own brain and to rationalise that that was the cause. But the marijuana was not the cause of his schizophrenia.

A *British Medical Journal* study in 2004 by Macleod, Oakes, Capello et al concluded:

> Using existing evidence, no causal relation can be found between cannabis use by young people and psychosocial harm.

That study showed that the use of cannabis was often associated with low educational attainment. We should be making our decision on drugs based on science and fact, not on how we feel, or our belief systems. Mr Hood and his church might look at that link and say that cannabis use causes low educational attainment, but there would be no causal link to establish that. A proper analysis would more likely reveal that unemployed and under-employed people of a particular social class use marijuana as a drug of choice, at least in part to deal with their boredom.

The Hon. Ian Hunter, when he spoke against the bill, said there is some suggestion that those who are genetically disposed to mental illness will be pushed towards it far more quickly as a consequence of using marijuana. Dr Alex Wodak, from St Vincent's Hospital in Sydney, who is regarded as one of the gurus in dealing with drug addiction, says that the science still disputes this cannabis psychosis causal link. But, what he goes on to say is:

> Should it be that those making the claim are right and that it is dangerous, why leave the bad guys to regulate it?

That is what this bill will do. It hands it over to the Mr Bigs to make more profit. This is the prohibitionist approach, and nowhere in the world does prohibition work. Even in countries such as China, where 1 000 people are put to death each year for dealing in drugs, the manufacture and supply of illicit drugs continues unabated.

The Family First/Assemblies of God approach to drug use is to turn users into criminals. I remind members that these are people who are a part of a family, and a part of our community. They are not demons. The Hon. Mr Hood says that the extra people who might be caught can be dealt with through the drug diversion process currently available under the Summary Offences Act. He says that in many instances the cases will not go to court. But, if this bill is passed, then there will no longer be a simple cannabis offence and there is no basis for the Hon. Mr Hood in making that assertion. If the message parliament gives is one of zero tolerance, then the courts will implement the law accordingly. So, if this parliament agrees to this legislation, then there is no doubt that more police and court resources will be devoted to what will have become a criminal offence.

The Hon. Mr Hood speaks of cannabis dependence. I know people who use cannabis only on social occasions—a bit like my one glass of alcohol once every three or four months. They might use it at a party. They do not hang out for it; they do not go out seeking to buy it. They do not have a dependence, but the Hon. Mr Hood wants these people to be treated as if they were dependent on it. There is no doubt that many people, faced with the option of a rehabilitation program or prison, will choose the rehabilitation option, even if they do not have a dependency; but they have to say to the courts, 'Yes; I do.' It then becomes part of the budget of the health system even though these people are not problem users. It is money that is therefore wasted. It will be wasted to prove a moral point about catching people who use a drug purely for recreational purposes.

Prohibition magnifies drug-related harm. It tends to obstruct treatment and prevention, and it results in users going for higher concentrations and potency of the drug. When the stakes are higher, the producers will then need to invest more up-front in order to change their methods. They did so as a consequence of the toughening of our drug laws, and now we have hydroponically produced cannabis, the likes of which Mr Hood laments, but he should recognise that this is the outcome of the increasing criminalisation that he advocates. Criminalisation and prohibition increase the harm of drugs; the exact opposite of what Mr Hood apparently wants. The users have to adopt more risky behaviour and, because they are having to interface with criminal elements, they will be seeking higher concentrations of the drug, because they do not want to be chasing it down all the time. Yet, I expect that Mr Hood would not want drug users seeking more potent forms of their drug of choice.

Government efforts to reduce cannabis use have had some effect, it appears—and Mr Hunter quoted some figures—but, at the same time, the use of amphetamines has significantly escalated. If there was a problem with marijuana use, it appears to have been merely transferred to a different set of drugs, and I would argue, on the scientific evidence, that amphetamines are much worse in their impact than marijuana. This bill is a populist, fear-driven, knee-jerk reaction to shock jock hysteria about drugs. Our job as legislators is to take a responsible attitude to that and not be frightened into our decisions. Our job as legislators is to balance the harm against the good. This bill might give some of our legislators a sense of moral satisfaction, but it will produce more harm in the long run. So, I indicate that the Democrats will be opposing the second reading.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to speak briefly. In preparation for today, I quickly went back over my chequered history in relation to this legislation to refresh my memory as to how I voted previously and just confirmed that, in relation to this, in 1986, when the expiation fee scheme was established, together with Liberal members I opposed then health minister Cornwall's introduction of the scheme. Two years prior to that, my colleague the Hon. Diana Laidlaw and I supported more limited reform of the then Bannon government and health minister Cornwall which removed the penalty of imprisonment for—if I can use the phrase; I am not sure if it is technically correct—the 'simple users or smokers' of marijuana.

In relation to the expiation scheme, my position—I guess I am the only one who can say that I was here in 1986 when it was first established—was to oppose it. I support the proposition that my colleague the Hon. Michelle Lensink has put. The only reason I rise to speak is that I think that the principal part of the explanation that the Hon. Sandra Kanck has put tonight is, on the advice provided to me, fundamentally wrong. That is, as I understand her proposition, I think she indicated that the 75 000 people who, instead of growing their own plants will now go into the community to purchase marijuana, will be committing a criminal offence, and will be criminals.

My learned QC's advice is that that is not correct, that is, that persons who purchase a small quantity of marijuana from someone else will be charged with possession. Under the current arrangements, and even with the bill, that is not a criminal offence, assuming we are talking about small quantities for personal use. Clearly, persons who sell are committing an offence and, under the current bill, that is not affected. As I understood her, the Hon. Ms Kanck was putting the proposition that tens of thousands of persons will now be descending in the streets to purchase small quantities of marijuana when previously they might have been growing their own at home, and that they would be committing a criminal offence and would now be turned into criminals.

As I said, at least on the basis of the advice provided to me, that is not correct. In relation to smoking, possession and use of small quantities of marijuana, again, my advice is that this is not impacted by the Hon. Mr Hood's legislation. I thought that I would place on the record at least the legal advice provided to Liberal members in relation to this, which does differ significantly from the position the Hon. Sandra Kanck put in terms of supporting her position on the bill.

The Hon. D.G.E. HOOD: I thank all members for their contributions: the Hon. Mr Hunter; the Hon. Ms Kanck, who opposed the legislation; the Hon. Ms Lensink, who spoke on behalf of the opposition; the Hon. Ms Bressington, who spoke some time ago; and the Hon. Mr Xenophon, who cannot be here tonight, of course, but he sent me a text message from hospital indicating his support (I am sure that does not count on the parliamentary record but, nonetheless, it is good to have Nick on side); and the Hon. Mr Lucas.

Before I go through what is a fairly brief submission, I would like to address one matter raised by the Hon. Ms Kanck. The honourable member continues to refer to Family First as an Assemblies of God party. Let me make it plain that that is absolutely incorrect. I am not a member of the Assemblies of God church; I have never been a member of the Assemblies of God church; and I expect that I will never be a member of the Assemblies of God church. I think that we can put that matter on the record firmly, absolutely and categorically once and for all. I suggest that the Democrats get a new tactic given that, during the last election, their tactic was to cause the Family First vote to tumble. Of course, the result was that our vote increased by 50 per cent and the Democrat's vote decreased by more than that. I suspect that it is time for a new tactic by the Democrats.

Returning to the matter at hand, I thank the Hon. Mr Xenophon, the Hon. Ms Bressington and the opposition for their support. The Hon. Mr Xenophon did well to include a drug reform campaigner as the No. 2 candidate on his ticket. In fact, Family First is very glad that the Hon. Ms Bressington is in this chamber, because she has taken a firm position on the war on drugs. Certainly, we support her in her endeavours and we appreciate that she has supported us in our endeavours. We have very similar goals in that regard. I think that together we share considerable reservations on the destructive attitude of harm minimisation and see much greater merit in prevention.

We adapt the old adage that it is better to have the fence at the top of the cliff than the ambulance at the bottom. Harm minimisation (a philosophy supported by the government in its second reading address on this bill) brought us a regime in 1987 that said from the outset that, so long as the cannabis plants you were growing were not grown for a commercial purpose, you could expiate those plants for $150. This is way back in 1987, when I was doing year 12 at high school, which seems like a millennia ago. So, that is 10 plants expiable for $150 in 1987. I stand to be corrected, but that is how the law reads to me, and it is quite unbelievable.

What damage our legislators did to this great state at that time, allowing people to grow some 10 plants and to be fined a miserable $150 for what was quite a substantial enterprise with a street value of the order of $20 000. That was quite a sum of money back in 1987, so no wonder South Australia became the cannabis capital of Australia.

My review of the expiation system since that foolhardy step (I think honourable members would have to agree that that is the only way to describe it, having seen the consequences of free-for-all cannabis use in the state) has revealed that we have seen three reviews of the expiation system. The number of expiable plants was reduced from 10 to three in the year 2000, then soon after (in 2001) from three to one, and then in 2002 the Brown Liberal government removed hydroponically-cultivated cannabis plants from the expiation system.

The Hon. Mike Rann, then leader of the opposition, made some very interesting observations. During the second reading debate on that bill, as an indication of Labor Party support for reducing the number of plants under the expiation system—had we been there at that time, we would certainly have supported it—he said:

> A number of other areas need to be drawn to the attention of the public. Police information is that one hydroponically produced cannabis plant is now [and this was back in 2002] capable of producing (conservatively) about 500 grams of cannabis, and that it is possible to produce three or four mature crops per year. It is estimated that a daily user of cannabis is likely to consume 10 grams of cannabis per week. If one hydroponically grown cannabis plant yields an estimated 500 grams of dried cannabis, this would meet the consumption needs of a daily user for a year.

This makes an absolute mockery of the ridiculous argument of personal use; it has no basis and the maths simply do not add up. The then opposition leader, now the Premier, went on to say:

> . . . yet we are told there can be three or four mature crops grown per year.

It is quite outrageous, and Family First would certainly agree with the comments made by the then opposition leader and current Premier, the Hon. Mike Rann. In his speech Mr Rann also mentioned:

> . . . cannabis grown in the 1970s had a THC content of 0.4 per cent whereas hydroponically grown plants have 6 to 8 per cent, which is a massive increase—at least eight times higher.

At this point the then premier interjected and the then leader of the opposition responded:

> According to the minister, even 15 times the level of THC content in the 1970s. I accept the minister's expertise in this area.

In its 2004-05 report the Australian Crime Commission noted:

> . . . a discernible subcategory of detections are attempted postal imports of small numbers of high-quality cannabis seeds bought on-line from specialised dealers in the Netherlands, with a view to domestic cultivation of high THC content strains of the plant. I think it's safe to infer from the information that our domestic cannabis market is looking for ways of growing stronger cannabis through the lower permissible growth levels.

I also understand that a hybrid variety of cannabis known as 'skunk' is increasing in popularity in Australia, and this has THC levels approximately six times the level of what is generally regarded as standard (if I can call it that) cannabis. With that comes an additional risk to normal cannabis consumption, a risk that has led drug users to call it 'madweed' in street vernacular—that is, of an increased likelihood of a psychotic episode. One wonders how the users care for one another to warn of these risks before offering the drug to others.

We therefore need to be alert, in light of technology and movements, to the desire of cannabis growers to increase the THC content in their cannabis plants. I think it is fair to say that the cannabis of 1987, when the government allowed a person to grow 10 plants for an expiation fee of $150, was much less potent than the cannabis of 2006. No-one disagrees with this point. The leader of the opposition, as he was in 2002 (Hon. Mike Rann), went on to observe the way organised crime syndicates infiltrated South Australia when we had that foolhardy, and I might add devastating, 10-plant expiation limit of just $150. We were indeed the cannabis capital of Australia.

As the Hon. Mr Hunter pointed out, the Rann government, as it now is, says it is getting tougher on growing one cannabis plant not hydroponically grown. I add 'I assume', because we had 10 plants for $150 in l987 and then three plants for $150 in 2000, one plant for $150 in 2001, and now, as from Sunday of last week in fact, 3 December, the expiation fee has just increased to $300 for the growing of one plant, as honourable members probably would have seen in the press at the weekend. The Hon. Mr Hunter made a very interesting point to which I want to turn. He said:

> If we give people the tools to make informed choices, the vast majority of people will make the right choices.

We certainly agree with that sentiment. The rest of the speech contained the government's position about its success in fighting illicit drug use, and whilst it attempted to address some of the key issues, we felt that there was not sufficient substance to outline the government's proposed method of addressing the cannabis epidemic, if I might put it that way.

I was prepared for a broadside about the courts getting congested by this bill, as has been suggested to me by some, because the expiators would move out of that system and into the court system, which is precisely Family First's intent of this bill, but there was no mention, despite a 'spokesperson' for the Attorney-General regularly stating to me in one-on-one conversations that this was an issue. I tell members this: it is not an issue. The courts' case load will not be increased by more than 1 per cent from this reform. I repeat that: it is very important. Our data indicates, and we have looked at this methodically, that the courts' case load will not increase by more than 1 per cent by this bill becoming law in this state. An increase of 1 per cent would be the absolute maximum that would result in the courts' case load.

Today, when I introduced another bill, I spoke about making the offence of driving unregistered and uninsured an expiable offence, which would remove some one-sixth and, in some cases, up to one in five cases from the court system, which would well and truly compensate, if I can put it that way, for any impact that this bill would have at least tenfold and more. There is no concern about an increased case load in the court system with this bill. I make the point that this bill will have no substantive impact on the courts' case load. My second reading contribution summarised the merits of having these offenders face court, rather than expiation. That is quite simply twofold: first, it sends a very clear message to the people who are growing cannabis that it is not tolerated; and, secondly, it does allow the courts to attain a record of repeat offenders.

At the moment, the weakness in the system is that, if someone is given an expiation fee, then they are given an expiation fee and they may have 1 000 expiation fees potentially, but that is never recorded as a repeat offence. This will allow the courts to say, 'Okay, first offence, let us hand out some sort of sentence which sends a signal. Second offence, this is getting more serious; and third offence, it is getting even more serious.' The point is that it catches repeat offenders. One of the key elements of this bill is that it allows those who earn a significant income from this way of life to be identified and identified easily. Across Australia we have contrasting approaches. We are getting tough on tobacco smokers with higher fees for various things and other laws impacting on their liberties. I firmly believe that we could similarly deter cannabis growing by reforms such as this, so I urge members to support this bill.

The council divided on the second reading:

AYES (11)

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

NOES (8)

Gago, G. E.	Gazzola, J. M.
Holloway, P.	Hunter, I.
Kanck, S. M. (teller)	Parnell, M.
Wortley, R.	Zollo, C.

PAIR

Xenophon, N.	Finnigan, B. V.

Majority of 3 for the ayes.

Second reading thus carried.

In committee.

Clause 1.

The Hon. A.M. BRESSINGTON: I move:

Page 2, line 3—Delete 'Expiation of simple'

This amendment deletes the word 'simple' from the term 'Expiation of simple cannabis offences', because I do not believe there is any such thing as a simple cannabis offence.

The Hon. D.G.E. HOOD: As the initiator of the bill, I am happy to support that.

Amendment carried; clause as amended passed.

Clause 2 passed.

Clause 3.

The Hon. R.D. LAWSON: I have a query of the mover of the bill. I would have mentioned this in my second reading contribution had I made one, but, as I did not, I would like to ask the member whether he has had any indication from the government of the cost of implementing this provision. Previously, when the Liberal Party proposed such an

amendment, it was said that the courts would be clogged with offences, the courts would grind to a halt and that the cost would be excessive. That is an argument that we never accepted.

About 5 000 expiation notices are issued each year. We do not know the precise breakdown of those expiation notices. Some will be for possession of cannabis, some will be for implements and some, of course, will be for the cultivation of cannabis, but let us assume that half are for cultivation—that is, about 2 500. As the courts already hear some 80 000 complaints a year, I, personally, do not believe that there will be any significant additional impost on the courts. I certainly do not believe that this measure will clog the courts, but I would be interested to hear whether the mover made any inquiries of the government and whether he received any response in relation to this matter, bearing in mind the very negative response that the government put to us when we raised it earlier.

The Hon. D.G.E. HOOD: I thank the Hon. Rob Lawson for his question. The short answer is no, I do not have a formal reply, although I have asked for the government's assessment of the situation. However, our data suggests—and we were quite careful about this—that there would be an increase in the order of 1 per cent. We would agree with the figure (approximately 80 000 cases) that was quoted by the Hon. Mr Lawson. We would estimate that there would be something in the order of a 1 per cent increase in actual case load in the Magistrates Court only—that is important: only in the Magistrates Court—for this particular offence. So, there would be a slight increase, but it is in the order of about 1 per cent, as we understand it.

Clause passed.

New clause 3A.

The Hon. A.M. BRESSINGTON: I move:

After line 13—
Insert:
3A—Substitution of section 33K
Section 33K—delete section 33K and substitute:
33K—Cultivation of controlled plants
A person who cultivates a controlled plant is guilty of an offence.
Maximum penalty: $5 000 or imprisonment for 2 years, or both.

The reason that I have put this amendment forward is to try to level the playing field a little by making the penalties consistent with selling tobacco products to minors. We cannot possibly create the illusion that cannabis is any less harmful than tobacco. We also need to make it more of a deterrent so that people will not even think of cultivating a cannabis plant of any kind. There is the delusion out there that cannabis is legal because of the expiation notice system. This will send a very clear message to those persons who participate in such behaviour that there will be a consequence to a serious offence.

The Hon. R.D. LAWSON: My understanding is that the effect of this amendment is to increase the maximum penalty for the cultivation of a controlled plant at a small quantity from $2 000 or imprisonment for two years, or both, to a fine of $5 000 or imprisonment for two years, or both. Given the general level of penalties, and given the rising cost of drugs and the like, I would have thought that this was the sort of measure that would find support in this place. Hopefully, when the bill goes to the lower house, it will be supported by the government.

The Hon. D.G.E. HOOD: I indicate Family First support for the amendment.

New clause inserted.

New clause 3B.

The Hon. A.M. BRESSINGTON: I move:

After line 13—Insert:
3B—Amendment of section 44—Matters to be considered when court fixes penalty
Section 44—after its present contents (now to be designated as subsection (1)) insert:
(2) A court must not, in determining the penalty to be imposed on a person convicted of an offence involving cultivation of cannabis plants, treat cannabis plants, or the products of cannabis plants, as being less serious or less harmful than other controlled plants or controlled drugs.

I move this amendment because, as I stated earlier, there is a misconception in the community that cannabis is less harmful than other controlled drugs and because this will now reflect in the court system itself that we are taking the production of cannabis seriously and that we are prepared to up the penalty to reflect public opinion.

The Hon. D.G.E. HOOD: I indicate Family First support for the amendment.

New clause inserted.

Remaining clauses (4 and 5) and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

STATUTES AMENDMENT (DOMESTIC PARTNERS) BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 1213.)

The Hon. A.L. EVANS: The Statutes Amendment (Domestic Partners) Bill goes to the core definition of family and relationships, which is very important to Family First. Let's Get Equal wants the bill passed this year. The Hon. Sandra Kanck has suggested a raft of amendments that could blow this bill out well into next year. I am not here to stall the debate. The gay community have said that they do not want amendments, and I will not delay this bill. I believe that I come at this with traditional old-fashioned values. I value marriage between a man and a woman to be the cornerstone of our society.

Intolerance has often stirred debate. It comes from both sides of the argument, but I call for it to stop. I have tried never to get involved in throwing stones but, in the same breath, I stand my ground in defence of family values and I do so quite firmly. We have been told openly by gay leaders that this bill is a stepping stone. On ABC Radio on 16 October, Matthew Loader was asked what would happen after this bill passed, and he said:

. . . we're talking about parenting stuff and we're talking about civil unions. . . we certainly don't think that those issues should be ruled out for a future agenda.

In respect of his co-sponsored same sex bill, the Hon. Mark Parnell has stated:

The Greens. . . support equal access for lesbian, gay, bisexual, transgender and intersex people to adoption, fostering, artificial insemination, sperm donation programs and in-vitro fertilisation procedures.

I do not think that ordinary South Australians want those sorts of things and I do not think that this bill is necessary. Most rights for gay and other couples can easily be accrued by drawing up a will or other legal documents such as power of guardianship but, if automatic rights are demanded, the

Family First response is reasonable. We respond by saying that, of course, if a couple has decided to share their lives together then we recognise that the law must deem that they have shared legal rights and responsibilities.

I think that there are good and bad aspects of this bill. For a start, this is a vast improvement compared to the bill before us last year. Earlier versions of this bill took a real hit at traditional marriage. Gay relationships were defined as de facto marriages. In a lot of acts the term 'marriage' was defined as including de facto relationships—giving approval to the concept of gay marriage. I am glad that this bill keeps marriage between a man and woman as separate, and that is thanks to Family First's insistence. However, in our view, the bill is nowhere near ideal in that marriage-like rights are extended to an ever-expanding group of people.

Both Dennis Hood and I have campaigned tirelessly to have marriage retain its rightful elevated position in the law and preserved as something special. This version of the bill makes it clear that a spouse is someone who is legally married under the commonwealth definition—being exclusive marriage between one man and one woman. As the Hon. Ms Redmond quite rightly said in another place, 'A lot of our legislation up until now has provided that 'married' means married or de facto; whereas we have now lifted out 'married' and said that 'married' means only legally married and, thereafter, everybody else is a domestic partner'.

I strongly believe that marriage is special. As the Lutheran submission to the Human Rights and Equal Opportunities Commission inquiry into same-sex relations noted:

> For about 5 000 years societies have valued marriage between a man and a woman as the social nucleus in which children are best born and raised. Our reading indicates that respect for traditional marriage is a value shared by all major religions and all enduring societies around the world.

Article 16 of the Universal Declaration of Human Rights, after defining marriage as between a man and a wife, reads:

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

As an aside, I note that article 3 of the Convention of the Rights for the Child states:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be the primary consideration.

This bill does not include provision for gay adoption or IVF treatment, for which we are grateful. Further, the old definition of 'de facto partner' relied on whether or not the couple is engaged in sexual relations. In this bill's definition, sexual relations are expressly excluded from consideration. I applaud this bill for removing sexual relations as a defining characteristic of a domestic relationship, again as a result of Family First's lobbying. With these references removed, the bill is no longer about gay rights. In fact, apart from the superannuation provisions, which were already decided in 2003, this bill does not talk about or expressly recognise homosexual relationships. That factor alone tones down the heat of the debate.

This bill is much fairer and broader than just the gay rights bill, giving rights under one test to all couples who have agreed to share their lives together and are living together on a genuine domestic basis. It is a solution that the Let's Get Equal campaign can live with. I acknowledge the work of the Attorney-General and his tireless Chief of Staff, Peter Louca, for trying so diligently to find a solution that is workable for everyone. It is, of course, invalid to make sexual relations a touchstone in the definition of a valid domestic relationship.

The Hon. Sandra Kanck's amendment draws a divide between domestic co-dependent and de facto partners. How do we tell the difference between members of both groups? When does someone go from being a domestic co-dependent to a de facto? There is no clear definition or distinction in her amendment. When we boil down all the arguments, the Hon. Sandra Kanck proposes a line drawn between couples who are having sex with each other and couples who are not having sex with each other.

When the Hon. Sandra Kanck's distinction meets the cold light of reason, we find we are talking about something that is arbitrary and discriminatory. Such a distinction discriminates against couples who cannot engage in sexual relations and who decide to live a platonic lifestyle. Many disabled couples find themselves unable to perform sexual acts due to their physical limitations. Their relationships, however, are no less special, and their inability to have sex should not make it more difficult for the relationship to be classified as a domestic partnership. Should they be discriminated against, placed on a different footing and forced to sign an opt-in register, simply because their relationship is not sexual?

The difficulties faced by impotent couples clearly show the absurdity of a sexual relationship test. I am told that impotence affects something like 10 to 15 per cent of all men. Should these couples have to opt in just because they cannot have sex? That is nonsense. How demeaning would it be for someone to have to explain that he has to register his relationship just because he is unable to have sexual intercourse? Many people, including elderly couples, are together not for sex but for companionship. I agree with the member for Giles in another place who said:

> It makes me laugh when people define their relationship in terms of sex, because I would like to know how many married couples do not have sex. There are many marriages out there where sex is a dim memory of the past.

The member for Light in another place said:

> To reduce the breadth of human experience to sexual behaviour diminishes our humanity.

Quite correct. Sex is a poor public test for the validity of domestic partnerships because sexual relationships are generally a private matter. Due to sometimes hostile community attitudes, many gay partners will not admit to a sexual de facto relationship with their partner. On 23 November in *The Messenger* Matthew Loader estimates that, while there are 30 000 gays and lesbians in South Australia, the 2001 census found only 1 062 gays and 1 237 lesbians were prepared to admit that they were in a same-sex relationship, with the data showing 556 same-sex male families and 634 same-sex female families. The Australian Bureau of Statistics 2005 Yearbook recognises the following:

> Examination of same-sex data from the census may have some limitations, including reluctance to identify as being in a same-sex de facto marriage.

Obviously if gay couples are unwilling to publicly admit they are in a sexual relationship with their partner, again, sexual relationships are shown to be a poor litmus test. Mr Kris Hanna in another place has said:

> There is ground for differentiating between sexual and non-sexual couples. There is actually a big difference; there is a big difference in community expectations.

I respectfully say that the honourable member is out of touch, as is the Hon. Sandra Kanck by repeating the same old failed

arguments. Perhaps in the past sexual relations were something guarded and special but, sadly, that is less and less the case. These are the days of one night stands, multiple sexual partners and 'hook ups' through telephone dating services. These days there are some very shallow relationships involving sex and there are some very deep and caring relationships that do not include sex.

The government has gone so far to recognise gay sexual relationships, let us not now discriminate against couples who are in non-sexual relationships by putting them in a third category with different rules. I strongly encourage members to vote against the Hon. Sandra Kanck's amendment to this bill. I am glad that the bill, as it stands, grants rights to this group that is not engaged in sexual relationships. This group has become known as domestic co-dependants. They are sometimes called platonic de facto or platonic life partners.

The 21st report of the Social Development Committee recommended that any bill dealing with legal rights for the gay community should also grant rights to this group. Who are they? Perhaps they are homosexual couples who have agreed for religious or medical reasons not to engage in sex with each other. Perhaps one of them is caring for another while he battles the scourge of AIDS and sexual relations would be unwise. Perhaps they are a couple, as previously described, who cannot have sexual relations for medical reasons. Perhaps they are two spinsters who have lived together for 30 years. Indigenous Australians form deep kinship bonds one with another which may fall within the definition. During the deliberation of the Social Development Committee I introduced a domestic co-dependant couple with the following description:

> . . . Mary. . . and Janet (whose names have been changed). . . have been friends since 1962 and have lived together on and off for many years whilst they worked as officers in the Salvation Army. Since retiring they have been living together for 17 years continuously and hope to continue that way into the future. They shop together for most things and generally share the household chores. Mary tends to do more of the cooking whilst Janet tends to do more of the gardening in their home. All of their living expenses such as groceries, utility bills and rates are shared equally between them. They eat together at all meals of the day and only seldom go out separately. Mary is legally blind and now relies on Janet's help and support in any social or other outings, especially in regard to such activities as driving. They are close companions and their friends and family generally expect them to attend functions or social engagements as a couple.

Non-sexual but romantic partnerships were apparently common up until the second half of the 19th century. They were often called 'Boston marriages'. However, they declined as open expressions of intimacy between non-sexual partners began to be treated with some anxiety.

So, let us run through the figures. How many domestic co-dependents are there in South Australia? According to the Australian Social Trends 2000 data, there were 7.186 million total households, 1.739 million lone person households and 5.056 million total families. Therefore, there are 391 000 'other households', the total households identifying at about 2 per cent same sex and 3.4 per cent being an 'other' domestic partnership. The ABS tells us that the way the data was used in the select committee report is not optimal, because Treasury officials who prepared the data mistakenly used different data sets from different surveys. Nevertheless, the numbers are clearly significant.

So, we pressed the Attorney-General for this definition that removed sexual relations and stressed a commitment to a shared life. It is a commitment between two people to an enduring or lifelong relationship. That excludes people such as house mates: they do not make that commitment to each other. Mrs Isobel Redmond in another place talked about her son, who lives with flatmates, having nothing to fear. No doubt her son would have an expectation to one day meet someone special and move out. Moreover, he would not be holding himself out to the world as being a 'couple' with his flatmate, and they might have had some, but definitely not the majority, of their property in common. These are all factors in the definition. Family First encourages enduring and exclusive commitments in a relationship, because we see these factors as good for the family.

While I have this opportunity, I would also like to address the laws in some of Australia's jurisdictions, as the interstate experience can teach us some valuable lessons. In New South Wales, the Property (Relationships) Act 1984 (previously the De Facto Relationships Act) was amended in 2002 to redefine a de facto relationship as 'a relationship between two adult persons'. Gay couples, however, were expressly excluded from adoptions.

New South Wales was one of the first jurisdictions to acknowledge domestic co-dependent relationships. In 1999, under the Property (Relationships) Legislation Amendment Act 1999, New South Wales granted recognition for people whom we might call 'domestic co-dependents' in eight separate acts or regulations. Very few cases have been brought to the New South Wales courts by people claiming to be in these domestic co-dependent relationships. In most cases, applicants have applied to be recognised as being in a close personal relationship only after their application to be recognised as a de facto partner had failed. There were in the New South Wales Supreme Court the cases of Dridi v Filmore (a 2001 case), Devonshire v Hyde (a 2002 case) and Woodland v Rodriguez (a 2004 case). The court took a restrictive view on all three cases, and the claims all failed.

The argument was successful in Jurd v Public Trustee (another 2001 Supreme Court case). The plaintiff had sought a declaration that he had been in a close but non-sexual, caring relationship with a man who had subsequently deceased. The plaintiff in that case basically put his life on hold for many years, cooking, grooming and caring for the deceased.

The conditions in that case were met. Basically, from New South Wales we have a few cases sensibly decided—and no floodgate of litigation. In Tasmania, the Relationships Act 2003 and the Relationships (Consequential Amendments) Act 2003 dealt with issues similar to those with which we are dealing today. The most significant difference between Tasmania and the other jurisdictions is its opt-in registration—which, by the way, has been an abject failure, as I will explain in more detail shortly. Similar to New South Wales, Tasmania includes legal recognition of non-sexual 'caring relationships' between two adults. Some 34 Tasmanian acts recognise caring relationships without requiring registration, but a further nine require the relationship to be registered. The legal entitlements that require registration mostly relate to property rights, and registration will void a person's will.

The difficulty of course is that life, being as busy as it is, and people's knowledge of their legal rights and obligations being finite, and given human nature to procrastinate, as at 2005 (two years after the legislation) not one person had registered a caring relationship and only 39 same-sex couples had registered. I hear anecdotally that there are few registered caring relationships in Tasmania, but the figures are obviously appalling. No-one opts in because these provisions are generally only discovered by citizens after consulting with a

lawyer after the death of a partner or during a messy separation. The Tasmanian experience is clear that an opt-in model, as proposed in another place by the Hon. Kris Hanna and in this place by the Hon. Sandra Kanck, is a complete and utter failure and a deceptive attempt to discriminate in substance against domestic co-dependants. From Tasmania we have learnt that the opt-in system does not work.

While this bill may be a significant improvement on last year's relationships bill it will still undermine marriage. This is especially so in the superannuation clauses (sections 160, 175, 197, 207, and so on) where the bill discriminates against domestic co-dependent couples and describes homosexual relationships as marriage-like—a precedent-setting description. This is of course a carryover from the wording of the 2003 Superannuation Act. If domestic co-dependants are recognised in other sections they should also be recognised for superannuation. Further, the concept of consortium—the legal term for the duties and rights with marriage—is expanded in the amendment to the Civil Liability Act.

Finally, the bill gives equal rights to a domestic partner in cases where a person is both married and in a domestic partnership. This occurs in the Transplantation and Anatomy Act, Administration and Probate Act, Civil Liability Act and Judges Pension Act. I applaud the stand by the Hon. Graham Gunn in the other place; and I struggle with the bill in the same way as the member for Waite (Mr Martin Hamilton-Smith) has indicated. This bill is coming to us, in one form or another, like a steaming locomotive. It is not a bill we all like. However, if this bill is not passed we fear that something far worse will manifest itself. I reiterate Matthew Loader's comments on Radio Adelaide some weeks back. Let's Get Equal wants this version of the bill passed without delay. They know that amendments may delay this bill well into next year. Matthew Loader said:

> . . . the more amendments or changes that are put forward, the more extended the debate will become and that will mean the bill won't pass and one of the things I'd ask all parliamentarians is to very seriously consider whether it's necessary to make any changes at this stage. The government's obviously gone through this issue with some detail to pick up all of the issues that were raised last time round. . .

Amendments will make this bill worse and introduce discrimination against domestic co-dependants. They will be refused by the government and they will delay this debate into next year—which is something no-one wants. I will try not to make a final decision before hearing the entire debate. The Hon. Dennis Hood and I will listen carefully to debate to confirm the final shape of this bill before we reach a final conclusion on how we will vote.

The Hon. J.M.A. LENSINK: I will try to be as brief as possible. This bill has been round and round the mulberry bush, or the Hills Hoist, or however you might like to describe it. In moving my own version of this bill, which was, in fact, the same as the government's bill from last year, with the addition of opt-in clauses for domestic co-dependants, I made a number of points I wanted to make then, so I will not go through all of that again. However, I would like to say that there have been more positions by more members on this than the Kama Sutra. Indeed, I find myself in the unfortunate position of having been in favour of the opt-in clause (which I still am) and being unable to support those particular amendments because I believe the time is at hand when we need to pass this bill in some form, despite my misgivings about what will happen to those people who will be captured unintentionally by this bill. However, those arguments have been well made and, no doubt, a number of members will make those arguments.

The prime difference between this version and previous versions of the bill is in the treatment of domestic co-dependants. I would say that the Hon. Andrew Evans has been consistent in this in that he has said that it is discriminatory for domestic co-dependants not to be included and also to have to opt in. However, I would put to him that a number of people who are in domestic-like relationships will be discriminated against because they have to opt out. I note that last year the government was quite content to support my amendments as sensible amendments, yet it raises similar misgivings in the second reading explanation, to which I will refer. On page 1208 of yesterday's *Hansard*, the minister said:

> No doubt these are far-reaching rights. For example, there may be some people living in relationships of this kind who would intend their children, rather than their partner, to inherit their estate. In that case, they will need to make a will clearly expressing their intentions.

On the next page, the minister goes on to say:

> . . . for those in a qualifying relationship, their property will no longer be wholly their own. If the relationship ends, either may be liable to a property claim by the other, which may need to be resolved by court proceedings.

So, I think the government is well aware of this particular issue. In the briefing provided to members, I think a number of us had misgivings about the way in which domestic co-dependants are being defined, because it does not really reflect the diversity and the potential permutations not only of people who may wish to be considered as domestic co-dependants but also people who may not wish to be considered co-dependants. If I use myself as an example, several years ago, the marriage of one of my sisters, who then lived in Perth, broke up, and she moved in with me with her two adorable children for a period of only six months. I did not have a will then (I did not have a will until last year), so, under this bill, if she had remained with me for three years, potentially, she would have a claim to all of my assets, regardless of whether I might have wished to divide those assets between my parents and my other sister and her children, and so forth.

The Hon. A.L. Evans interjecting:

The Hon. J.M.A. LENSINK: Well, I would not actually want to be considered a couple.

The Hon. A.L. Evans interjecting:

The Hon. J.M.A. LENSINK: Yes; but it talks about siblings. My sister and I are not a couple: we are sisters. We would be much happier with a term that did not classify us as a couple, because we are not a couple.

The Hon. A.L. Evans interjecting:

The Hon. J.M.A. LENSINK: Yes; but it talks about a couple. Anyway, be that as it may. The Hon. Andrew Evans, in his address, talked about the fact that people do not get around to writing documents and so forth that reflect their intentions. I think that is a real concern, because that occurs as it is, yet a whole range of people are likely to be captured by this bill who I believe are being discriminated against for the sake of the government reaching a conclusion with Family First.

I think it is a flawed law. I think it will be dealt with in the courts and is going to be quite untidy in that respect. We had a very strong multipartisan willingness from the Greens, the Democrats, Ann Bressington (who had been prepared to put her name to it) and myself as a Liberal for the version that

would have had an opt-in, yet the Attorney-General said that they had consulted with the only ones who count, namely, Family First, so I believe that the integrity of some aspects of this legislation has been compromised because of that preference towards Family First. Be that as it may, I have no wish to delay the passage of this bill. I urge members to be hasty in their process and I apologise in advance for not being able to support the Hon. Sandra Kanck's amendments, because my sympathies lie very much with them.

I wish to put on the record a question for the government. What resources does it intend to put towards a thorough education campaign to make the community of South Australia aware that people will need to opt out if they do not wish to be captured by this bill? I look forward to the response at the conclusion of this debate.

The Hon. SANDRA KANCK: It is very pleasing that this bill has at last arrived in the parliament as a government initiative. In sheer desperation, as the Hon. Michelle Lensink has reminded the chamber, a group of us co-sponsored a private member's bill as a means of placing pressure on the government to do something about keeping its promises. Most of my comments about the government's tardiness were made at the time of introduction on 27 September, so I do not wish to go into them in great detail although, because of a few things that have been said so far by other speakers, I do feel somewhat compelled to repeat them. This bill is different from what we have had before because it creates this new category of relationship, the domestic partner. In doing so, it adds complexity to the legislation.

I was perplexed to hear the comments being made by the Hon. Mr Evans talking about what I had said. I have not given the second reading contribution: I am doing it now. I do not think he was referring to the speech I gave when the bill was introduced on 27 September and he cannot be speaking about what I have said in introducing the amendments, because we are not in the committee stage. So, let us have a look at what Sandra Kanck has said. Back in 2001 when I was dealing with the Liberal government's Equal Opportunity Bill, I expressed the following view:

> In the Democrats' view, we should value all relationships which are based on mutual caring and support. A relationship does not have more value simply because it is heterosexual. At its simplest, current definitions of marriage or de facto relationship are based upon two people of the opposite sex who implicitly have or have had sexual relations with each other. Surely a mature society can advance beyond having sex as the criterion. We should recognise all sorts of relationships. Consider the TV series *Mother and Son*. Clearly, in that example, there is a relationship of dependence and caring between those two people.
>
> Many families have two maiden aunts. These days we are increasingly seeing an elderly parent having to care for disabled children. These are the sorts of relationship that we need to consider. We need to go beyond defining 'relationship' as simply being between heterosexual couples who have sex or have had sex with each other.

I went on to quote the federal Migration Act with its definition of 'interdependency relationship', the definition of which involves 'being closely interdependent' and 'having a continuing commitment to mutual emotional and financial support.' When we were dealing with that Equal Opportunity Bill in 2001, I went on to move an amendment to alter the proposed definition of 'putative spouse'. What I proposed then was that a 'putative spouse' is:

> (a) a person who is cohabiting with the person as his or her de facto husband or wife and
>
> (i) has so cohabited continuously over the last preceding period of one year; or
>
> (ii) has had sexual relations with the person resulting in the birth of a child; or
>
> (b) a person of the same sex who is cohabiting with the person in a relationship that has the distinguishing characteristics of a relationship between a married couple, except for the characteristic of being a different sex, and other characteristics arising from the characteristic, and that he or she has so cohabited continuously with that person over the last working period of one year.

The Hon. Terry Cameron, playing the tricks that he did at the time, moved a similar amendment, except that he made it a five-year period, at which time Trevor Griffin (having those two to choose from) almost pulled his hair out during discussion about the relative benefits of the opposition's amendment and Terry Cameron's and my amendments. I said at that time:

> When I spoke in my second reading contribution I raised the question of what my preferred definition of interdependent relationship was; that that is ultimately what I prefer. That is what we are talking about; we are talking about interdependency and sharing. Certainly, the definition that I have for putative spouse is more restricted than the interdependent relationship that I wanted to have. As I see it, a putative spouse—and this is something that to me always begs the question—does imply interdependency and sharing but it also implies a sexual relationship, either that one has occurred or will occur in the future, or that there is an intention that there be a sexual relationship.
>
> I believe that, when we are talking spouse, when we are talking marriage, when we are talking de facto relationship, inherent in that is an expectation of a sexual relationship, past, present or future. That is why, for me, 'interdependent relationship' is a better definition, because it does not require that expectation of sexual relations. That to me is one of the key distinguishing characteristics of what the relationship between a married couple is about.

I wanted to put that on record because I honestly have no idea what it is that the Hon. Mr Evans is talking about. As I had not spoken to the second reading of this bill I could not understand how he was deriving his comments out of what had been said regarding the relationships bill that we introduced on 27 September.

The honourable member then went on to give the impression that he is gung ho for this. I remind the chamber that Family First—before 2001—in 2000 was active in delaying what was called the Same Sex Relationships Bill, by pushing it before the Social Development Committee and, for the most part, as I saw it, it opposed the bill towards the end of last year.

The Hon. A.L. Evans interjecting:

The Hon. SANDRA KANCK: The bill was introduced in 2000 and it was referred to the Social Development Committee. It was called the whatever relationships bill 2000.

Members interjecting:

The Hon. SANDRA KANCK: Sorry, yes, I am getting my years mixed up. I am getting the equal opportunity one mixed up as well. Family First played a considerable role in holding up that legislation and now the honourable member dares to suggest that I am holding up this legislation because I intend to put some amendments. I know that I cannot debate those amendments at this stage, but there is a three-page replacement of part 3, and that is the key to it. If that is passed, there is a series of consequential amendments. There is no need for huge amounts of time to be taken up unless Mr Evans wants to try and use it as an excuse to further delay the bill.

I am really sorry that the Hon. Ms Lensink said that, although she believes it should be an opting-in provision, she will not be supporting the amendments to do that because, in a sense, she is allowing herself to be bullied by the government. The reality is that the definition of 'domestic partner'

in this bill is casting a far wider net than was the case I was talking about in 2001. I think it is a clever device, because it makes it much harder for the opponents of the previous bill to argue that this is a bill to legalise same-sex marriage. But, I think that the net is being cast too far. Again, the Hon. Michelle Lensink gave the example of her and her sister; and she does not want her live-in arrangements with her sister to be a domestic partner relationship.

I agree that what the government has done with this is clever, but it might be too clever by half, and I think that it could create unnecessary complications when the bill becomes law. I had a discussion with the member for Mitchell prior to the committee debate in the House of Assembly, and I was impressed by the approach he was taking to sort out this issue. I intend to move amendments similar to those. For those who have looked at *Hansard* and for those who listened in to the debate in the lower house, it did not unnecessarily delay the bill to have that amendment debated.

In order to hide the fact that this bill is giving some equality to people in same-sex relationships, it has adopted a disguise. Part of it is in the name and in creating this new form of relationship 'domestic partner'. It also means that it cannot, under any stretch of the imagination, include things such as reproductive technology rights and adoption. I know that there are members of the Let's Get Equal campaign who would love to have these included, but they also would not want to have them used as a reason for the bill to be defeated. I will be supporting this bill because it increases equality for people in same-sex relationships. It may not give all the rights that same-sex people are seeking, but it will basically bring South Australia into line with other Australian states in regard to equal rights for gay, lesbian and transgendered people.

During the Feast Festival I went on Dr Gertrude Glossop's Gay History Walk. For those who have never indulged in that, I thoroughly recommend it. I think this was my third or my fourth one. Anyhow, she concluded with a quote from comedian Linda Lavner. I will quote it because I know that, really, this bill is about giving equal rights to same-sex couples. She states:

> The Bible contains six admonitions to homosexuals and 362 admonitions to heterosexuals. That doesn't mean that God doesn't love heterosexuals. It just means that they need more supervision.

I want to give my congratulations to Let's Get Equal. I met with them back, I think, in the year 2000. At that stage, they were talking about 54 pieces of legislation that needed amending. Now, in this bill, we see that it is up to more than 90. I know that it has been a hard row to hoe for them with lots of disappointment, but they have stuck with it, and now, at last, same-sex couples are within days of getting the equality that they deserve. I indicate strong support for the second reading.

The Hon. D.W. RIDGWAY: As members would be aware, I supported a similar bill in the last parliamentary session. However, I want to make a couple of brief comments to add to the position I put in the last parliament. I have always believed that a marriage, as such, should be between a man and a woman, and I have never strayed from that belief. However, I think that today we live in a modern society in which we have a range of different relationships and partnerships, and they should all be looked upon in a similar light. I do not want to have the institution of marriage devalued by this at all but, as I said, we are living in a modern world.

I said that my comments would be quite brief, but I am also a little concerned that the model before us today is all encompassing whereby any two people in a domestic co-dependent relationship will be captured by this piece of legislation. I hope it does not seem that I am trivialising the issue but, some 20 years ago, a very good friend of mine had a house in Mile End. Two of his good mates and a young lady shared that four-bedroom house. They divided up all the duties of the house between them, and they lived there together for nearly five years in a pretty happy relationship. We had many good times there as a bunch of friends. We have great memories. We had great parties. I was talking to him today. He now lives in Fiji, and I was discussing his family life and the particular political circumstances he is facing at present.

I am concerned that, for those people living in a shared domestic relationship, there may be some unintentional consequences and legal ramifications. While we are not debating them, I indicate that I will support the Hon. Sandra Kanck's amendment for people to opt in rather than having to opt out of this particular arrangement. As I said earlier, I understand that we are living in a modern world. However, for people living in different relationships, partnerships and arrangements there is the potential for a range of unintentional consequences to come from this piece of legislation. While I support the bill, I will also be supporting the Hon. Sandra Kanck's amendments. I commend this bill to the chamber.

The Hon. S.G. WADE: I rise to support the second reading of the bill. The bill seeks to achieve a measure of equality before the law for couples who live together on a genuine domestic basis in a close personal relationship. On 1 November 2006, I explained in the context of the Statutes Amendment (Relationships) Bill my support for measures to remove unjustifiable discrimination against couples of the same gender, and to recognise the legitimate entitlements of domestic co-dependents.

My support for the bill is not without qualifications, however. First, I am not convinced that the definition of 'domestic partners' is sufficiently tight to limit each person to one close personal relationship and therefore one domestic partnership. I can envisage circumstances where a person may have more than one close personal relationship. The government asserts that each person is limited to one partnership. I hold the government accountable for the fair operation of the bill.

Secondly, I am concerned that people may also be caught by the act without intending to be so. Most people do not put in place documentation to reflect their intentions. However, accordingly, it is arguable that more people's intentions will be appropriately recognised if relationships are recognised on a presumptive basis rather than on an opt-in basis. That is a matter for judgment. The government has made that judgment. I hold the government accountable for the judgment it has made. On this basis, I will not be supporting the amendments proposed by the Hon. Sandra Kanck, and I will be supporting the bill.

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

SUMMARY OFFENCES (GATECRASHERS AT PARTIES) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police): I move:

That this bill be now read a second time.

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

Leave granted.

At the last election the Labor Party made this election promise:

Gatecrashers

The public disorder caused by gatecrashers is a significant community concern. There has been an increase in incidents where groups of uninvited guests attending private functions cause disturbances and, on occasions, assaults.

The Rann Government will clarify the law so that home-owners, or persons in authority, can require uninvited persons to leave the premises and not return, and, if necessary, use reasonable force to remove them.

This Bill proposes changes to the *Summary Offences Act* that will put that promise into law.

There is, of course, a general regime governing trespassers in the *Summary Offences Act*. The core provision is section 17A which says:

17A—Trespassers on premises

(1) Where—

(a) a person trespasses on premises; and

(b) the nature of the trespass is such as to interfere with the enjoyment of the premises by the occupier; and

(c) the trespasser is asked by an authorised person to leave the premises,

the trespasser is, if he or she fails to leave the premises forthwith or again trespasses on the premises within 24 hours of being asked to leave, guilty of an offence.

Maximum penalty: $2 500 or imprisonment for 6 months.

(2) A person who, while trespassing on premises, uses offensive language or behaves in an offensive manner is guilty of an offence.

Maximum penalty: $1 250.

(2a) A person who trespasses on premises must, if asked to do so by an authorised person, give his or her name and address to the authorised person.

Maximum penalty: $1 250.

(2b) An authorised person, on asking a trespasser to leave premises or to give a name and address, must, if the trespasser so requests, inform the trespasser of—

(a) the authorised person's name and address; and

(b) the capacity in which the person is an authorised person under this section.

(2c) A person must not falsely pretend, by words or conduct, to have the powers of an authorised person under this section.

Maximum penalty: $750.

(3) In this section—

authorised person, in relation to premises, means—

(a) the occupier, or a person acting on the authority of the occupier;

(b) where the premises are the premises of a school or other educational institution or belong to the Crown or an instrumentality of the Crown, the person who has the administration, control or management of the premises, or a person acting on the authority of such a person;

occupier, in relation to premises, means the person in possession, or entitled to immediate possession, of the premises;

offensive includes threatening, abusive or insulting;

premises means—

(a) any land; or

(b) any building or structure; or

(c) any aircraft, vehicle, ship or boat.

(4) In proceedings for an offence against this section, an allegation in the complaint that a person named in the complaint was on a specified date an authorised person in relation to specified premises will be accepted as proved in the absence of proof to the contrary.

These provisions resulted from a careful and lengthy debate in the Parliament as a result of strong complaints from farmers and country people about trespassers going onto private property looking for "magic mushrooms". The result was that there was no "mere trespass" offence—there was a "trespass plus" offence. The "plus" is that the trespasser has been asked to leave by the occupier and has failed to do so.

The structure proposed in this Bill for dealing with trespass by gatecrashers builds on this fundamental decision and the resulting legislative structure.

The Labor policy and the Bill are focussed on dealing with gatecrashers at private parties. A "private party" is a defined term. It means a party to which admittance is allowed by invitation only. Those who hold parties on the basis of free entry to all who turn up do not and should not fall within the scope of this Bill. Neither do those parties which may be "private" in the defined sense, but for which the organisers should organise their own security—such as those who hold parties in corporate boxes at the football. Those who hold a party on licensed premises should comply with the separate and rightly distinct regime imposed by the *Liquor Licensing Act*. That being said, though, the proposed measures will apply whether the party is being held in a private home or in a hired hall or other premises.

In general terms, the sequence of the sub-sections in proposed s 17AB follow an anticipated factual sequence of gatecrashing.

- The person in charge reasonably suspects that the person or persons are gatecrashing and requires proof of entitlement to be there—say, an invitation.
- The person fails that test and is told that they are not welcome, whereupon that person is deemed to be a trespasser.
- The trespasser is asked to leave (either in person or as a member of a group) and fails to leave. That constitutes an offence. The maximum penalty is twice that of the general trespassing offence.
- Supplementary supporting offences attacking the use of offensive language, behaving in an offensive manner and failing to give name and address by the trespasser.
- Police powers to enable police removal of anyone reasonably suspected by police of committing an offence against this section.
- Additional police powers to deal with loiterers in the vicinity of the private premises based on the existing model of general loitering provisions in s 18 of the *Summary Offences Act*, together with an enhanced penalty for failure to comply.
- Amendment of the defence of property provisions of the *Criminal Law Consolidation Act* to make it clear that they apply to the situations contemplated by the proposed provisions.

These are innovative and well-thought out proposals which precisely reflect Labor election policy. They should command the support of the Parliament.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Summary Offences Act 1953*

4—Amendment of section 17A—Trespassers on premises

This clause makes a consequential amendment to section 17A. The material in the 2 subsections that are to be deleted is now to be covered by proposed section 17AC.

5—Insertion of sections 17AB and 17AC

This clause inserts new sections as follows:

17AB—Trespassers etc at private parties

This provision creates a number of special offences relating to trespassers at private parties, makes provision for removal of trespassers at, and persons loitering in the vicinity of, private parties and provides special evidentiary arrangements in relation to offences under the provision.

A ***private party*** is defined in the provision as party, event or celebration to which admittance is allowed by invitation only, other than a party, event or celebration that is held by or on behalf of a company or business, in a public place or on licensed premises.

Under the provision, an authorised person at a private party may require a person suspected of being a trespasser to produce evidence that he or she is entitled to be on the premises. If the person fails to produce such evidence, the person may be advised that he or she is trespassing on the premises and at that point will be taken to be a trespasser for the purposes of the other provisions of the clause and for the

purposes of section 15A of the *Criminal Law Consolidation Act 1935* (which is the provision about defence of property). This provision is in addition to the ordinary laws about trespassers and is designed to assist authorised persons in establishing that a person is a trespasser and that powers under the provision may be exercised in relation to that person.

The provision then creates the following offences:

- A person who trespasses at a private party and who, having been asked to leave the party, fails to do so or returns during the party, commits an offence punishable by a fine of $5 000 or imprisonment for 1 year.

- A person who trespasses at a private party and uses offensive language or behaves in an offensive manner commits an offence punishable by a fine of $2 500.

- A person who trespasses at a private party must, if asked to do so by an authorised person, give his or her name and address to the authorised person. Failure to do so is an offence punishable by a fine of $2 500.

Proposed subsection (7) deals with removal of a trespasser from the party premises at the request of an authorised person. Proposed subsections (8) and (9) deal with people who are not trespassers but who are in the vicinity of a private party. Under subsection (8), police may, on grounds specified in the provision, request a person to cease loitering, or request persons in a group to disperse. Under subsection (9), a person of whom such a request is made must leave the place and the area in the vicinity of the place in which he or she was loitering or assembled in the group. Failure to do so is an offence punishable by a fine of $2 500 or imprisonment for 6 months.

The provision also contains provision for proof that a private party was being held and for proof of a person's status as an "authorised person".

17AC—Authorised persons

This provision requires an authorised person exercising powers under the current section 17A or new section 17AB to disclose certain information on request by the person in relation to whom the powers are being exercised and making it an offence to falsely pretend to have the powers of an authorised person under either of those sections.

Schedule 1—Related amendment to *Criminal Law Consolidation Act 1935*

The Schedule makes a related amendment to section 15A of the *Criminal Law Consolidation Act 1935* to make it clear that a person commits a criminal trespass for the purposes of the provision if the trespass is committed in circumstances where the trespass itself is an offence or constitutes an element of the offence (the latter situation being the subject of the amendment). The trespass offences under section 17A and proposed new section 17AB of the *Summary Offences Act 1953* are framed such that the trespass is not an offence of itself and so this amendment will clarify that the commission of one of these offences will nevertheless be a criminal trespass for the purposes of section 15A.

The Hon. R.I. LUCAS secured the adjournment of the debate.

SOUTHERN STATE SUPERANNUATION (INSURANCE, SPOUSE ACCOUNTS AND OTHER MEASURES) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

ROAD TRAFFIC (COUNCIL SPEED ZONES) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

DEVELOPMENT (BUILDING SAFETY) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

ADJOURNMENT

At 12.57 a.m. the council adjourned until Thursday 7 December at 11 a.m.