LEGISLATIVE COUNCIL

Wednesday 7 February 2007

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

DeGARIS, Hon. R.C., DEATH

The Hon. P. HOLLOWAY (Minister for Police): By leave, I move:

That the Legislative Council expresses its deep regret at the recent death of the Hon. Ren DeGaris, former minister of the crown and member and leader of the opposition of the Legislative Council, and places on record its appreciation of his distinguished and meritorious public services, and as a mark of respect to his memory the sitting of the council be suspended until the ringing of the bells.

Yesterday all honourable members heard the sad news of the passing of Ren DeGaris, one of the most important post-war conservative figures in South Australia. Mr DeGaris enjoyed a 23-year career in the Legislative Council, including holding a number of ministerial portfolios and becoming his party's leader in the upper house. He is perhaps best known for the pivotal role he played in debate about electoral reform in the 1960s and 1970s. He will also be long remembered for his loyalty to his state, his firm convictions and values, and his impact on the Liberal Party in this state.

Mr DeGaris passed away on Monday, at the age of 85. He was born in Millicent on 12 October 1921 and was the product of a strong British family with a rich history of farming and community involvement in the South-East. Young Renfrey was educated at Prince Alfred College here in Adelaide. He served for six years in the RAAF, and married Norma Wilson in 1948. His political career began with a 12-year association with local government, including five years as the chairman of the Millicent District Council. Bigger things beckoned for a man of his ability, and he sought a place in the House of Assembly in March 1962.

Contesting the seat of Millicent for the Liberals, he lost by a mere 200 votes to the tough, yet affable, Des Corcoran. Another opportunity arose for Mr DeGaris in December 1962, when he entered the Legislative Council as a representative for what was called the Southern District. His maiden speech hinted at just some of the issues that would concern him throughout his career, such as the funding and construction of country roads, the cost of electricity, and the role of local government—topics that continue to be debated to this day.

Mr DeGaris became the leader of the Liberals in the Legislative Council in 1967, and he held three ministerial portfolios in the government of Steele Hall from April 1968 to June 1970: chief secretary, minister for health and the minister for mines.

Mr DeGaris held pronounced views on various political issues and was never shy about expressing them. Mr DeGaris consistently stood for what he believed in, even if it was crazy or even if it contradicted the policies of his party, the Liberal Party. He was outspoken about the quality of parliamentarians and about how much they should be paid, and he was concerned about the rise of executive government and its dominance over parliament. He also believed that Legislative Councillors should be more independent of party and that the council should become a more effective house of review.

In 1970, Mr DeGaris told the old Adelaide *News* that the upper house must be structured 'so that you can break the dominance of the party machine. I believe the upper house must act in this way as some independent court of appeal, where people can approach and put a viewpoint and know that the party machine is not going to dictate how an amendment or a piece of legislation will go through the house.'

As is well known in this place, Mr DeGaris strongly disagreed with Steele Hall and his fellow moderate members of the Liberal Party about electoral reform in South Australia, especially the scope of the franchise in relation to the upper house. Depending on one's standpoint, Mr DeGaris was seen as a stirrer, a reactionary and one of the ultras of the Liberal Party or as an independent minded representative of the people, a principled reformer and a thinking opponent of mindless dogma.

By the time Mr DeGaris announced in 1983 his intention to quit politics he had served under seven different premiers. He told Stephen Middleton of *The News* at the time that the Playford and Dunstan periods had been the two most important in South Australian politics in the previous half century. Playford saw the growth of the state's industrial capacity as the single most important issue before him, while Dunstan concentrated on the areas of social reform that Playford shunned, he was quoted as saying.

Mr DeGaris eventually retired from parliament in 1985, but this did not necessarily mean he was leaving politics. Indeed, he remained a mentor to many. He was very close to the former member for Victoria and then leader of the opposition, Dale Baker, with some people believing that Ren masterminded Mr Baker's rise to the leadership. Besides Mr Baker, we know that Ren DeGaris influenced later generations of parliamentarians, including Senator Jeannie Ferris and the federal member for Barker, Patrick Secker.

Mr DeGaris retained an encyclopedic knowledge of elections and voting systems and remained an astute and insightful political observer. He accurately predicted the result of the 1997 state election a full two years before it was held. I often heard of his views when my colleague the Hon. Terry Roberts was in this place and had *The South-Eastern Times* and passed it around. I believe that Mr DeGaris had a regular spot in that paper.

I understand his great passions in his later years were reading and bird watching in the South-East, with a special interest in the migrating water birds of the region. One of his most fascinating legacies to the South-East is his collection of home movies (spanning 30 years) taken by his father, who owned an early version of a hand-held movie camera, during the war years of the 1940s. I believe the films include rare images of town life in Millicent, including local weddings and farewell and welcome home celebrations for soldiers. The films are now held by the Wattle Range Council.

Ren DeGaris remained a good-hearted, generous man to the end. In recognition of his outstanding service to South Australia, in response to a request from his family and in consultation with the opposition, the Premier yesterday agreed to a state funeral for Mr DeGaris. On behalf of all members of the government and the Legislative Council, I extend my condolences to Ren DeGaris' family and friends, especially his wife Norma, his daughters Ruth and Louise, his sons Bill and Richard and his grandchildren and great-grandchildren.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise on behalf of the Liberal members, although some of my

colleagues, I understand, will speak as well, to support the motion moved by the Leader of the Government in relation to the Hon. Renfrey Curgenven DeGaris. He has the distinction of being the only Curgenven that I knew and, I suspect, will ever know. I am not sure what the origins were but, indeed, as the Leader of the Government has indicated, a unique political character has passed on only in the past 48 hours or so.

As the Leader of the Government outlined, Ren DeGaris had a long and distinguished public career, a relatively short period, as I understand it, in local government and then more than 20 years in the Parliament of South Australia. As the leader noted, he had an active engagement all through that period and subsequently in our party, the Liberal Party of Australia, SA division, or in those days the LCL, the Liberal and Country League, as it was then known.

He had a brief period as a minister, just two years in the Hall Government of 1968-70. The leader read out the portfolios and, I think, these days one of those portfolios sounds quaint—the position of chief secretary—but in those days the chief secretary's position was a most important position in government. I think—I stand to be corrected—it was either third or fourth in terms of protocol within the government. It involved a range of issues: police, corrections and a variety of other responsibilities within that particular portfolio, and it was indeed a significant and important portfolio in any government during that particular period. It has long gone, of course, and those responsibilities have been shared amongst a number of other ministers.

As the Leader of the Government indicated, he not only had that responsibility, which in those days was probably the most important, but he also had the responsibility for running the health system as well, together with the mines portfolio, which the Leader of the Government, of course, is responsible for these days. So, certainly the significance of his contribution during that brief period of the Hall government was indicated, at least in part, by the importance of the portfolios that he held during that period.

My first recollections—and I cannot be entirely certain of meeting Ren DeGaris—would have been, I suspect, in the period of around about 1974-75, right in the period of earnest (if I can use that word; others could be used) debate within the Liberal Party in relation to electoral issues and electoral reform issues. I recall serving on re-distribution committees with Ren DeGaris, and others of course, and on committees that looked at electoral reform issues. Whilst I need to be frank and say that I did not always share the views of Ren DeGaris in those days or in subsequent years on a number of significant issues, he was, nevertheless, a very important contributor to the direction that the party's policy took for many years in relation to those issues.

The leader referred to an encyclopaedic knowledge of electoral issues. Certainly he was formidable in debate within whatever forum you were, whether it was an internal party forum or in the parliamentary forum in relation to electoral issues. He was one of those few—and there are not many these days—who devoted, and continued to devote, a lot of time to electoral statistics, including the issue of moving votes around for redistribution and knowing which polling booths went in which particular direction. All of those sorts of issues were of great interest to Ren DeGaris right through the early days as well as his latter days.

He was active through the period of the 1970s and 1980s in a whole range of policy-related reforms in this area. A number of them have reached the public forum of the parliament where they were discussed, but I know back in those early days at varying stages through the 1970s and 1980s he discussed within the party the potential of the West German electoral system, which involves the election of members at large in electorates but then topping up members from a state-wide vote to try to ensure a fair vote. At one stage, and I cannot remember exactly when, during the 1980s it was part of the Liberal Party's policy as we sought to resolve the issues of governments being elected with less than 50 per cent of the vote.

During the period of the late 1980s when he was still active long after his retirement, after the 1989 election when John Olsen was defeated with 52 per cent of the two-party preferred vote and there was significant concern being expressed at the unfairness of the electoral system in South Australia in that a party could win more than 50 per cent of the vote and not win government, the current system that we now have had its genesis. The fairness criterion debate—that is, the 50 per cent plus one of the two-party preferred vote—raged soon after the 1989 election during that period when Dale Baker was leader of the Liberal Party and, whilst he was not the only one (there were a number of others arguing the case at the time), he nevertheless had a significant input into the constitutional provision that we now have for the fairness criterion—the 50 per cent plus one before you can achieve government.

Ren, as I think the Leader of the Government alluded to, had very strong views. He had a very long memory as well, I might say. He had many friends and supporters within the Liberal Party but, again, to be frank, he had many enemies, and many strong enemies within his own party also. He had very strong views. The area for which I most admired his contribution was in relation to the importance of members of parliament being legislators, being parliamentarians, and in particular he was talking about members of the Legislative Council. He often argued, particularly with the evolving role of the Legislative Council with the electoral reforms of the 1970s, that the base of this Legislative Council was to be different from the House of Assembly. It was not to be a replication of lower house members directly representing particular electorates. It was a state-based house. It was to give members of the Legislative Council greater freedom to work through committees of the Legislative Council, which he believed should be an important part of the role and work of the Legislative Council; and, because the method of election of the Legislative Council was different from that of the House of Assembly, members of this chamber would be able to spend much more time in terms of reviewing legislation.

I have to say that is one of the aspects I admired most about him. Whilst there is a lot of controversy about his views on electoral reform and other issues, when you knew the work that Ren DeGaris did in terms of legislation, he was quite formidable. It did not matter what bill it was, he would go through each individual clause and provision of the bill. Whether it was when he was leader in this place for some 11 or 12 years or during his period as a backbencher, whether it was a Labor or Liberal government, he spent a lot of time going through the individual clauses and provisions, arguing the toss during the committee stage or during the second reading and asking questions.

In terms of the work of this place, that is a lesson for us all in relation to the role of Legislative Council members. It does not matter whether it is our own party or another party that is trotting out the legislation, none of us is infallible or

perfect—whatever some might suggest—in terms of the quality of bills and proposals that are put before this place. Mistakes are always being made. He certainly demonstrated by his work ethic that he applied himself rigorously to the task of checking legislation to ensure that it was the best possible legislation to go through the Legislative Council.

He had a great love of this Legislative Council. Even when he left this place many of us received on occasions correspondence or suggestions on how we might improve our performance or where he disagreed with a particular aspect of our performance in a particular area. Nevertheless, the framework underlying it all was strong support for the importance of the role of the Legislative Council in trying to keep governments accountable, whether they be Labor or Liberal. He felt it was important in terms of the accountability mechanism which is part of our democratic system and processes.

His last three years were my first three years in parliament. Together with the Hons Diana Laidlaw and Peter Dunn, I joined the parliament in 1982, and we attended our very first party meeting, which has been publicly reported on. In 1982 Ren DeGaris, Martin Cameron and Trevor Griffin contested the leadership of the Legislative Council. Once the decision had been made and Ren was unsuccessful, he rose in the party room, spoke frankly and firmly about a range of issues and his views on a number of people and left the party room (which is now the King William Room, but which used to be the Liberal Party Legislative Council room) never to grace the doors of the Legislative Council party room again.

It was certainly an eye opener for those of us attending our very first party meeting to become engaged in a vote for the leadership and then to be confronted with the repercussions. It was a lesson well learnt in terms of the real politics of politics in South Australia. For the next three years he sat on the bench on which I suspect the Hon. Ann Bressington now sits or perhaps just in front of her. He was a fearless and independent speaker on a range of issues and he freely expressed his views during the last three years of his term in the Legislative Council.

Before concluding my remarks, the Leader of the Government referred to the 1970s, which was a tumultuous time for the Liberal Party. Significantly, as a result of the conflict between Steele Hall and those who supported him and Ren DeGaris and his particular views, eventually through another device a motion was moved in relation to whether or not the Liberal Party leader should retain the right to select members of the cabinet as opposed to having something akin to the Labor Party system where some or all members are selected by the caucus. That is a significant difference between the two parties. Without going into the gory detail a motion was moved. Steele Hall's position did not prevail in the House of Assembly party room and he resigned.

Incredibly, and as I read again today in the book *Liberals in Limbo* by Dean Jaensch and Joan Bullock (who, for those of you who do not know, is now Joan Hall), whilst everyone in the Liberal Party room knew that Steele Hall had resigned, when the parliament convened one or two hours later that afternoon no member of the media or the government and no member of staff realised he had resigned until he sat on the backbench for question time and rose to make a statement, in which he spoke frankly about his particular views on a range of issues.

Going back through that time, and looking briefly at the *Liberals in Limbo* book and also at Ren's book (which was, I think, called *Redressing the Balance* and which put another view of that period), I found it intriguing to look at the attempts of Dean Jaensch and company to go through the particular groups and factions in the party in 1971. To place on the record for some of my colleagues who are recent additions, I think the Leader of the Government referred to the 'ultras'. That is the description that Dean Jaensch gave to various members of the Liberal Party at that stage. In an earlier edition I think he used terms such as 'the troglodyte cave', 'the ultras and the conservatives', and 'the moderates and the progressives'. However, in Dean Jaensch's 1971 description Ren was clearly listed amongst the conservatives, or the 'ultras' as he referred to them, within the Liberal Party, while Steele Hall and Stan Evans were listed within the moderates and progressives. I place that on the record to indicate that times do change, things evolve; certainly, within our own party it is a never-ending evolution as one looks at the ebbs and flows of politics.

Ren had many other interests. I think the Leader of the Government talked about bird watching; he also loved talking, and he loved music. He had a great passion for cryptic crosswords, of all things. Those old enough will remember that *The National Times* used to put out a weekly full-page cryptic crossword, and Ren would inevitably spend the first 24 hours of the week resolving most of the clues. He had a great love of cricket, as those who get the opportunity to see the old press versus parliament cricket book (which we hope some may do, as we are looking to revive the tradition on Easter Thursday this year) will see. Ren was an initiator and leader of that particular tradition, playing (they tell me) with the great names of the past, such as Gil Langley of the Labor Party and others. I saw him only in his latter years when he had certainly slowed, when the loop was not as high and the flick of the wrist not as strong; however, I am told that in his prime he was a fearsome leg spin bowler. He certainly told me that, anyway. What he could do with a tennis or cricket ball was legendary—at least, as he described it to me. Certainly, his performance in the press versus parliament cricket game would indicate that he was a dab hand with the bat; he got a few runs and picked up a few wickets in that annual match.

He was the life of the party, whether you agreed or disagreed. As I indicated at the outset, I disagreed with Ren on a number of issues over the years but, throughout the period when he was in the parliament and throughout the mid-80s when, I guess, I had the most to do with him, he was always good company. He had strong views and expressed them, but he was always good company, whatever the particular occasion may have been. On behalf of Liberal members, I place on public record our acknowledgment of his contribution to public life, to the parliament and to the Liberal Party. We pass on our condolences to Norma, his family members and his friends and acquaintances.

The Hon. SANDRA KANCK: Ren DeGaris was, I think, a renegade and a free thinker. I knew him at a distance in his last three years in parliament because, at that time, I was working with Ian Gilfillan at very close quarters, because Ian and I actually shared the same desk. So, when Ren DeGaris would pop in to see Ian about legislation or to share his views with Ian, particularly about electoral reform, I heard those conversations. I did not always agree with his views; for instance, I certainly would not be able to support the views he expressed about the death penalty. However, his views about the Legislative Council and the role this chamber has to play are things that I think at this point should be repeated.

In *The News* of 30 July 1970, in response to a question asked by a journalist about the necessity for the upper house, he said:

> This is not borne out, of course, by any democracy. All the writers on the formation of a democracy agree on the necessity for the bi-cameral system. If you get one House acting on legislation and that House is always right because of the dogmas of one party machine, you're going to see deterioration in the standard of democracy.
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> It is the accepted principle by practically everyone that a two-house system offers much greater protection to the democratic system and a much higher standard of debate.

Later in that same interview he said:

> Somehow in an Upper House you must structure it so that you can break this growing dominance of the party machine.
>
> I don't care whether it's a party machine that's Liberal and a Country League or whether it's a party machine of the Australian Labor Party or any other party.
>
> I believe that the Upper House must act in this way as some independent court of appeal where people can approach and put a viewpoint and know that the party machine is not going to dictate how that amendment or that piece of legislation will go through the House.

He continued:

> I'm questioning the right of a party that has a majority to say that it's always right. There is such a thing as a majority dictatorship, which I must think we must try and overcome.

I do not know what his pronouncements were in recent times, but I doubt that they would have changed. I think that the views he espoused about that are particularly relevant at a time when this current government proposes at the next election to have a referendum to abolish the Legislative Council. He expressed much wisdom on this subject, and I would suggest that ALP members should look at what he had to say. Parliament needs more MPs who are prepared to question and not simply toe the party line. We need more MPs who are not looking just towards the next preselection and what will please the party. I take this opportunity to extend the Democrats' condolences to all the family and friends of Mr DeGaris.

The Hon. R.D. LAWSON: I rise briefly to indicate support for the motion. I first met Ren DeGaris in about 1993, when I had made the decision to seek preselection to stand for parliament. As a television viewer, in the 1970s I had seen Mr DeGaris in the celebrated *This Day Tonight* program of the debate he had with Don Dunstan on 1 May 1973 about electoral reform. I was discussing it with Mr DeGaris when I first met him, and he kindly gave me a copy of his memoirs, *Redressing the Imbalance*, a book he published in 1989, some years after he left the parliament. It is indeed an interesting document, which I commend to anyone interested in the history of our parliament. It is a book that relies very heavily on extensive quotations from *Hansard*.

I must say that at the time, as a young man, and being an impressionable person at that stage, in the debate between Dunstan and DeGaris, where Don Dunstan was preaching the mantra of one vote, one value and suggesting that the Liberal Party had been opposed to that and that it was opposed to fairness in electoral matters, I was impressed with Dunstan's logic on that. It was not until a great deal later, after reading DeGaris' book and having discussions with him, that I really appreciated the fallacy of the proposition that electoral fairness necessarily comes from single-member electorates of equal size. It was an argument that DeGaris maintained through the years. He may not have won the debate—although he believes that he performed well in that debate in 1973—but he did manage to achieve significant amendments to a constitutional reform bill Dunstan was putting through at that time.

Ren DeGaris was assiduous in maintaining a line against his political opponents, as well as against a number of academics and journalists. He was particularly virulent in his criticism of Professor Dean Jaensch (then Dr Dean Jaensch), who had invented the term 'the Playmander' to describe the so-called gerrymander that existed under the Playford Liberal governments of the 1940s to the early 1960s. DeGaris was able to convince a number of those academics, although not all of them, by his writings that the so-called Playmander was a gross overstatement based on a misunderstanding of the mathematics. Ren DeGaris was an extremely good mathematician and a good electoral mathematician. In fact, when one reads his work, and with the benefit of discussions with him, he was a master of that field and certainly one who has never been exceeded by any person I have either spoken with or whose work I have read.

The book *Redressing the Balance* outlines many of the matters the Hon. Rob Lucas has mentioned. It is true that Ren DeGaris was assiduous in his assertion that Steele Hall engaged in what he described as treacherous activities in those times. They were matters, I am sure, he never resiled from and was always willing to enlighten younger members about.

He was a great supporter of the West German electoral system, which ultimately was not adopted here. However, he was, I believe, the originator of the notion of a political fairness test in electoral redistributions and, notwithstanding the criticism he levelled against Sir Charles Bright in the Electoral District Boundaries Commission in 1976 for his failing to take into account the political consequences of redistributions, I believe he was ultimately proved to be correct.

Ren DeGaris had a long and distinguished career. As I have said, he was astute, assiduous, perceptive, thoughtful and very intelligent, a great raconteur and an effective parliamentarian. He was not without his faults. He was indeed a most stubborn man, and he was not a person whom one could ever accuse of not bearing a grudge. However, he made a signal contribution to the cause of the Liberal and Country League in South Australia and to public life in this state.

I met Ren DeGaris on a number of occasions when he was working in the office of Dale Baker, before 1997, when Mr Baker was a member of this parliament. I have had some dealings with his son Bill, a solicitor in the South-East. I extend my condolences to Bill, to Ren DeGaris's wife and to their family.

The Hon. J.S.L. DAWKINS: I rise to support the motion, and I am very pleased to associate myself with the remarks made by the Leader of the Government, the Leader of the Opposition and the Hon. Mr Lawson. I would just like to make a few comments about the Hon. Renfrey Curgenven DeGaris. He was a colleague of my father in this place for 20 years. As a result of that, I knew him from the time that I was in primary school. It was, however, some years later, in fact, after I had not long started employment with the now Hon. Neil Andrew, member for Wakefield, that Neil was asked to speak at a retirement function for Ren DeGaris. I think Ren had actually asked Neil (this new member for Wakefield) to speak at his retirement function. I was working in the Commonwealth Bank building and just across the aisle was the current Leader of the Government in this place. One

of the tasks I undertook fairly early in this job with Neil Andrew was to research Ren DeGaris' political and community career. I remember that as being something I enjoyed doing very much. I obviously gained a lot of knowledge about the political stoushes Ren had had, but it was educative for me to do the research for Neil Andrew at that time.

Ren, when he left parliament, remained a strong supporter of various forums of the Liberal Party. One of those was the South-East Regional Convention, which he attended quite regularly. He was a very regular attendee and contributor at the rural council of the Liberal Party (now the Rural and Regional Council), and particularly so after his retirement. I remember him having plenty of advice for me during my term as the chairman of that body. He was also a member of the state council for many years after he left parliament. That, of course, gave him a role on preselection colleges for upper house candidates. Probably a number of my colleagues went through similar experiences to mine where, in 1997 in Millicent, he put me through my paces, as he would someone who wanted to move into the house in which he had served. While it was not an aggressive or difficult circumstance, he certainly made me earn the money.

After that discussion I remember that Ren went off to a meeting of the Rotary Club of Millicent. He had a very strong commitment to that club and to Rotary International in general. At that stage I was a relatively new Rotarian, so he freely gave me some tips about how to work my way through that organisation. As I said, I have had the privilege of knowing Ren DeGaris for a great proportion of my life. He was a great South Australian and a great contributor to this parliament and to this Legislative Council. I extend my condolences to Norma and to the family.

The Hon. CAROLINE SCHAEFER: I, too, have known Ren DeGaris for certainly most of my adult life. He was part of this parliament, part of the Legislative Council and part of the Liberal Party for, I think, the entire time that my father served here. In fact, he and Mrs DeGaris attended my wedding, so we do go back for quite some time.

He did have a brilliant mind. He was fiercely loyal to his belief in the independence of the upper house. My recollection is that he was one of the last bastions who fought rigorously against joint party meetings. He believed that the Legislative Council should not attend the party meetings of the lower house, and he certainly disapproved intensely of the fight that many of us have waged in latter years to have some say in the election of the leader of our joint party. Again, he believed very much that we should be an independent and at arm's length house and body.

He was, as has previously been mentioned, probably a quite brilliant electoral statistician and was probably one of the few people who actually understood the counting system under which we are elected. He was able to predict with great accuracy how many we were going to get into this place after the first votes had been counted on election nights. He was a believer in proportional representation but, as I recall, not in what he called somewhat disparagingly the list system under which we are elected but rather in the more purist Hare-Clark system that exists in Tasmania. In latter years he was a proponent of the German Bundestag system, which was an amalgam of a proportional representation system and a top-up system, and which would have seen, as our leader suggested, a 52 per cent plus 1 per cent government.

Ren was also devoted to living in the country. He lived in Millicent all his life until his latter years, when it was no longer practical to do so. He had an intricate knowledge of his district, its natural history and resources and was someone who was always willing to give visitors to Millicent the benefit of his knowledge of his district. As has been said, he remained a member of state council and rural and regional council for many years after he retired from this place. Many of us were given the benefit of his knowledge and advice over that period of time. I extend my condolences to Mrs Norma DeGaris and the rest of the family.

The Hon. D.W. RIDGWAY: I rise to support the condolence motion and state my support for all the comments made by my collegues on both sides of the council today. I first met Ren DeGaris in about 1984 or 1985 when I joined the Liberal Party at a Victoria or McKillop SEC meeting. I dropped out of party activities for a while as I had met my wife and found courting her a little more interesting than going to Liberal Party meetings. On my returning to Liberal Party involvement, Ren DeGaris was still very much an important part of the South-East Liberal network, somebody who was always easy to talk to, even though he was many years older than me, much wiser and more experienced. He was always happy to sit down and have a chat with anybody. He made me, my wife Meredith and any of the younger people in the party in the South-East extremely comfortable and welcomed us in party involvement.

I was perhaps the last successful candidate to whom Ren DeGaris gave advice. The member for MacKillop today, Mitch Williams, won the seat from Dale Baker as an Independent and there was a preselection battle that Mitch wanted out of the way soon after he rejoined the Liberal Party. It is no secret that at that time I was keen to be the member for MacKillop, and I had a number of conversations with Ren when he expressed some disappointment on his own behalf that he was unsuccessful for the seat of Millicent when Des Corcoran beat him. In the end, despite some disappointments along the way with his term in this place, he said that maybe it was not such a bad course to take and that it would be in my best interests to do so. I took his very wise advice and at the end of the day both Mitch and I are in this building together and happy to serve the Liberal Party. So, I guess two is better than one any day.

I would like to place on the record that I would like to thank Ren DeGaris for his very wise counsel and the support he gave me. I still have a couple of letters that he wrote to me upon being pre-selected, encouraging me and certainly giving me some guidance. I should perhaps go back and refresh my memory of some of the guidance that he has given me. Notwithstanding that, I would like to offer my family's condolences to Norma and Bill and the other members of the DeGaris family.

The Hon. J.M.A. LENSINK: I rise to support the motion on the passing of the Hon. Ren DeGaris. I too had my experiences with Ren. I first joined the Liberal Party in 1990 and became a member of the party's governing body state council in 1992, which is where I would have first come across him. He is the sort of person who was a legend in those days, and I think will remain in our history books as a legend whose reputation preceded him. I remember people pointing him out to me when he would go towards the microphone and say in hushed tones, 'That's Ren DeGaris.'

I too received advice from Mr DeGaris when I became Young Liberal president in 1995. I was—like all preceding Young Liberal presidents and subsequent ones, for many years at least—a recipient of his book *Redressing the Balance*. There were not too many people who wrote me letters trying to educate me about certain things in the party, but that was one that I did receive, and I would often receive other correspondence out of the blue from him too if I had made some contribution on policy debate. So, he was never backwards in coming forwards in expressing his views.

He was on my college as a state councillor, as has been said by a number of people here. He was on the state council of the Liberal Party for many years. He was on the first electoral college that I stood for when I was standing as a candidate for an unwinnable position on the senate ticket, which was 1997. When you are running for an unwinnable position you are not expected to do a grand tour of the country. In the Liberal Party, at least, when we have pre-selections it is never a foregone conclusion and so the expectation is that you go and visit everybody, but I was not expected to visit on that occasion.

So, I made a phone call to Mr DeGaris and it was a very short conversation. You can never be too sure, if you are ringing someone whose views you do not think concur with yours, whether they will detain you on the phone or how you will be received. He was very frank, which I appreciated, to be honest. He said, 'Michelle, I don't like your views and I'm not voting for you,' clunk. Having been the victim of people who detain you on the telephone, I have to say that his approach was much appreciated. As they say in politics: only believe the people who say they are not voting for you.

My last contact with Mr DeGaris was, I think, in 2003 when he was very much frailer. He was at a fundraising barbecue at Mitch Williams' place, and I must say that on that occasion he was much more sanguine. He is a legend in the Liberal Party and he will be remembered for his contribution, and I would like to add my condolences to his family and friends.

The PRESIDENT: I also rise to support the motion. Growing up in the South-East—born and bred in the South-East—I often came across, or heard a lot about, Ren DeGaris. On behalf of Millicent, and the South-East in particular, I would like to say thanks for all the work that he did down there. He certainly put the South-East ahead of most of the other things when he was a member of parliament. Not only was he a member of parliament but he was a member of the council as well, and he kept pushing the views and the positions of the South-East and Millicent very strongly right up until his passing. I also had the pleasure of playing football with Richard at Tantanoola. I think Richard played with us there for a season.

I often wondered, when Martin Cameron beat Des Corcoran by one vote (before Martin was elected to the Legislative Council), whether that vote might have been Ren's, but of course we will never know. I am sure the Hon. Terry Roberts will be there waiting to continue the debate with Ren, because they were known to have a few debates over the years, and of course Des as well. Ren was a wonderful ambassador for the South-East, and I am sure the South-East would like to thank him for that. I pass on my condolences to Richard, Mrs DeGaris and the rest of the family.

Motion carried by members standing in their places in silence.

[Sitting suspended from 3.11 to 3.22 p.m.]

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 18th report of the committee.

Report received.

QUESTION TIME

WATER SUPPLY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the water plan for South Australia.

Leave granted.

The Hon. D.W. RIDGWAY: The South Australian government has the South Australian Strategic Plan, under which by the year 2050 it hopes to have a population of 2 million people. It is interesting to note that, even today, with a population of about 1.5 million, we do not have enough water and are suffering level three water restrictions and, I suspect, by the middle of the year (1 July) we will have to suffer level five restrictions.

In the minister's other portfolio area of mineral resources development, we have the Roxby Downs development, which will source water, we believe, from a desalination project in the Upper Spencer Gulf; and the other one the government has been championing recently is the Oxiana development, which has its own source or aquifer from where it will get water for its project. It would be interesting to know where we might find other sources of water for the projected mineral boom we might have following the government's exploration program.

Following the Liberal Party's bold and progressive announcement on 29 January to build a desalination plant, an article in *The Advertiser* the next day stated:

> Plans for a desalination plant to provide extra water for Adelaide have been rejected by the state government which says it would cost too much and force up water prices.

Minister Wright was the responsible minister and he was sent out by the government that day to respond to the announcement. The article continues:

> Mr Wright said, 'What he's talking about is based on what was built in Perth. My advice is that that is nowhere near big enough.'

At one point in the article the government is rejecting the plant and the next minute it is saying the desalination plant is not big enough. Minister Wright said that he 'felt plans for waterproofing Adelaide through other measures were more than adequate'.

I do not believe that this government has a plan. I was reminded of something the other day when I walked past the television and saw my son watching *F Troop*. They were doing a rain dance and when I look across the chamber I am reminded of Chief Wild Eagle, his able assistant Crazy Cat Zollo and Roaring Chicken Gago, not to mention Two Dogs Wortley up the back. I am sure we are in good hands when it comes to rain dancers! My questions are:

1. What is the government's plan for water security in South Australia?

2. Will the minister explain his comment yesterday by way of interjection, 'Why would they build a desalination plant when in four or five years they will not need one'?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I am not sure to what interjection the honourable member is referring. Yesterday in this council I tabled a ministerial statement from the Minister for Water Security which addressed the issue. What the honourable member does not seem to realise is that the whole of south-eastern Australia has been in a drought that is quite unprecedented. Most parts of south-eastern Australia have had the lowest rainfall ever recorded. We could have taken the view of the Prime Minister of this country and said, 'There is no such a thing as global warming.' We could have had that view, but this government and the Premier in particular have been leading this country in relation to addressing the issues of carbon in the atmosphere and climate change, because they are all related. There is a linkage between climate change, energy consumption and greenhouse gases. They are intimately linked.

In relation to the Murray-Darling Basin, I am sure the honourable member is well aware that in the past year we have reached a situation where the water held in reserve in the Murray-Darling Basin is at levels that have never been seen before.

Members interjecting:

The Hon. P. HOLLOWAY: And, of course, the Prime Minister of this country is saying he will take over water resources. What is the attitude of members opposite in relation to that? The River Murray has provided water security for this state ever since settlement. The Prime Minister is not even suggesting that this state is guaranteed the 1 850 gigalitres under the Murray-Darling Basin Agreement. He is not suggesting that will be honoured. In fact, I suggest that the water security of this state is somewhat up in the air as a result of those issues.

The honourable member would be well aware that the Murray-Darling Basin Commission has been looking at the question of water for Adelaide, and, of course, there are a number of contingencies in the very unlikely event, the 10 per cent or less chance (I suggest), that we have a continuation of water shortages this year. Over the past few years this government has been examining the water desalination plant in relation to the Olympic Dam expansion. If—or when, I hope—that desalination plant proceeds—

An honourable member: You've got it right there—if.

The Hon. P. HOLLOWAY: Well, it has to go through a proper feasibility study, as would any proposal for any plant. Perhaps with the opposition it would not; perhaps it does not put these projects through the proper feasibility studies.

That is what is happening in relation to Olympic Dam. Not only would that plant supply water for the expansion of the mining operations in the north of the state, it would also offer the capacity to supply water to the areas currently supplied from the River Murray. So, if it supplies water from the 10 gigalitres or so instead of what is now being drawn from the Murray-Darling Basin through the pipelines of Whyalla and beyond through to Eyre Peninsula then of course that water remains in the river. That water then becomes available for uses south of—

The Hon. D.W. Ridgway: Subject to evaporation and seepage and all the rest of it.

The Hon. P. HOLLOWAY: Let us just look at the stupidity of what the opposition says. It would build—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Its policy is to copy Western Australia, which was proposing a desalination plant; so its policy is that it would build one like Western Australia's that supplies about 17 per cent of that state's water. Here in South Australia, because we consume less water than Perth, it would be about 20 per cent. How would that give any security? It would take years to build and cost a fortune.

What this government already has under way, through the consideration of the Olympic Dam expansion, would put in an extra 10 gigalitres from the displacement of water in the Upper Spencer Gulf region. That makes sense, because it is economically feasible; the cost of delivering water there is enormous. Members opposite have been throwing figures around and talking about $1.15 per kilolitre in Western Australia—

The Hon. D.W. Ridgway: $1.17.

The Hon. P. HOLLOWAY: Well $1.17. But haven't they realised yet that that is what it costs to actually produce it? It costs more to distribute it. The water from the Murray costs zero. It costs a bit more when you pump it, because you have to pay for the electricity to pump it into the reservoirs, but the marginal cost of the water extraction is zero. So you can supply water at $1.17 a kilolitre, but once it gets to the plant you have to pump it up a hill and let it flow down. The distribution costs, which are the highest part, will be a similar amount.

Sure, we can say that in the future we will ask South Australians to pay for a massive increase in water which may or may not be necessary, but through the Spencer Gulf this government is putting forward a proposal that actually makes economic sense and that is in the best interests of this state. It is going through proper feasibility studies, both environmental and economic. Members opposite do not have a plan—

Members interjecting:

The Hon. P. HOLLOWAY: These are the people who do not have a plan; they do not have anything. The opposition's plan is to oppose everything.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: These people read in a newspaper that Western Australia has built one, so they will do the same, whatever it is. 'We don't know where it will be, we don't know where we will site it, we don't know how big it will be, we don't know what energy we are going to use for it, we don't know how we are going to add infrastructure or pay for pumping it down, but we will call that a plan and we'll then go and attack everything this government does.' Members opposite may have convinced themselves that they have an answer to something, but I suggest that they go back and find out what the question is first, because then they might be able to come up with a proper answer.

The Hon. D.W. RIDGWAY: I have a supplementary question arising from the answer. Given that the minister—

The Hon. J. Gazzola interjecting:

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

The Hon. D.W. RIDGWAY: —commented on the impact of climate change and the fact that we are likely to have less rainfall, what non-dependent climate water resource are you looking for in your plan for the future of South Australia?

The Hon. P. HOLLOWAY: Well, Mr President—

The Hon. D.W. Ridgway: What happens if it doesn't rain again in the near future?

The PRESIDENT: Order! The Hon. Mr Ridgway has asked his question.

The Hon. P. HOLLOWAY: —all these questions are properly for my colleague. The Leader of the Opposition has no—

Members interjecting:

The Hon. P. HOLLOWAY: What does he think Water Proofing Adelaide was about? What do members opposite think Water Proofing Adelaide has been all about? What does he think all the investment in wetlands and aquifer recharge throughout this city have been about? What it is about is waterproofing Adelaide. Water Proofing Adelaide means exactly what it says: waterproofing Adelaide. It has been the policy of this government for some years, and it has been implemented progressively in a whole lot of ways, with the aquifer recharge and so on. That is what it is all about.

The Hon. T.J. STEPHENS: I have a supplementary question. What site have you actually selected for the desal plant in Spencer Gulf? Have contracts been signed for the desal plant in Spencer Gulf? What dollar value have you committed to, and what will you do if BHP and the federal government do not tip in?

The PRESIDENT: That is three supplementary questions.

The Hon. P. HOLLOWAY: I do not really understand these opposition people. I do not understand at all where they are coming from with the questions they are asking. They seem to believe that, somehow or other, you go to bed at night and, in the morning, you wake up and suddenly there is this inspiration in your head, 'Yes, I'm going to build a desalination plant. It will be size X at site Y,' and you do not have to do any work to look at all the alternatives or study it through.

If you are to build something like a desalination plant in the vicinity of Port Bonython, you have to do some detailed design work. If you are to do it properly and not waste tens of millions of dollars of taxpayers' money, you have to work out exactly how much you want for the optimum benefit. You have to go through an environmental impact study to know where you put the brine so that it has the minimum impact on the environment. Those works have been underway for months, and they will take months. You do not just wake up in the morning, look at a map, put a pin in it and say, 'We're going to build something there.' You do very detailed studies, and they are underway.

I and other government members have been talking about these plans in this place for over a year. All this work has been going on and we have been talking about it, but there has not been a question on it. Suddenly, they have discovered, 'Hey, we're in a drought at the moment. We're in a one in a hundred year drought. Water might be a problem, so we can get a few headlines and pretend we really know what we're talking about. We'll pluck a policy out of the air. We'll see what Western Australia does, and we'll announce something they have done. We won't do any detail, but we'll announce that and pretend it's a plan. We'll go out and criticise the government.' That is not going to wash with the people of South Australia.

As I said, in relation to Water Proofing Adelaide, we have had some detailed plans for years, and they have been progressively underway. We have been doing the work, and we will continue to do the work; however, these things are not done overnight. You do not do a detailed environmental impact statement overnight.

The Hon. T.J. STEPHENS: I have a supplementary question. Minister, will you answer the question? If BHP Billiton does not tip in—and you are trumpeting that you are building the biggest desal plant in the southern hemisphere—will you go ahead with it?

The Hon. P. HOLLOWAY: We are doing this feasibility study. How long is a piece of string? In the wholly unlikely event that BHP does not go ahead with the Olympic Dam expansion, for a start we would need a lot less water and, secondly, we would have to rescale the whole thing. I do not believe that will happen. I believe that, because of the climate that this government has created—

The Hon. D.W. Ridgway: No plan.

The Hon. P. HOLLOWAY: How can you say that when the planning is actually going on? That is what planning is. Planning is not ringing up Perth and saying, 'Hey, what are you guys doing over there? You've got a plant. Can we copy you? We'll say we'll have one, but we don't know where it will be, how big it will be, or how we will pay for it. We don't know what we'll do with the water.' If they think that is a plan, then good luck to them.

HOSPITALS, REHABILITATION BEDS

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Mental Health and Substance Abuse a question about closed ward extended care rehabilitation beds.

Leave granted.

The Hon. J.M.A. LENSINK: A report was handed down by the Coroner following the inquest into the death of a man by the name of Renata Dooma, who suffered from chronic paranoid schizophrenia and who had a history of absconding from mental health facilities. He was treated in the Crammond Clinic for several months in 2005 but, because his treating consultant found him treatment resistant, he determined that Mr Dooma needed to receive treatment in a closed ward for an extended period of time. Indeed, Mr Dooma's consultant gave evidence to the Coroner, as follows:

> . . . it is very clear from my 19 years experience now in the area of psychiatry that people with more chronic illnesses actually take weeks, to months, or even longer to recover.

Glenside is the only facility that provides the services required by Mr Dooma, but Glenside refused to admit him on the grounds that this system no longer exists. The letter of reply from Glenside to the consultant is as follows:

> . . . the service offering extended care for chronic clients no longer operates within the confines of Glenside Campus Rehabilitation Service.

Mr Dooma absconded from an open ward at Crammond Clinic on 20 September 2004. He was hit by a truck and subsequently died from his injuries. The Coroner found that the lack of closed ward extended care rehab beds contributed to his death. Further evidence, as published in the report, states that Dr Tony Davis, who is a senior psychiatrist with over 20 years' experience in psychiatry at the Royal Adelaide, reviewed the management of Mr Dooma. The report went on to state:

> Dr Davis agreed with Dr Dhillon that Mr Dooma needed an extended care bed in a closed facility. In his experience, the demand for extended care beds is such that it means that patients who need them are either staying in acute wards or being released into the community. . . In Dr Davis's view, South Australia has inadequate facilities to provide the type of supervision and assertive management required for patients like Mr Dooma. He elaborated as follows: 'I think if you're post-acute and really stabilised you can be managed

by the community teams, but. . . in South Australia we just have not got adequate facilities. . .

The Coroner's conclusion was as follows:

Having reflected on the evidence on this topic, I consider that the process which has evolved regarding access to extended care beds is an insult to senior Psychiatrists in this State who are trying to act in the best interests of their patients.

My questions are:

1. Is there or is there not a closed ward extended care rehabilitation service in South Australia?

2. How many beds does it have and how long is the waiting list?

3. Does the government have any plans to increase the number of closed ward extended care rehabilitation beds?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): Again, I bring to the attention of the chamber the importance of the reform agenda which the Commissioner of the Social Inclusion Board, Monsignor Cappo, was charged with putting together and which is before the government now. We are currently putting together an across departmental and government response to that. There are a number of issues. We know that our current system is deficient because of many decades of mismanagement, particularly in the previous decade.

During the eight years the former government was in office, it did nothing but allow our health services to be absolutely into the ground, which is an absolute disgrace. This government has worked very hard to rectify that situation in terms of opening new services such as the Margaret Tobin Centre, and the Repat Centre mental health beds. We have also committed to opening up the community rehabilitation centres, with three lots of 20 beds. So there are a number of services that we have put into place already.

In terms of the needs of intensive care patients at Glenside, we believe that we have a wide range of intensive or acute services provided from that site enabling a wide range of treatments to be given. We certainly have intensive beds at Brentwood and Brentwood South and, of course, now at the Margaret Tobin Centre. In terms of the Secure Mental Health Rehabilitation Unit, again, we continue to plan for a 30-bed unit there. That is due to commence in 2008 and the completion is aimed for 2009.

We accept that our system is less than perfect. The opposition has had a large part to play in that. We have a very aggressive and active reform agenda to rectify those deficits. We are committed to reforming our mental health system, and we work tirelessly to ensure that all the needs of mental health patients are met.

Members interjecting:

The PRESIDENT: Order! The Hon. Ms Lensink has a supplementary question.

The Hon. J.M.A. LENSINK: When the minister referred to 'a wide range of services at Glenside,' can she confirm whether that does or does not include a closed ward extended care rehabilitation service?

The Hon. G.E. GAGO: Of course there continues to be extended care operating at Glenside. I understand it is currently operating at over 100 beds.

The Hon. J.M.A. LENSINK: Will the minister therefore reprimand Glenside for telling consultant psychiatrists within our mental health system that the service no longer operates?

The Hon. G.E. GAGO: That is the opinion of the honourable member. We know that she has come into this chamber with inaccurate advice before. I am happy to investigate that. I am happy to follow that up.

E. COLI OUTBREAK

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Minister for Environment and Conservation a question about her role as acting minister for health.

Leave granted.

The Hon. R.I. LUCAS: The *Government Gazette* records that the minister was appointed as the Acting Minister for Health for the period from 22 January 2007 to 4 February 2007, during the absence of the Minister for Health, John Hill. On 26 January *The Advertiser* carried a story called 'Doctors warn of E. coli outbreak'. It states:

A public health warning has been issued as four South Australians have contracted a potentially fatal bacterial outbreak. One of the victims has been hospitalised with haemolytic uraemic syndrome (HUS), the same illness linked to the 1995 Garibaldi food poisoning epidemic that caused the death of four-year-old Lewiston twin, Nikki Robinson.

As best as can be ascertained, a statement was issued late Thursday afternoon by Public Health Director, Kevin Bucket, alerting the media on Thursday 25 January. My office made a search of radio and television transcripts but has been unable to turn up any radio or television coverage of the story, but our media monitoring is perhaps not as comprehensive as the government's might be.

As I said, there was then a reference to the warning carried in the paper on the following day, on Friday the 26th. My questions to the minister (as she was acting minister for health at the time) are: when was she first advised of this particular issue? Was she asked to make any public announcement to try to generate electronic media publicity as to the seriousness of the warning that was being issued to South Australians?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his questions. I do not have the particular details of the dates in front of me. I cannot tell you the date or time at which I was first advised but, to the best of my knowledge, I was advised promptly, in terms of when this HUS outbreak was first determined.

I believe I was advised promptly of that and discussion ensued as to the strategy to deal with that and on what announcement would be made to warn the public and to advise other hospitals of the potential of this outbreak. There were discussions around that and it was decided that the senior health official, Dr Bucket, would make those announcements; and there were various other delegations in terms of senior people to advise the appropriate bodies, authorities and hospitals of that outbreak. I was satisfied that all that could and should be done was being done.

The Hon. R.I. LUCAS: I have a supplementary question. First, is the minister confirming that she was aware of this outbreak prior to 25 January when the public statement was issued? Secondly, is the minister refusing to indicate whether or not she was asked to make a public statement about the issue?

The Hon. G.E. GAGO: As I indicated in my answer, I do not have the details of the dates or times before me as to when I was notified, but I am happy to find them. As I already answered, a discussion ensued with the appropriate officials as to what would take place in terms of notification

and who would be the most appropriate person to make those statements. I was satisfied that public safety was satisfied above all, and I believe that all that could be done was done. I believe that our officials and health care professionals handled this situation very well, and I commend them for the work they did and their prompt intervention and notification.

GEOTHERMAL ENERGY

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about geothermal energy.

Leave granted.

The Hon. R.P. WORTLEY: As the focus on climate change issues increases in Australia, greater attention is also being paid to cleaner and greener forms of energy for the future. One of the brightest stars on the energy horizon, especially for South Australia, is geothermal or hot rocks technology. It is rapidly becoming a legitimate option for this country's future energy needs. Will the minister provide this chamber with an update on the current status of geothermal energy exploration and investment in South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank the Hon. Mr Wortley for his question. He shows repeated interest in raising issues such as this, unlike members of the opposition who had absolutely no interest and asked no questions on water up until they thought there might be some political mileage in it. Their record shows their negligence over recent years, which is not the case with energy questions from members of this government, which is quite different.

I am pleased to advise all members, including members opposite, that our state leads the nation in the attraction of investment to explore for and demonstrate the viability of geothermal energy resources, while other states are now trying to emulate South Australia's success. Through the implementation of new geothermal legislation and the gazettal of areas for geothermal exploration, our state has the advantage of having been in front. As a result, we continue to attract sufficient national and international interest, and the investment in geothermal exploration in this state is unrivalled. More than $500 million in guaranteed and non-guaranteed work program investment is forecast for the period from 2002 to 2012 in South Australia, and this figure does not include investment for deployment. This $500 million represents about 90 per cent of the total national investment by Australia's geothermal sector and confirms the industry's confidence in our state being the preferred destination to explore for emission free and renewable hot rock energy resources.

During the past month alone, another 10 geothermal exploration licence applications have been lodged in South Australia, bringing the total number of licences applied for to 109. This compares to just 11 geothermal licences that have been applied for since 2000 for the rest of Australia. So, 109 have been applied for here, and 11 in the rest of Australia since the year 2000. There are now 13 companies exploring for geothermal energy, and all have visions of commercialising geothermal energy. Considerable progress can be expected, with up to 79 wells expected to be drilled over the next four years, of which 11 wells are forecast for this year. These wells are drilled to varying depths to determine heat-flow measurements prior to the drilling of deep injection and production wells.

Two companies—Geodynamics Limited and Petratherm Limited—expect to drill deep geothermal wells in the latter half of this year. Geodynamics Limited has already demonstrated the flow of geothermal energy with high temperature water from deep wells at its Habanero project in the Cooper Basin. The company plans to start drilling Habanero No. 3 around the middle of this year to undertake flow tests and to prove geothermal reserves in the Cooper Basin.

Just last week, Petratherm Limited and Beach Petroleum Limited—two ASX listed companies with their headquarters in Adelaide—announced their intention to jointly develop the Paralana geothermal venture, establishing the Paralana Energy Joint Venture. This joint venture brings Beach Petroleum's wealth of experience in operating deep oil and gas wells to hot rock well operations. The joint venture proposes to commence drilling its first deep 'proof-of-concept' well in the second half of this year, with the next step to be the drilling of a second well to demonstrate flow of geothermal energy.

If the joint venture succeeds, it will be a milestone on the path to establishing a capacity to meet growing demand for power at Heathgate's Beverley mine, which is located about 11 kilometres from the Paralana Energy project. The Petratherm/Beach plan is aligned with a memorandum of understanding signed in November last year by Petratherm and Heathgate Resources to jointly investigate the supply of hot rock power to the Beverley mine.

I think all honourable members will agree that the geothermal sector in our state is vibrant and reflects the outstanding potential to develop vast renewable and emissions-free hot rock geothermal resources in South Australia. These positive developments in South Australia's geothermal sector have been possible because of a supportive investment framework, the provision of very useful pre-competitive data, effective marketing and attractive incentive programs, especially the government's highly successful PACE initiative. We are watching history in the making, as our state positions itself to both enhance its security of energy supplies and move at great pace towards a lower level of greenhouse gas emissions.

The Hon. D.W. RIDGWAY: As a supplementary question arising out of the answer, Mr President, the minister referred to $500 million of guaranteed and non-guaranteed investment. Could he give us the percentages of what is actually going to be invested and what is just spin?

The Hon. P. HOLLOWAY: When companies bid for a block they put up their proposals about what they plan to do. Obviously, their ultimate expenditure will depend on the success—

The Hon. D.W. Ridgway: It is mostly spin.

The Hon. P. HOLLOWAY: No; it is not mostly spin. How can it be spin when we have 109 in this state and there are 11 applications in the rest of the country since the year 2000? There is substance in this, and it is being shown by the development. Ultimately, of course, the actual dollars—

Members interjecting:

The Hon. P. HOLLOWAY: The $500 million is the sum total of those figures announced by the companies of their intentions. Obviously, the actual amount will depend on their success in their exploratory wells.

FAMILIES SA

The Hon. A.M. BRESSINGTON: I seek leave to make a brief explanation before asking the Hon. Ms Zollo, representing the Minister for Families and Communities, a question.

Leave granted.

The Hon. A.M. BRESSINGTON: Over the past 10 months I have been approached by many people who believe they have been treated unjustly by Families SA. Stories and circumstances vary; however, there is a theme to the actions taken by the department and the theme is that there seems to be a high level of inconsistency in decisions made. After looking into a number of these cases and seeking advice from various professionals, I was astounded to learn that there is limited accountability of social workers within Families SA. As a matter of fact, I learnt that the social workers do not have to meet a burden of proof when their reports are presented to judges, and they do not undergo any cross-examination in the early stages in relation to the context of their reports and the conclusions they have made, or the recommendations made to the court.

Furthermore, I have seen an alarming number of cases in which social workers have recorded diagnoses of complex personality and mental disorders such as obsessive compulsive disorder and Munchausen's by proxy, the latter being a recurring theme in diagnoses of unqualified social workers. These unsubstantiated, often disproved diagnoses are taken on board by judges when decisions to remove children from the care of parents are made. This indicates that the practices and procedures of the department have left the lives of literally hundreds of people torn apart. I would also make the point that I understand that child protection is a very difficult area in which to work and that social workers face dilemmas every day. However, if there is a large number of people who are not being treated in a just and fair manner and the lives of children are being torn apart, it is our responsibility to make that system work smoothly. My questions are:

1. Will the minister advise whether the government has any plans to legislate for a duty of care to apply to all government agencies that have any dealings with South Australian families?

2. Will the minister advise the exact meaning of the term 'the best interests of the child'?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for her question in relation to the practices and procedures of child protection in Families SA. I will refer her questions to the minister in the other place and bring back a response.

LEGAL ISSUES

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a copy of a ministerial statement relating to legal issues made earlier today in another place by my colleague the Premier.

E. COLI OUTBREAK

The Hon. CAROLINE SCHAEFER: My questions are addressed to the Minister for Environment in her capacity as former acting minister for health. They are:

1. In which hospitals or health settings were the E. coli and HUS diagnoses made, and were all hospitals across South Australia alerted to the occurrence of the outbreak and, if so, when?

2. How many patients in total were diagnosed with HUS or E. coli-related illnesses in South Australia over the past three weeks?

3. What was the age of the victims?

4. Were parents interviewed as to what their children ingested and, if so, how soon after the diagnosis were the parents interviewed?

5. Were the relatives and associates of the people who became ill with food poisoning symptoms interviewed to help track down a possible source?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for her question. In relation to the number of people diagnosed, I understand from the latest report I received that there were four people, only one of whom was hospitalised. The other three were not ill enough to require hospitalisation. I also understand that all hospitals were notified of the potential for this outbreak. In terms of which hospital that one person was admitted to, I cannot recall but I am happy to find out that information. In relation to the processes of investigation and following the contaminant, I understand that there are processes and procedures in place and that they were followed but, in terms of the actual details, I am happy to obtain those results and bring back a response. I can certainly say that, as acting minister for health when this outbreak occurred, I believe I did a far better job than the Hon. Mr Lucas did when he was acting minister for health and the Garibaldi outbreak occurred.

THREATENED SPECIES

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

Leave granted.

The Hon. I.K. HUNTER: South Australians place great value on our state's native flora and fauna, from the often overlooked unique insect species and the more well-known reptiles and mammals to the many species of trees, shrubs and grasses that have evolved hand in hand with the environment over many millions of years. Will the minister advise what is being done to protect our native plants and animals, particularly vulnerable and threatened species, and whether there has been any new development in this area?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his ongoing interest in these important matters. I am pleased to announce that South Australian conservation efforts have recently received a major boost following the fresh discovery of a small native shrub (which was once thought to be extinct) near Telowie in the state's Mid North. The spiny daisy, a bluish-grey shrub that grows to about half a metre with distinctive yellow flowers, was rediscovered at Laura by a local farmer in 1999. Since then the plant has also been found at Hart. This latest discovery is the fifth known wild occurrence in the state.

The spiny daisy is one of the most endangered plants in the world, so learning that it now exists in five locations around the Mid North and southern Flinders Ranges is wonderful news. Although five colonies are now known to exist, all of them in South Australia, each site is genetically unique. The discovery of this latest specimen means a fifth genetic variation has been found. At present the spiny daisies

can be grown only by taking cuttings, because any seed that is produced is infertile; and finding this new species means that we have a chance to interbreed plants. This is particularly important because mixing these genetically unique plants is the best way to shore up our plant stocks for the future, and this could be a major step in the recovery of the spiny daisy.

The recovery of this amazing plant is possible only because of the successful partnership between the Department for Environment and Heritage and the natural resources management boards, and I think it is worth acknowledging Ms Anne Brown (a spiny daisy recovery team member), who spotted this latest discovery while driving along the highway.

Protecting our natural environments and the species within them is a priority for the Rann government, and that is why South Australia's Strategic Plan has a 'no species loss' commitment. This commitment has seen the establishment of Coongie Lakes National Park, the 500 000 hectares Yellabinna Wilderness Protection Area, the Adelaide Dolphin Sanctuary and the East Meets West biodiversity corridor on Eyre Peninsula (the first of five around the state).

South Australia is the sustainable state, as we all know. We are embracing renewable energies and working hard to preserve our precious water resources, and the new natural resources management framework is helping to better manage our precious national resources. The appointment of a threatened flora and fauna officer in each of the eight NRM regions is an important initiative. The species recovery teams are now working to ascertain whether any spiny daisies exist on private property. In each case the plants have been found on the roadsides, so I encourage landholders to be aware of the threatened and endangered species that might be found locally. We can only hope that attempts to interbreed the plants will prove to be successful.

OLYMPIC DAM

The Hon. M. PARNELL: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the use of Great Artesian Basin water at the Olympic Dam mine.

Leave granted.

The Hon. M. PARNELL: The Olympic Dam mine is the single biggest user of water from the Great Artesian Basin, and it is also the largest single site industrial user of underground water in the southern hemisphere. In his recent Press Club address on water, Prime Minister John Howard declared that water extraction from the Great Artesian Basin would be capped, and the use of water from the giant aquifer by all users, including the mining industry, would be subject to pricing and entitlements.

When specifically asked by Phil Coorey of *The Sydney Morning Herald* about the amount of Great Artesian Basin water the Olympic Dam mine is using, and is likely to use in its expansion, the Prime Minister said, 'Everybody's got to make a contribution to solving this problem'. I should point out that the Olympic Dam mine currently uses free of charge about 33 million litres of water per day, although the company is able to extract up to a maximum of 42 million litres per day. Also, BHP Billiton has today announced an interim 6 month profit of $8 billion and looks like setting a new Australian corporate profit record. My questions are:

1. When will the government start charging BHP Billiton for the use of Great Artesian Basin water? If it will not, why not?

2. Will the government commit to reducing the company's maximum allowable limit, which currently stands at 42 million litres of water per day?

3. At the very least, will the government require the Olympic Dam mine to be bound by the Great Artesian Basin Strategic Management Plan, which aims to manage the long-term sustainability of the basin?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): What the member does not mention is the contribution that BHP (and, before it, WMC) made in terms of capping bores within the Great Artesian Basin. I well recall that, when you went to the pastoral leases in the Great Artesian Basin 10 or 15 years ago, water was allowed to pour from the ground. Indeed, the amount of water being saved through capping paid for by WMC is, in fact, greater than the water actually used by the Olympic Dam mine.

Of course, the honourable member talks about the management plan; that came into place some time after this work was done. The evidence is that the operators of that mine well understand the impact that extraction has and have acted responsibly in that regard. The company has a certain entitlement under law, and I do not know what the Prime Minister's statements mean. When he was further asked about what would happen if the commonwealth did take over the states' powers on water (which appears to be what it wants to do), I read that he said that he would, in fact, honour the contracts. So I really do not know what impact the federal government will have.

In November last year the Prime Minister was telling state premiers that the commonwealth had no intention of taking over water; then we hear that it has been planning this new policy for months. Well, someone in the federal government is not telling the truth—either Mr Turnbull, who said that they had been planning it for months, or the Prime Minister, who, back in November, told the premiers that he would not be taking over water. Whether state or federal, the Liberals are great at plucking out things. They have suddenly discovered we have climate change, and they have suddenly discovered that we have a drought, and they love plucking out water policies at the drop of a hat.

Back in November there was no plan to take over the state's water, but now the commonwealth has a plan to take it all over and spend $10 billion—probably almost none of which will be in South Australia. It says, 'Well, we might be buying out water licences, but then again we might not.' It depends on whether you listen to Mr Turnbull or Mr McGauran; it depends on which federal minister you listen to or the Prime Minister. They all have different views about what is going to happen in relation to this great water plan. It is rather like the plan of the state Liberals whereby they just try to catch something to get a headline. However, this state has been working for years on those particular issues.

That was the last part of the question. The important part asked by the Hon. Mark Parnell was in relation to the future and, as the honourable member would well know, there is a feasibility study going on in relation to the desalination plant in Upper Spencer Gulf. There are a number of very important—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well it will be, if it is built; that is right.

Members interjecting:

The Hon. P. HOLLOWAY: These are the people who are talking about security. They are saying that we will copy Western Australia; it will provide 20 per cent of the water. What about the other 80 per cent? You are talking about security and you are saying, 'Okay, we will still rely 80 per cent on the River Murray.' What is the difference? If you put an extra 10 gigalitres back, if you build this plant up there and you displace the water that is used in the Upper Spencer Gulf, not only do you save but it also makes economic sense because you no longer have to pump it from the Murray. You save the greenhouse gas used to pump the water from the Murray, which helps the economics, and it puts the water back into the system. We have a closed system here; you cannot create more.

In relation to the future requirements of BHP at Roxby Downs, clearly that work is being done and, ultimately, BHP has an entitlement, as the honourable member said, of up to 42 megalitres a day extraction. Of course, they are doing the work on the feasibility of the plant but, obviously, the economics of the project will turn very much on the cost of water. What will look dopey is the lack of thought given by honourable members to their media concoctions because, when you look at them, they are quite absurd.

An honourable member: Front page of the *'Tiser*, though.

The Hon. P. HOLLOWAY: You do not have to do an awful lot to get on the front page of the *'Tiser*, do you? This morning, their federal colleague was bemoaning the fact that the front page of this morning's *Advertiser* was totally alarmist. I think that *The Advertiser* probably wants to build up the Liberals in the polls. They are probably doing a bit of polling at the moment and thinking, 'We'd better give them a headline or two to make them look good. They have been going so badly and so appallingly. They have no ideas.' Probably a journo rang up and said, 'In Western Australia they have a desal plant. You don't have to tell us where it is. You don't have to tell us how big it is, and you don't have to tell us how we're going to fund it. Don't go into the economics too much. Just ignore what it costs to distribute it in terms of the economics. Do all those things, but don't worry about where you will place the outflow in terms of where you will put the brine. Don't worry about that. We'll put it on the front page, pretend it's a policy and you can pat yourselves on the back for the next few months.'

Sadly, government is not that easy. You have to do the detailed work and make decisions that affect the dollars that ordinary people raise in taxes. We all have a responsibility to ensure that that money is wisely spent, and that requires a thorough investigation. We have to look at the environmental impacts as well. We do not just pluck things out of the air, as members opposite seem to think we should. As I said, with respect to BHP, when the work is done on that desal plant it will provide much more information to BHP about the way forward in relation to water.

The Hon. M. PARNELL: I have a supplementary question. Minister, you speak of the entitlements under existing law, particularly the indenture and future requirements. Does that mean that the government is in the process of renegotiating the indenture agreement; if not, is it intending to renegotiate the indenture agreement as part of the proposed expansion of the BHP mine?

The Hon. P. HOLLOWAY: The current Roxby Downs indenture not only permits a certain amount of water extraction from the Great Artesian Basin but also covers a whole lot of other things, including the size of the mine. Clearly, if BHP were to expand the mine and triple or double it in size, or whatever the ultimate size is, it would be beyond the current indenture, and it would need to be negotiated. However, that is not to suggest that the current entitlements would be removed.

E. COLI OUTBREAK

The Hon. T.J. STEPHENS: My question is to the former acting minister for health. Pursuant to section 35B of the Public and Environmental Health Act 1987, the department is required to inform each local council of the occurrence of a notifiable disease in its area that constitutes or may constitute a threat to public health. Did the minister's department inform each local council; if so, on what dates and by what means? When were all general practitioners alerted to a potential outbreak of E. coli and how were they informed?

The Hon. G.E. GAGO (Minister Assisting the Minister for Health): I have already answered this question. I said that I do not have the details of the processes of notification before me. This is the third time I have said that I do not have those details before me. I am happy to provide the chamber with those answers and bring back a response.

Really, rephrasing the same old question over and over again is simply wasting the council's time. I have already said that I do not have those details in front of me. I am more than happy to bring the details of those questions back to this chamber. Are members opposite thick or something? They need to regroup and move on and try to think of a new question; this is the third time I have answered this question. They obviously cannot think of an original question to ask. As I have said, I am more than happy to bring back the details in response to that question.

The Hon. T.J. STEPHENS: I have a supplementary question. If the department breached that particular part of the Health Act while you were the acting minister, will you resign?

ROAD SAFETY, SEATBELTS

The Hon. B.V. FINNIGAN: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about the use of seatbelts.

Leave granted.

Members interjecting:

The Hon. B.V. FINNIGAN: Unlike members opposite, I do not need to watch children's television to get my questions. The Wiggles yesterday and *F Troop* today. At last, we know your strategy! Each year, about 33 per cent of driver and passenger fatalities and 13 per cent of drivers or passengers seriously injured were not wearing seatbelts. Will the Minister for Road Safety explain what the government is doing to promote the use of seatbelts?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I thank the honourable member for what is an important question. In real terms—

Members interjecting:

The Hon. CARMEL ZOLLO: Yes—failure to wear a seatbelt cost at least 19 people their life on South Australian roads last year. In a bid to stop this senseless waste of life, the latest road safety advertising campaign is reminding motorists that 'No trip's too short for a seatbelt'. The campaign began

last month and uses a mix of television, radio and innovative car park advertising to spread the message. For the first time in South Australia, seatbelt reminder banners will be seen on boom gates at 21 U-Park facilities.

The importance of seatbelts cannot be underestimated. The reality is that you are far more likely to be killed because you have been thrown around in a car, or even out of a car, during a crash. Research shows that wearing a seatbelt doubles your chances of surviving a serious crash. A study by the Australian Road Research Board found seatbelts to be particularly effective at minimising injury in single vehicle crashes. However, too many South Australians are still choosing to take their chances.

From July 2005 to June 2006, 9 718 infringements were issued by South Australia Police to drivers for failing to wear a seatbelt properly adjusted and fastened, and 1 106 passengers also received an infringement during this time. It is not surprising that intoxicated drivers involved in fatal crashes are less likely than sober drivers to be wearing a seatbelt at the time of a crash. Statistics from the Department for Transport, Energy and Infrastructure show that, on average, over the five year period from 2001 to 2005, 60 per cent of drivers killed who had a blood alcohol content of 0.05 or above were not wearing a seatbelt at the time of the crash. This compares with 35 per cent of all drivers killed not wearing a seatbelt.

Preliminary data for 2006 shows that one-third of all vehicle occupant fatalities were known not to be wearing a seatbelt at the time of the crash. For the nine months to September 2006, 10 per cent of drivers or passengers seriously injured were not wearing a seatbelt. This compares to the previous five-year average (2001 to 2005), where 33 per cent of driver and passenger fatalities and 13 per cent of drivers and passengers seriously injured were not wearing a restraint at the time of the crash. Of those vehicle occupants killed in road crashes who were not wearing a seatbelt or child restraint, 74 per cent were male and 26 per cent were female.

From crash reports, passengers killed or seriously injured are not wearing seatbelts as often as driver casualties. On average, 12 per cent of drivers killed or seriously injured are not wearing a seatbelt at the time of the crash, compared to 21 per cent of passengers. For fatalities, 31 per cent of drivers and 39 per cent of passengers were not wearing seatbelts. Last year South Australia achieved the lowest road toll on record, and it is tragic to think that something as simple as wearing a seatbelt could have seen that road toll cut by a further 15 per cent.

HOSPITALS, REHABILITATION BEDS

The Hon. J.M.A. LENSINK: I seek leave to make a personal explanation.

Leave granted.

The Hon. J.M.A. LENSINK: During question time the minister stated that I was expressing my personal opinion in a supplementary question. I would just like to place on the record that I was actually quoting the second sentence of the second paragraph of a letter dated 2 July from Glenside to Dr Rowan Dhillon. It is paragraph 6.5 in the Coroner's report into the matter of Renata Dooma, dated 22 December 2006.

MATTERS OF INTEREST

BELARUSIAN UPRISING

The Hon. B.V. FINNIGAN: On Sunday 26 November 2006, I had the honour to attend the Belarusian Autocephalic Orthodox Church, South Australia Inc., the Parish of St Peter and Paul, which is on Torrens Road. Of course, this is the community that was relocated when Hindmarsh Stadium was extended under the previous government. I was welcomed very warmly there by Mr Mikola Kondrusik, the president of the community, and Father Eugeme, the parish priest who officiated at the services.

Divine liturgy and remembrance prayers were celebrated at the church, and this was followed by lunch. While, of course, they probably do the divine liturgy every Sunday, I imagine, on this particular day the remembrance prayers and lunch were to commemorate the defenders of the Slutsk uprising in 1920, which was a valiant but ultimately unsuccessful attempt to defend the independence of Belarus in the region of the town of Slutsk. It is a town of about 60 000 in Belarus, and in the early 20th century it was a particular centre of national activity and intellectual life.

The local peasantry were involved in fighting against the Bolshevists' agrarian policy of war communism and supported Belarusian independence, which was declared in March 1918. Following that, a Belarusian National Committee was formed in that year. Slutsk was occupied several times by both Soviet or Polish troops during the Polish-Soviet war of 1919-20, but finally in 1920 the Polish took control over the town. The division of Belarus territory between Poland and the Bolsheviks provoked (as you would expect) considerable concern and outrage amongst the citizens and prompted the Belarusian National Committee to commence activity to try to reverse the situation.

Polish troops were preparing to withdraw from the area and some of them sympathised with the Belarusians and did not actively oppose the activity they were undertaking to organise resistance. In November 1920 civil power was transferred from the Polish military to the Belarusian National Committee, and elections followed. The Congress of Sluchchyna region included 107 delegates from Slutsk and surrounds. That congress protested the Soviet invasion of Belarus and decided to organise armed resistance. I am sure the following resolution was written in another language, but translated it states:

> The First Belarusian Congress of Sluchchyna salutes the Upper Rada [an army unit] of the Belarusian National Republic and declares that it will give all its powers for the revival of our Fatherland and categorically protests against the occupation of our Fatherland by foreign and imposter Soviet powers.

Ultimately, defence units were formed and around 10 000 men mobilised. From 27 November first encounters occurred between the Belarusian and Soviet forces, but despite support from the locals the Belarusians were short on arms and ammunition and, even though some of the Russians joined with them (because they were also anti-Bolsheviks) ultimately they were unsuccessful and had to retreat to Poland on 31 December.

The Belarusian Autocephalous Orthodox Church commemorated this event in 1920—a very worthy thing to do: to commemorate those who stood up against Soviet tyranny and to take pride in their national history. On 27 January this year I attended the opening and blessing of the Macedonian

Orthodox Church dedicated to the Holy Mother of God under the title 'Memory of the Virgin Mary'—a former Catholic Church near the Queen Elizabeth Hospital, which is now a Macedonian Orthodox Church for the Diocese of Australia and New Zealand. His Eminence, Bishop Petar, presided at the blessing, opening and divine liturgy, along with a number of guests including His Grace Geoffrey Driver, the Anglican Archbishop of Adelaide, and His Worship Harold Anderson AM, Mayor of the City of Charles Sturt. I congratulate that community for the opening of its new church, which I am sure will be of great benefit to the Macedonian orthodox community in Adelaide.

LAW AND ORDER

The Hon. R.D. LAWSON: I wish to speak on the subject of the government's misleading hyperbole on law and order. I was delighted to see that in *The Advertiser* poll, in which some 2 000 respondents were asked various views, 60 per cent of those polled thought that the state government's so-called tough on law and order promise, since coming to office in 2002, was in fact false and that the government had not been tough, despite all of its self-proclaimed announcements that it was. The hypocrisy of the government on law and order is never more obvious than in announcements made today. You always know when the government is facing a difficult political situation. Last week Prime Minister Howard completely wrong footed this government on the subject of water and the Murray-Darling Basin. The Premier went out in one direction and it now clearly appears that the Prime Minister has the support of other governments and will prevail.

So, what did the government do? It faced parliament yesterday and it had to drag up an announcement about law and order, and the one it chose was an announcement that it had unveiled rape reforms. The announcement says that cabinet had approved drafting instructions for legislation to make certain long overdue amendments to laws relating to sexual offences. The announcement was that the government would be one of the first jurisdictions in the country to define consent, and the new laws will set out that consent is not given if a victim is so intoxicated that they are incapable of agreeing, that the victim was asleep or unconscious, and a number of other considerations, all of which are in the existing law of this state.

The fact is that the Legislative Review Committee of this parliament in November 2005 tabled a report dealing with conviction rates in relation to rape and no action was taken by the government on that report. The government has been sitting on a report for quite some time from Liesel Chapman, who was engaged to prepare a paper. Ms Chapman's report indicates that, far from South Australia being one of the first jurisdictions to define consent, most other states already have embodied in statute laws and provisions relating to this aspect.

Ms Chapman's report also identified—and this is June of last year—that cabinet had already, at that stage, approved amendments to the Evidence Act in a number of areas relating to sexual offences. Those amendments were not produced last year and have not yet been produced. Now we find the government trying to make great hay out of the fact that there are new rape law reforms.

The government is in further trouble when today it came out with another announcement, this time headed 'Dangerous offenders locked up for good'. Once again, it is misleading hyperbole. The government proposes that certain offenders may, on order of the court, be detained. Other states already have these laws. The hyperbole can be seen in the statement of the Premier that von Einem would not be released under his government. There is no suggestion that any parole board would ever recommend the release of von Einem, and I do not imagine, if such a recommendation were made by a parole board, that any government in this state would accept it. I would certainly need a great deal of convincing that it should be accepted.

So this is, once again, shadow-boxing by the Premier—a press release saying, 'We're going to be tough'. It mentions 'tough, tough, tough', 'making no apologies for a tough stance', all of the usual hyperbole. It is good to see that the public of this state do not believe a word of it.

DRUGS, GENERIC

The Hon. I.K. HUNTER: Last month I was honoured to be invited to attend and chair a session of the Asian Parliamentarians' Workshop on HIV/AIDS in Bangkok, as the guest of the Parliamentary Group on Population and Development. The conference was organised to look at factors contributing to the growth of HIV infection in the Asia Pacific region. I will not go into what was discussed at the conference in any great detail, but I would like to bring one aspect of it to members' attention, and that is the availability of generic drugs to treat a range of infections, particularly HIV/AIDS, and the campaign by Medecins Sans Frontieres and others to ensure that these drugs continue to be made available in the developing world.

Emerging economies, such as India, are at the forefront of this battle over the production of generic drugs. According to Medecins Sans Frontieres, some one-third of the world's population lacks access to essential medicines. In the poorest parts of Africa and Asia this figure rises to one half. The work of aid organisations, like MSF and the Red Cross, is severely limited because these medicines are either too expensive or they are no longer produced by pharmaceutical companies.

International rules relating to the copyright of medicine are overseen by the World Trade Organisation. The Trade-Related aspects of Intellectual Property Rights (TRIPS) agreement is a convention of the WTO, bringing intellectual property rights under one common set of international rules and establishing minimum levels of protection to intellectual copyright holders, including pharmaceutical companies. The TRIPS agreement, however, is not an international law—it is an agreement that signatory nations should eventually comply with, at differing rates, depending on the level of economic development in the country.

For what we might call emerging economies, such as India, the situation regarding copyright is not as clear-cut as it is in countries like Australia, where intellectual property laws in this area are well developed. There are fewer legal precedents—indeed, there are statutory barriers to some patent applications—and therefore more latitude for generic manufacturers to market their products. Further, following the World Trade Organisation's Doha ministerial conference in 2001, ministers issued a waiver to the TRIPS agreement, which stated intellectual property should not take precedence over public health considerations.

The WTO's own explanation of the Doha declaration states:

> This separate declaration on TRIPS and public health is designed to respond to concerns about the possible implications of the TRIPS agreement for access to medicines. It emphasises that the TRIPS agreement does not and should not prevent member governments from acting to protect public health.

This declaration essentially gives governments the right to override patents on public health grounds. The Indian government has made full use of this WTO provision by refusing to allow patents on what it considers essential drugs developed prior to 2005, and making laws to prevent 'evergreening'; that is, the practice of granting patents on variants of drugs, as opposed to wholly new innovations.

Indian generic drug manufacturers produce a significant amount of affordable medicine in the developing world and over half the AIDS drugs used in the developing world. In the light of this, Swiss pharmaceutical company NOVARTIS has instituted legal action in India to try to overturn these laws and allow for far more widespread patenting of pharmaceuticals, thereby limiting the availability of generics. Dr Karunakara, medical director of MSF's Campaign for Access to Essential Medicines, at a press briefing in New Delhi last month put it this way:

> NOVARTIS is trying to shut down the pharmacy of the developing world. Indian drugs account for at least a quarter of all medicines we buy and form the backbone of our AIDS programs in which 80 000 people in over 30 countries receive treatment. Over 80 per cent of the medicines we use to treat people living with HIV/AIDS come from India. We cannot stand by and let NOVARTIS turn off the tap.

There is an argument often made—and, indeed, recognised in the Doha declaration—that the unfettered supply of generic drugs would damage the profits of drug companies and therefore lead to reductions in their budgets for research and development. While there is an element of truth in this, and any movement in patenting law needs to be carefully planned and sensitive to these issues, surely there is also an argument here for much greater government investment in research and developments in pharmaceuticals, not just here in Australia but also across the developed world. Surely we have as much responsibility to the millions of sufferers of largely preventable disease as we do to the shareholders of pharmaceutical companies. Surely these shareholders have a social responsibility also.

Ready access to adequate medical treatment should be a universal human right and one worth fighting for, and one that is not held hostage to the profit of pharmaceutical companies. I will be signing the Medecins Sans Frontieres petition urging NOVARTIS to drop its current action against the Indian government, and I urge all members to do the same and access the website www.msf.org.

Time expired.

SEPARATION OF CHURCH AND STATE

The Hon. S.G. WADE: The year 2007 is the 150th anniversary of responsible government in South Australia. I think it is important that we take this opportunity to reflect on some of the principles that have guided the development of our state. One area where our state has led the world has been in the separation of church and state. Our forebears were solid in their commitment to build a Christian society in the colony, but they differed markedly on how that could be done. Some saw the church as fundamental to growing a civilised society and thereby worthy of state support—what was called state aid for religion. For others, financial support for religious purposes compromised the respective roles of the state and the church. These people promoted what was called the voluntary principle.

Let me sketch the history of this development. The act which established the colony of South Australia in 1836 made provision for the appointment of chaplains, although this clause was repealed in 1838. During Governor Gawler's term of office between 1838 and 1841 he failed to convince ministers from various denominations to support his proposals to heavily reduce the price of land if purchased for the support and maintenance of religion. Governor Robe wanted religion to be aided out of the local revenues of South Australia. In his address to the Legislative Council on 24 June 1846, he said:

> South Australia is the most backward of all the colonies of the British Empire in providing from its public revenues for the means of worshipping. Let it no longer be a reproach upon the government of the province having control over the public finances.

Both camps were active. A number of petitions were presented to council, including one containing nearly 2 000 signatures which opposed state aid. Only half the council was elected at this stage and the Governor had the casting vote. Robe's measure was carried and allocations were made to Christians and Jews.

In response to this decision, the League for the Preservation of Religious Freedom was revived. This group highlights the key point that the campaign against state aid for religion was not motivated by opposition to religion—religious people saw the dangers of state-run religion. The league's manifesto was published in 1849 and was signed by 19 non-conformist churchmen. It read, in part:

> The evils involved in the principle of state support to religion have been sufficiently obvious to most, if not all, of you in the Mother Country. It has impeded the spread of Christian principle by requiring mere outward observations as though they were essential and all-important. It has corrupted religion by making it formal, and weakened the state by compelling it to persecute, and wherever carried out to its legitimate consequences it has proved an effectual bar to the advance of the community in any of the paths of social or material progress. Judged by its fruit it is condemned by the voices of experience from the first moment of its adoption to the present time.

In January 1951 a new Constitution for the province arrived in South Australia and two-thirds of the council by this time was nominated by the colonists. For the first time the colony had an election, and state aid to religion was a central issue in the 1851 election. Supporters of the voluntary principle were well supported, and in late 1851 the Legislative Council defeated Governor Robe's state support to religion act by a majority of three. The full debate was published in the *Adelaide Times* newspaper of 30 August 1851; and I quote from the front page as follows:

> South Australia has set a noble example to the other colonies of this southern empire and it is one, we trust, they will not be slow to follow.

South Australia was the first British colony to achieve the separation of church and state—an issue that is still debated in the mother country 150 years later. Having said that, both the church and the state evolve and South Australia needs to strive to maintain an appropriate relationship between the church and the state.

From my perspective one of the greatest threats to an appropriate balance is from those who deny the legitimacy of religious-based views in public debate. The principle of separation of church and state is not the separation of religion from politics. Other matters that highlight the contemporary relevance of this issue include the commonwealth's proposal

to provide chaplains in schools, church opposition to the Iraq war, government contracting for welfare and employment services, and the Equal Opportunity Act before the other place. In conclusion, I would stress that mutual respect and cooperation, yet with separation, are important for the health of both the church and the state.

MONTANA METH PROJECT

The Hon. D.G.E. HOOD: I rise today to draw attention to something known as the Montana Meth Project. Methamphetamine or meth (as it is commonly described in the USA) is a drug that is ravaging our country, particularly our youth, as is well known. It is perhaps one of the greatest challenges of our time. These drugs are very dangerous, not only because of the health problems arising from meth use but also because of the way in which the meth cooks (as they are called) prepare the meth. They cut corners or they simply make fake drugs in order to rip off the vulnerable users.

The Montana Meth Project was launched in September 2005. This project was largely financed by the dotcom billionaire Mr Thomas Siebel, who quite admirably gave some of his own personal finances to the state government in Montana to fund an anti-drug campaign. I am sure that this government would be quite grateful if he were to do the same here. The Montana Meth Project runs television advertisements which use graphic warnings about the health risks that methamphetamines pose. The advertisements also give victims' testimonies; for instance, from women who have been raped when under the influence of methamphetamine or who have developed an addiction and started selling their bodies to supply their meth habit, and people who describe their first meth hit as 'the beginning of the end of your life'.

The Montana Attorney-General's January 2007 report into the Montana Meth Project claims that attitudes are changing. Apparently supply is decreasing and meth use appears to be declining. Meth-related crime is also decreasing. But, due to the significance of the problem at this early stage, meth's social and economic impact remains high. A telling statistic that shows the social impact is that 'more than half of the parents whose children are placed in foster care are meth users'. I will repeat that: 'more than half of the parents whose children are placed in foster care (in that state) are meth users'. I wonder how South Australia would measure up to that statistic.

The Montana Meth Project is nationally recognised as one of the best programs around. For instance, in October 2006 Mr John Walters, Director of the White House Office of National Drug Control Policy, presented the Montana Meth Project with a certificate of recognition from the White House citing the program as one of the nation's most powerful and creative anti-drug programs. Mr Walters said:

> We [the White House] commend the Montana Meth Project for mobilising the citizens of Montana to rid their state of this destructive drug. . . The program truly is a model for prevention efforts nationwide.

So committed is the Montana government—and perhaps so well resourced—that Mr Siebel, on receiving the White House certificate on behalf of the project, said:

> The meth project is the largest advertiser in Montana, reaching 70 to 90 per cent of the state's teens at least three times a week with the meth prevention message.

If honourable members or others want to view what the project offers, go to montanameth.org, where video advertisements can be viewed.

Family First calls upon the Minister for Mental Health and Substance Abuse to use this advertising campaign here, or investigate its suitability for use here. I do not think the advertisements need to be rerecorded with Australian actors or Australian accents in order to preserve costs—indeed, our TV screens are full of American actors (probably too many, some may argue). American accents prevail on our screens and will not impede the impact of the advertisements on the people they are designed to reach. In fact, with so many of our teenagers and young people idolising Americans and American culture it may well be suitable to use the ads directly. I commend the Montana Meth Project to honourable members. I implore them to look at the site, and call on the minister to seriously consider the use of that program (or something very similar) here in order to publicly spread the message that the use of these substances is very dangerous indeed and that the impact on our society is absolutely horrendous.

HOWARD GOVERNMENT

The Hon. T.J. STEPHENS: I wish to use my time to discuss federal politics at the moment and put on record the impressive achievements of the Howard government since its election to power. I have chosen to discuss this as I can sense that at the moment some people are starting to think that it could be time for change, and I believe some of those people feel this way because we have such a strong economy and low unemployment, and their future is looking incredibly bright. People become comfortable with these conditions, even become used to them, and perhaps take them for granted. Some may start to think that the same old faces are still there and that a change may be good to freshen up things a little.

Issues arise such as scare campaigns on industrial relations, the Iraq war not going as smoothly as hoped, and those surrounding the incarceration of David Hicks, as well as scare campaigns on the use of nuclear energy in this country or daft suggestions that the Howard government is not doing enough to address climate change. This all adds to the silly theory of, 'Hey, this mob's been here for too long and maybe it's time we tried something else.'

So along comes a new leader for federal Labor. Kim Beazley is knifed and Kevin Rudd is installed as the great white hope, just as Mark Latham was before him, and the honeymoon begins. People start to take notice of the new guy and, rightly so, tune in to see what he is on about. The ALP chucks in megabucks (reportedly over $1 million) for a feel-good TV campaign and Kevin Rudd begins to enjoy a popularity not seen in a very long time for a federal opposition leader—other than, perhaps, Mark Latham. People start to think that this guy seems to have a bit more ticker than the last leader (which, quite frankly, would not be hard) and is a little bit slicker than the one before, plus there is none of that silly 'ladder of opportunity' stuff with this one—yet. The latest polls (which, as politicians, we do not read anything into, of course, as the only poll that counts is on election day) all point to a genuine fight later this year and some tough work ahead.

However, the people who are flirting with the idea of making Kevin Rudd our next prime minister need to take a closer look at the risks involved. Yes, it is a different leader (as a matter of fact, it is Labor's fifth in five years), but it is the same old Labor, the same old mob which is controlled by the trade union movement and which will, no doubt, be

pouring millions of dollars into the ALP campaign in coming months. It is a party that has simply adopted the position of the ACTU on workplace relations because it is too lazy to develop policies that would ensure that jobs remain secure and that the fantastic wages growth we have had continues. It is the same old Labor that is rushing to develop a plan to lock in the economic prosperity that the Howard government has established over the past 10 years.

On the other side of the coin we have a leader with whom the electorate is completely familiar and knows exactly what he stands for. John Howard is a strong leader with a safe pair of hands; there are no surprises with his steadfast leadership, and he is prepared to continue to work hard in that role. Amongst other things, John Howard and the federal Liberals have focused on making Australia's economy secure and restoring Australia's economic foundations, and they have sustained impressive economic growth in what has been a very uncertain period for the rest of the world. A friend of mine, a former federal Labor member of parliament, once said to me, 'Terry, it's just bad luck mate, because when America sneezes we catch a cold.'

John Howard and his team have shown that that is not true; we can become the masters of our own economic destiny, and we have. They have ensured that Australians have a balanced health system in which public and private care both play an extremely important role; they have maintained and strengthened Medicare to ensure that all Australians have access to high-quality health care whilst also promoting choice. John Howard and the federal Liberals have supported families by substantially increasing family assistance payments, and they have supported our senior citizens and Australia's system of aged care, which has also been improved by increasing places, money and transparency. Federal Liberals have continued to support choice for parents in selecting the school environment that best meets their children's needs, whether that is in government schools or in Catholic or independent schools. The federal Liberals are addressing Australia's skills shortage and encouraging innovation. They have recognised that our production and use of energy, now and in the future, needs to be environmentally sustainable; and they have done whatever is necessary to keep our nation safe and secure.

I can assure the council that our federal Liberal senators and members of the House of Representatives (who have a huge fight on their hands to retain their seats) will continue to work incredibly hard for all South Australians in this election year and beyond, and I wish them all the very best.

Time expired.

ALCOHOL CONSUMPTION

The Hon. SANDRA KANCK: Like the earlier contribution from the Hon. Mr Hood, I agree that there is a drug epidemic sweeping our society, but its name is alcohol. ABS figures reveal that 13.4 per cent of Australian adults (that is, more the one in every eight) is drinking alcohol at a risky to high risk level. That is 2 million people. That figure is increasing each year, from 8.2 per cent in 1995 to 10.8 per cent in 2001, to 13.4 per cent in 2004. According to the same ABS paper, some of the health effects of problem drinking are oral, throat and oesophageal cancer, breast cancer among females, cirrhosis of the liver and hypertension. It also states:

- Alcohol is the second largest cause of drug-related deaths and hospitalisations. . . (after tobacco);
- Alcohol is the main cause of deaths on Australian roads;
- In the seven years from 1998-99 to 2004-05, the overall number of hospital separations with principal diagnosis of mental and behavioural disorders due to alcohol increased from 23 490 to 35 152.

The number per 1 000 of population increased by 39 per cent for all ages during that time period and by 41 per cent for those under 20 years. At the community level, the estimated economic cost of alcohol misuse to the Australian community in 1989 totalled $7.6 billion. This estimate includes associated factors, such as crime and violence, treatment costs, loss of productivity and premature death.

Recently, the *Medical Journal of Australia* cited hangovers as accounting for the loss of 2.6 million work days and costing $340 million per year. We can add to those consequences sexual harassment, domestic violence, sexual assault and physical assault. Dr David Caldicott from the Royal Adelaide Hospital told me that alcohol-related trauma from an international cricket match, with roughly the same number of attendees as a rave party, was six times that of a rave party.

All drugs are potentially harmful, and drug abuse results in major health problems. Donna Bull, from the Alcohol and Other Drugs Council of Australia, says that 'alcohol is the principal drug of concern'. Yet, while we crack down on illicit drugs at the Big Day Out and rave parties, relentless promotion of alcohol continues in the media and at sporting events. This hypocrisy puts the health of our young people at risk.

Dr Rob Moodie of the Victorian Health Promotion Foundation says, 'We completely underestimate the increased damage big-time boozing is doing to health and wellbeing.' He quotes the Victorian health minister as saying that alcohol-related admissions to Victorian hospital emergency departments has increased by 35 per cent over the past five years. This is perhaps not so remarkable given, as Dr Moodie points out, that liquor licences in that state have increased from fewer than 4 000 in 1984 to almost 17 000 now. I do not have the South Australian figures but, given that we allow hairdressers to dispense alcohol, it is obvious that South Australia has gone down the same path, with more outlets and longer opening hours.

Sadly, society now accepts binge drinking as normal. Despite the frightening facts about alcohol abuse and its consequences, this government actively promotes the Clipsal 500, where alcohol is glorified through the sponsorship of cars. The Dick Johnson team has Jim Beam sponsorship, Paul Morris Motorsport is sponsored by Sirromet Wines, and Larry Perkins is sponsored by Jack Daniels. Yet we know that alcohol and driving are a lethal combination which we should not be promoting. As community role models, it would be good to see our Premier and his ministers set an example by not serving alcohol in their corporate box, but I will not hold my breath.

South Australia's politicians lack credibility with young people in regard to drugs. As former federal Labor MP Dr Neal Blewett said, 'Unless we change the culture of drinking in the adult community, we're only going to have a marginal impact on the way young people behave.' Governments and oppositions should get their priorities right in the drug debate. It is time to cut the linkages between alcohol advertising and sport, especially motor sport. We owe it to our kids to be clear about the dangers.

HICKS, Mr D.

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

1. That as members of the South Australian parliament, we recognise the need to ask that members of the United States Congress take steps to bring about the return to Australia of Australian citizen David Hicks, a detainee held at Guantanamo Bay for more than 5 years, for prosecution here.
2. That the South Australian Legislative Council particularly recognises that—
   (a) the recently announced rules for Guantanamo Bay detainee trials will not afford David Hicks (or other detainees) a fair hearing, consistent with international legal standards and Australian law. For example, military commission rules that permit hearsay evidence and evidence obtained by coercion and that restrict access to certain evidence violate essential guarantees of independence and impartiality;
   (b) there is an understanding that there was significant opposition in Congress to the Military Commissions Act 2006 in part because it denies rights, including resort to habeas corpus, to non-US citizens and does not adequately guard against mistreatment of prisoners;
   (c) Judiciary Committee Chairman Senator Leahy's concerns that, 'Not only would the military commissions legislation before us immunise those who violated international law and stomped on basic American values, but it would allow them then to use the evidence obtained in violation of basic principles of fairness and justice' (28 September 2006);
   (d) the denial of justice in David Hicks' case erodes values and principles shared by Australia and the United States of America. We are also concerned that the ongoing absence of justice in David Hicks' case is serving to undermine international efforts to combat terrorism;
   (e) according to Australian psychiatrists, David Hicks is exhibiting signs of mental illness. This is not surprising because we understand that for much of the past five years he has been held in solitary confinement. Article 110 of the Third Geneva Convention, which is recognised in section 268.99 of the Australian Criminal Code, entitles David Hicks to immediate repatriation to Australia, pending trial before a properly constituted court of law;
   (f) United States Congress colleagues and the Speaker representative Nancy Pelosi insist, perhaps by way of a resolution in the Congress, that David Hicks be immediately repatriated to Australia. Expert legal commentary is that the allegations against David Hicks can be considered under Australian criminal law. The issue of custody pending a trial would be considered by a properly constituted court. Be assured also that our anti-terrorism laws make provision for strict control orders to be imposed on terrorism suspects;
   (g) the return of David Hicks to Australia would be entirely consistent with the precedent established by the return of the British subjects held in similar circumstances. But failing return, we ask that David Hicks be immediately put on trial before a properly constituted United States criminal court; and
   (h) current arrangements are unjust and contrary to principles that our respective legislatures have for centuries nurtured and cherished. Those principles provide a shining example to those who would seek to destroy or degrade our cherished heritage through arbitrary acts of violence.

How humane a society is can be judged by the way in which it treat its citizens when they are in need. On this basis, we as a country fail quite dismally. From the very beginning, John Howard, our Prime Minister, Alexander Downer and Mr Ruddick have stated that they believe that David Hicks is guilty of some sort of atrocious crimes. The presumption of innocence until one is proved guilty is something we hold very clearly and dearly in this country, but it seems to play no part in their logic in this whole argument.

It is also a shame that people who stand up and express concern about the way in which David Hicks is being treated are very often accused of supporting whatever actions David Hicks is accused of committing. I have no idea what actions he is accused of committing because he has never been charged. For five years he has been kept in a cell, with very little sunlight and, in some cases, chained to the floor. From all indications, he is now suffering from psychiatric problems because of the abuse by the military in Guantanamo Bay. It is beyond me how any person in this country can justify supporting this type of atrocious treatment of a citizen of Australia and, in particular, a citizen of South Australia.

The previous military commission that was established was found to be unconstitutional by the American High Court, so they have now come up with a new commission. The problems with the new commission are as follows:

- There is no provision to automatically take into account the five years Hicks has already spent in prison.
- The Law Council of Australia states that the commissions are 'designed to rubber-stamp decisions about guilt that were made long ago.'
- Hearsay evidence is admissible. The defence must prove why such evidence should be ruled out rather than the prosecution prove why it should be included.
- Information gathered under coercion is admissible as evidence.
- Torture is ruled out, but techniques previously considered torture are now deemed coercive, including sleep deprivation and being blindfolded and having water poured over someone's head to simulate drowning.
- Defence lawyers cannot reveal classified evidence unless it is reviewed by the government.
- Hicks may not get to see the full classified case against him and may instead be given an unclassified version of the case against him.
- Defendants are denied the rights of habeas corpus to challenge in a civil court the legality of their detention.

Habeas corpus, which is held very dearly, has arisen out of hundreds of years of law. The definition of habeas corpus is as follows:

> In common law countries [which applies to Australia, the United States, England and others] habeas corpus, Latin for 'you [should] have the body', is the name of a legal action or writ by means of which detainees can seek relief from unlawful imprisonment. However, habeas corpus has a much broader meaning in common law today. A writ of habeas corpus is a court order addressed to a prison official (or other custodian) ordering that a prisoner be brought before the court for determination of whether that person is serving a lawful sentence and/or whether he or she should be released from custody. The writ of habeas corpus in common law countries is an important instrument for the safeguarding of individual freedom against arbitrary state action.

So, David Hicks will be denied the right of habeas corpus. The President of the Law Council of Australia, Tim Bugg, recently told *The Sydney Morning Herald* that he could not name a single legal authority in Australia that supports Canberra's position. From what I can understand, the only people who seem to support the federal government's position are the few rednecks you often hear on talkback radio who usually speak with a rush of blood to the head or whatever.

I had a discussion with a member of the opposition about supporting this resolution. I will not name the member, but I understand that he will soon be a pretty significant leader in the opposition. His argument was that he was not supporting a person coming back to this country who had trained with al-Qaeda. It seems that the basis of the argument against David Hicks is that he is presumed guilty of a crime, yet after

five years of basically torture and being locked up most of the time in solitary confinement he has still not been charged. So, one would have to wonder whether, after that sort of traumatic time, proper charges will ever be brought against him. If that is the case, David Hicks should be repatriated to Australia immediately.

At the moment, even people in the federal coalition are starting to question the merits of the position taken by John Howard in particular. Only yesterday, John Howard made quite a staggering admission that he could have David Hicks back now if he wanted to but that he would prefer that justice be administered in the United States, despite the fact that David Hicks has been subjected to five years of abuse and that charges have yet to be laid. I find it quite disgraceful that the leader of this country should hold such a position against one of our citizens.

People are starting to wake up, and the more they hear about this whole issue the more they are starting to wonder what on earth is happening and why the federal government is taking such a hard position. To sit here in this chamber and do nothing and allow the terrible treatment of David Hicks to continue will ensure that we ourselves bear some responsibility for the terrible treatment of David Hicks. It is about time we started being serious about this issue. If David Hicks has committed crimes, I would like him to be tried and punished—there is no doubt about that—like any other member of the Australian community. But to sit back and watch an Australian citizen languishing in gaol as he is doing at the moment and being treated with fewer rights than an animal is just totally unacceptable. I commend the motion to the floor and look for the support of members in the chamber.

The Hon. NICK XENOPHON: I indicate my support for this motion, and I also indicate my support in principle for the motion of the Hon. Mr Parnell, who has been a long-term campaigner on this issue, as, indeed, has the Hon. Sandra Kanck; they ought to be acknowledged for their long-term contributions on this issue. My remarks can best be summed up by a Tandberg cartoon on the front page of *The Age* this morning, where the Prime Minister is presumably speaking to one of his advisers. The adviser is saying, 'There's now a lot of sympathy for David Hicks.' The Prime Minister's reply is, 'I must admit there's been a climate change.' We have this so-called war on terror which is supposed to be about upholding values that we hold dear in the West. Those values fundamentally must include, by definition, the rule of law. One of the key elements of that is the principle of habeas corpus that the Hon. Mr Wortley has set out so well.

I do not know what David Hicks has done or not done but, in our system in this country but also in the United States and England, there is a basic principle that people are charged expeditiously and that they are brought to a court to face a fair trial. That has not happened in this case. This is not about supporting David—

The Hon. R.D. Lawson interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Lawson mentions the Australians in Changi. They were there for four years and they were not tried with anything. The Hon. Mr Lawson is absolutely right—that is wrong. The point needs to be made that this is about the rule of law. This is about matters being dealt with fairly and expeditiously, and that is why it is important that we do our bit in this parliament to make the point that what has occurred to David Hicks is simply not fair. I think I should also acknowledge at this point the campaign by his father, Terry Hicks. Whatever you may think of David Hicks, no-one can doubt the love of Terry Hicks for his son. He has stood by him and has campaigned relentlessly for him. I think he is an inspiration to many.

The issue here is process. The New South Wales Director of Public Prosecutions recently said that the treatment of David Hicks was disgraceful. When a DPP makes a pretty strident comment like that, you know there is something wrong with the process. Another point that needs to be made is that even Victorian senator Judith Troeth said it was regrettable that habeas corpus and protection against people being held without charge had been undermined. 'It is worrying that can happen,' she said. 'You cannot have a judicial system without habeas corpus. No Australian wants to see him languish indefinitely.' That is another voice in support of some fundamental action in relation to what has occurred to David Hicks.

This is not so much about what Mr Hicks has done or not done: this is about process. Apparently that point was made in the federal Liberal Party room only yesterday, with a number of backbenchers speaking out and saying it was not the person but the process that concerned them. I think that sums it up pretty well. I am really concerned about this. If this so-called war on terror is about Western values, about fairness and about the rule of law, then this sends a very strange signal, in that the United States has held this man without trial for five years and there are allegations that he has been subjected to inhumane treatment. I thought the difference between our system and that of terrorists, who kill and maim and who have no regard for any process whatsoever, is that we actually believe in something: we believe in the rule of law, and that is why I support this motion.

The PRESIDENT: Without amendment? Any further contribution?

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

LAKE BONNEY

The Hon. SANDRA KANCK: I move:

1. That the Legislative Council notes that—
(a) the estimated water savings of 11 gigalitres from blocking off the water supply to Lake Bonney is a minuscule amount compared to the 5 400 gigalitres of savings proposed in the Prime Minister's National Plan for Water Security;
(b) damming Chambers Creek would artificially disrupt the natural operations of the Murray River and its associated lakes and wetlands, all of which play important roles in the complex ecosystem, with potential impact on the rare broad-shelled turtle;
(c) local people with intimate knowledge of the lake and river system believe this would lead to a decline in water quality, algal blooms and fish die-offs that would make the lake unfit for almost all other forms of life; and
(d) there has been no environmental impact assessment of the effect on the ecosystem of Lake Bonney; and

2. Calls on the government to delay the damming of Lake Bonney until the impact of recent rainfall in Queensland and New South Wales and South Australia's winter rainfall can be taken into account, to allow for a comprehensive environmental impact assessment to be prepared, and for the progressing of other water saving measures.

On 21 December 2006, a meeting was held at the Central Irrigation Trust in Barmera. I do not know what the group actually was and under what auspices it was called. In attendance were P. Hunt, S. Rufus, L. Stribley, H. Willcourt, G. McMahon, G. Parish, N. Andrew, I. Penno and J. Tsorotiodis. It does not say that it is minutes, but refers to a meeting held in regard to the natural evaporation of Lake

Bonney in the Riverland of South Australia, held at Central Irrigation Trust, Barmera, at 4 p.m. on Thursday 21 December 2006. The N. Andrew was Neil Andrew, former federal MP, who has been appointed to liaise with Riverland communities re handling the drought.

Those notes show that those people were told that the issue they were apparently discussing was irrigation versus evaporation and that Lake Bonney loses 29 gigalitres annually through evaporation. From reading the notes it seems that a lot of behind the scenes work had been going on. For instance, it says:

> The separation of Lake Bonney from the Murray River could be achieved at several points, all of which have been considered as to accessibility, suitability and feasibility, with a likely position being at the point of entry of Chambers Creek into the lake. A temporary weir will be placed at the Nappers Bridge point, restricting and then ceasing flows. Lake Bonney will then—

and I note the language 'will'—

> evaporate naturally over a period of time. However, as Lake Bonney has several points of provision, the seepage which enters underground from Chowilla accounts for a percentage of the water body, it is known that the lake will never completely dry out. Following the initial draw down of the Lake Bonney waters through evaporation, involved parties will look to construct and install water inlet regulators, which will assist in future flows into the lake prior to the ceasing of the drought.

Just before Christmas one of those who attended the meeting—Julie Tsorotiotis, a member of BLOC—sent out a message to BLOC representatives, beginning with a message of Christmas cheer, and informed them of what had been said at this meeting. Reading what she had to say to the BLOC representatives, she had clearly been convinced of the inevitability of the lake's closure. She promoted a view in the email that the continued existence of the irrigators was more important than the continued existence of the lake but that some compensation would be available. Here is what she says:

> Instead of dwelling on the negative impacts such an event is going to cause, we need to stay positive and look at the possibilities. Due to the economic crisis the BLOC area will suffer due to this decision there is the opportunity to be compensated through the government economic crisis fund. Suggestions for the utilisation of these funds included the building of a permanent weir suspended from Nappers Bridge to regulate and improve future flows into the lake, building of a town swimming pool and permanent water supply to the Greenwood Park area, linking it with the town water supply. This would provide the perfect opportunity for further lake front development and could be a bargaining tool as part of the compensation package.
>
> With improved water quality following the installation of the weir and refilling of the lake, the opportunity for real estate development is very real in this area. Personally I don't think we should just settle for just a swimming pool. Why not aim bigger and go for a huge attraction, which could include a wave pool and water park—a major tourist attraction in itself. If we're going to temporarily lose our greatest asset, let's look forward to enhance our town and not settle for less. Why not rebuild our town icon, our original jetty?

She goes on, but it really seems that whatever happened at that meeting on 21 December she got conned, because the reality is that there is no state money available. Federal money might be available if exceptional circumstances are declared. She was sold a very happy alternative that simply does not exist. At best, if exceptional circumstances are declared, locals can apply for some of these things, but nothing is guaranteed.

The locals at Barmera have reacted with almost one voice, very angrily, and have formed the Save Lake Bonney protest movement. It is interesting that within the very short space of time from that initial informal meeting the arguments for damming the lake have changed. Initially, as at that meeting on 21 December, the information given was that 29 gigalitres evaporates annually from Lake Bonney and that water must be prevented from entering the lake so that irrigators can survive. Yet only yesterday the paperwork that minister Maywald was handing out at her press conference was saying that the evaporation is 11 gigalitres per annum. You wonder about the science being developed around this when you have a change from 29 gigalitres per annum to 11 gigalitres per annum. What other things might be wrong? It seems that a lot of it is simply guesswork and kite flying.

Not only has the amount of evaporation in the basic argument now changed but a month ago the damming was to be done to allow water for irrigators, and the argument now being put to the local community is that the water in the lake is too saline to allow it to move back into the river. The minister in her statements over the past six weeks has been referring to the backwaters of the Murray. The Barmera people are not very happy having their Lake Bonney called a backwater. This lake is natural and its levels have gone up and down over time according to environmental conditions, but at no stage has anyone ever suggested that it should be artificially blocked.

I am particularly concerned by the proposal because of the broad-shelled turtle, known scientifically as Chelodina expansa, which is classified in South Australia as rare. The Institute of Applied Ecology at the University of Canberra has been studying this turtle in Lake Bonney, particularly as a local man, John Baneer, has been actively restocking the turtle in the lake over a period of 20 years. A pamphlet from the University of Canberra Institute for Applied Ecology, research flier 4, on the status of this turtle states:

> Rarity and vulnerability to extinction comes in many forms. Species that are widespread but low in abundance throughout their range can also be vulnerable to system-wide changes to our river systems. Current impacts of this nature include water resource development and global climate change.

Of course, both of those apply in the case of the River Murray in South Australia. It continues:

> One species with this type of rarity is the broad-shelled turtle, *Chelodina expansa*.

The leaflet goes on to tell more about this particular species, and I would be happy to provide it to any member who would like to know more about it.

Additional to the turtle are fish species, with the lake containing up to 20 tonnes of Murray cod. Other fish include bony bream, golden perch, silver perch, catfish and some European carp, although the levels of salinity that are there have tended to restrict that species' expansion. There is a biological load of up to 200 tonnes in Lake Bonney at the present time.

If the water from Chambers Creek is prevented from entering Lake Bonney, the remaining water, logically, will concentrate in salinity over time and, like any population, when crowded, competition for the resources will begin. That will only result in the death of these aquatic species. The rate and order in which these fish and reptiles will die is yet to be determined, but die they will, and the stench of 200 tonnes of dying fish is something to imagine. It is also something to imagine in terms of what this might do for tourism in the town.

Those attending the meeting—in particular, Neil Andrew—were prepared for this, and the notes from the meeting say:

Consideration has been given to various scenarios relating to health issues during the drying process. The expected odours which exist during these processes and are expected, can be alleviated via surface flooding—

so, we do not have any water but we are going to be able to do surface flooding—

and the insect infestations which also will result from these processes will be an issue of environmental concern to be dealt with through the Department of Environment and Health, possibly via chemical sprays.

So, not only are you going to have rotting fish, the government is then going to come in and spray with chemical sprays, which I am sure the people of Barmera will love, and which will also be very good for their tourism!

Minister Maywald says that the damming of Lake Bonney is not a done deal and they are just at the beginning of the process. One would hope so when you have wildly erratic figures for evaporation from that lake varying from 29 gigalitres of evaporation six or seven weeks ago down now to 11 gigalitres. It appears to me that a lot more questions will need to be asked and answered about this project. What will be the impacts of the reduction of the water in the lake in terms of the clay sediments underneath it and the release of methane, and how will this impact on the government's greenhouse gas commitments? Given the State Strategic Plan's objective of no more species lost in South Australia, what does the government think will happen to the broad-shelled turtle, and will it in fact work with the University of Canberra to ensure that species' survival?

What will be the economic impact on the town of Barmera, in which tourism plays an important part? Accommodation services in Barmera are already saying that, as a consequence of the stories about the draining of Lake Bonney, tourism numbers are down in the town. On Monday I visited Barmera and went to the site where Chambers Creek would be blocked off. Clearly, it would be an easy thing to do. It is no more than 20 metres wide and only 1 to 2 metres deep. So, probably it would take a day's work of earthmoving to be able to block it. Easily done, but the environmental and economic outcomes of that would be drastic. There are strong rumours in the Riverland already that a local earthmover has already been told that he has the contract to do this.

Finally, my motion calls for a delay in any decision-making about blocking off Lake Bonney. We know there has been rain in south-western Queensland and western New South Wales and time must be allowed—over the next six months, at least—to see whether there are follow-up rains that will result in flows through the Darling and into the Murray. We must wait at least until springtime to see what the winter rains in South Australia bring that might possibly alleviate this crisis. Clearly, we need the scientific evidence that is lacking to date and an environmental impact statement.

In all the arguments that we are hearing about the government's plans for damming parts of the River Murray, one thing is glaringly obvious: despite all the public knowledge and protests of commitment to do something about climate change, this government has been caught without a plan to deal with the extremes of weather predicted. Urban water restrictions were implemented—too little, too late; industry has still not been required to tighten its belt; and the River Murray, throughout all of this, has never been considered as an environmental asset. Rather, if it ever was considered as an environmental asset, what we are seeing now is asset-stripping.

It is time that we looked at the Murray as much more than one long continuous dam. One thing we in the environment movement have learnt (sadly) over the years is that engineering solutions always come at a cost, and the more we intervene the more we have to intervene, and each intervention costs more. The Australian Democrats will be working with the Save Lake Bonney Protest Movement to ensure that Lake Bonney continues to exist.

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

HICKS, Mr. D.

The Hon. M. PARNELL: I move:

That the Legislative Council of South Australia calls on the Premier of South Australia to write to the President of the United States of America asking for South Australian, David Hicks, to be brought home to South Australia.

Last year, in December, I moved a motion in this place calling for a fair go for David Hicks. I thought it was a simple motion but I believe a number of members either genuinely did not understand what I was trying to say in that motion or they chose to misinterpret it. So, whilst I was very disappointed that my motion in December was not supported, I have come back again today with a simpler motion and there can be no doubt about what the motion is calling for.

In the time since we last discussed David Hicks in December, much has changed and the urgency of the matter is now somewhat increased. First, we have worrying reports about the mental state of David Hicks, and people can be in no doubt that, when someone is incarcerated in the conditions in which David Hicks is incarcerated, their mental health must suffer from that treatment. We also have worrying reports of abuse, reports of shackling to the floor of the cell, and reports that David Hicks has been shown pictures of the hanging of Saddam Hussein and the decapitation of his brother, and there can be no doubt that the desired effect of those images is to undermine David Hicks' mental health.

The new military commission that has been announced to replace the now discredited commission still offends basic principles of a free and fair trial. David Hicks will be unable to challenge his accusers, and that is one of the most fundamental aspects of our legal system: to know your accusers, to hear what they have to say and to then challenge their evidence. The American lawyer for David Hicks, Major Michael Mori, was interviewed by *The 7.30 Report* on 19 January this year, and he said:

Basically, he's not going to get a fair trial. Unfortunately this new system is very close to what the old illegal system was like. The fundamental protections that are usually part of a civil criminal trial or a US court martial have been removed.

He went on to say:

Under the new system they've actually made things somewhat worse. Now the burden is on the defence to show why prosecution hearsay evidence is not reliable and yet the prosecution can keep secret from the defence the methods, or how evidence was obtained.

Such methods would never be tolerated in an Australian court of law and I do not believe they should be tolerated in Guantanamo Bay, either. Finally, Major Mori said:

. . . the area of classified evidence is another area where they actually made the new system worse than the old commission system. Under the old commission system, the military defence lawyer has the same clearance as the prosecutor, got to see all the classified information. I may not have been able to share it with David but I at least got to see it all. Under the new system, classified evidence, even though I have the clearance as the prosecutor, the

same one, it can be kept from me from even being able to see it and investigate it. Included in that can be methods, or how evidence was obtained.

So here you have David Hicks' appointed military lawyer saying that the system cannot deliver a fair result for David Hicks. We also had some concerning new developments in relation to comments from federal government ministers, in particular, the Attorney-General, who was reported by the ABC yesterday as saying:

> If it's torture, it's out altogether, but if the evidence is coercive or obtained coercively, then the test is, is it believable given the way in which it has been obtained?

Again, such a method of collecting evidence would never be tolerated in any criminal justice system in any civilised country.

As members would know, new charges have been prepared but not formally laid against David Hicks. Therefore, there is still time for us to take action. The charges no doubt will be challenged when they are finally laid and so, too, will the legitimacy of the military commission be challenged. That means that we have in these arrangements the seeds of a potential to drag this on for yet another five years, and that is clearly intolerable in terms of any fair standard of justice.

I believe there is now a groundswell of revulsion in the Australian community at the treatment of David Hicks and the failure of the Howard government to request his return. It is reported in the media today that the Prime Minister has himself acknowledged a public mood shift on this issue, yet he still appears reluctant to act. The Newspoll in December reported that three quarters of those surveyed supported a call to bring David Hicks back to Australia, and that included two thirds of coalition voters.

Members would be aware of the GetUp campaign—the TV advertisements, the billboards, and the rally on the steps of Parliament House in Canberra yesterday. The momentum is building for David Hicks to be brought home, and my motion also provides an opportunity for members in this place who, for whatever reason, did not support a motion for a fair go for David Hicks last time, to review the changed circumstances, to look at the public mood and to support this motion when it is brought on for decision.

The main reason David Hicks is still in Guantanamo Bay is that no-one in any position of authority in Australia has asked for him to be brought home. The British, Spanish and French governments all refused to allow their citizens to be tried by the military commission at Guantanamo Bay. I think we should take our lead from the British government, which insisted on all its nationals being brought home, and they were. Even the Americans have removed their citizens from Guantanamo Bay to ensure they faced a fair trial at home.

Today it is also reported in the media that Prime Minister Howard has told his party colleagues that he could secure the release of David Hicks at any time—but he will not do it. If the Prime Minister will not call for David Hicks to be returned, then it is an appropriate role for Premier Rann to take on. David Hicks is a South Australian. His father Terry, whom the Hon. Nick Xenophon referred to earlier and who deserves credit for the way in which he has stood by his son, is a South Australian resident. This motion is about the South Australian parliament and the South Australian government through the actions of the Premier defending the rights of South Australian citizens.

The other motion moved today by the Hon. Russell Wortley is a very honourable detailed motion. I am sure it was a long time in the planning—long before I foreshadowed my motion—but I think it does have one flaw, and I will speak to it later; I did not speak to it today. I mention in passing that it does lack an element of action. I will be supporting the motion, but I think it lacks an element of action. On the other hand, my motion makes it clear that we are calling on the Premier to write to George W. Bush. I am happy to pay for the postage stamp. It is not a hard ask.

There is not a lot of taxpayers' money involved in this motion. Also, people might be concerned to say that my motion is simply about bringing David Hicks home, and what happens then? Will he be a danger? Can we try him under South Australian or Australian law? I note in today's *Australian* newspaper that David Hicks' American lawyer signalled that the terror suspect was prepared to be subjected to a control order if he were repatriated to Australia. An article in this morning's *Australian* states:

> Hicks desperately wants to return to his family and he is willing to do whatever the Australian government asks of him upon his return.

I do not think it is a risky venture, but I think the continual failure of our authorities to bring David Hicks home does compromise the integrity of Australian democracy. What is happening to David Hicks in Guantanamo Bay offends the sense of common decency that is an integral part of Australian society. We have had a lot of debate about Australian values. Here is an Australian value that is being infringed yet we have done nothing about it.

My view is that any political leader who fails to act, given all the information that we now have about David Hicks and his treatment, will be punished by decent public opinion over their cowardly failure to stand by Australian values. If the federal government fails to act, then there is a role for the South Australian parliament to step in. Finally, I believe there is some urgency about this matter, so it is not my intention to have the motion sit on the *Notice Paper*. I think it would be more than appropriate for this matter to be brought on for a vote shortly after a month, say, 14 March, because that will still give time before the American unfair military commissions have had too much opportunity to develop. Let us bring David home soon. I urge all members to make their contributions to this motion on the next Wednesday of sitting or the one after that when I will be calling for this motion to be put to a vote. I urge all members to support the motion.

The Hon. NICK XENOPHON: I rise to speak briefly in support of the motion. I support the sentiment and principle of this motion. It is similar to the Hon. Russell Wortley's motion, although some would say less is more in that it sums up the sentiment that the Hon. Mr Wortley has set out in his motion. My concern is that if charges are to be laid they ought to be laid fairly and there ought to be an appropriate process. Ultimately, David Hicks ought to be brought home, even if it is after the judicial process has been dealt with, on the basis that the process is fair—and, so far, it has not been a fair process; it has been nothing short of a disgrace.

Let us bear in mind that the United Kingdom is a great ally of the Bush administration. It has sent thousands of troops to what seems to be a foolish and senseless war in Iraq. Yet the United Kingdom government, the Blair government, stood up to the Bush administration and had the British citizens detained at Guantanamo Bay brought back to the UK. It beggars belief why our government has not followed the steps of the British government in doing the right thing, the decent thing, considering the gross anomalies in the judicial process,

the lack of fairness, and also the absolute abrogation of the fundamental principles of the rule of law.

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

[Sitting suspended from 6 to 7.47 p.m.]

ADMINISTRATIVE DECISIONS (EFFECT OF INTERNATIONAL INSTRUMENTS) ACT REPEAL BILL

The Hon. M. PARNELL obtained leave and introduced a bill for an act to repeal the Administrative Decisions (Effect of International Instruments) Act 1995. Read a first time.

The Hon. M. PARNELL: I move:

That this bill be now read a second time.

The legislation I seek to repeal with this bill is, in my view, one of the most shameful and embarrassing laws on the South Australian statute book. The Administrative Decisions (Effect of International Instruments) Act 1995 is probably one of the least known laws of this state, yet it is of immense symbolic significance. Its importance lies in the message that it gives to our own citizens and to the rest of the world about how South Australia views international agreements and our place in the international community.

At the heart of the bill is the following question: should our administrative decision makers—that is, ministers and public servants—be required to have regard to the international treaties Australia has signed when making decisions? If the answer to that simple question is yes, then my bill should be supported. If the answer is no, we can continue comfortably in our hypocritical bubble and pretend that we form no part of the international community.

Because it is simply a repeal bill, I need to explain where the original act comes from and the circumstances surrounding its passage through the South Australian parliament 12 years ago. This act was a direct response to the High Court's decision in the case of Minister for Immigration and Ethnic Affairs v Teoh, where the High Court held that Australian citizens had a legitimate expectation that our public servants and ministers would have proper regard to the international treaties we have signed when making administrative decisions. That High Court case related to the Convention on the Rights of the Child, which was ratified by Australia in 1991. However, it has application for most of the international treaties, conventions and covenants Australia has signed.

The court in the Teoh case, and in particular the judgments of Chief Justice Mason and Justice Deane, included the following, where their honours said:

> It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. . . So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law.

In that passage, their Honours were pretty much stating what was regarded as the status quo. They went on to say:

> Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that administrative decision-makers will act in conformity with the Convention. . .

So, that is what this legislation 12 years ago was all about. It was about undoing the High Court's decision which stated that we citizens have a legitimate expectation that our administrative decision makers will have regard to treaties this country has signed when they make decisions.

The commonwealth parliament was first cab off the rank in attempting to undermine this rule of the High Court. However, three attempts to undermine the Teoh judgment failed. In 1995, an ALP bill lapsed; in 1997, a coalition bill lapsed, because it found the ALP's amendments to be unacceptable; and, in 2000, again, a coalition bill lapsed.

The commentary in the legal community was vehemently opposed to this legislation at the commonwealth level. The critics included a wide range of people in the legal community, in human rights and in the environment. For example, an Amnesty International news release of 20 June 1997 stated:

> This [bill] is the latest of a series of steps by the Australian government which effectively undermine their commitment to human rights. On the one hand, it is telling the world that it is bound by the treaties it has ratified and, in some cases, helped to develop. But on the other hand, with this draft law, the government is giving its people and the world a very different message.

We did not end up getting an administrative decisions (effect of international instruments) act at the commonwealth level, which begs the question: how did we end up with such a statute at the state level? I think the answer to that question lies in some early fears all the states had in relation to the Teoh judgment that it would make administration inconvenient or unworkable. But, having said that, no other state in the commonwealth has passed legislation such as the act I am seeking to repeal.The 1995 act has at its heart the following:

> . . . an international instrument that does not have the force of domestic law under an act of parliament of the commonwealth or the state cannot give rise to any legitimate expectation that:
>
> (a) administrative decisions will conform with the terms of the instrument; or
>
> (b) an opportunity will be given to present a case against a proposed administrative decision that is contrary to the terms of the instrument.
>
> (c) However, this act does not prevent a decision-maker from having regard to an international instrument if the instrument is relevant to the decision.

That might sound like a complicated legal formula, but it is really quite simple. What it is saying is that our state ministers and our state public servants cannot be held to account for not having regard to international treaties. The act does not say that they cannot have regard to international treaties but that no-one can hold them to account if they do not.

I am aware of only one case in South Australia where this act has been instrumental in the outcome, and that is the case of Collins and the State of South Australia, a Supreme Court decision from 1999. His honour Justice Millhouse handed down that decision. The facts of that case are that a prisoner complained about the lack of segregation of convicted and remand prisoners at the Adelaide Remand Centre, and he also complained about the doubling up in cells. It was fairly clear from the facts that these arrangements in the Adelaide Remand Centre breached various international standards, including the International Covenant on Civil and Political Rights. Justice Millhouse said:

> I am satisfied on the evidence I have been given that Article 10(1) and Article 10(2) of the Covenant have been breached at the Adelaide Remand Centre.

His honour then went on to talk about the act I am now seeking to repeal. He said:

> . . . the effect of the Act in South Australia is to make Australia's involvement in international conventions 'merely platitudinous and ineffectual'.

So, that is a judge from the Supreme Court saying that the South Australian act makes our involvement in international conventions 'merely platitudinous and ineffectual'. His honour went on to say:

> Much as I regret it, as a single judge I am not able to give force to the basic human rights set out in these conventions. I accept that the situation about which the plaintiff complains is quite undesirable, even wrong: it is a breach of the principles in the Standard Minimum Rules for the Treatment of Prisoners. I am not able, at law, to do anything to have it improved. I express the hope, though, that the Government will.

To my knowledge, that is the only time that this act has been used, and it was effectively used to say that South Australia is beyond and above international standards, even if we have signed treaties saying that we will comply with those standards.

I want to give two brief case studies as to why I say my repeal bill is important. The first is the Magill Training Centre and the second the Wellington weir. I am hoping the Hon. David Ridgway will come back into the chamber when I start talking about the Wellington weir. On 22 November last year, I asked the Minister for Correctional Services, representing the Minister for Families and Communities, a question about the Magill Training Centre. My question related to the 2005-06 annual report by the Guardian for Children and Young People, Pam Simmons, who described the Magill Training Centre as follows:

> . . . it is a cheerless institution which inhibits proper care and behaviour change. The facility falls well below national standards for both youth and adult detention facilities, it contravenes United Nations Rules for the Protection of Juveniles Deprived of Liberty and is potentially in violation of article 40 of the United Nations Convention on the Rights of the Child.

That is the same convention that gave rise to the original Teoh High Court decision.

In my question to the minister, I also referred to the Administrative Decisions (Effect of International Instruments) Act 1995, which I described as an act with the sole purpose of undermining the effect of international treaties on South Australian administrators. I asked the minister whether he believed the United Nations Rules for the Protection of Juveniles Deprived of Liberty and the United Nations Convention on the Rights of the Child represent appropriate standards for the operation of youth detention centres in South Australia, including the Magill Training Centre. I also asked the minister whether he would now issue a directive to all staff involved in the detention of juveniles to comply with these international standards. Finally, I asked the minister whether he would support the repeal of the act I now seek to repeal through this bill.

Members might be surprised to hear that I have not yet received an answer to that question, so I think this bill gives the government the opportunity to think about how this state should respond in the future to international standards.

The principle enunciated in the Teoh case is that citizens have a legitimate expectation that decision-makers will comply with treaties. How that legitimate expectation translates in practice is that, according to the High Court, our administrators should have regard to those treaties. If they are not going to have regard to them, they should make it explicit and they should give any affected persons the right to make representations about matters that affect them.

I know there are legal arguments around the difference between substantive rights and procedural rights under international law, and there are also questions around who, if anyone, would have standing to bring a challenge to an administrative decision that did not comply with an international treaty. However, the point that I wish to make here is quite simple and that is that, as a nation, we have told the world that we will abide by these international standards and yet, at home, if we do not, there is nothing that anyone can do about it.

My second example is that of the Wellington weir. When the Premier first flagged the idea of a weir at Wellington on 14 November last year, he acknowledged that one of the issues that should be considered was the impact on the internationally listed Ramsar wetlands of the Lower Lakes and Coorong. The Premier said:

> The government is nonetheless very concerned about the fate of the Ramsar listed Coorong and Lower Lakes which provides a valuable habitat for more than 65 species of water birds and more than half the water birds found in South Australia. I am told it is ranked within the top six water bird sites in Australia.

So how does this fact fit with the South Australian decision-making process that will be undertaken in relation to the Wellington weir? We have not incorporated the Ramsar convention on the protection of wetlands of international significance into our state law, and the South Australian act says that no state bureaucrat can be held accountable for not complying with the terms of the Ramsar convention.

However, that is not the case at the federal level with commonwealth decision-makers, because the commonwealth parliament has incorporated this convention into commonwealth law via the Environment Protection and Biodiversity Conservation Act (the so-called EPBC Act). That act identifies Ramsar listed wetlands as a matter of national environmental significance and therefore a trigger requiring commonwealth as well as state approval. Inevitably, because of that commonwealth connection, the Ramsar status of the Lower Lakes and the Coorong will need to be taken into account.

The effect of the act in South Australia is not so much its direct impact on citizens and their rights, but it has a more important impact, in my view, and that is that this 1995 act provides a psychological barrier to our public servants and ministers having to give full regard to these international instruments. What this act says to all our administrative decision-makers is, 'Feel free to ignore international treaties. In South Australia they're not worth the paper they're written on.' That is why I say this act should be repealed, and I commend my bill to the council.

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

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

1. That a committee to be called the 'Budget and Finance Committee' be appointed to monitor and scrutinise all matters relating to the state budget and the financial administration of the state.
2. That the standing orders of the Legislative Council in relation to select committees be applied and accordingly—
   (a) that standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only;

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

The first paragraph is the operative paragraph; that a committee to be called the budget and finance committee be appointed to monitor and scrutinise all matters relating to the state budget and the financial administration of the state. I want to chronicle the arguments for the Legislative Council considering what will be potentially the most significant move to increase the accountability of any government—this government and future governments—to the parliament through this mechanism of a Legislative Council budget and finance committee.

In doing that I guess we need to look at what are the issues that are to be addressed, at least in part, by the committee. What are the arguments for improving accountability? Is there an argument that there are deficiencies in the current accountability mechanisms? Our simple answer to that is that, yes, there are significant problems with the current accountability mechanisms. Whilst this committee itself will not resolve all of those issues, it is our view that it will be an important step in improving the accountability of any government. As I said, it is not just this government but, we would hope, all future governments that will be answerable and accountable to the parliament.

What are some of the problems with the current system? We have read and heard and discussed the problems in relation to the current estimates committee process of the House of Assembly. Its members know that, essentially, in the past, almost two weeks was taken up by estimates committees which generally went from around mid-morning through to about 10 o'clock at night. We have seen in recent years the number of days reduced over that period, and a number of other problems have eventuated as a result of the operations of those estimates committees. Put simply—and this is not necessarily just a criticism of this government—the government controls the estimates committee numbers and the government, through its appointment of committee chairs, dictates the flow of questions, what questions are ruled admissible, what guidelines are provided to members in terms of asking questions, and what questions are ruled in or out of order in relation to it being an estimates committee question or not.

I have noticed in the past couple of years an increasing tendency by chairs to rule out of order questions which, in my experience of over 20 years of reading estimates committee processes, have generally been accepted—under both Labor and Liberal governments, I might say—previously. But we have seen much tighter restrictions placed on questions by the government chairs in control of the committees.

We had the curious process where, for virtually every portfolio, the minister is entitled to make an introductory statement of up to 10 minutes and, if a minister has a number of portfolios, on some occasions (although not all) ministers use up the available time to limit the time for questioning. The issue that all parliaments need to accept as part of our process is the Dorothy Dixer questions we see during question time under both Labor and Liberal governments. Where ministers have some concerns, Dorothy Dixer questions can and are used to limit questions from the opposition. There have been a number of committees over the years where the minister has proceeded to negotiate a deal with the committee on the basis that, if the opposition members are prepared to finish the committee earlier than might otherwise have been intended, government members will not undertake Dorothy Dixer questions beyond perhaps a handful at the start of the committee.

We have also seen increasingly at times ministers under pressure. Last year it was minister Pat Conlon: because of the tremendous problems within his portfolio and massive blowouts within transport and road projects, the government scheduled minister Conlon for the shortest period it could late at night to try to get away from media interest. Television cameras having finished their news services at 6 or 7 o'clock, the government scheduled the bulk of the Minister for Transport's controversial questioning after 7.30 at night, outside media interest hours generally. In other cases the government has shortened periods in a certain portfolio. There may be some consultation with the opposition, but in the end the government makes the decision. If there is a particular portfolio where three or four areas are covered, the more controversial one can be shortened in terms of the number of hours allowed on it and, if there is a non-controversial area, the opposition can be given one or two hours more than is required in that area, because the government is unconcerned about questions in that part of the portfolio.

Other criticisms relate to the practice, which has existed since the inception of the committees back in the Tonkin government era of 1979 to 1982, whereby all questions have to be directed to the minister. We have senior public servants, but generally they only respond should the minister ask the chief executive or public servant to provide additional information. There is no ongoing monitoring of the budget. This is a once-off process: the budget estimates are brought down and this process is engaged in by House of Assembly members for I think five or six days and there is no ongoing monitoring of the budget for the rest of the 360-odd days of the budget year.

As we have seen in recent years, there have been huge variations in actual revenue and expenditure flows when compared to the budget. I do not have exact figures with me, but on average the errors in total revenue and expenditure in the past four or five years have averaged over $500 million to $600 million a year in errors or underestimates of revenue flows coming to government. There is no process of accountability in either budget blowouts or extra revenue flowing into the budget that this parliament can require of governments. Those error estimates were significantly greater in the past five years than they were under the former Liberal government. The errors were of the order of about $200 million a year, but the errors under Kevin Foley have been closer to $500 million to $600 million.

The existing process is approving a budget which, as soon as it is approved, is significantly out in its estimates. This year's budget is a perfect example, where it was delayed to September or October. The mid year budget review came out less than three months later and already expenses have blown out by $100 million to $200 million and revenue inflows have exceeded estimates by that magnitude as well in the space of less than three months. The current system does not allow any ongoing monitoring of overall aggregates or blowouts in individual projects.

We have also seen sadly in recent years ministers refusing to answer questions, which for many years have been answered by both Labor and Liberal governments. The perfect example of that is the standard question oppositions

have been asking for many years, namely, for ministers of the government to list the consultants that have been engaged by the department, the exact amount of money spent on each consultancy and the method of appointment. This year for the first time—again, a sad further example of the arrogance of this Premier and this government that the community and media are becoming only too aware of—the Premier refused to answer those questions by the opposition, making the trite claim that this information is already available, on the tenders and contracts web site, in annual reports or in budget documents.

As I outlined in a press statement on this issue earlier this year, when you go through a number of those annual reports of departments, the Premier does not indicate that, for example, a number of departments, as a result of a decision taken by this Premier, can put consultancies into various expenditure bands. One of those bands is greater than $50 000. So, if, for example, a particular firm has been employed to do $55 000 worth of work, they can be listed in that particular expenditure band; if they have been employed to do $1 million worth of work, they are listed in the same band. There is no specific indication in those annual reports of how much money is being spent.

One of the other problems is that the Premier indicated that information—for a period of time, generally 12 months or less—is on the contracts and tenders website. Again, three years down the track, when one wants to go back and have a look at previous contracts and the value of those particular contracts for a department, that information is no longer available on those websites. So, we had the example with the shared services centre where (about three years ago) the government spent—we claimed during the estimates committee—more than $1 million. Kevin Foley pooh-poohed that claim, saying that he doubted very much the accuracy of the claim made by the opposition but that he would get the numbers.

In relation to that, if you looked at the websites, a number of them would not still be there, because it was three years ago. Secondly, if you went to the annual reports, some of those reports just listed a particular company as receiving more than $50 000 in terms of the consultancy. When we eventually found out the true cost of the consultancy, in some cases up to $700 000 had been received by some companies from the government to look at a shared services centre three years ago, which was then ultimately rejected on the basis of Treasury's opposition.

When Mr Greg Smith was appointed—another consultant, formerly a federal Treasury officer—he had a different view and the government is now supporting shared services centres, and the opposition, the media or the community that might have been interested in looking at how much had been previously spent on consultancies that were rejected earlier were impeded in getting access to that information. That is just one example of questions which over the years have been answered by Labor and Liberal governments, and this arrogant government, Premier and ministers are now saying for the first time, 'Well, we're not going to answer those questions and there's nothing much you can do about it'—in essence, snubbing their noses at the parliament and public accountability.

We have seen the same thing, of course, through the other accountability mechanisms which have traditionally been used by oppositions through questions on notice. First, you have the questions being asked in the estimates committees. All of those are required to be answered within two weeks, generally. This government has either ignored those or extended the answer period from two weeks to a number of months or just refused to provide answers to those questions. As I said, in some cases they ultimately just refuse to answer the question, in other cases they just ignore the question, and they have significantly reduced accountability through that particular approach to the estimate committees.

We have seen exactly the same process through questions on notice. Again, to be fair to both Labor and Liberal governments in the past, this process had previously been treated with much greater seriousness by those governments than questions without notice during question time. I have outlined my views on that before. I think oppositions (Labor and Liberal) have accepted that ministers dance the light fantastic in question time on questions without notice, but that, by and large, governments in the past have provided some form of response to questions that are put on notice. Oppositions might not always have been happy with the quality of the response, but at least a response has been provided.

What we have now is the extraordinary position where an arrogant Premier, government and ministers have left about 600 questions on notice for periods of up to four years, just refusing to answer the questions. These days they do not even blush at their position.

The Hon. R.D. Lawson interjecting:

The Hon. R.I. LUCAS: When Russell makes the move we may well see a number of changes, I am sure. I am sure the benefits and conditions of the ordinary working member of parliament might improve, too, if the Hon. Mr Wortley makes it to the front bench. The Hon. Mr Wortley could be no worse than the arrogant current members of the front bench and his own Premier.

To have a situation where a government and its ministers just snub their noses at the parliament in terms of accountability, snub their noses at conventions of accountability that have been accepted by Labor and Liberal governments for decades, is extraordinary. It is one of the reasons why parliaments and the Legislative Council may well contemplate not only the establishment of powerful committees like the budget and finance committee but the use of other powers that undoubtedly houses of parliament have in terms of accessing information. This, in our view, is a first step. We think it is a sensible first step on sound policy reasons, but in part also it is justified by the extraordinary arrogance of a government refusing to provide answers to questions.

I want to give one other example of the arrogance of the government. As I said, it does not even blush these days when it does this. Members will be aware that, for a number of years now, Business SA has put out a manifesto in terms of changes that it believes ought to be implemented by governments to make the state better and generate jobs and economic growth. We will all agree with some and disagree with others, I am sure, but one of the ones that it has been very strong on for a number of years now has been the need to provide some payroll tax relief, in particular to small and medium sized enterprises in South Australia.

Our payroll tax regime, as I have outlined on many occasions, is the harshest in the nation. The payroll tax-free threshold in South Australia at $504 000 is the lowest of all the states and territories. In some other states and territories it is as high as $1.25 million before you start paying payroll tax. Our payroll tax rate itself is at the higher level—it is not the highest but it is at the higher level at 5.5 per cent. Business SA pushed for an increase in the threshold from

$504 000 to $800 000 and a reduction in the rate from 5.5 per cent to 5 per cent.

I want to use that as an example. This is a business organisation representing businesses in South Australia that has put out publicly a policy position. During the estimates committee process last year—again, after the election and four years prior to another election—a simple question was put to the Treasurer asking what would be the cost to revenue of implementing the Business SA proposal to increase the payroll tax threshold from $504 000 to $800 000. The Treasurer's response was:

> I am not going to do the homework of an opposition. Do you honestly suggest that if I said in the time that I was in opposition, 'Oh, Rob, by the way, would you cost me some policy options?' that Rob Lucas would not have laughed at me?. . . You were a lazy opposition and you were lazy during the election campaign. If you think I am going to do your work for you, you are sadly mistaken.

Then another question was asked:

> Well, how do you respond to Business SA's proposition in relation to the reduction in the rate?. . . I'm not going to do Rob Lucas's homework for him. He has been a lazy shadow treasurer over the past four years. I am not going to do the work for him for the next four years. . . You can get the data and do your own calculations. I am not going to do your homework for you. What a lazy opposition.

That is the extraordinary response from the Deputy Premier and Treasurer to a simple question after an election and four years out from an election in terms of the cost of a proposition put by Business SA.

So, as a result of the futility of trying to get answers from the Treasurer in the House of Assembly, when the Appropri ation Bill last year came to the Legislative Council, I put the question to the Leader of the Government in this place and said, 'Okay, the government says that we can get the data and we can do our own calculations. The only people who have the data, of course, is Revenue SA. No-one else has the data in terms of the payroll tax arrangements of businesses in South Australia.' So our question during the Appropriation Bill debate was: 'Given that you say we can get the data and do our own calculations, will the Treasurer and the government provide access to the data from Revenue SA to the opposition or some other group so that the calculations can actually be done?' The other question we asked was: 'You say the data is available. Exactly where is the data available so it can be accessed?'

Then we got the response from the Leader of the Government in this place (Hon. Mr Holloway) and he said on behalf of the government:

> The answer I have been provided with is that information regarding payroll tax is available in Budget Paper 3, Chapter 3, page 3.9.

I seek leave to have page 3.9 of Chapter 3 of Budget Paper 3 inserted in *Hansard*.

Leave granted.

Taxation

The forward outlook for taxation revenue is for modest nominal growth of 3 per cent or slightly higher per annum over the forward estimate period. Growth rates are affected by the impact of scheduled IGA tax reforms, the full implementation of smoking bans in gaming venues and an assumed softening in property market conditions in 2006-07.

Table 3.6: Taxation ($m)

	2005-06 Budget	2005-06 Estimated Result	2006-07 Budget	2007-08 Estimate	2008-09 Estimate	2009-190 Estimate
Employer payroll tax	776.9	794.6	840.0	888.9	940.6	992.7
Taxes on property	989.9	1 121.4	11 146.2	1 182.2	1 225.1	1 245.8
Taxes on gambling	413.6	399.3	417.7	403.2	399.5	419.9
Taxes on insurance	282.5	283.6	289.6	298.3	307.1	316.2
Motor vehicle taxes	393.9	382.5	392.8	406.6	421.3	435.0
Other taxes[a]	5.4	-	-	-	-	-
Total taxation	2 862.2	2 981.6	3 086.2	3 179.1	3 293.7	3 409.6
Policy adjusted[b]	2 854.7	2 973.1	3 086.2	3 238.6	3 406.8	3 577.1
% Change on previous year						
Employer payroll tax		6.4	5.7	5.8	5.8	5.5
Taxes on property		0.0	2.2	3.1	3.6	1.7
Taxes on gambling		-0.4	4.6	-3.5	-0.9	5.1
Taxes on insurance		0.5	2.0	3.0	3.0	3.0
Motor vehicle taxes		-0.4	2.7	3.5	3.6	3.2
Other taxes		n.a.	n.a.	n.a.	n.a.	n.a.
Total taxation						
Nominal growth %		1.4	3.5	3.0	3.6	3.5
Real terms growth %		-1.7	0.3	0.5	1.1	1.0
Policy adjusted underlying revenue growth						
Nominal growth %		5.2	3.8	4.9	5.2	5.0
Real terms growth %		1.9	0.5	2.4	2.6	2.4

[a] Levies on agricultural products have been reclassified from taxation and other revenue.
[b] Time series has been adjusted to be consistent with 2006-07 policy settings.
Note: Totals may not add due to rounding.

The Hon. R.I. LUCAS: That particular page is a simple page headed 'Taxation' which looks at all the taxes, and it indicates that the estimate for payroll tax this year is a particular number and then for each of the next four years the estimate for the total payroll tax collections is a slightly higher number. In the next part of the table it calculates the percentage increase year on year of those particular numbers. Down the bottom it says:

> Payroll Tax
>
> In accordance with [ABS] classification standards, payroll tax receipts are reported net of payroll tax rebates and firm specific payroll tax assistance.
>
> The payroll tax base grew by 6.8 per cent in 2005-06 but net of rebates and grant assistance the growth in payroll tax revenue was lower at 6.4 per cent. Payroll tax collections net of rebates exceeded budget by $18 million.
>
> Forward projections assume growth of 5.5 per cent per annum in the payroll tax base.

If anyone had read *Hansard* and the response from the Leader of the Government on behalf of the Treasurer, they would have said, 'Okay, all right, the government is providing the answer; it's on page 3.9 of Budget Paper 3.' I have just tabled page 3.9 and read its substantive parts, and that is just an example of the arrogance of the Deputy Premier and Treasurer in relation to this issue. He puts on the record that the answers are available there but, clearly, even to any economic incompetent, they can tell that no detail is provided on page 3.9 which would allow anyone (including the opposition) to do any calculations on the policy proposals of Business SA.

So, in relation to that issue—the consultancies and the others that I have given—it is an indication of the frustrations of the opposition, or non-government members—because I am sure the frustrations, having spoken to Independent members, are similar—in terms of seeking genuine information in relation to things as relatively simple as how much it would cost revenue to increase the tax threshold for payroll tax. These, in any estimate, are not extraordinary or outlandish or outrageous requests for information. That information, I am advised from people within Treasury, is available. The costings have been done and they are available to the Treasurer and Treasury. It is just that the government has decided that it will not provide that information to the opposition, the media or, indeed, anyone. That is the range of our frustrations and problems.

A number of solutions have been flagged in the past. One of the more popular solutions has been that members of the Legislative Council should participate in this process with members of the House of Assembly. I think that if that solution were adopted it would be a recipe for even more frustration and lack of accountability. All the inherent weaknesses in the structure of the estimates committee would remain—government control, government chairs, government restriction of questions, government restriction of time, government restriction of when ministers will be questioned and government restriction of the questioning of chief executives.

All those weaknesses of the current estimates committee would remain the same. The only difference would be that a few new members would be included from the Legislative Council as part of the House of Assembly estimates committee process. That solution has been suggested on occasions over the past 10 years by members of my own party. The Hon. Bob Such when in the Liberal Party might have suggested it and latterly as an Independent he has suggested it, as well. If people think it through they would and should realise that it is not a recipe for increasing accountability of any government to the parliament. That is why other solutions need to be considered.

I have been a strong supporter of increasing the powers of the committee system of the parliament throughout all my time in the Legislative Council. I was a strong supporter of the establishment of the Statutory Authorities Review Committee when we were in government. I was a supporter of increasing the committee system when the Bannon government was in power. I was not enamoured with the Groom/Evans proposals with which we were eventually lumbered. From my viewpoint they relied a little too much on joint committees, but, in the end, from opposition it was the best that could be achieved in terms of giving access to Legislative Council members to some committees. When we were in government, the Statutory Authorities Review Committee, which was a wholly Legislative Council committee, was established. I indicate that I played a role in ensuring that it was our policy and that it got up and going when we were in government.

In 2004 during the Appropriation Bill debates I raised my frustration with the current accountability process and flagged the notion of a committee such as this. I indicated at that stage that we had been in government for two terms and had not had a committee such as this. At that stage it was still my personal view. I would argue within my party that if we were to adopt it we would not push for it, even though as a result of discussions with other non-government members in the Legislative Council at the time I am sure we would have had the numbers to establish the committee at that stage. I felt that, in order to be fair to the Labor administration, we had not had such a committee in the Legislative Council for the first term and the Legislative Council should see how the Labor administration operated, although I personally was a strong supporter of it.

It was part of our treasury election policy we took to the election last year. In the Address in Reply I flagged, again, the intention of our moving down this path (its having been accepted as party policy for the Liberal Party) and that we would seek an early opportunity to have it debated and implemented. Early last year I met with Mr Harry Evans, the Clerk of the Senate, someone whose expertise in the area of accountability and operation of upper houses is accepted by almost everyone around the country. I thank Mr Evans for being generous with his time. I spent 1½ hours with Harry Evans talking about the mechanisms that in recent years the Labor Party, the Greens and the Democrats had used to keep Liberal federal governments accountable in terms of providing answers to questions. The estimates committee process was one of the issues I discussed with Mr Evans, and it will be for another occasion to look at some of the other issues I personally am keen to pursue, subject to the views of my colleagues in the Legislative Council.

In January this year, consistent with the policy that we took to the election, I indicated that we would be moving in the first week of the parliament to establish a budget monitoring committee of some type. In relation to the models for these committees, the Senate has one particular model. It has eight legislative and general purpose committees which take on the specific role of estimates committees. The New South Wales upper house has five legislative and general purpose committees, as well, which also take on a role of estimates committees throughout the year. Western Australia has a specific upper house committee called the Standing Committee on Estimates and Financial Operations, which is probably

most useful, together with the Senate experience, in terms of governing what we might do here in South Australia.

In relation to the Senate estimates committees, the key thing to take away from the Senate estimates committees is that, whilst they do look at the Appropriation Bill at the time of the appropriation, they also monitor the progress of the budget throughout the financial year. On two other separate occasions during the year they look at all departments and agencies because they do have the eight committees. On two separate occasions they monitor the budget progress during the financial year.

I am particularly keen on the latter two areas in relation to what we might do here. I think I have indicated before that, given that we will have only one committee (as opposed to the Senate's eight and the five in New South Wales), I do not see that we have the capacity to cover all the portfolio areas each year. Certainly, from the opposition's viewpoint, we do not envisage the operation of the committee at all delaying the consideration of the Appropriation Bill or the House of Assembly's estimates committees which, in my view, provide some useful information and their continuation serves a purpose. They can continue to do what they can, but this budget and finance committee, in terms of monitoring budgetary and financial issues, would take over the role for the rest of the financial year.

The House of Assembly has its own Economic and Finance Committee, which can look at a range of related issues as well, and that is also available for House of Assembly members. The Auditor-General has tended to relate to the Economic and Finance Committee. Under this proposal, the Auditor-General could certainly report to the budget and finance committee of the Legislative Council on a regular basis whenever the committee so required it.

I think that it is important to highlight that, in relation to the system in both the Senate and New South Wales, because we are limited to just 22 members (as opposed to the significantly larger numbers in both the Senate and the New South Wales Legislative Council), we do not have the capacity to replicate their processes, and I do not suggest that we endeavour to do so. The proposition that is being moved tonight is not to replicate exactly the Senate estimates committee process; it is to take the best aspects of the Senate, the upper house of the New South Wales parliament, and the Western Australian upper house, and to try to develop (and I would hope, over a period of time, evolve) a process for budget and finance monitoring that suits the South Australian experience.

As I have indicated in discussions with a number of members already, tonight I will outline in some detail our current thinking in relation to this issue. However, from our viewpoint there are a number of grey areas in terms of the operation of the committee. I suspect that, in the end, the resolution ought to be that, if we do establish the committee, we see how it operates and allow it to evolve and improve its practice, with the ultimate goal being to improve the accountability to the parliament of the executive arm of government.

As I said, the Western Australian experience, with its standing committee on Estimates and Financial Operations, is an interesting one. It looks at the Appropriation Bill at the time it is introduced as a separate process to its House of Assembly. I must admit that, at this stage, my view is that I do not see that as being the role of our budget and finance committee, although, in the end, both the Legislative Council or the committee may decide that there are particular aspects of the Appropriation Bill that needed to be considered. I think that the Legislative Council in Western Australia has all its hearings on one day so as not to delay the Appropriation Bill. However, at this stage, my thinking is that the Appropriation Bill should, by and large, progress as it is intended in terms of time.

If this committee were to be used, it would certainly be used only in a specific area. It may well evolve along the lines of the Western Australian experience, where they may have a limited hearing. As I said, I think that the Legislative Council in Western Australia looks at all the portfolios. In South Australia, our experience might be to pick out just two or three of the more important areas to allow the questioning of senior executives in those portfolios without delaying the Appropriation Bill.

One of our priorities, and one of the weaknesses of the current system, is that it would be our intention that the people who implement the budget—the chief executives and the senior finance officers—would be the primary witnesses before the committee. It is clear that this council has the capacity to require the attendance of senior executives, and that is not in question. Of course, we do not have the capacity to require the attendance of ministers in another place. Whilst they have appeared before upper house committees, in the past it has been an issue for individual ministers to agree to. This government has decided that it will not allow its ministers to be questioned by upper house members. So, it is certainly our view that we will not head down that path. Let us be quite explicit that the intention is that chief executives and senior finance officers are the officers who would be questioned in relation to budget and finance monitoring.

For example, as we see with the Northern Expressway or any other major blunder that has occurred where there is a massive financial overrun, the committee could determine that that particular department could at any time be brought before it for questioning on what has happened, what the reasons were and what the solutions might be. Certainly, in our view, we are not just interested in establishing what the problems are; we are, of course, interested in trying to establish what the solutions might be in relation to some of these significant problems. It might not be just transport; it might be a health capital works project or a recurrent program in the Attorney-General's Department. There are a range of potential issues that could be brought before the committee.

It is certainly our intention that this would be a hardworking committee. At the very least, we would envisage that it would meet on a regular basis, every fortnight. Should the situation continue where there were a government chair, the committee would ensure, through its non-government majority, that what has happened with some of our other committees (where the chair does not call a meeting) would not occur. So, there would be at the first meeting a regular schedule of meeting dates established for the remainder of the year so that, if there is to be a government chair, he or she could not frustrate the committee by not convening meetings of the committee.

The chairing of the committee is an issue that is open to question. Certainly, Harry Evans in the Senate indicated that the majority of the Senate took a very strong view (and implemented it) that there would be non-government chairs of committees because the non-government members were in the majority. The Liberal Party, in government and in opposition, has thus far abided by the convention of accepting government chairs of committees, but I have to say there are a variety of views within my party on that issue. Of course,

it is not just a decision for the Liberal members: it is a decision for the majority of members of either the committee or the Legislative Council to establish. However, I note that the Senate experience is that the majority takes the chair.

The Hon. R.P. Wortley interjecting:

The Hon. R.I. LUCAS: Well, because Howard now has the majority. When Howard did not have the majority, the non-government chair, Democrat or Labor, chaired the committees. Now that Mr Howard has the majority, albeit slight, he has taken back the chairing of the committees. As I said, we have tried, rightly or wrongly, to respect most of the conventions of the Legislative Council, but we are sorely tested when we see this government arrogantly snubbing its nose at other conventions, such as answering questions on notice.

The Hon. R.P. Wortley interjecting:

The Hon. R.I. LUCAS: Well, the monster has already been created, Hon. Mr Wortley, by the government refusing to acknowledge the convention that it answer questions on notice. I can assure the Hon. Mr Wortley that one does not have to argue who is moving first in relation to this issue. We have solidly respected the conventions of the council, but our resolve will be sorely tested in relation to this issue, depending on the approach of the government. Certainly, that is an issue about which we are open to discussion and debate.

As I said, CEOs and senior officers will be the primary witnesses. There would be regular meetings of the committee; we would envisage at least once a fortnight. Clearly, it is our position as a party that, should we be elected to government either at the next election or at some subsequent election, the arrangements for this committee ought to be more formalised.

The other committees are established under the Parliamentary Committees Act. We clearly do not have that capacity at this stage. Frankly, the way we are doing it is probably the best way in the first three years so that it can evolve. The motion I have moved tonight is very simple. It is wide-ranging and flexible in terms of its breadth. Its operations will be significantly up to the members of the committee to decide, and we can see what works and what does not work. From the discussions my staff have had with the Western Australian staff, our experience is that they, too, are learning as they go, although their committee is included in their standing orders and they do not have quite the flexibility in the initial stages that we have. This particular committee has been operating for only about two years in Western Australia.

One of the final issues I want to raise relates to how the committee can be utilised by the Legislative Council. The current motion before the council is for a committee of five, which at this stage would be two government members, two opposition members, and one third party or Independent member. Now that I have formally moved the motion and outlined it in detail, members of the Legislative Council will at least be able to understand a little more of the detail of what we are suggesting.

We are certainly open to the suggestion of a committee of six, which would include two Independent or non-government members. However, it will be a significant commitment. In my initial discussions with some Independent and non-government members, we will need to establish the degree of interest there is in terms of their wanting to make this sort of commitment on a regular and ongoing basis to such a committee. I hope to have more formal discussions with the Independents and third party members over the next couple of weeks in relation to specific aspects of what I am raising tonight.

So, that is one option in terms of involvement. The other option, which I have to say I do not have a concluded view on yet, is something I have ascertained only in the past 48 hours. In the Western Australian parliament, the Estimates and Financial Operations Committee (their upper house committee) has in its standing orders (which applies to all committees, not just the Estimates and Financial Operations Committee) the provision:

> Any member of the council may participate in a committee's proceedings and, by leave of the committee, its deliberations, but may not vote. Leave can be given only for a specific inquiry, but a member may be given leave in relation to more than one inquiry, whether or not those inquiries are contemporaneous with one another.

As I said, I have established this only in the past 48 hours, as I looked at how the committee processes might be available to other members of the Legislative Council, and I see a problem with that potential model.

It is early days in Western Australia. If you have five members of the committee you may well end up being swamped by everybody else arriving at the committee—they cannot vote, of course, but in terms of questioning. The argument for it, of course, is that it allows all members of the Legislative Council who might not want to devote all their time and effort to the committee to come along on occasions and to ask questions.

As I understand our current arrangements, that is not possible at the moment. We would either have to amend our standing orders or amend this motion in some way. I do not personally have a concluded view on it. My colleagues have not yet had an opportunity to have the debate either, so we do not have a concluded view on this issue. We have the opportunity also of looking at the Western Australian model where, evidently, all members are polled a number of days prior to the committee hearings. If they know the health department is coming up they are provided with the opportunity of placing questions, in essence, on notice. The chief executive of the department comes along, provides answers to all other members' questions and the members of the committee can pursue particular issues if they are not satisfactorily answered at the committee stage. That is another option that might be more manageable in allowing opportunities for non-committee members to avail themselves of the process.

I did not pick this up until after I had had a discussion with Harry Evans. I only picked it up again this morning. When I was reading the standing orders of the Senate, I noted that the Senate has a provision under standing order 25(7) where senators may be appointed to the committee as a substitute for members of the committees in respect of particular matters before the committees. I have not had a discussion with Harry Evans about that but, at least on the surface, it would appear to indicate that if, for example, a member of the committee—let us say an Independent or non-government member—did not have a particular interest in the health department and that person was a member of the committee, they might be able to appoint as a substitute somebody who is an Independent or non-government member who is very interested in the health portfolio for that hearing. That, again, might be more manageable because at least you know you always have the five or the six, rather than somewhere between five and 21 members turning up to a committee room to ask questions of witnesses.

Again, these are all options or variations which are not currently part of the proposal. I have not had the opportunity

to form a view myself or have a discussion with my colleagues in relation to the options. I do know, from some discussions with Independents and third party members in the past few days, that they have been interested as to how the committee might be structured and how its processes might be made available to more than just the five members of the committee. In the past 48 hours that has been the result of the research that we have been able to do in relation to that issue.

That is a more than required summary of the arguments about the need for this committee. It is our intention, subject to discussions with other interested parties, to have a vote on this before the parliament is prorogued, whenever that might be, so that we can resolve the position of the Legislative Council on the issue. Obviously then, after prorogation, it will need to go through other processes again in a new session of the parliament, but our current thinking is to try to reach a conclusion on this issue as soon as our processes can reasonably accommodate it. With that, I urge members of the Legislative Council, particularly the six non-government members other than members of the Liberal Party, to consider earnestly this proposal. It has not come as a knee-jerk reaction: it is something which has been well thought through by members of my party, based on discussions with people over the years, and former members as well, about what might be done.

It is based on the experiences in three other upper houses—the Senate and the New South Wales and Western Australian upper houses—so it is not an experiment in the dark. It is based on solid experience in other states and territories. I repeat that we do not see this as being a replication of the Senate estimates process, but we hope it will be a model picking the best of the Senate, the New South Wales and Western Australian upper house models and, hopefully, over the next three years, evolving into an appropriate mechanism, not just for this Labor government but for all future governments—Labor and Liberal—providing accountability to the Legislative Council through this budget and finance committee.

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

CRIMINAL LAW CONSOLIDATION (SERIOUS CRIMINAL TRESPASS) AMENDMENT BILL

The Hon. D.G.E. HOOD obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935. Read a first time.

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

That this bill be now read a second time.

In introducing this bill today I make plain that methamphetamine manufacturers are dealing in death, plain and simple. Family First has been devoting all of its energy this week and in previous weeks to make meth dealers' lives as hard as possible. As a cornerstone of our campaign, this bill toughens up the law relating to break-ins on pharmacies and other places that legally store controlled drugs or drugs containing controlled precursors. To quote from the Pharmaceutical Society of Australia code of practice regarding pseudoephedrine from November 2006:

> For some time now pseudoephedrine has been targeted for non-therapeutic purposes. All forms (single ingredient and compound, solid dose forms, liquid preparations and raw powder) are being used in the manufacture of amphetamines in clandestine laboratories for the illicit drug market. Recent reports show that most of the methamphetamine now available on Australia's illicit drug market is produced from pseudoephedrine containing medicines diverted from community pharmacies.

Clearly the majority of methamphetamines being produced are as a result of the precursor ingredients, which are obtained either legally or illegally through pharmacies by these drug crooks. In the past two months it has been widely reported that we have had some 27 pharmacy break-ins. That is 27 pharmacies too many—almost one break-in every two days—and it is totally unacceptable. A recent article focused on one pharmacy in Northgate being the latest target, with thieves smashing a hole in the door last Thursday in the early hours of the morning, again with the pseudoephedrine-based drugs being targeted in this pharmacy.

My office did a survey of several pharmacists in the Adelaide area, with one pharmacist just off Rundle Mall telling us that they are often threatened to hand over cold and flu tablets. Apparently one client only last week at this pharmacy had become very aggressive when they quite rightly refused to sell the cold and flu tablets to that particular individual.

Prior to entering this place I worked for Johnson & Johnson which, as members would know, is one of the largest pharmaceutical companies in the world. For that reason the responsibility for this bill has fallen on me as the Family First representative to work up an antidote for this problem. I am pleased to report to the council that we have the support of the South Australian Pharmacy Guild President, Mr Ian Todd, for this bill. To quote his comments in *The Advertiser* on Saturday:

> Having harsher penalties would be another way of sending the message to people that it is an unacceptable risk to break into a pharmacy.

We have also be in contact with the Registrar of the Pharmacy Board, Peter Halstead, regarding this proposal and he was also very concerned with the large number of break-ins recently and supportive of any measures to clamp down on offenders, including this measure.

Lawyers or members familiar with the Criminal Law Consolidation Act will be familiar with the provisions relating to serious criminal trespass. There are different categories for trespass on residential and non-residential premises. There is a different category for aggravated and non-aggravated offences. In a nutshell, there is a list of characterisations that make an offence aggravated. For instance, breaking into a residential house and threatening to use or using a weapon is one aggravating factor, and breaking in and committing an offence against a police officer or prison officer aggravates the offence. This bill makes breaking into a pharmacy an aggravated offence, which currently it is not. Pseudoephedrine is also stored in other drug repositories, surgeries, laboratories and warehouses, and these places are also protected under this bill. It is not just pharmacies that will be affected but all of those places that legally store such medication.

Importantly, the bill is designed to protect those businesses that are acting lawfully and will not afford protection to those who are running illegal drug labs or storing chemicals illegally. If you are housing these precursor drugs illegally, or if they are the result of illegal activity, this bill does not provide any protection for people in that situation whatsoever. When we make such offences aggravated they become major indictable offences rather than minor indictable offences. This is the crux of the issue: such offences are dealt with in the District Court rather than the Magistrate's Court

and therefore penalties increase substantially. At the moment the maximum penalty would be 10 years, and potentially under this bill in the most extreme cases, although rarely, there would be a maximum penalty of 20 years imprisonment.

In the opinion of Family First, meth crooks who break into pharmacies and other drug repositories should be dealt with by a judge and not as defendants in minor Magistrate's Court proceedings. I know that increased penalties for pharmacy break-ins tie in well with the increased commonwealth penalties for the importation, domestic possession, manufacture and trafficking of precursor chemicals as part of the 2005 amendments to the commonwealth criminal code. Some members might ask why these new laws are necessary. It is true that last year pharmacies reduced the standard pack size of cold and flu tablets from 30 to 12, on average. The Pharmacy Guild has done its utmost in advising chemists to reduce their holding of pseudoephedrine tablets left unsecured overnight. Some pharmacists who have the facilities to lock up the tablets at night are doing so.

However, the problem is still so severe that there has been talk of removing pseudoephedrine based tablets completely from stores and relying on alternatives such as Sudafed PE tablets, which are based instead on phenylephrine. Unfortunately, pseudoephedrine-based tablets are required in the treatment of several conditions such as chronic sinusitis and middle ear infections and are generally considered to be far more effective than phenylephrine based tablets—and I know this from experience. While pseudoephedrine is found in chemists they will remain targets. I therefore believe this bill is very necessary. The 27 violent break-ins that have occurred in pharmacies in the past few months is ample demonstration of this.

Methamphetamine addiction is destroying lives, communities and families. Methamphetamine type drugs are the most widely used illicit drugs after cannabis. More than 52 000 South Australians over 14 years have used methamphetamines in the past year, according to a recent paper released by the Australian National Council on Drugs. That represents approximately one in 30 people in our state in the past 12 months over the age of 14 years having used methamphetamines. The report also found that meth use was on the rise, with some 73 000 dependent users across the nation. I made comments earlier today in my matters of interest contribution about the effects of methamphetamines and the steps that Montana has taken to address this scourge.

I would also like to point out another US program called 'Faces of Meth', which is primarily a website at www.facesofmeth.us run by the Oregon Sheriff's department. It shows graphic pictures of the before and after shots of people who have been abusing methamphetamines for some time. If anyone is in doubt as to the terrible effects of methamphetamine, this website is a wonderful tool and will certainly dispel your doubts immediately, I suggest.

A little while ago, Robert Mittiga, program director of the Gambling and Addiction Treatment Service, went on to say that 'methamphetamine is the next heroin,' and that—in his words—'it's the devil's drug.' It is not a harmless party drug as some say, and he talked about the consequences, as follows:

> Violent crimes, serious domestic violence, road rage and violent brawls. These people are not normally aggressive but they can become total animals.

I rarely agree with Dr David Caldicott, but even he says:

> The size of the methamphetamine problem is now every bit as big as heroin in the late 1990s. It is a tremendous concern because methamphetamine is associated with addiction, psychosis and violent psychosis.

I would add that it is a major trigger for crime in this state, draining on our legal system, a trigger for domestic violence and the absolute destruction of families. No words that I could say could do justice to the amount of damage that pseudoephedrine-based drugs have done to South Australian families. As I said, one in 30 people in South Australia have experimented with methamphetamines in the past 12 months.

So, for two reasons, and the reasons I have already mentioned, I ask members to support my bill this evening. First, to warn members of our societies that pharmacies and other drug repositories should not be broken into, just as a matter of respect for those businesses. Indeed, our business owners deserve increased protection. Secondly, my bill attempts to restrict the flow of pseudoephedrine and therefore the operation of clandestine drug laboratories and manufacturers of misery and despair which significantly—I was going to say 'impact'—destroy families. I commend the bill to members.

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

PROTECTION OF PUBLIC PARTICIPATION BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 1247.)

The Hon. M. PARNELL: I sought leave to continue my remarks on this bill because there was a particular case that I wanted to talk about, but late last year it was before the courts and it had not been resolved so I decided to wait until that matter was over before raising it as a case study in support of why my bill is needed. Since December, when I commenced my second reading speech on this bill, another issue has arisen which I believe is directly relevant to why we need this type of legislation.

The first case study I want to refer to relates to a company called Entech. Not far from here, at Devon Park, is a factory that is owned and operated by Entech Circuits and Graphics Proprietary Limited. The managing director of Entech is one Mr Douglas John Charles Brown. The Entech group of companies consists of some eight companies, operating from three sites: Regency Park, Keswick and Devon Park. According to documents that I obtained from the District Court, Entech carries out a range of activities at its Devon Park site, including that it is the head office for the Entech group of companies, it is a showroom, a warehouse and it is also used for paint mixing, colour matching, screen printing, product development and testing, repairs and maintenance work, spray painting, oven curing, oven baking of painted panels, laboratory work, quality assurance and administration and marketing.

The Devon Park site is in very close proximity to housing. In fact, the factory is directly across the street from several homes. It is from these residents that a number of complaints were made about pollution from the Entech factory. I will read out some extracts from a letter written by one of the residents who lives near the Entech plant. This is a letter that was circulated fairly widely to Port Adelaide and Enfield councillors, various state government agencies and various ministers, including the Attorney-General, the Hon. John Hill and the Hon. Kate Ellis of the federal parliament. This is how a resident describes living close to the Entech factory:

I am very concerned about the manufacturing process that happens directly across the road from my home. Entech Circuits and Graphics is located on the block of Belford Avenue, Bolingbroke Avenue and Alexander Avenue. A large chimney stack is located on Bolingbroke Avenue, in direct view with direct access to my home. Every day my family is breathing the polluted air, due to the fumes being created from inside the factory being expelled via the chimney stack right to our front door. The fumes also come out of the factory when their roller door is open and also through non-sealed windows, etc. Although intermittent and irregular, the smell is distinctive.

Since April 2005 I have made complaints to both the EPA and the Port Adelaide Enfield Council. I have two little boys aged four and one. I am extremely worried about the effects of the fumes on their health. I am also concerned for my husband and myself too. To date, after many requests, I still do not know what chemicals/processes are being used in the factory. I also do not know what the fumes are made of. Since I first noticed the fumes, it is only on a rare occasion that I allow my boys to play outside. They have a wonderful play area out the back with swings, etc., covered with shadecloth to protect them from the sun. What is the point! Often if I have windows/doors open, I am forced to close them as I can smell the fumes entering my home. We should not have to live like this.

I have been in regular contact with the environmental health department at the Port Adelaide Enfield Council. I was advised by this department that 'the chimney stack had been raised and additional high quality wet scrubbers and carbon filters been installed and commissioned'. Claiming this is a 'very effective way of preventing odour problems'. To date, we still have polluted air. The fumes are not as intense, but still can be smelt and seen from the chimneystack. I will continue to complain to the council.

The letter goes on:

I am writing to all people that I think need to be aware of our problem with Entech, here at Devon Park. My family and I have the right to breathe air that is not polluted by toxins coming from this factory across the road. I have the right to know what is actually going on in the factory to make our air smell so bad, often unbearable when it is warm. Also to know what makes up the fumes coming from the chimneystack.

In this day and age we have enough pollution in our air, so we certainly should not have to put up with this in and around our home. My little boys deserve better.

I feel that it's extremely important and urgent that we, the residents, are made aware of what is happening across the road from our homes. Our health is likely to be at risk. I have experienced unusual tastes and sensations in my mouth when I have been exposed to the fumes/smell. Often I feel lightheaded and this too could be caused by the factory. I am very worried for my boys because one day I was gardening out the front and at my height standing up there was no smell evident. However, at ground level the smell was intense. This is the height that my little boys are at all the time. What are they breathing and how often is the air polluted at their level? Surely I am entitled to know.

I will not read the whole of the letter, but it goes on in the sort of vein that many of us here would have heard before, where residents are concerned and take it upon themselves to write to people in authority to try to have their situation improved.

While some residents limited their action to direct dealings with the company or to complaints to officials such as the EPA, local council and members of parliament, some other residents went further afield. A little over a year ago, in December 2005, a group of affected residents who live near the Entech plant held a small protest near the factory, and that was reported in the local Messenger Press under the headline 'Factory odours annoy' and the sub-headline was 'Smells are terrible say neighbours'. I will just read a couple of sentences from that Messenger Press report of 14 December 2005. It states:

Port Adelaide Enfield Council will assume the role of environmental watchdog following complaints from a group of Devon Park residents about odours from a nearby factory. The council has taken the unusual step of agreeing to employ its own air quality monitors to analyse emissions for The Entech Group's Belford Ave site. Some nearby residents have complained, saying foul odours emanating from the factory, which manufactures printed circuit boards, have made life unbearable.

The article goes on to state:

Resident Marie Leshinskas said the smells affected her quality of life. 'It's a terrible smell, it leaves a dry, metallic taste in your mouth and a burning sensation in your throat and it doesn't take long to start getting short of breath,' she said.

So, again, it is a fairly typical Messenger Press report of a local pollution incident where the residents are concerned about the quality of air they are breathing.

About a month after that article appeared in the Messenger Press, the woman who I last quoted, Marie Leshinskas, and one of her neighbours, wrote a further letter to the Messenger Press which was published on 18 January 2006, and that letter reads:

Factory health concerns

'Factory odours annoy' was the Messenger article headline . . . referring to the Entech factory at Belford Ave, Devon Park, which manufactures fibreglass-based circuit boards. Yes, odours do annoy, but residents are concerned about the toxic, choking fumes. Residents are experiencing increasing health problems, such as headaches, nausea, dizziness, coughing, shortness of breath and burning in the throat. These symptoms have been occurring since the beginning of 2005 when Entech changed its operations—is this a coincidence?

We have not received satisfactory answers from Port Adelaide Enfield Council, the EPA or MPs contacted about:

- why a factory producing toxic fumes is permitted to remain in a residential area;
- how the site of a (Solver) warehouse can become the site of manufacturing;
- how it is Entech required an EPA licence at its previous plant at Keswick and did not at Devon Park, and what chemicals we are being exposed to.

The letter goes on to talk about some of the chemicals that they were particularly worried about. The letter concludes:

Citizens who have lived here for years are being forced out and losing money as well, because who wants to buy in this area now? Our health is at risk. We often feel we are getting the runaround, with authorities and MPs passing the buck.

Again, members would be familiar with that type of letter to a Messenger Press newspaper. We see that sort of complaint or report all the time.

In my view, one of the inevitabilities of doing business—not just in this state, but anywhere—and one of the costs of doing business is that you need to engage as a corporate citizen with all manner of stakeholders, including government agencies, local councils and local communities. And often it will be a tense relationship, but corporations and businesses often cop criticism from their local communities and they need to deal with it. Dealing with criticism should involve things such as modifying your operations if they are, in fact, causing problems; informing and engaging local communities; and correcting any alleged misinformation through the media, if that is where the alleged misinformation came from.

That was not what Entech and Mr Brown chose to do: they went straight to the lawyers. In this case the lawyers were Kelly & Co, and, under the hand of one of their partners, Rob Kennett, they wrote to the ladies who had written to Messenger Press and threatened to sue them. Kelly & Co's letter, after having complained about the activities of the ladies in writing to Messenger Press, said:

Within 7 days of the date of this letter you will publish to our clients, the Messenger newspaper [etc] a letter of retraction and apology in the form set out in the attachment to this letter.

Basically the letter says that unless, within a week, they have fully retracted every criticism they made of this company dire legal consequences will follow. The letter concludes:

> This is a final offer and our clients are not prepared to negotiate terms with you. If you fail to comply with these demands within the time stipulated, as previously indicated, we will take the appropriate steps to recover our clients' losses, vindicate their personal and professional reputations and protect their business. We hold instructions to issue proceedings without further notice should you fail to so comply.

This is a totally heavy-handed corporate response to a couple of people who live in a neighbourhood where there are serious concerns about their health and who have complaints about the pollution that is invading their homes.

When no apology was forthcoming Kelly & Co went to the next level and issued writs in the District Court for defamation against the ladies who had written to the Messenger Press complaining about the pollution. In the company's statement of claim it basically said that it had cost them money to respond to those who had criticised their operations and who had complained about the pollution. In their statement of claim, under the heading 'Particulars of Loss', it said 'The first plaintiff has incurred costs and expense in answering the allegations made in the Messenger letter and flyers' (there were some flyers for which they alleged these two ladies were also responsible). These losses included:

> internal wage and administration costs; cost and expense involved in obtaining specialist environmental reports to disprove the defendants' allegations and appease their concerns; and cost and expense involved in retaining public relations consultants to minimise the damage caused to the plaintiffs' reputations and business.

Basically, they are saying that the normal costs of a corporate player, a polluting industrial player, in dealing with its local community are costs for which they should be able to sue local residents and recover in a court of law. In terms of the claims they made the plaintiffs sought:

> damages in respect of the Messenger letter and the flyers; aggravated damages; exemplary damages. . .

It seems that they want to create as much fear as possible and give the defendants the clear message that they are very likely to lose everything they have. The plaintiffs also sought an injunction restraining the defendants, whether by themselves or as part of the Devon Park Residents Group, from publishing or causing to be published any statements to the effect that, for example:

> the first plaintiff unlawfully produces and emits toxic fumes at the Devon Park site; the first plaintiff's operations at the Devon Park site have caused severe health problems for Devon Park residents and their pets; the first plaintiff's operations at the Devon Park site have exposed Devon Park residents to chemicals which are a threat to public health. . .

In other words, they are seeking an injunction and asking the court to make these residents stop telling it like it is, make them stop saying that this pollution makes them feel sick—in effect, stop them from telling the truth.

What is most interesting in this case is that there were no threats whatsoever issued to Messenger Press. Now, if you are serious about recouping losses, if you are serious about having suffered loss and wanting to recover it, you chase the deep pockets. That is what litigation lawyers do. Chasing deep pockets means chasing the media outlets, yet no threats were made against Messenger Press and no legal action was taken against it. Why did Kelly & Co not chase Messenger? Because they knew that their claim was half-baked, that Messenger Press would fight it and would probably win. This shows me that Entech was primarily interested in silencing its pesky neighbours; it was all about shutting up the residents and stopping the complaints about the pollution. That is what SLAPP suits are all about—strategic litigation against public participation. If you silence your critics you win. That is why I have introduced this bill, to protect the right of public participation and try to protect residents from SLAPP suits and prevent them from occurring.

One of the problems with this jurisdiction is that, if you say that a company is simply using legal actions or threats for the purpose of silencing critics, that claim itself can be used against you as an additional alleged defamation. Back in the Hindmarsh Island bridge defamation cases the Conservation Council was sued for suggesting that earlier legal action taken by the Chapmans was a SLAPP suit, an attempt to silence dissent. Of course everyone involved in the case knew that that was exactly what it was, but you said it publicly at your peril, such was the climate of fear created around that sorry litigation. However, I can say it here: Tom and Wendy Chapman sued their critics in order to silence them and stop the campaign against the bridge. If I say it outside I risk being the umpteenth defendant dragged through the South Australian court system.

Back to Entech at Devon Park. This action is a classic SLAPP suit. It is a half-baked legal action and it was aimed at relatively powerless and certainly not rich local residents as a tool to stop their protests. My bill aims to make such conduct harder to maintain. There should be no place for bullying behaviour, and the companies that engage in those practices and the lawyers that aid and abet them deserve our condemnation. Most importantly, citizens deserve the protection of the law so that they can responsibly engage in public debate on issues that concern them. Entech should be ashamed of its behaviour and so should Mr Brown. If my bill had been in place then this dispute would have been quickly resolved without the residents having to stop raising their legitimate concerns.

The lawyers from Kelly & Co.—the lawyers for Entech—should be ashamed of themselves, as well, for their role in this bullying behaviour. I do not think it is good enough for lawyers to rely on the Nuremberg defence and say that they are simply doing their client's will. It did not work at Nuremberg and it should not work here. As I said in the first part of my second reading contribution, I do not believe the legal profession is up to the task of regulating this type of behaviour in its own ranks and that is the reason the creation of a statutory right to public participation is so important.

The second case study to which I want to refer concerns a dispute that has raged across the pages of the Messenger press—this time more recently. It concerns the Walkerville council and the developer Holcon. On 17 January this year the *Standard* Messenger newspaper published a front page story under the heading, 'Mayor fights gag'. That story was about a dispute over housing development in Walkerville and the pressure that the company Holcon is bringing to bear on the newly elected mayor, David Whiting. According to the newspaper report, a director of Holcon Mr Stephen Connor had written to the new mayor urging him to stop his opposition to the development. The letter also contained veiled threats of legal action against the council and councillors. The article in the Messenger press states:

> Holcon wrote to Mr Whiting shortly after he was elected last November, demanding he retract comments made during his election campaign opposing the town centre development.

Imagine if the situation existed in this parliament that you could campaign during an election period for some principle only to be told once you were elected it was against the policy of the previous government and that, therefore, you were no

longer allowed to campaign on that issue. It is quite a ridiculous situation. Leaving aside for one moment the implications for democratic governance of developers being able to silence elected representatives, if that was the end of it then one might be able to fob off this case study as another case of robust business confrontation. There are companies, obviously, but there are also fairly empowered people who do have some access, for example, to legal resources. However, that is not the end of this matter because Holcon has cranked it up to the next level by bringing in the legal guns to put fear into the heart of council as part of a campaign to silence its critics who are now well represented on the elected benches of council.

Three days before Christmas a number of council elected members and staff received letters from Kelly & Co.—the same lawyers behind the shameful Entech litigation. The person who alerted me to the fact that this was happening did so on the condition of anonymity. They wrote a letter to me and it had 'confidential' and 'anonymous' written all over it. The final paragraph of that letter states:

> If you have any doubts as to the privileged nature of this communication I request that you keep it confidential. I have no desire to be the next target. I have checked the facts as best I can, given the limited documentation available.

The tone of that letter—'I have no desire to be the next target'—shows the effectiveness of this type of bullying legal behaviour. It does not even require a legal writ: all it requires is lawyers' letters threatening these types of outcomes. The letters from Kelly & Co. set out that the lawyers are saying to the recipients that they should back off from criticising Holcon, the client of Kelly & Co., and they should refrain from any engagement in the issue, including any involvement in council decisions. I will read an extract from the Kelly & Co. letter. The letter is addressed to a member of the council. It states:

> You have a clear conflict of interest in this matter as a person who would suffer a non-pecuniary detriment if the motion was passed [referring to a council motion]. You failed to disclose your obvious conflict of interest in this matter prior to the vote on the motion. Your actions breach sections 73 and 74 of the Local Government Act 1999. Further, in voting on the motion, you have made an improper use of your position as a member of the council to gain an advantage for yourself. In doing so, you have committed an offence under section 62 of the act and are liable for a maximum penalty of $10 000 or imprisonment for two years.

This is not a letter from the DPP: this is a letter from the lawyers acting for the developers, advising these people that they are guilty of offences and the penalties they might face. The letter continues:

> Pending your response to this letter, our client is considering its position—

that is classic legal language—

> with respect to its intention to institute legal proceedings seeking:
> 1. to annul the resolution; and
> 2. orders for conviction for infringement of, inter alia, section 62 of the act.

So, pending your response we reserve our rights to do these bad things to you, including seeking orders for conviction. This law firm is not the police. It is not the DPP. It does not have the ability to prosecute these people. The letter continues:

> We request that you provide written confirmation by no later than 5.00 p.m. on Friday 29 December 2006.
> 1. that you will not take part in any future discussion by the council in relation to the redevelopment project; and
> 2. of the steps you intend to take to rectify your omissions as set out above.
>
> This letter will be produced to the court on the question of costs.
> Yours faithfully
> Kelly & Co.
> per David Colovic
> Partner

That is a most remarkable letter for a law firm to be sending to staff and elected members of council.

The first thing I note is the date of the letter. It was dated three days before Christmas (so presumably it arrived two days before Christmas), and it seeks a response in the period between Christmas and new year. This is classic SLAPP stuff. If you read the textbooks on how to intimidate protesters (SLAPP Suits 101 at university), the first thing you do is issue legal proceedings or make your threats just before a holiday period. Good Friday is a good day to do it, and Christmas Eve is another popular date. So, here they are sending threatening letters to people during a period when they are very unlikely to be able to access legal advice.

The claim of conflict of interest is a serious one. As far as I can make out, the only ground seems to be that the recipients of these letters were vocal critics of the proposal. They had taken various actions against it, such as lodging objections and voting for motions seeking to delay the development. I have not seen any evidence that any of the councillors—for example, rival developers, neighbouring property owners, or any of the other categories of people—were recognised as having a conflict of interest in relation to decisions about development. The developer's threats, or their lawyer's threats, seem to be based on the fact that the previous council had a deal with the developer and therefore the newly elected councillors had no right to criticise the development or do anything to stop it. That is akin to a change of government in state parliament, with someone threatening the newly elected government, saying, 'We had an arrangement with the previous government. You're not allowed to criticise our development.' It is really quite outrageous.

It seems to me that, if the developer is right and there is some breach of the contract the developer might have had with the council, the developer's action would be a legal action for breach of contract and it would be against the council. However, to threaten and bully individual elected members is, in my view, unconscionable. I think it is unprofessional, particularly unprofessional on behalf of the lawyers who are involved—again, Kelly & Co. I think it may be even worse than I have stated. If you look at what Kelly & Co. is saying, it is effectively this: 'You have broken the law, and we think that we might seek the laying of criminal charges against you, but what we really want to is for you to back off and let our client's development go ahead. If you do that, we might not pursue you further.'

When I read that, it had to me the whiff of illegality about it. It did not sound like the sort of thing you should be able to do—that is, hold over someone's head the prospect of reporting criminal behaviour unless they do what you want. So, I referred the letter to a leading criminal Queen's Counsel. I was immediately phoned and told to read part 7 of the Criminal Law Consolidation Act 1935, which deals with offences of a public nature. Very briefly, I will explain to members the nature of that part of the Criminal Law Consolidation Act and how it works. The first thing it does is to define 'public officer', which includes a member of a local government body or an officer or employee of a local government body. Incidentally, it also includes all members of parliament, so we are covered by this provision: we are

public officers. Section 238 sets the standard under which public officers are to behave and comply. It provides:

For the purposes of this Part, a public officer acts improperly, or a person acts improperly in relation to a public officer or public office, if the officer or person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind, or by others in relation to public officers or public officers of the relevant kind

It sounds convoluted, but basically what it is saying is that you have to behave with propriety. If Kelly & Co. is correct and there are undeclared conflicts of interest, that would likely be an offence against section 238 of the Criminal Law Consolidation Act. So, it is not just a question of the Local Government Act; it is also the criminal law. Part 7 (and this is where it gets back to Kelly & Co.) also contains another offence, namely, the offence of impeding investigation of offences or assisting offenders. Section 241 provides:

(1) Subject to subsection (2), a person (the accessory) who, knowing or believing that another person (the principal offender) has committed an offence, does an act with the intention of—

(a) impeding investigation of the offence; or

(b) assisting the principal offender to escape apprehension or prosecution or to dispose of proceeds of the offence,

is guilty of an offence.

What that is saying is that if you know or believe that someone has committed an offence, and you do something to impede an investigation or assist them to escape prosecution, you too are guilty of an offence. What is Kelly & Co. doing in its letter to these Walkerville local government people? It is saying, 'You have committed an offence. We are thinking about taking it to the proper authorities, but we might not if you do things our way.' It seems to me that that is very close to the edge of illegality itself, and I think that it is an appalling way for a law firm such as Kelly & Co. to behave.

I believe that the type of behaviour I have referred to in these case studies is not the way that civil society should work. I think that it is an affront to our democratic rights to engage in public participation on matters of public interest that we should be subject to threats and bullying tactics by developers, for example, or corporations and their lawyers. I do not know whether Kelly & Co. is trying to position itself in the legal marketplace as South Australia's leading SLAPP lawyers, but I for one will continue to name and shame in this place lawyers who engage in tactics that stifle free speech.

I will not go through a detailed explanation of the clauses of the bill, but I will say, in summary, that the key clause is clause 5, which creates the right to engage in public participation. We know that we do not have a bill of rights, and we know that we do not have a statutorily guaranteed right of free speech. We have some uncertain High Court pronouncements on what the extent of political free speech might be. However, here is a better way of doing it, and that is to create by statute a right of public participation. It is not an absolute right. It is not a right that says people can be violent or damage property. Responsible behaviour has boundaries, and the boundaries are as I have set out in the bill.

Other mechanisms of the bill relate to how people who believe their right to public participation has been infringed can seek rapid redress through our court system. Up until now, you have to wait until you are actually sued. There is no response you can make to bullying legal threats: you have to wait until you are sued, and then you have to go through the process of defending that legal action. Under this bill, the threat of legal action also triggers the right to go to court and get a declaration that you were simply engaging in your right to public participation. With those words, I commend the bill to the council.

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

UNITED NATIONS POPULATION REPORT

Adjourned debate on motion of Hon. I.K. Hunter:

That the Legislative Council of South Australia—

1. recognises that—
   - (a) a report from the United Nations Population Fund (UNFPA) State of the World Population 2006—A Passage to Hope: Women and International Migration—was released on 6 September 2006;
   - (b) women constitute almost half of all international migrants worldwide—95 million or 49.6 per cent;
   - (c) in 2005, roughly half the world's 12.7 million refugees were women;
   - (d) for many women, migration opens doors to a new world of greater equality and relief from oppression and discrimination that limit freedom and stunt potential;
   - (e) in 2005 remittances by migrants to their country of origin were an estimated US$232 billion, larger than official development assistance (ODA) and the second largest source of funding for developing countries after foreign direct investment (FDI);
   - (f) migrant women send a higher proportion of their earnings than men to families back home;
   - (g) migrant women often contribute to their home communities on their return; for instance, through improved child health and lower mortality rates, however;
   - (h) the massive outflow of nurses, midwives and doctors from poorer to wealthier countries is creating health care crises in many of the poorer countries, exacerbated by massive health care needs such as very high rates of infectious disease;
   - (i) the intention to emigrate is especially high among health workers living in regions hardest hit by HIV/AIDS;
   - (j) the rising demand for health care workers in richer countries because of their ageing populations will continue to pull such workers away from poorer countries;
   - (k) millions of female migrants face hazards ranging from the enslavement of trafficking to exploitation as domestic workers;
   - (l) the International Labour Organisation (ILO) estimates that 2.45 million trafficking victims are toiling in exploitative conditions worldwide;
   - (m) policies often discriminate against women and bar them from migrating legally, forcing them to work in sectors which render them more vulnerable to exploitation and abuse;
   - (n) domestic workers, because of the private nature of their work, may be put in gross jeopardy through being assaulted; raped; overworked; denied pay, rest days, privacy and access to medical services; verbally or psychologically abused; or having their passports withheld;
   - (o) when armed conflict erupts, armed militias often target women and girls for rape, leaving many to contend with unwanted pregnancies, HIV infection and reproductive illnesses and injury;
   - (p) at any given time, 25 per cent of refugee women of child-bearing age are pregnant;
   - (q) for refugees fleeing conflict, certain groups of women such as those who head households, ex-combatants, the elderly, disabled, widows, young mothers and unaccompanied adolescent girls, are more vulnerable and require special protection and support;
   - (r) people should not be compelled to migrate because of inequality, insecurity, exclusion and limited opportunities in their home countries;

(s) human rights of all migrants, including women, must be respected.

2. encourages—

(a) governments and multilateral institutions to establish, implement and enforce policies and measures that will protect migrant women from exploitation and abuse;

(b) all efforts that help reduce poverty, bring about gender equality and enhance development, thereby reducing the 'push' factors that compel many migrants, particularly women, to leave their own countries, and at the same time helping achieve a more orderly migration program.

(Continued from 1 November. Page 852.)

The Hon. J.M.A. LENSINK: I rise to indicate Liberal Party support for this motion. I have pleasure in speaking to this motion, as a member of the Parliamentary Group on Population and Development in Australia, as are a number of members of this chamber. The PGPD supports the empowerment of women and girls through its commitment to gender equality and the advancement of women and affirms that equality goes hand in hand with investment in sexual reproductive health, education and economic opportunity. Taken together, these investments can lift millions of people out of poverty. As a member of that organisation, I commend the Hon. Sandra Kanck for highlighting the existence of this organisation to a number of us who would otherwise not have joined.

This motion recognises the United Nations Population Fund and, in particular, the State of the World Population Report 2006—A Passage of Hope: Women and International Migration. This report highlights the sacrifice and contribution women make, particularly to their families and communities, when they leave their home of birth and go overseas and often send remittances back to assist their families. The publication is a fairly sobering read about human rights abuses and the abuse of many of the rights we in this country take for granted. The report is quite harrowing in sections.

When I was in the UK last year, I attended a women's conference where the issue of trafficking women was raised. Australia was commended for its role in attempting to reduce trafficking within Australia and by Australian citizens abroad, through the work of the Australian Federal Police. Trafficking is a very common problem, and many people are being exploited overseas.

A number of members have addressed various paragraphs of the motion. I would particularly like to focus on paragraph 2(b), which is fairly broad but mentions all efforts that help reduce poverty and bring about gender equality and enhanced development, thereby reducing the 'push' factors that compel many migrants, particularly women, to leave their own county. As a Liberal, that is probably an area I would be more likely to focus on than many other members of this chamber.

There are some fairly positive examples around the world of individuals and organisations doing great work to assist economic development within developing nations. The first example to which I refer is the Hon. Susan Nakawuki, whom many members of this chamber would have met last year. She said that she chose Australia because she and her husband Nicholas had spoken to a number of the aid agencies working within Uganda (which is her country, obviously), where she is the representative for the constituency of Busiro County East. The aid organisation told her that, amongst the world's wealthy nations, Australians per head of population, as individuals and as a nation, are very generous contributors to overseas aid and development programs. She came here and she had a very successful trip in terms of raising funds and raising awareness of the issues in Uganda which, as we are all well aware, is a developing nation which has a high rate of poverty and a high rate of AIDS.

One of the programs that Susan has introduced since she was elected as a member (which is in fairly recent times from recollection, as it was in May last year that she was elected) has been to establish a program of micro-credit. The requirement there is that, of the three people who apply for their micro-credit loan through the village bank, two must be women. The only reason that they have included men is that only men can own property in Uganda. But their experience is, as it has been in many other countries and for many other organisations, that women can quite successfully establish small businesses through micro-credit.

She also has a program quite cutely named Three Little Pigs, where a village is provided with three pigs. They raise them all to maturity, then they are able to retain one pig and the other two are returned to the program to be on loan, if you like, to another village. She has also organised a number of sponsorship programs for children, because there are a large number of orphans and child-led families. The example that she provided, when she spoke to a number of groups, was when she was out campaigning and she came across a family of some three or four small children. She asked where each parent was, and such parent was not there and there were no aunties. When she asked, 'Who is in charge?' she was told that it was an eight-year-old—an eight-year-old in charge of some three or four siblings. She is doing some great work in that country.

I also note that one of the Nobel Prize recipients last year was Bangladeshi Muhammad Yunus, who was awarded the prize for his micro-credit program, the Grameen Bank. In *The Advertiser* of 14 October last year it was stated:

> It has been instrumental in helping millions of poor Bangladeshis, many of them women, improve their standard of living by letting them borrow small sums to start businesses.

He said that micro-credit cannot fix everything, but it is a big help. In its citation the Nobel Prize committee stated:

> Economic growth and political democracy cannot achieve the full potential unless the female half of humanity participates on an equal footing with the male.

Another organisation that I would like to draw to the attention of parliament is called Bpeace, which is based in the United States. It has a range of supporters from non-profit NGOs, government agencies and universities to a large range of individual and corporate supporters. Many of these names will not be familiar to Australians but it does include Redken, Parmalat, Unilever, Estee Lauder and Samsonite. The lead partner in their programs is UNIFEM. They have three particular programs, or they did at the time that I accessed this on their web site: one in Afghanistan and one in Rwanda and a new pilot program in Iraq.

What they believe is that entrepreneurship is the foundation for building hope and stability in regions where conflict exists. They cite Clint Eastwood in the movie *A Fistful of Dollars* where he said, 'Once a man has some money, peace begins to sound good to him'—or to her, as in our case. Many members of this chamber would also be well aware of Oxfam, which has run an incredibly strong campaign under the fair trade banner.

Many of us would be purchasers of fair trade coffee, and there are studies which have demonstrated the economic benefit to developing nations and to the agricultural growers of these particular products. One study showed that fair trade certification had had a positive effect on Bolivian coffee

prices generally, as well as strengthening producer organisations and increasing their political influence.

Another study by the Colorado State University showed that small-scale coffee producers in Latin American had improved their training, credit and external development funding. I think a lot of those things are self-evident. One of the concerns I have, when I look at international politics and international trade, is the relevance of the World Trade Organisation and its effectiveness in assisting what it was originally developed for, which is obviously to ensure that trade across the world is fair.

These figures might be slightly out of date, but the average agricultural subsidies for different nations are as follows: in Japan, a whopping 59 per cent; EU, 35 per cent; and in the US, particularly after the implementation of the US Farm Bill, it is some 23 per cent of farm income. Australia can again hold its head up high in that regard, in that ours is about four per cent. Indeed, Australia has been the chair and the driver of the Cairns group of agricultural exporting nations, which has played a very important role in advocating more open and less distorted trade, which would have a very positive effect for farm producers in developing nations.

It has been estimated that subsidies that are provided to farmers in the US, the EU and Japan equal the entire GDP of sub-Saharan Africa and amount to seven times of donating countries' total foreign aid budgets. Indeed, the barriers to developing countries, when they attempt to export, is some $100 billion per year.

The defence, particularly in Europe, for such heavy trade support is that they are supporting a unique way of life, but they are having a very detrimental effect on the lives of people in developing nations and in some way (I may be being a little political here) may make some contribution towards international terrorism and certainly international unrest, particularly in countries within Africa. There is also the issue in relation to economic development, and an example is cited in this book on international business, which refers to Ghana and South Korea and their attitudes towards international trade. Apparently in 1970 the living standards of both nations were roughly equal. They had a gross national product per head about the same at about $250, but by 1995 there was a huge difference.

The annual growth rate of Ghana between 1968 and 1995 was under 1.4 per cent, but as we know South Korea has been booming and had a comparable rate of some 9 per cent annually. The explanation really is in their attitude towards international trade. Where Ghana took a very retro view about exporting, imposed high tariffs and an import substitution policy and policies that discouraged Ghana from exporting, Korea took a much more open minded view and opened its doors to trade. That is probably another point of difference I would have with many members of this chamber, namely that, as long as it is fair, free trade is ultimately good for nations.

There is one other part of the equation that needs to be borne in mind, and that is to be supportive of the internal processes and procedures of developing nations. Australia plays a large role with many countries to which it provides aid, in particular, Vietnam. When I visited there with a delegation we were made aware of the training in governance structures to assist Vietnam to develop legal and administrative systems that will allow foreign investment, because it will increase confidence within those systems, and that is also a very important part of this equation.

In closing, I turn my thoughts to Australia in this regard. We provide services for migrant women and families who have arrived on our shores, and I commend the Migrant Women's Support Accommodation Service, which, together with a range of other services in this state, assist people. This organisation has a high focus on domestic violence for those women and children fleeing violent situations. In its annual report of last year the figures are quite telling and need to be borne in mind by those of us for whom English language proficiency is taken for granted. They obviously keep a lot of statistics, and that is very useful.

Of the 260 people to whom they provided a service in the financial year 2005-06, some 54 per cent of those service users whose ability to communicate in English was classified as either none or little. We should not forget that there are people who have migrated to this country and who still require services and support. In Australia we welcome people from overseas, particularly if they have come from troubled regions, and hope we can provide them with a supportive and welcoming country for them to settle in. With those remarks I conclude my contribution and commend the motion to the council.

The Hon. D.G.E. HOOD secured the adjournment of the debate.

SUMMARY OFFENCES (TICKET SCALPING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 November. Page 1104.)

The Hon. D.G.E. HOOD: Very briefly, Family First supports this bill in its entirety. We see it as a very commonsense step to enable families to afford tickets to events that everyone should have a right to attend, and to ensure that ticket prices are not driven up to ridiculous levels. In essence, I rise to support the second reading of this bill. The bill seeks to amend the Summary Offences Act to render ticket scalping illegal unless the mark-up is less than 10 per cent above the original price. I place on record—and I am pleased to report to honourable members—that, so far as I am aware, there has been no ticket scalping for Family First events at this stage, and we are not expecting any. A bit of humour at the hour; I think it helps!

Under the Hon. Mr Xenophon's bill, the minister can declare a specific event, or presumably a group of events, to be covered by this new law. These declarations can cover events including sporting contests, concerts or other forms of entertainment. A person cannot then sell tickets for an event for more than 10 per cent over the original purchase price. There is indeed a $5 000 maximum fine or a $315 expiation fee as a penalty. I note that the expiation fee exceeds that which the government wants to impose (and, in fact, does impose) for people growing a cannabis plant in South Australia. So, it is a tough fine but, in our view, it is appropriate. The cannabis expiation fee is nothing short of a joke.

I want to compare this bill with the experience from Victoria and Queensland (which jumped in with this legislation just prior to the Ashes series) and other proposals from New Zealand. Since 2002, Victoria has provided scalping protection for sporting events, for instance, applying the new legislation to the 2006 Commonwealth Games which were held in Melbourne. The fine for one scalping sale under their legislation is $6 000 for an individual or up to $30 000 for a

corporation, or for more than one scalping sale for one event, $60 000 for an individual and $300 000 for a corporation. Interestingly, the Victorians say that if you have to on-sell the ticket, it has to be at or below the original price on the ticket.

Queensland has a maximum $1500 fine for selling and a maximum $375 fine for buying the tickets. It is interesting that they actually fine people for buying the tickets as well. The 10 per cent cap on mark-up applies, as with this bill. The Queensland approach is interesting, as I just said, as it seeks to dissuade buyers from buying as well as sellers from selling. Perhaps this bill could have gone that way, but there is not major party support for this bill, so it is somewhat of a moot point.

The New Zealand government proposed on 1 November last year that for major sporting events they would have much tougher laws allowing no 10 per cent mark-up, banning what they call 'ambush marketing', like the infamous act by Holden, for example, flying its blimp over the Toyota sponsored AFL grand final that we saw in Australia last year. Curiously, it does not allow ticket give-aways at all as part of any corporate package, or anything similar. So, I think we can see, in comparison to three nearby jurisdictions where such laws are coming, or have arrived, in effect, the Hon. Mr Xenophon, as always, is a picture of moderation. I want to read into *Hansard* the advice on scalping from the government's Office of Consumer and Business Affairs. I think it demonstrates the need for legislative action in this area:

> Scalping is the practice of reselling tickets for sporting or entertainment events at prices that exceed the original purchase price of the ticket.

I think we all know that. It continues:

> There is no legislation that specifically prohibits scalping in South Australia; however, you should be aware that there are risks associated with purchasing tickets from scalpers.

It goes on to say that tickets may be invalid when people arrive at the destination, and the like; and, indeed, the tickets themselves may be counterfeit. Finally it states:

> Remember, if you don't buy your tickets from the authorised seller, you take the risk that you won't get what you paid for. And if you don't, how will you get your money back?

Towards the end of last year we saw a string of artists like James Blunt, Coldplay, U2, Robbie Williams, Pearl Jam, Kylie Minogue and others moving through our state to give major live performances, which was a credit to the state and I am sure many people enjoyed these events. It was good to see these acts coming to South Australia—sometimes they do not.

As honourable members are no doubt aware, the Ashes test series was a remarkable success for the Australian cricket team against the English team. Tickets to what became an historic Ashes 5-0 whitewash event sold out almost immediately when released well in advance of the series. Some of those tickets soon afterwards appeared on eBay for auction sale to the highest bidder. Quite rightly, Cricket Australia took action to ensure those tickets would not be honoured. I recall that the concern at the time was that desperate Englishmen would pay the scalpers' price for those tickets and therefore they were being exploited.

When performers come, when sporting teams come, for example, when big events happen in our city, we hear reports of incredible mark-up by ticket scalpers. In fact, U2 tickets, when they recently came through Adelaide, were apparently $180 on face value but were going for up to $800. The Hon. Mr Xenophon reports in his second reading speech that tickets to the Kylie Minogue concert were going for some $1 500 with scalpers. Advertising for the Big Day Out in 2007 on the Gold Coast, which was sold out when we examined the issue, told Queenslanders to think of buying tickets for the Melbourne, Adelaide and Perth Big Days Out, which were still available at the time, because it would be cheaper to go on holiday in those cities and see the show than it would be to pay the scalpers' price to see the show in their city.

Event promoters need to make these sorts of announcements because the law does not protect the participants from ticket scalping. However, the Federal Court has other ideas. On 18 December last year, in response to an action filed by eBay, the court ordered that the Big Day Out organisers could not have a warning on their tickets threatening to cancel any tickets found to have been sold online. eBay had complained that putting such a condition on sale was a breach of the Trade Practices Act. So, I note for honourable members that competition policy means there is no support from the courts for stopping ticket scalping, which is crazy, as Big Day Out organiser Ken West attests, when he said to the ABC about the judgment:

> What I'm really flabbergasted about is that consumer rights have been lost today, because they're saying that the ticket scalper is being protected within the system, while the consumer can be forced to pay two, three [and even more] times the face value.

Some people prefer the free market approach to ticket scalping. Well, good luck to them, some people say. They can go into the free market and pay what they are prepared to for the tickets, but Family First thinks that the Hon. Mr Xenophon has a point when it comes to people purchasing a batch of tickets early and then scalping them later. This limits the amounts of tickets available to South Australian families and individuals who would like to attend these events.

Families cannot always be organised about whether they can make it to a particular event or not some time in the future. Families have commitments that might not clear until the week before, or even days before, when they know if they can get to the event or not. Having reached that point of clarity, if you like, they look for tickets and there might not be any because the scalpers have scooped them up and are selling them at an incredible and unfair mark-up. Would it not be great if these families knew they would only have to pay a maximum of 10 per cent above the original ticket price? I think we here in this chamber, perhaps with better incomes than others, can lose sight of the number of families in our state for whom paying an exaggerated ticket price from a scalper means that they simply cannot attend the event.

The other thing I dislike about the free market approach is that the event organiser misses out on that bonus—and why should they? The bill does not address that but it does not sit well with Family First that unscrupulous individuals profit from an activity and the organisers of the event do not. The answer, surely, is for government, event organisers and organisations like eBay to work together to get the best possible result for South Australians.

Family First are disappointed that this bill will not go beyond this chamber and Family First hopes that the government takes note of our support for this very good legislation. We believe that it is important that this practice ceases.

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

EDUCATION (RANDOM DRUG TESTING) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 27 September. Page 771.)

The Hon. NICK XENOPHON: I support this bill. I note the second reading explanation of the mover (Hon. Ann Bressington) and commend her for introducing this bill. I do not propose to unnecessarily restate what the honourable member has put before the chamber, not only in this debate but in terms of the material she has put, the research, the facts about the scourge and about the devastating impact that substance abuse has had in Australia. At the outset, however, it is worth reflecting on the UN World Drug Report statistics from 2004, and I think the Hon. Ann Bressington can enlighten us, when she concludes the second reading debate, as to what further updated statistics there are.

The material that I have indicates that, in terms of cannabis, the annual prevalence in percentage terms of those 15 and over who have used that drug in the past 12 months in Australia is 15 per cent; in Austria, 5.6 per cent; in Canada, 10.8 per cent; in the Czech Republic, 10.9 per cent; in New Zealand, 13.4 per cent; in the United Kingdom, 10.6 per cent; in the United States, 11 per cent; and, interestingly, in Sweden it is 1 per cent. In terms of opiates the annual prevalence rate, according to the 2004 UN drug report, which has been adopted by the OECD in terms of its health data, in Australia is 0.6 per cent; in Luxembourg it is 1 per cent; in Portugal, 0.7 per cent; in the UK, 0.7 per cent; and in the USA, 0.6 per cent, so we are not the highest. However, in Sweden it is 0.1 per cent.

In relation to the annual prevalence of cocaine for those 15 and above, Australia is 1.5 per cent compared to 2.1 per cent in the UK, 2.5 per cent in the US and 0.06 per cent in Sweden. In terms of amphetamines, which I will reflect on shortly, Australia has a 4 per cent prevalence rate, according to the UN World Drug Report, compared to 1.6 per cent in the UK, 1.4 per cent in the US, 3.4 per cent in New Zealand and 1 per cent in Canada. In Sweden it is 0.1 per cent, according to the UN World Drug Report.

The Hon. A.M. Bressington interjecting:

The Hon. NICK XENOPHON: The Hon. Ms Bressington says that these statistics should be passed on to Dr David Caldicott. Presumably, he is familiar with these figures, in any event. In terms of OECD countries, the cumulative average of all this drugs use, according to the United Nations 2004 report shows Australia at 5.3 per cent, so we are at the top of the tree; 4.5 per cent for New Zealand; 3.9 per cent for the US; 3.8 per cent for the UK; and Sweden at 0.3 per cent. The Hon. Ann Bressington has outlined some of the concerns and the evidence in terms of the health effects of drug use, and there is a frightening link between mental health issues and drug use, particularly marijuana, Ecstasy and methamphetamines, in particular, ice in its stronger, purer form. There is a very real concern that there is a link between violent behaviour, psychotic episodes and the use of that drug.

That is why it is important that there be early intervention. That is why this particular piece of legislation that requires random drug testing of students in our schools is a very important proactive method of intervention to ensure that if a student has been using drugs there are steps taken to deal with that. The Hon. Ann Bressington's approach is not a punitive approach. I do not support the United States approach where gaols are full of young mainly African-American men who have been caught on possession charges. I believe the approach we need to adopt is the approach taken in Sweden where problematic drug use leads to a system of managed, monitored rehabilitation, and I will refer to that when I speak briefly in relation to the Hon. Ms Bressington's bill in relation to that.

In regard to the argument that this is an invasion of civil liberty, I think there is a fundamental civil liberty that every child should reach their best potential and that every child should have the opportunity to be the best they can be. Using drugs and developing a drug problem is the wrong way to go. That is why having random testing as a mechanism of early intervention and for those kids getting help is a fundamental step.

I know the government will say the cost is too much. The Hon. Ann Bressington, I understand when she concludes the debate on this bill, will enlighten us on more recent developments in terms of new forms of drug tests that are accurate and cheaper. When a young person goes off the rails because of drug use when they have difficulty with employment and develop a mental illness and commit offences, it is an enormous cost to the community. That is why I think it is important that we have this method of intervention.

This is a debate that will not go away. I believe it is inevitable that it will occur. I understand the Hon. Ann Bressington went to Victoria recently and spoke to people in private schools where it is a condition of students being enrolled. It is a contract that I understand the parents sign so that there is inbuilt consent for random drug testing to take place, and the Hon. Ann Bressington will give us those figures. She has spoken to me privately about it, but the information that I have seen indicates that it makes a huge difference. This is about young people reaching their potential and being the best they can. UN world drug report figures—not my figures and not the Hon. Ann Bressington's figures but those of a credible authority such as the UN—indicate that we have the highest level in the OECD nations of methamphetamine use, for instance. We are way up there overall in terms of illicit drug use, and that is a real issue.

I do not ignore the issue of alcohol in terms of binge drinking. Problematic alcohol use is obviously important, and this testing that is being recommended would obviously pick that up as well. If a student has an alcohol problem, that is something that would be picked up, and of course we need to do a lot more with respect to that. However, this is an important step. When you consider the link between psychotic illness or psychotic behaviour and drug use, then it is important that we act. This, as I see it, is a landmark piece of legislation that is long overdue, and I strongly support it.

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

MONITORED TREATMENT PROGRAMS BILL

Adjourned debate on second reading.
(Continued from 22 November. Page 1109.)

The Hon. NICK XENOPHON: My remarks are similar to those I gave to the previous bill in relation to random drug testing of students. I strongly support this bill for monitored treatment. I refer to the statistics from the UN World Drug Report indicating that Australia is at the top of the tree when it comes to illicit drug use—particularly with

methamphetamine. The country that is consistently the lowest, particularly with methamphetamine use, is Sweden—and Sweden is not known as a repressive society or a fascist state. It is a country that was known for its social reform on a whole range of issues; however, about a generation ago they decided that there was a serious drug problem in their country and they needed to do something about it.

In October 2005 I co-sponsored, with Paul Madden (a former head of Baptist Community Care), the Peoples' Drug Summit, in which the Hon. Ann Bressington was a key participant. The Hon. Dennis Hood was also a participant before being elected to this place. It was very clear from those who gave evidence that the Swedish system (including a phone hook-up from a key proponent of that system) works. It works because it is a compassionate system in relation to problematic drug use, a lot of resources are put into it, and it is not punitive but is about giving people a chance to break the cycle of addiction.

I believe there will be a lot more said about the comments that have been made by the Hon. Ann Bressington in terms of our methadone program. My understanding, from medical practitioners I have spoken to, is that methadone is supposed to be a short-term transition to assist in getting off heroin, yet I know of a number of people who have been on methadone for many years—in one case I think it was 15 or 20 years. I know the Hon. Ann Bressington can provide further information in relation to that.

This is about having intensive, well-resourced treatment, and I believe that pays dividends. I understand that young people from Sweden who have visited Australia cannot believe the way we deal with drugs here. Their attitude is completely different in the sense that the culture is different and the issue of monitored treatment, mandatory treatment where there is problematic drug use, has made all the difference. That is why this legislative model, based on what has occurred in Sweden, is absolutely essential in our community, and I believe South Australia can lead the way in relation to this.

The Hon. A.M. Bressington interjecting:

The Hon. NICK XENOPHON: The Hon. Ann Bressington says that it is also based in the Netherlands, where I understand there has been a U-turn, if you like, in terms of drug policies. On 31 January, the Australian National Council on Drugs put out a position paper on methamphetamines, and in that it talked about how there were 73 000 dependent methamphetamine users in Australia—almost double the estimated 45 000 regular heroin users in the country. That figure is very frightening, and when you consider that senior psychiatrists—and I refer to Dr Jonathan Phillips, the former head of mental health in this state, as well as Dr Craig Raeside, a senior forensic psychiatrist—refer to the link between mental health problems and mental illness and drug use, particularly methamphetamines and cannabis, we need to do something about it.

One senior psychiatrist I spoke to said that something like 70 per cent of people who present to the emergency departments of public hospitals, in terms of psychotic episodes, are linked to drug use. Another expert I spoke to recently said that that was a conservative figure and it was probably higher than that. That is very frightening. I believe that the so-called harm minimisation approach which has been the mantra for the past generation or so and which has been the prevalent method of dealing with this issue has failed. There has been a significant increase in hepatitis C, a serious public health problem. There has been an increase in drug use, and with it has come problems.

My understanding is that we are seeing more cases where the mental capacity or mental incompetence defence is being used under the Criminal Law Consolidation Act; where there is a clear link between the behaviour that led to an act of violence being perpetrated against innocent parties and drug use. Methamphetamines seem to be at the forefront of that. We need to do something about this. The model proposed by the Hon. Ann Bressington is sensible and it is the way to go. I fear that we will lose many thousands of young people in this state to a life that is wasted because they will cause themselves significant long-term harm through drug use. They will cause irreparable damage to themselves. If we take this approach we can reverse that trend and make a real difference to people's lives and the benefits to our community, I believe, will be enormous. It will mean fewer people clogging up the court system and fewer people requiring assistance from the mental health system. A compassionate, well-funded system of rehabilitation is the way to go and that is why I strongly support this legislation.

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

LOCAL GOVERNMENT (STORMWATER MANAGEMENT) AMENDMENT BILL

Received from the House of Assembly and read a first time.

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.

The *Local Government (Stormwater Management) Amendment Bill 2006* will establish new and improved financing and governance arrangements for stormwater management throughout South Australia.

The Rann Government is the first to recognise the importance of stormwater management and the need to improve current arrangements. In this regard, we have worked closely with the Local Government Association (LGA) to develop long-term solutions.

The Government identified in the Strategic Infrastructure Plan for South Australia the need to prioritise and implement high priority stormwater works arising out of the Urban Stormwater Initiative and the Metropolitan Adelaide Stormwater Management Study.

The Government subsequently entered into a memorandum of agreement on stormwater management, dated 14 March 2006, with the LGA of South Australia. The LGA and its member councils are to be commended for achieving this agreement.

The agreement addresses responsibilities for stormwater management and provides the basis for joint and collaborative action by all levels of government to deal with the threat of flooding and better manage the use of stormwater as a resource. The State Government committed as part of the agreement to a long-term (30 year) funding arrangement for stormwater management and flood mitigation works.

New governance arrangements have been set up for the management of stormwater and the Hon Nick Bolkus is chairing the Stormwater Management Committee under the interim arrangements set out in the March 2006 agreement.

The agreement foreshadows the need for a Bill to give statutory effect to aspects of the agreement. This is reflected in the Bill that is being introduced into this House today.

This Bill will establish the Stormwater Management Authority as a statutory corporation to implement the agreement for an improved framework for implementation of priority flood mitigation works throughout the State.

The Stormwater Management Authority, which will be managed by a board having representation from Local and State Government, will prioritise stormwater infrastructure works based on total catchment planning considerations.

The Stormwater Management Authority will work closely with councils to progress stormwater management plans and implement stormwater infrastructure works.

The provisions outlined in this Bill are just one part of a comprehensive package of measures for the management of stormwater in the State.

Guidelines for Stormwater Management Plans have already been developed with the support and approval of the Natural Resource Management (NRM) Council. Plan Amendment Reports under the *Development Act 1993* will continue to be used where needed to reduce the flood related risk implications identified by floodplain mapping information and stormwater management plans.

Community education will be undertaken by councils and other planning authorities to assist in achieving better economic, social and environmental stormwater management outcomes.

One of the key responsibilities of the Authority will be to administer the allocation of funds towards appropriate priority stormwater management works. The focus will be on priority works established on the basis of catchment-wide Stormwater Management Plans produced by councils. These plans must be prepared in consultation with the relevant regional NRM Boards.

The Authority will direct available funding, including any funds that may be secured from the Australian Government, and will utilise borrowings if necessary to accelerate implementation of priority works.

The Bill that is before the House today has been through an extensive consultation process with Local Government. The LGA has undertaken a process of consultation with all its member councils both on the terms of the agreement and now on the specific measures set out in the Bill. Comments received through that process have been taken into account by the LGA in agreeing with the Bill in its current format.

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 *Local Government Act 1999*

4—Insertion of Schedule 1A

This clause inserts a new Schedule 1A into the *Local Government Act 1999* dealing with implementation of the Stormwater Management Agreement entered into by the State of South Australia and the LGA on 14 March 2006.

The Schedule contains the following provisions:

- an interpretation provision containing definitions for the purposes of the Schedule;
- a provision approving the Stormwater Management Agreement;
- a provision specifying that the Schedule is in addition to and does not limit or derogate from the provisions of any other Act;
- provisions establishing the Stormwater Management Authority (the ***Authority***) and setting out its functions, namely:
- to liaise with relevant public authorities to ensure the proper functioning of the State's stormwater management system;
- to facilitate and co-ordinate stormwater management planning by councils;
- to formulate policies and provide information to councils in relation to stormwater management planning;
- to undertake functions in relation to stormwater management plans;
- to administer the Stormwater Management Fund;
- to ensure that relevant public authorities co-operate in an appropriate fashion in relation to stormwater management planning and the construction and maintenance of stormwater management works;
- to undertake stormwater management works in certain circumstances;
- to provide advice to the Minister in relation to the State's stormwater management system;
- provisions with respect to the Board of the Authority (which is to consist of 7 members of whom 4 are to be appointed on the nomination of the LGA and 3 are to be appointed on the nomination of the Minister);
- provisions with respect to the preparation of stormwater management plans by councils and for approval by the Authority of stormwater management plans prepared by councils and provisions giving the Authority power to require the preparation of a stormwater management plan;
- provision for the Authority to make an order requiring action by a council where a council has failed to comply with a requirement to prepare a stormwater management plan or has failed to comply with an approved stormwater management plan or where the Authority is satisfied that action by a council is necessary to provide for the management of stormwater or to preserve and maintain the proper functioning of any stormwater infrastructure that the council has the care, control and management of. If a council fails to comply with an order the Authority may take the necessary action and may apply monies from the Fund to cover the costs and expenses of taking the action or recover the costs and expenses (or a portion of them) from the council as a debt;
- provisions with respect to the Stormwater Management Fund, including its establishment, the circumstances in which payments can be made out of the Fund, accounts and audit and annual reports on the operation of the Fund;
- miscellaneous provisions dealing with the exercise of powers in relation to land, notice to occupiers, a power of the Minister to vest land or infrastructure, liability, assessment of costs and expenses, evidentiary matters and regulations. In addition, provision is made to specify that the provision of money from the Fund to meet the whole or part of the cost of construction of any work will not be taken to make that a public work for the purposes of Part 4A of the *Parliamentary Committees Act 1991* and where the Authority takes action under an order because a council has failed to do so, the work to be constructed by the Authority will, for the purposes of the Part 4A of the *Parliamentary Committees Act 1991*, be treated as if it were work to be constructed by the relevant council.

Schedule 1—Related amendments to *Natural Resources Management Act 2004*

1—Amendment of section 3—Interpretation

The definition of ***surface water*** is to be amended to include water that is contained in any stormwater infrastructure. It is also to be clarified that a ***surface water prescribed area*** may include stormwater infrastructure, and that ***to take*** water includes to stop, impede or direct the flow of water in any stormwater infrastructure, or to extract water from stormwater infrastructure.

2—Amendment of section 89—Amendment of plans without formal procedures

This amendment will provide a mechanism to incorporate a stormwater management plan into a regional NRM plan.

3—Amendment of section 124—Right to take water subject to certain requirements

This amendment will recognise a right to take water from stormwater infrastructure.

4—Amendment of section 125—Declaration of prescribed water resources

5—Amendment of section 128—Certain uses of water authorised

6—Amendment of section 146—Licences

These are clarifying amendments.

7—Amendment of section 223—Evidentiary

This amendment will assist in providing for the status of infrastructure connected with stormwater management for the purposes of proceedings under the Act.

The Hon. R.I. LUCAS secured the adjournment of the debate.

CRIMINAL LAW (FORENSIC PROCEDURES) BILL

Received from the House of Assembly and read a first time.

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.

This Bill will regulate the carrying out of forensic procedures to obtain evidence in the investigation of criminal offences and provide for the continuation of the D.N.A. database. It will replace the *Criminal Law (Forensic Procedures) Act 1998*.

Forensic procedures include the taking of prints of the hands, fingers, feet or toes, the taking of an impression or cast of part of a person's body, an examination of a part of a person's body, and the taking of a sample of biological or other material from a person's body.

D.N.A. testing is one of the most important investigatory tools provided for under the Act. D.N.A. testing has the proven capacity to assist in solving serious crimes such as murder and rape. In 2002, the Government changed the law to require prisoners in South Australia to be D.N.A. tested and it expanded testing to specified summary offences. Since July, 2003, the expanded testing has resulted in more than 25,000 samples from crime scenes and offenders being added to the database.

At the 2006 election, the Government pledged that D.N.A. tests will be conducted on:

- offenders involved in any assault on another person;
- offenders committing stalking offences;
- offenders who damage other people's property, irrespective of the value;
- offenders who are found unlawfully in possession of other people's property;
- people over the age of 18 years who vandalise and graffiti property;
- people in possession of illicit drugs.

Since the election, the Commissioner for Police has put a submission to Government arguing for amendments to the Act to simplify and clarify its operation. Importantly, he has proposed extended testing that would allow the testing of suspects for any summary offence for which imprisonment is a penalty. He has also recommended permanent retention of suspects forensic material.

The Kapunda Road Royal Commissioner also recommended that the Act be simplified.

Both the Commissioner's submission and the report of the Kapunda Road Royal Commissioner suggest that problems with the operation of the Act have been caused by its complexity. The Government has taken note of these comments and, in consultation with the Commissioner of Police, has undertaken a comprehensive review of the Act. As the amendments proposed represent a major revision of the Act, a Bill for a new Act has been drafted, rather than an amending Bill.

The Bill goes further than the Government's election pledge and will allow forensic procedures to be carried out on a person suspected of having committed an indictable offence or any summary offence punishable by imprisonment. The Bill also deals with legal, operational and administrative matters raised by the Commissioner. The Bill reduces the categories of procedures, allows for the authorisation of procedures by senior police officers rather than judicial authorisation and provides for the permanent retention of D.N.A. profiles taken from suspects. The Bill also removes the legislative impediment to the inter-jurisdictional matching of D.N.A. through the National Criminal Investigation D.N.A. database (N.C.I.D.D.).

Forensic procedures.

The Bill defines "forensic procedure" as a procedure carried out by or on behalf of South Australia Police or a law enforcement authority and consisting of:

(a) the taking of prints of the hands, fingers, feet or toes; or

(b) an examination of a part of a person's body (but not an examination that can be conducted without disturbing the person's clothing and without physical contact with the person); or

(c) the taking of a sample of biological or other material from a person's body (but not the taking of a detached hair from the person's clothing); or

(d) the taking of an impression or cast of a part of a person's body.

This is the same definition as used in the current Act.

The Bill continues to distinguish between forensic procedures and intrusive forensic procedures. An intrusive forensic procedure is defined as:

(e) a forensic procedure that involves exposure of, or contact with the genital or anal area, the buttocks or, in the case of a female, the breasts; or

(f) a forensic procedure involving intrusion into a person's mouth (other than a procedure consisting of the taking of a sample by buccal swab); or

(g) the taking of a sample of blood (other than the taking of a sample by fingerpick for the purpose of obtaining a D.N.A. profile).

Fingerprints and Simple identity procedure

The taking of fingerprints from a suspect is currently authorised under section 81(4) *Summary Offences Act 1953* where the person is "in lawful custody on a charge of having committed an offence" and by way of a forensic procedure authorised under section 15(1)(a) or (b) of the *Criminal Law (Forensic Procedures) Act*. This means, that where a person is not under arrest or does not consent to providing his or her prints as a suspect, the police need an order authorising the fingerprints to be taken under section 15(1)(a) or (b).

The Bill introduces a new concept, that of a "simple identity procedure". This covers both the taking of fingerprints and the taking of forensic material by buccal swab or fingerprick. The rules applying to the taking of forensic material by buccal swab or fingerpick will also apply all simple identity procedures, simplifying the process that need to be followed by police.

Retention of lawfully-obtained forensic material

Under the current Act, the Commissioner must destroy forensic material that has been lawfully obtained under a category 3 (suspects) procedure where:

- the material is obtained under an interim order and the appropriate authority decides not to confirm the order; or
- proceedings for an offence either:
  - are not commenced against the person within two years after the material is obtained; or
  - are commenced against the person within two years after the material is obtained, but the proceedings are discontinued, or the person is not, as a result of the proceedings, a person to the offenders procedures apply.

A recent decision of the District Court and the Auditor-General's Supplementary Report for the year ended 30 June 2005 titled *Government Management and the Security Associated with Personal and Sensitive Information* highlighted the difficulty for police with the existing requirements.

The Bill no longer requires the destruction of forensic material obtained from suspects. This will mean that suspects D.N.A. will be able to be retained indefinitely.

The United Kingdom has already legislated to allow permanent retention of forensic material obtained from suspects. Since the change in the U.K. laws, it is estimated that around 198,000 profiles that previously would have been removed have been retained on the database helping to solve a range of crimes including 88 murders, 45 attempted murders, 116 rapes, 62 sexual offences, 91 aggravated burglaries and 94 supply of controlled drugs.

The Government believes that the D.N.A. database will continue to play a major part in the prevention, detection and investigation of crime, including terrorism. The Government has already acted to allow D.N.A. testing of prisoners. As can be seen from the U.K. experience, the removal of the requirement to destroy forensic material taken from suspects should further increase the effectiveness of the database in preventing and detecting crime.

The Bill includes a transitional provisions so that profiles from suspects and offenders held on the database when the new Act comes into operation will be able to be retained indefinitely.

A consequential amendment to the *Summary Offences Act* will allow for the permanent retention of fingerprints and other samples taken under section 81(4).

Volunteer and Consent Categories

Currently, the legislation provides for two types of forensic procedures that can be taken with the subject's consent. category 1

(Consent) procedures are outlined in Part 2A of the Act and category 2 (Volunteer procedures) are dealt with in Part 2B.

D.N.A. profiles obtained from category 1 procedures are not stored on the database, whereas profiles derived from a category 2 procedure can be stored on the database. Category 2 procedures can be taken for limited or unlimited purposes.

An example of what was contemplated for category 1 is the case where a forensic sample is taken from a victim e.g. a victim of a child sexual assault or a rape. The current framing of the Act did not intend that forensic material collected from category 1 volunteers would be put on the database. An example of a category 2 situation is where a person freely consents to go on the data base for elimination from one or more crime scenes, or for unlimited purposes.

Before taking a category 1 procedure, police must assess whether the subject of the procedure is "competent to consent". A person is competent to consent to a forensic procedure under Part 2A if the person—

(a) is of or above the age of 16 years; and

(b) is not physically or mentally incapable of consenting to the procedure.

A person is competent to consent to a category 2 (volunteer) procedure if they are not a protected person i.e, they are of or above 18 years and physically and mentally capable of giving informed consent to a forensic procedure.

The reason for the different ages is that the age of consent for medical treatment under the *Consent to Medical Care and Palliative Treatment Act 1995* is 16 years old. The age of 18 years was used for category 2 as it is not about medical treatment but criminal investigation.

The Commissioner has recommended that the Act be amended. He argues that there is a need to simplify the consent categories and to remove the confusion that is created by a child over 16 years old (capable of consenting for category 1 procedures) being incapable of providing consent to a category 2 procedure because they are a 'protected person'. He suggests that any forensic procedure involving a volunteer should require consent by:

- the volunteer, provided the volunteer is over 18 years of age and not incapable of consenting owing to a physical or mental incapacity to provide informed consent; or
- the volunteer's parent, guardian or carer if the volunteer is incapable of providing consent.

The Bill removes the distinction between the two categories. A volunteers procedure will be able to be carried out where the relevant person consents to the procedure or a senior police officer authorises the carrying out of the procedure. A relevant person will be the person on whom the procedure is to be carried out, or the in the case of a protected person, the closest available next of kin. A protected person will be a child or a person physically or mentally incapable of understanding the nature and consequence of a forensic procedure.

Although the Bill currently sets out the age of consent for a volunteer consent procedure at 18 years, the Government has received representations from the Commissioner for Victims' Rights and victims' groups that the age should be set at 16 years. This is the age that applies to consent to a category 1 procedure under the current Act and is the age at which a person can consent to medical treatment. They argue that 16 and 17 year old rape victims who seek help in confidence and agree to a forensic medical examination should have their privacy respected, as would happen if they were only consenting to a medical examination.

The government has reconsidered this matter and is preparing an amendment to reduce the age of consent to a volunteer procedure to 16 years.

A senior police officer will only be able to authorise the carrying out of a forensic procedure on a protected person if satisfied that it is impractical or inappropriate to obtain consent to the procedure from the relevant person because of the difficulty of locating or contacting them or because the person or a person related to, or associated with, the relevant person is under suspicion for a criminal offence. The senior police office must also be satisfied that the carrying out of the procedure is justified in the circumstances of the case.

The volunteers procedure in Part 2 Division 1 of the Bill does not deal with the issue of storage of a D.N.A. profile on the volunteers index. That is dealt with separately in clause 42. As now, a D.N.A. profile cannot be stored on the volunteers (limited) index or volunteers (unlimited) index unless the relevant person has given informed consent. The clause sets out the information to be provided to the person before consent is given. A person has the right to refuse to consent to such storage or can impose conditions limiting the period for which such storage can occur and prohibiting the comparison of that D.N.A. profile with D.N.A. profiles stored on other specified indices.

The Bill will continue to require destruction of forensic material obtained from a volunteer procedure.

Serious offences

Under the current Act, D.N.A. testing can be compelled against an offender who is:

(a) serving a term of imprisonment, detention or home detention in relation to an offence; or

(b) being detained as a result of being declared liable to supervision by a court dealing with a charge of an offence; or

(c) convicted of a serious offence by a court; or

(d) declared liable to supervision by a court dealing with a charge of a serious offence.

A serious offence means—

(e) an indictable offence or a summary offence listed in the Schedule; or

(f) an offence of attempting to commit such an offence; or

(g) an offence of aiding, abetting, counselling or procuring the commission of such an offence; or

(h) an offence of conspiring to commit such an offence; or

(i) an offence of being an accessory after the fact to such an offence.

Thirteen summary offences, including using a motor vehicle without consent, possession and use of a firearm, assault police, and trespassing have been listed in the Schedule. The Government's pledge would have extended the D.N.A. testing regime by the inclusion in the Schedule of additional summary offences, including assault on another person; property offences irrespective of the value and graffiti and vandalism offences where the offender is over the age of 18 years.

The Commissioner has advised that the definition of serious offence unnecessarily limits the scope of the Act. By way of example, assaulting police contrary to section 6(1) of the *Summary Offences Act 1953* is a scheduled summary offence. The offences of resisting arrest or hindering police, however, are not, even though all three offences often form part of a course of behaviour. The Commissioner has submitted that the definition of serious offence should be amended to include all summary offences for which a term of imprisonment may be imposed.

The Government has reviewed this matter and agrees. It notes that the summary offences listed in the existing Schedule already range in punishment from 3 months to 2 years imprisonment. The scheduling of offences is an arbitrary approach and makes it more complicated for police. As such, the definition of "serious offence" in the Bill, extends to any indictable offence or a summary offence that is punishable by imprisonment. The Bill will also remove the distinction in the current Act between serious offences and prescribed offences.

Authorisations by Senior Police officers

Clause 13 of the Bill provides that a suspects procedure may be carried out if the person is suspected of a serious offence and either the procedure is a simple identity procedure or the procedure is authorised by an order under the Division.

One of the major changes to the suspects procedures is the authorisation procedure for the making of the orders. The Act currently provides for a scheme of interim and final orders. The appropriate authority for making the order depends on the type of proceeding. A magistrate is an appropriate authority for an interim order. A final order can be made by the Magistrates Court or, in the case of a child, the Youth Court. The Act recognises a senior police officer as an appropriate authority for an interim or a final order if:

- the officer is not involved in the investigation for which the authorisation is sought;
- the respondent is in lawful custody;
- the respondent is not a protected person; and
- the forensic procedure for which an authorisation is sought is non-intrusive.

A senior police officer is defined in the Act as a police officer of or above the rank of sergeant.

The Commissioner believes that the procedures set out in the Act are too complicated and lead to unnecessary delay. He submits that a senior police officer should be able to approve an order for an

intrusive or intimate forensic procedure and orders where the suspect is not in custody.

The Government has adopted this approach in the Bill. The role of the magistrate and court is replaced by a senior police officer. The definition of senior police officer is, however, amended so that it is limited to a person of, or above, the rank of inspector rather than a sergeant.

The procedure to be followed in applying for, and making an order is set out in the Bill. The senior police officer must be satisfied that there are reasonable grounds to suspect that the respondent has committed a serious offence and that the forensic material could produce material of value to the investigation, The senior police office must also weigh up the public interest in obtaining evidence tending to prove or disprove guilt the respondent's guilt against the public interest in ensuring that private individuals are protected from unwanted interference.

The Bill recognises the right of a person to be present and to make submissions at an application to have legal representation and, where the suspect is a "protected person", an appropriate representative.

Clause 17 of the Bill provides for applications in cases of special urgency where the respondent cannot be located and evidence may be lost or destroyed. An order made as result of such an application only remains in force for a period of 12 hours. If the procedure is not carried out in that time, a formal order would be required.

Clause 54 also allows a senior police officer to authorise the carrying out of a forensic procedure on a deceased person suspected of a serious offence. This will clarify the extent to which police are entitled to seek biological material or D.N.A. profiles from deceased persons.

Offenders procedure

Division 3 of Part 2 deals with the offenders procedure. The Bill will allow a simple identity procedure to be conducted on a person who is convicted of, or declared liable to supervision for, a serious offence. It will also allow the testing of a person serving a term of imprisonment, detention or home detention for an offence, or being detained as a result of being declared liable to supervision.

General provisions

Part 3 of the Bill deals with the carrying out of forensic procedure. It continues to recognise the right of a person to be treated humanely and with a minimum of physical harm, embarrassment or humiliation, and to have a chosen medical practitioner present at most procedures. There is also a right for a person to be assisted by an interpreter. Clause 25 of the Bill limits the situations where an audiovisual recording must be made to intrusive procedures.

Retention and assimilation orders

The Bill will continue to provide for retention and assimilation orders. As now, retention orders deal with the situation where a person is a protected person, consent has been given by the parent or guardian, the forensic sample has been taken and the parent or guardian then requires the sample to be destroyed. A senior police officer may make an order for retention where he or she is satisfied that the person who gave the consent, or a person related or associated with that person is suspected of a serious offence and there are reasonable grounds to suspect that the forensic material would be of probative value in the investigation of the suspected offence and the order is justified in all the circumstances.

Assimilation Orders deal with the situation where a volunteer becomes a suspect. The Act already acknowledges that, in such cases, it would not be sensible to require police to make another application to obtain the same forensic material. The Bill will continue to provide for the conversion of material obtained as a result of a volunteer procedure into material obtained by way of a suspects procedure. A senior police office will be able to make such an order.

The D.N.A. database

Part 5 of the Bill deal with the D.N.A. database system. The database system will continue to include:

- a crime scene index; and
- a missing persons index; and
- an unknown deceased persons index; and
- a volunteers (unlimited purposes) index; and
- a volunteers (limited purposes) index; and
- statistical index; and
- any other index prescribed by regulation.

However, the change in destruction requirements referred to above, will allow the current category 3 (Suspects) and category 4 (Offenders) to be combined into a single Suspect/Offender Index.

The Bill regulates the storage of information on the database and access and use of the D.N.A. database system. As now, the Bill sets out criminal offences, punishable by a maximum of $10 000 or two years imprisonment including:

- storing identifying D.N.A. information obtained under the Act on a database other than the database set up by the Act or a corresponding law or doing so temporarily for the purpose of administering the database;
- supplying a forensic sample for the purpose of storing a D.N.A. profile on the database or storing a D.N.A. profile on the database where those actions are not authorised by the Act;
- not ensuring the destruction of information in the D.N.A. database system where the Act requires it to be destroyed;
- accessing information stored on the D.N.A. database otherwise than in accordance with rules authorising access;
- disclosing information stored on the D.N.A. database otherwise than in accordance with authorised disclosure.

With the changes to the suspects index, the matching rules under the Bill are less complicated. This has allowed the matching table to be replaced with a provision that restricts the use of a D.N.A. profile on the volunteers (limited purposes) index.

Arrangements with other jurisdictions

The Bill will allow arrangements to be made with the Minister responsible for the administration of a corresponding law of the Commonwealth to allow the integration of the D.N.A. database with other databases kept under corresponding laws to form the National Criminal Investigation D.N.A. database (N.C.I.D.D.).

The provision differs from the provision in the current Act. This is because there has been some doubt about the legal basis for the national database. Following consideration of this matter by the Standing Committee of Attorneys-General, the Commonwealth agreed to amend its legislation to clarify that the national D.N.A. database is legally a combination of each of the different databases of the States and Territories and the Commonwealth.

The provision in the Bill was intended to reflect this arrangement. However, further amendments are likely to clarify the relationship with the commonwealth legislation. to make it clear that the minister can enter into an arrangement with the commonwealth minister or CrimTrac for the transmission of information to form part of the National Crime Investigation DNA Database.

The Bill also allows Ministerial arrangements with other jurisdictions with corresponding laws dealing with the exercise of functions and powers by police officers and the registration of orders.

Independent Audits by the Police Complaints Authority

Importantly, the Bill also introduces a requirement for the Police Complaints Authority to conduct an annual audit to monitor compliance with the Act. Regular auditing of the operation of the D.N.A. database will help to ensure compliance with the legislative requirements imposed by the Act.

These audit arrangements would be additional to the technical audit requirements imposed on F.S.S.A. by the National Association of Testing Authorities (N.A.T.A).

The report of the audit would be presented to the Attorney-General and tabled in Parliament. The will be an important safeguard in the operation of the Act.

Other amendments

The Bill also:

- allows the taking of another sample if the first sample is insufficient, unsatisfactory, lost, contaminated or if the analysis is unreliable;
- provides for evidentiary certificates to certify when and how a forensic procedure was carried and how the forensic material was dealt with;
- provides for a quality assurance register. The register will be a screening index and will not be used for matching against any of the other indices;
- deals with the effect of non-compliance with the Act on the admissibility of evidence.

The Bill differs from the current Act in that the requirement to make an audio-visual recording of a forensic procedure will be limited to intrusive forensic procedures on a suspect and intrusive forensic procedures where the person request that an audiovisual record be made.

The Bill also removes the requirement on SAPOL to provide the results of the analysis of forensic material. The Commissioner argues that the provision results in information being sent to people who do not want the information and this is a waste of resources. Clause 32 of the Bill would ensure that the person from whom the forensic material is removed would have access to a part of the material

sufficient for analysis. The Bill also removes the requirement set out in section 41 of the Act to provide access to photographs taken of part of a person's body. The Commission argues that these requirements are unnecessary. A photograph taken under section 41 could be obtained under the *Freedom of Information Act*. Furthermore, if the person is prosecuted, the photographs must be disclosed by the prosecution to the defence.

This Bill is an important measure. It has been drafted taking into account the legal, operational and administrative matters raised by the Commissioner. The Bill will assist police to use forensic procedures and, in particular, D.N.A. evidence, as a tool in criminal investigation. It will simplify the procedures for carrying out forensic procedures and should make it easier for operational police to work with the provisions.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines various terms used in the measure. In particular, a ***forensic procedure*** is defined to mean—

- the taking of handprints, fingerprints, footprints or toeprints; or
- an (external) examination of the suspect's body; or
- the taking of a sample of biological or other material from a part of the body; or
- the taking of an impression or cast of a part of a person's body.

4—Application of Act

This clause specifies circumstances in which the Act does not apply to a forensic procedure.

5—Extra-territorial operation

This clause provides for extra-territorial operation.

Part 2—Authorisation of forensic procedures

Division 1—Volunteers procedures

6—Interpretation

This is an interpretation provision for the purposes of the Division.

7—Volunteers procedures

This clause sets out what constitutes a volunteers procedure and specifies that such procedures may be authorised by consent under clause 8 or by the giving of a police authorisation under clause 9.

8—Authorisation by consent of relevant person

This clause makes provision in relation to the giving of consent to a volunteers procedure.

9—Authorisation by senior police officer

This clause allows a senior police officer to authorise the carrying out of a forensic procedure on a protected person if the officer is satisfied that it is impracticable or inappropriate to obtain consent to the procedure from the relevant person (for reasons specified in the clause) and the carrying out of the procedure is justified in the circumstances of the case.

10—Withdrawal of consent

This clause provides for the withdrawal of a consent given to a volunteers procedure and deals with questions of admissibility of evidence where consent is withdrawn.

11—Volunteers procedure not to be carried out on protected person who objects to procedure

This clause—

- provides that a volunteers procedure is not to be carried out on a protected person who objects to or resists the procedure and requires that fact to be explained to the protected person before the procedure is commenced; and
- deals with questions of admissibility of evidence.

The provision does not, however, apply in relation to a protected person who is under 10 or who does not appear to be capable of responding rationally to information.

Division 2—Suspects procedures

12—Interpretation

This is an interpretation provision for the purposes of the Division.

13—Suspects procedures

This clause sets out what constitutes a suspects procedure. For a forensic procedure to be authorised under the Division, the person must be suspected of a serious offence and the procedure must be either authorised by order under the Division or must consist only of a simple identity procedure (which is authorised without the need to obtain an order). A ***serious offence*** is defined in clause 3 as an indictable offence or a summary offence that is punishable by imprisonment. A ***simple identity procedure*** is defined in clause 3 as a procedure consisting only of fingerprinting or carrying out a mouth swab or fingerprick for DNA purposes.

14—Application for order

This clause sets out the procedure for making an application for an order authorising a suspects procedure.

15—Conduct of hearing

An order may be made by a senior police officer on the basis of an informal hearing conducted in such manner as the senior police officer thinks fit.

16—Respondent's rights at hearing of application

This clause sets out the rights of the respondent (ie. the person on whom the procedure is proposed to be carried out) to make representations at the hearing.

17—Applications of special urgency

This clause allows for the making of an order in the absence of the respondent where the respondent has not yet been located and the procedure may need to be carried out as a matter of urgency when the respondent is located.

18—Making of order

This clause sets out requirements for the making of an order authorising a suspects procedure.

Division 3—Offenders procedures

19—Offenders procedures

This provision authorises the carrying out of a simple identity procedure on a person who is serving a term of imprisonment, detention or home detention in relation to an offence; is being detained as a result of being declared liable to supervision (under Part 8A of the *Criminal Law Consolidation Act 1935*) by a court; is convicted of a serious offence by a court; or is declared liable to supervision by a court dealing with a charge of a serious offence.

Part 3—Carrying out forensic procedures

Division 1—General provisions on carrying out forensic procedures

20—Forensic procedures to be carried out humanely

This clause imposes a general duty to carry out a forensic procedure humanely and to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs or inflicting unnecessary physical harm, humiliation or embarrassment. The clause also requires that a forensic procedure must not be carried out in the presence or view of more persons than are necessary and that, if reasonably practicable, a procedure involving exposure of, or contact with, the genital or anal area, the buttocks or, in the case of a female, the breasts must be carried out by a person of the same sex.

21—Right to be assisted by interpreter

This clause provides a right to be assisted by an interpreter.

22—Duty to observe relevant medical or other professional standards

A forensic procedure must be carried out consistently with appropriate medical standards or other relevant professional standards.

23—Who may carry out forensic procedure

A forensic procedure must be carried out by a registered medical practitioner (or if the procedure involves the mouth or teeth, a registered dentist - see the definition of ***medical practitioner*** in clause 3) or a person qualified as required by the regulations.

24—Right to have witness present

This clause provides for the presence of witnesses during a forensic procedure in certain circumstances.

25—Audiovisual record of intrusive procedures to be made

An audiovisual recording of an intrusive forensic procedure must be made if the procedure is a suspects procedure or if it is a volunteers procedure and the volunteer has requested the making of a recording. The clause also provides for the viewing of the record or the provision of a copy of the record (on payment of any prescribed fee).

26—Exemption from liability

This clause provides an exemption from liability for a person who carries out, or assists in carrying out, a forensic procedure.

Division 2—Special provisions relating to suspects and offenders procedures

27—Application of Division

This Division only applies to suspects and offenders procedures.

28—Directions

Directions may be issued by a police officer to secure the attendance of a person who is not in custody at a specified time and place for the carrying out of a suspects or offenders procedure. Failure to comply with the directions may result in the issue of a warrant for the person's arrest.

29—Warnings

This clause provides for the giving of warnings related to clause 30 and clause 31.

30—Use of force

This clause authorises the use of reasonable force to carry out a suspects or offenders procedure or protect evidence obtained from such a procedure.

31—Obstruction

It is an offence to intentionally obstruct or resist the carrying out of a suspects or offenders procedure (punishable by 2 years imprisonment).

Part 4—How forensic material is to be dealt with

Division 1—Access to forensic material

32—Person to be given sample of material for analysis

If forensic material is removed from a person's body as a result of a suspects procedure or an offenders procedure, a part of the material, sufficient for analysis must be seta aside for the person and if the person expresses a desire to have the material analysed, reasonable assistance must be given to the person to ensure that the material is protected from degradation until it is analysed.

Division 2—Analysis of certain material

33—Hair samples

Hair samples must not be used for the purpose of obtaining DNA profiles except on request.

Division 3—Retention and assimilation orders

34—Interpretation

This clause is an interpretation provision for the purposes of the Division.

35—Order for retention of forensic material obtained by carrying out volunteers procedure on protected person

This clause provides for the making of an order (a ***retention order***) by a senior police officer that would allow the retention of material obtained as a result of a volunteers procedure carried out on a protected person in circumstances where the material would otherwise have to be destroyed. The order can be made where the person who gave consent, or a person related to or associated with him or her, is suspected of a serious offence, there are reasonable grounds to suspect that the relevant material could be of probative value in relation to the investigation of the suspected offence and the order is justified in all the circumstances.

36—Order for forensic material obtained by volunteers procedure to be treated as if obtained by suspects procedure

This clause provides for the making of an order (an ***assimilation order***) by a senior police officer that would allow material obtained as a result of a volunteers procedure to be treated as if it had been obtained from a suspects procedure. This order may be made where there are reasonable grounds to suspect that the person on whom the procedure was carried out has committed a serious offence and either that the forensic material may be of value to the investigation of the suspected offence or the material consists only of material obtained for a DNA profile.

37—General provisions relating to applications under this Division

This clause sets out general matters relating to the making of a retention order or an assimilation order.

Division 4—Destruction of certain forensic material

38—Destruction of forensic material obtained by carrying out volunteers procedure

This clause provides for the destruction of material obtained from a volunteers procedure on request.

Part 5—The DNA database system

39—Interpretation

This clause defines certain terms used in Part 5.

40—Commissioner may maintain DNA database system

This clause allows the Commissioner of Police to maintain a DNA database system and enter into arrangements with other jurisdictions for the exchange of information or the integration of the database with NCIDD.

41—Storage of information on DNA database system

This clause creates offences connected with—

- storage of a DNA profile derived from forensic material obtained by carrying out a forensic procedure under this Act on a database other than the DNA database system (the penalty for which is $10 000 or imprisonment for 2 years);
- storage of a DNA profile on the DNA database system in circumstances in which that storage is not authorised by this Act (or a corresponding law) (the penalty for which is also $10 000 or imprisonment for 2 years).

42—Specific consent required for storage of DNA profile on a volunteers index

This clause sets out a special consent procedure for the storage of a DNA profile obtained as a result of a volunteers procedure on the DNA database system.

43—Storage of information on suspects/offenders index following assimilation order

This clause is consequential to clause 36.

44—Access to and use of DNA database system

This clause deals with access to and use of the DNA database system and creates an offence punishable by $10 000 or imprisonment for 2 years for unauthorised access.

45—Removal of information from DNA database system

This clause requires the Commissioner of Police to ensure that information is removed from the DNA database system when destruction is required under this Act (see clause 38) or under a corresponding law. In addition, a DNA profile of a missing person is to be removed from the system if the missing person is found and requests removal. A person who intentionally or recklessly causes information to be retained on the database system in contravention of this section is guilty of an offence punishable by $10 000 or imprisonment for 2 years.

Part 6—Evidence

46—Effect of non-compliance on admissibility of evidence

If a police officer or other person with responsibilities under the measure contravenes a requirement of the measure, evidence obtained may be inadmissible in accordance with this clause.

47—Admissibility of evidence of denial of consent, obstruction etc

Evidence that a person refused or failed to give consent, or withdrew consent, to a forensic procedure is inadmissible, without the consent of the person, in any criminal proceedings against the person but evidence that a person obstructed or resisted the carrying out of a suspects procedure or an offenders procedure authorised under this Act is admissible in any criminal proceedings against the person subject to the ordinary rules governing admissibility of evidence.

48—Evidentiary certificates

This clause provides for evidentiary certificates to facilitate proof of certain matters specified in the clause.

Part 7—Miscellaneous

49—Confidentiality

A person who has, or has had, access to information obtained under the measure or information stored on the DNA database system must not disclose the information except in accordance with this clause. The penalty for unauthorised disclosure is $10 000 or imprisonment for 2 years.

50—Restriction on publication

A person must not intentionally or recklessly publish a report of proceedings under the measure containing the name of a person suspected of a serious offence, or other information tending to identify the person, unless the person consents to the publication or has been charged with the suspected offence or a related serious offence. The penalty for this offence is $5 000 or imprisonment for 1 year.

51—*State Records Act 1997* not to apply

The *State Records Act 1997* does not apply to forensic material or the DNA database system.

52—Forensic material lawfully obtained in another jurisdiction
Forensic material lawfully obtained in another jurisdiction may be retained and used in this State in accordance with the measure despite the fact that the material was obtained in circumstances in which it could not be obtained under the measure.
53—Subsequent procedure where insufficient material obtained
This clause provides for the repetition of a forensic procedure, where insufficient material has been obtained.
54—Power to require forensic procedure on deceased person
This clause sets out a procedure whereby a senior police officer may, if satisfied that a deceased person is suspected of a serious offence, authorise the carrying out of a forensic procedure on the body of the deceased person.
55—Arrangements with other jurisdictions
This clause provides for arrangements to be made with other jurisdictions relating—

- to the exercise of functions or powers under this Act by police officers of the jurisdiction in which the corresponding law is in force; and
- the exercise of functions or powers under a corresponding law by police officers of this State.

56—Compliance audits
This clause provides for annual compliance audits by the Police Complaints Authority.
57—Regulations
This clause is a regulation making power.
Schedule 1—Related amendments, repeal and transitional provisions
Part 1—Preliminary
1—Amendment provisions
This clause is formal.
2—Interpretation
This is an interpretation provision.
Part 2—Related amendments
Division 1—Amendment of *Child Sex Offenders Registration Act 2006*
3—Repeal of section 29
This clause repeals section 29 of the *Child Sex Offenders Registration Act 2006* (which will no longer be necessary because this measure will not apply to procedures under that Act by virtue of clause 4).
Division 2—Amendment of *Summary Offences Act 1953*
4—Amendment of section 81—Power to search, examine and take particulars of persons
This clause deletes section 81(4f) of the *Summary Offences Act 1953* (which required destruction of material obtained under section 81(4) in certain circumstances).
Part 3—Repeal
5—Repeal of *Criminal Law (Forensic Procedures) Act 1998*
This clause repeals the *Criminal Law (Forensic Procedures) Act 1998*.
Part 4—Transitional provisions
6—Retention of fingerprints etc obtained in accordance with *Summary Offences Act 1953*
This clause allows the retention of fingerprints and other matter referred to in section 81(4) even where that matter was obtained prior to the repeal of section 81(4f).
7—Material obtained in accordance with repealed Act
This clause provides for forensic material obtained as a result of a forensic procedure authorised under the repealed Act to be taken to be forensic material obtained as a result of a forensic procedure authorised under the measure.
8—Retention and assimilation orders under repealed Act
This clause deals with retention and assimilation orders made under the repealed Act and provides that they are to be taken to be orders under this measure.
9—Continuation of DNA database system
This clause continues the DNA database system established under the repealed Act.
10—Validation provision
This clause provides that for the purposes of any proceedings, contravention of a requirement of section 40, 44C, 44D or 46C of the repealed Act in relation to a forensic procedure, forensic material or a DNA profile derived from forensic material will be taken not to be contravention of a requirement of the repealed Act and will not affect the admissibility of any evidence obtained from, or relating to, the procedure, material or DNA profile.

The Hon. R.D. LAWSON secured the adjournment of the debate.

ADJOURNMENT

At 10.37 p.m. the council adjourned until Thursday 8 February at 11 a.m.