LEGISLATIVE COUNCIL

Wednesday 13 February 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:19 and read prayers.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the written answer to question on notice No. 116 be distributed and printed in *Hansard*.

PAROLE BOARD

116 The Hon. D.G.E. HOOD (26 September 2007). Can the Attorney-General advise:

1. Does a protest of innocence at a Parole Board hearing prejudice the application for parole; and

2. What is the basis for the Parole Board's policy?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs): I am advised that:

1. The Parole Board would not and does not refuse an application for parole because a prisoner maintains that he or she is innocent of the offence for which he or she has been convicted.

2. The Parole Board considers an application for release on parole on the basis that the prisoner has been convicted of an offence. It is not the role of the Parole Board to retry the issue. The Parole Board considers applications for the release having regard to all matters that it is required to take into account pursuant to legislation.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:20): I bring up the 12th report of the committee 2007-08.

Report received.

STOLEN GENERATIONS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:21): A few moments ago the Premier made a statement in relation to the national apology to the Stolen Generation. I seek leave to read that statement to the council.

Leave granted.

The Hon. P. HOLLOWAY: Before I read the statement, I note that today is the second anniversary of the passing of the Hon. Terry Roberts, a former member of this place and minister for Aboriginal affairs and reconciliation in this government. Of course, he was a person who was deeply committed to the advancement of the indigenous people of this country. The Premier's statement is as follows:

> First of all, I want to acknowledge that we in this parliament meet today on the traditional lands of the Kaurna people and that we respect their spiritual relationship with their country. I am sure that all of us are proud that the Aboriginal flag, the South Australian flag, and the Australian flag fly side by side above us.
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> Today's apology by the Prime Minister and by the national parliament marks a momentous occasion in the history of this nation. It heralds, we all hope, the beginning of a respectful new relationship between indigenous and non-indigenous Australians. In that spirit, I offer the warmest welcome and acknowledgement to the elders, to members of the stolen generations, and family members from Aboriginal communities across South Australia who join us in this parliament today.
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> This morning in Elder Park, I sat alongside Aboriginal elders and joined with other South Australians from every possible background to watch the Prime Minister deliver his national apology to the stolen generations. In Canberra, the Minister for Aboriginal Affairs and Reconciliation (Jay Weatherill), and our newly appointed Commissioner for Aboriginal Engagement, Klynton Wanganeen, were among the thousands present to witness this landmark address.
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> Across the nation, I am sure there are millions of people who, like me, were proud to be Australian this morning when, at last, we were united as a people in acknowledging the injustices of the past as we move forward towards reconciliation.

In South Australia it is fair to say that we have been here before, perhaps in a smaller way. But from little things, big things grow. Nearly 11 years ago, in this place, on a day like this, our opposing parties were not opposed, even on matters of detail or wording. We were bigger than that, and we then apologised wholeheartedly and unanimously. There were no dissenting or discordant voices. We said sorry for wrongs done in our time, and in years before our time, to the first custodians of this ancient land.

On that day, we made a belated effort towards healing, or at least to try to make amends, or to find sufficient words of consolation, sadness, regret and sympathy for wrongs and cruelties, as well as the honest mistakes that could now not be undone. On that day, in this parliament there were no weasel words. We were not afraid to apologise; we were not afraid to say sorry, and I join with the Prime Minister in doing so again.

So today, but now as Premier, I too, say sorry. These words had to be said clearly and unequivocally in this parliament, and now, today, with decency, grace, candour and feeling, from a national parliament and a new prime minister. Words that herald a new beginning.

On 28 May 1997, this parliament was one the first in Australia to express its deep and sincere regret to the stolen generations for the impact of past government policies on Aboriginal and Torres Strait Islander communities, and on our state and nation. The motion was passed without dissent. I still believe it was one of the best days in the history of this parliament.

The Aboriginal affairs minister at the time, the Hon. Dean Brown, for whom I have a great respect—

I know they are the Premier's words, but I endorse them—

recognised the needs of political unity. He said:

> Reconciliation has nothing to do with party politics: it is about the future of Australia. Today, this parliament, on behalf of the people of South Australia, takes another important step along the road towards reconciliation.

Our apology that day offered a chance for members on both sides of this house to recognise the pain endured by so many Aboriginal and Torres Strait Islander families and communities. Seconding Dean Brown's motion, I spoke of mothers at settlements around Australia desperately trying to hide and, in some cases, temporarily bury their children in order to prevent them from being taken away.

In 1991, at Ooldea, as minister for Aboriginal affairs I had the privilege of handing over the title of the Ooldea lands to Maralinga elders who had confronted everything, even the testing of nuclear weapons on their lands and the poison left behind. We had a ceremony in the desert and elders cooked dinner for us at our campsite the night before. Trucks and cars arrived from all directions and Aboriginal people, both young and old, walked with us to a place where, for thousands of years, Aboriginal people had lived and gathered next to a precious water source. In more recent times it had become the site of Daisy Bates' mission. Today there are still a few pepper trees that mark the mission site amongst the sandhills. And beneath those sandhills—land sacred to Aboriginal people—is one of the richest and oldest archaeological sites in the world.

But it was also a place where so many Aboriginal children had been taken away from their parents. Towards the end of the ceremony I was approached by an elderly Aboriginal woman weeping and in considerable distress. Her son told me that she had been taken away from her mother at Ooldea and, in later life, had spent years trying to trace and meet her family and the mother she never knew. I was told that she eventually met her mother before she died. But she was so proud and so moved on that day that she had finally returned to her birthplace. She had finally come back to the place from which she had been taken. Her mother's little girl had finally come home. And she had done so on the very day, at the very moment, that Ooldea land had once again been recognised as Aboriginal land.

I have attended lands rights ceremonies where Aboriginal women have poignantly sung about the babies being taken away. They were singing about their own experiences, and each time their song was followed by a prolonged, painful silence. It is a grief that has not healed. Others in this chamber on that date tried to imagine the suffering in order to empathise with those whose lives were torn apart. The then member for Napier, Annette Hurley, said, 'As a mother I know how I would feel if my child were taken away from me and I never knew what happened to that child all through its life.'

All who spoke acknowledged that the practices undertaken in the past have an ongoing impact within the Aboriginal community. The premier of the time, John Olsen, noted, 'The decisions which led to this sad episode have caused a scar on the face of the nation.' The ceremonies that I have attended; the grieving I have witnessed, seem to embody that scar, that stain on our soul to which the Prime Minister referred earlier today.

Back in 1997 we agreed to learn from these past mistakes. The apology to the Stolen Generations was symbolic, but it was also sincere. Here in South Australia we took our first step down the road to reconciliation. Today's apology in our federal parliament represents another critically important milestone in that journey. Some people, of course, have dismissed symbolic acts just as they dismissed land rights. They said they preferred practical remedies. But you cannot have one without the other.

Beyond these words there is a long, hard road to travel. Many here will not see its end. But today is at least a beginning. And, in the spirit of South Australia's apology more than a decade ago, I look forward to working with the opposition and all members of this parliament towards the day when the First Australians are no longer the last Australians in health, education, employment, life expectancy and opportunity.

Today the Prime Minister also spoke of practical outcomes. Past experience has shown us that practical outcomes cannot be reached without a respectful partnership and an acknowledgement of past injustices. Since

coming to office in 2002 my government has used the apology delivered in this house in 1997 as a platform to pursue recognition, justice and healing for the Aboriginal people. In 2004 I was proud to honour a pledge I had made years before to return a large area of land, the Mamungari Conservation Park, to the ownership of the Maralinga Tjarutja and Pila Nguru Aboriginal people. It was the biggest hand back of land in 20 years.

More recently, we have worked with the Anangu Pitjantjatjara Yankunytjatjara people in our state's north-west to try to solve problems such as petrol sniffing. We are acting in partnership with Aboriginal people to try to find solutions to the most difficult problems. There is now a new school, swimming pools, a power station, rehabilitation centre, bush tucker programs and arts centres, as well as police back on the lands.

But there is much, much more to be done, and we welcome the pledge of a new era of cooperation from the Prime Minister—cooperation with the states and with the opposition and, most importantly, an equal partnership with indigenous Australians based on trust. Today's apology can now allow that to happen with a cleaner slate and a new resolve. We owe it to the children.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): I seek leave to offer a response on behalf of the opposition.

Leave granted.

The Hon. D.W. RIDGWAY: Today marks another step in our journey towards reconciliation. It is an Australian journey. Eleven years ago, for the first time in parliamentary history, a South Australian minister said he was sorry. Today, I reaffirm the words of former Liberal premier Dean Brown, who invited the then opposition leader, Mike Rann, to second the motion in the true spirit of bipartisanship.

The state Liberals pay tribute to the struggles of many thousands of Aboriginal and Torres Strait Islander people affected by forcible removal. We acknowledge their hardships. Today, we remember those who have been able to come home. We lament the children who could never come home. In April 1997, Australians were confronted with the stories of thousands of people whose lives had been affected by the official policies of separation of children from their families. The Bringing Them Home report changed the debate from one of policy to one about real people, real tragedies and real trauma.

I speak today to reaffirm and recognise the leadership shown by this parliament on 27 May 1997, when the Hon. Dean Brown moved:

That the South Australian parliament expresses its deep and sincere regret at the forced separation of some Aboriginal children from their families and homes which occurred prior to 1964, apologises to these Aboriginal people for these past actions and reaffirms its support for reconciliation between all Australians.

The motion was supported by all MPs. Today, together our spirit remains strong and united. This issue has been difficult for our nation as a whole to embrace. The 11-year journey began with minister Brown's apology and reached a high point today, when our federal leader shook hands across the floor of the parliament and said sorry on behalf of an entire nation.

I ask members today also to consider the future. It is imperative that we do so, to see today as not a conclusion to our journey but, rather, the beginning of a greater journey—a great journey for a reconciled nation of many cultures. As we step forward, I ask that we remember those from the indigenous community who could not join us; in the many decades of separation, the children taken from their homes who never returned; the many children who became adults who struggled with identity and belonging; and the many who have passed and their stories never told.

To understand our future, let us also understand the losses that occurred in our past. We cannot revoke the past. We cannot reinvent the past. It happened. We remember those who could never return to their home.

Liberal leader Mr Martin Hamilton-Smith had the privilege of serving our nation in the Defence Force alongside indigenous Australians (one of them was at Elder Park this morning); men and women who had the courage to serve the nation; and, in many cases, their spirit rests on foreign soil, well away from their traditional home. In some ways, the nation has often failed to serve them. We will always remember them.

Today, like 28 May 1997, is a significant day in our state's history. This parliament's apology reflected the impact of the Bringing Them Home report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. The report showed the reality of policies of past governments. Many children were forcibly removed from their families by the Australian authorities until 1969. Many people affected by the tragedy of the Stolen Generations are still alive today and live with its effects. Many were in the other chamber today. We welcome them, we thank them and we accept their invitation to join in reconciliation.

Apologising to the Stolen Generations provided our state parliament with an opportunity to recognise the wrongs within policies of past governments and to make a commitment to reconciliation. As others have said before, we have a long way to go. Health and education are at the very top of the agenda for our way forward. The apology in federal parliament today, supported by the federal Liberal opposition, marks the beginning.

Here, in South Australia, we need to do more to help our Aboriginal communities. We need to provide a means by which future generations can understand the history of indigenous culture. The South Australian Liberals have been active in our support of reconciliation and will continue to be so.

When European culture arrived in 1788, it found a happy people who lived comfortably with the land they so loved. Over time, we have had to confront many problems. Let us solve health, social and other issues. Let us educate the young children.

The new generations must be stronger, healthier and happier. The new generations should reflect the new Australia—a nation that in 2008 has learnt much from the past 220 years, a nation that sets new standards for the coming centuries. Today is a day for our children. From this day Aboriginal children should be able to grow without disadvantage. From this day non-Aboriginal children should be able to grow without any shame.

I congratulate the parliament of 1997 for its agenda-setting apology and reaffirm the motion of the time that `State Liberals reaffirm the deep and sincere regret at the forced separation of some Aboriginal children from their homes and families which occurred prior to 1964, and apologise to these Aboriginal people for the past actions.' We reaffirm our support for reconciliation between all Australians and, as a member of the South Australian parliament today, I say 'Sorry'. Today, as Leader of the Opposition in the Legislative Council, I say 'Sorry'. Let today, 13 February 2008, be remembered as a day for us to look around and learn, a day that we understand that we are all Australian, a day where we understand the importance of saying sorry and a day when we became a better Australia.

WATER SECURITY

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:35): I lay on the table a copy of a ministerial statement in relation to water security made today by the Minister for Water Security.

SCHOOL CLOSURES

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:36): I lay on the table a ministerial statement in relation to the closure of Broad Meadows Primary School, Rosedale Primary School, Browns Well District Area School, Spence and Heysen Primary Schools (Aberfoyle Park), Aldinga Junior Primary and Primary Schools made today by the Minister for Education and Children's Services.

QUESTION TIME

POLICE, INDIGENOUS EMPLOYEES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:37): I seek leave to make a brief explanation before asking the Minister for Police a question about indigenous police numbers.

Leave granted.

The Hon. D.W. RIDGWAY: Under the former Liberal Government the number of indigenous full-time equivalent staff between 1997 and 2002 increased from 45 to 63, an increase of some 40 per cent during that period. The Rann Labor government's embarrassing record reveals a decrease of almost 10 per cent since it came to government in 2002. The Productivity Commission report, which the minister was so proud to talk about yesterday, indicates a drop in indigenous full-time equivalents over the time of this government. Will the minister explain why the government has not achieved its strategic benchmark of 2 per cent of indigenous staff within SAPOL and what strategies it is putting in place to fix this recruiting problem?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:39): It was this government that restored a police presence to the APY lands. We have a number of Aboriginal police officers

now working in the lands—not as many as we would like, but that is not because of lack of trying on behalf of the South Australian Police Commissioner nor this government to recruit such community constables. The reason simply is that it is a very difficult position for many people on those lands to undertake that work within their communities with the pressure on those individuals, and it is always a difficult task to recruit community constables. I have had some discussions with the Commissioner about how that might be improved.

One of the suggestions has been made that perhaps we need a different category, as the community constables recruited are subject to the same sort of restrictions as are other members of South Australia Police. In particular, one must not have any criminal convictions and the like, and for many people who live on the lands and undertake important community tasks this may be an inhibition. I have spoken with the Commissioner and I understand that he is currently considering—and it will have to be negotiated with the Police Association—other categories to ensure that more indigenous police are recruited to our police force.

Can I just say by way of analogy that, to fill the numbers of police, this state already has recruited actively in the United Kingdom. After the current recruitment, almost 400 officers of the 4,200 officers in South Australia Police will have been recruited in the UK. But, obviously, in relation to numbers of indigenous officers to fill our targets we do not have options such as that available to us. We have had a lot of trouble recruiting police officers. The fact that we have had some difficulty filling those positions is why we have had to go to the United Kingdom to recruit, but obviously within indigenous communities it is difficult, and it is no good pretending otherwise. Clearly, we will have to do it differently from the way it was done in the past. Of course, even if we could recruit—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, as I said, prior to that there was no police presence at all within the APY lands, but that is another story. Let us not go back into the—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Yes, but there were none in the particular communities. To be effective, community constables obviously have to have some knowledge of the communities and the lands, and the difficulty is recruiting those community constables in the areas for which they will be responsible. Obviously, with other areas of employment it is not easy, and it does not help anyone to pretend there is some magical solution.

As I said, it is a matter that the Commissioner, the Police Association and I am well aware of, but we will have to look at some quite radical solutions if we are to solve this problem. It is not just a matter of going around putting up recruiting signs and asking people whether they will join, and we are not going to force people to join, either. So, clearly, it is a matter of making this job more attractive and more acceptable to police officers. But, given some of the cultural issues involved, that is not easy, and let us not pretend it is.

POLICE, INDIGENOUS EMPLOYEES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:42): I have a supplementary question. Does the minister concede that it will be impossible to achieve the strategic benchmark of 2 per cent across SAPOL?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:42): No, of course not. I am saying that, particularly if we are to get community constables in the more remote regions of the state where they will be of most benefit to the police and to their communities, recruitment will be very difficult. But we are certainly not going to give up on our targets.

AGED-CARE FACILITIES

The Hon. J.M.A. LENSINK (14:43): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question on the subject of the Controlled Substances Act.

Leave granted.

The Hon. J.M.A. LENSINK: In May 2006 the government released a discussion paper in relation to the administration of drugs of dependence in high and low care aged facilities. Indeed, I asked a question in relation to high care facilities on 31 May 2007. It has been brought to my attention that a number of low care facilities have significant concerns because of their staffing

levels. I have a copy of a letter from the Chief Executive Officer of Aged & Community Services SA&NT Inc., who has written to the minister in the following terms:

> The industry...has two primary concerns: the increasing shortage of...RNs and ENs expected into the future, and the ability of small stand-alone residential aged care facilities, in both rural and metropolitan settings, to comply with the proposed regulations. Such facilities are typically 40 places or less and not necessarily on shared sites which have an adjacent high care facility or hospital that would employ nurses 24 hours per day. In a recent survey of ACS members, some 50 facilities responded with genuine concerns about their ability to comply with the proposed legislation.

He then goes on to raise issues of financial viability due to increased wages and says:

> Members have recently advised ACS that they have been advertising for nursing staff for over 12 months without success.

He also raises potential solutions that would have a regime of exempting facilities and credentialling skilled care workers. He then goes on to raise issues where, indeed, the government's proposal may conflict with the commonwealth regulations under the Aged Care Act, including the issue of self-administration of drugs of dependence by residents. He says that, if both low and high care facilities are defined as health services, residents would be prohibited from the choice to self-administer, and this may put the facility in conflict with standard 3 within the Aged Care Act. My questions to the minister are:

1. Has the government reached a decision on the proposed changes? If not, why has it taken close to two years to reach a landing on this decision?

2. Will the minister meet with representatives of low care stand-alone facilities so that they may express their concerns to her directly?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:46): No, a decision has not as yet been reached, and I am happy to provide a little background to that in a moment. However, to answer the last question first, in terms of meeting with representatives from low-care facilities, I have already met with a number of them, and we continue to consult with them.

I will provide a little contextual information. The controlled substances legislation applying to the management of drugs of dependence in residential aged-care facilities was reviewed, as I understand it, following a question about whether the definition of a health service in the controlled substances regulations of 1996 could be interpreted to include both high and low-care residential aged-care facilities and also because of workforce issues in the aged-care industry.

The issues that were identified to be considered by the review are quite complex, which is part of the reason why the review has taken so long. It included the Australian government's policy on ageing in place, which has made the distinction between high and low care by a facility less meaningful. Whereas the past practice was that they were clearly identified to be different facilities, policy has changed that and one is less able to distinguish between the two.

Also, the current legislation has different requirements for high and low-care facilities. Enrolled nurses who have undertaken a diploma course or the diploma post-enrolment program have increased their level of knowledge and understanding about medication, and the Nurses Board supports their increased involvement in medication administration. So, there have been some changes there as well. The evolution of the scope of practice of enrolled nurses since the legislation was enacted needs to be reconsidered in light of these practices.

Another matter is the safety of the administration of drugs of dependence, in particular, of residents in residential aged-care facilities, by unregulated workers. As we know, the trend has been for patients suffering from more complex physical conditions to continue to be accommodated in aged-care facilities. A couple of decades ago, a person in an aged-care facility who became ill would automatically be admitted to a public hospital for treatment. So, the complexity of care has shifted somewhat.

There have been two periods of consultation: in 2004 and also in 2006. So, consideration of these matters goes back even longer than the honourable member has mentioned.

Stakeholders were advised of the proposed changes to the legislation in December 2006. The changes being considered would result in:

- residential aged-care facilities being recognised as a separate class of health care facility;

- no differentiation between the requirements for low and high care in residential aged-care facilities in relation to the administration of drugs of dependence;
- registered and enrolled nurses being permitted to administer drugs of dependence in both low and high-care residential aged-care facilities rather than administration being restricted to registered nurses in high-care areas;
- unregulated health care workers not being permitted to access or administer drugs of dependence, including Webster-paks, which are those packs where pharmacists distribute to a container and the care worker distributes from the container to the resident.

The Controlled Substances Advisory Committee was consulted about the proposed changes to the legislation in December 2006. The council did not see any reason to differentiate between an enrolled nurse's role in a residential aged-care facility and other types of health services; so that was its view. The council saw the main issue as the competence of the enrolled nurse to administer drugs of dependence. If an enrolled nurse was competent to administer the drugs of dependence, the legislation should support that, regardless of the type of health service in which the enrolled nurse was working.

The council suggested that consultation should occur with health services outside the aged-care industry, with a view to proposing changes to legislation relating to the administration of drugs of dependence that would cover enrolled nurses working in a wide range of different health care settings. Health services outside the aged-care industry have been consulted. As I have said to the honourable member, I have met personally with a number of them. They were consulted about whether they supported the proposed changes to legislation that would result in enrolled nurses in all types of health services being able to administer these drugs of dependence.

The current requirement under the Nurses Act would be expected to apply, in that an enrolled nurse would be working under the supervision of a registered nurse and enrolled nurses should not undertake any duty they were not competent to do. The results of the consultation with health services outside the aged-care industry are now being considered, along with those within the industry. I have asked the aged-care industry to provide additional information. The majority of their clients are low-care clients, so I have asked them for additional information in relation to concerns they have raised with me.

I am expecting information about the anticipated impact of the proposed change which might result in the prohibition of care workers administering and dispensing drugs of dependence, particularly in low-care facilities. Any proposed changes to the controlled substances legislation will be referred back to the Controlled Substances Advisory Council. It is a complex issue, which affects a lot of people. It is in the context of a great deal of change, and we need to ensure that any changes are good changes which are considered thoroughly.

WANGARY CORONIAL INQUEST WORKING PARTY

The Hon. S.G. WADE (14:54): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question relating to the Wangary Coronial Inquest Working Party.

Leave granted.

The Hon. S.G. WADE: Yesterday, the minister made a ministerial statement regarding the Wangary Coronial Inquest Working Party and its role in ensuring that the recommendations made by the Coroner are implemented. The minister also stated that the CFS has made many changes already following the Smith report and as part of Project Phoenix.

However, there are a number of recommendations made by the Coroner which are either similar to recommendations of past reports previously declared to have been completed or are repeating similar recommendations yet to be addressed. As an example of recommendations previously identified as completed, I note that Dr Smith's report and Project Phoenix both highlight the need for better integration of private firefighters into the CFS systems and operations, while the CFS claims this recommendation has been completed; and I note that the Coroner has made a similar recommendation.

In terms of recurring recommendations, I note a series of recommendations which relate to bushfire readiness in national parks. In 2003, cabinet officially endorsed the recommendations of the Premier's Bushfire Summit, including those related to the management of native vegetation and public land, including firebreaks and access tracks in national parks

Similarly, recommendations were made by the Environment, Resources and Development Committee of this parliament in November 2005, following the Wangary fires and, again, in 2007 by the Coroner in his report on the Wangary fires. The Kangaroo Island bushfires recently burnt 90,000 hectares of land, including 75,000 hectares of national parks, again highlighting the need for better management of vegetation on public land. My questions are:

1. Will the minister broaden the Wangary Coronial Inquest Working Party terms of reference to ensure that they undertake a stocktake of recommendations made in previous reports, including the Premier's Bushfire Summit, and progress made in implementing those recommendations?

2. What will the minister do to ensure that recurring recommendations are finally addressed and resolved?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:56): I thank the honourable member for his question. He has already identified that many of the recommendations in the coronial report were already dealt with either by the recommendations of Dr Bob Smith or Project Phoenix. It does not mean, of course, that they were not picked up again at the coronial inquest stage. However, as I clearly outlined yesterday—

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: We are working on them and, as I said yesterday, we have a working party that has already met three times. Different groups of people have been tasked to undertake a body of work as well. The intention is that later everybody will come back together to have a look at what everybody has done and, if there are any issues that need to be looked at, of course, they will be.

One of the first things the honourable member said today was in relation to private farm firefighters. Of course, the CFS undertook to prepare a code of practice for private firefighter farmers. I remember being up in the Adelaide Hills the day that code of practice booklet was launched. As I said, that would have been something we would have said earlier had been completed. If there is any aspect of that arising out of the Wangary coronial inquest which we need to improve on or add, then of course we will do so. As I undertook yesterday, I will come back to this parliament and let this chamber know exactly what we have done with all those recommendations.

RIVER TORRENS LINEAR PARK

The Hon. J.M. GAZZOLA (14:58): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the River Torrens Linear Park.

Leave granted.

The Hon. J.M. GAZZOLA: The safety of the River Torrens Linear Park has come under question since the tragic death of two young babies. From these unfortunate deaths arose calls from the public for improved safety along the trail either side of the River Torrens. Will the minister advise the council on any plans that the state government has for improving pubic safety within the River Torrens Linear Park?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:59): I thank the honourable member for his question. Like all members, I was saddened to hear of the tragic drowning of 10 month old Gracie Walkley and five month old Leonardo Legrand.

These deaths, just six months apart, within the River Torrens Linear Park, promoted the state government and the Local Government Association to order an immediate safety assessment by a consulting firm. The consultant's report identifies key deficiencies along the 70 kilometres of trail on both sides of the River Torrens from the hills to the sea. Having identified those risks, the state government, the LGA and the nine councils that the park traverses have asked the Public Space Advisory Committee, which is chaired by Martyn Evans, to report back as soon as possible on three key issues. These issues comprise:

- agreements that clarify responsibilities for the trail and the park;
- clear funding regimes for priority upgrading work on the trail and the park and for future maintenance and insurance arrangements; and

- a linear park local action plan to reflect the natural environment of the trail and the park, with consistency of paths and signage across council boundaries.

The state government has not been sitting idle while waiting for the outcome of the safety assessment. Work continues on improving and maintaining the linear park, with the recent completion of the Seaview Road underpass at Henley Beach South, where the Torrens River meets the sea. The government has also helped fund upgrading and improvements to the section that runs through Underdale, a section of the park that would have been lost to the public if the opposition had had its way.

The safety assessment of the entire 35 kilometre length of the River Torrens Linear Park and its 70 kilometres of trail on either side of the river is an important first step in identifying risk to public safety. The Rann Labor government acted in 2006 to ensure that linear park land cannot be sold, yet responsibility for the capital maintenance on the trail remains unclear. However, once the Public Space Advisory Committee has prioritised the work required to upgrade safety, the state government has the financial capacity to assist local governments in meeting these priorities. There will be some shared costs, but some of those funds could be met through the Planning and Development Fund. So far, the Planning and Development Fund has approved funding for more than $34 million in projects for open space and Places for People initiatives during the course of this government, some of which have included work on the River Torrens Linear Park.

As you may be aware, Mr President, the River Torrens linear trail runs from Paradise in Adelaide's north-east to the seaside suburb of Henley Beach. During that trek, the river winds through nine councils, namely, Charles Sturt, West Torrens, Adelaide City, Walkerville, Norwood, St Peters and Payneham, Port Adelaide-Enfield, Campbelltown, Tea Tree Gully, and Adelaide Hills.

While the state government has overall responsibility for the linear park, local councils have direct responsibility for care and control, and they have continued to maintain this internationally-renowned, uniquely South Australia public asset. We are grateful for this, but it is time to put in place some clear strategies and responsibilities for the linear park's management. More work is now being done to ensure material gathered during last year's safety assessment is provided to all nine councils and the state government to assist in the preparation of an action plan.

However, no matter what we do to improve some of the safety measures along the trail, there is one thing that must not be forgotten: a river is an inherently dangerous place. We as governments, state and local, can work together to reduce the dangers. However, if we are to retain the beauty and natural landscape of the park, the fact is that it remains a watercourse with two banks sloping down to the river.

BAIL CONDITIONS

The Hon. SANDRA KANCK (15:02): I seek leave to make a brief explanation before asking the Minister for Police a question about bail conditions.

Leave granted.

The Hon. SANDRA KANCK: A former police officer has informed me that 70 per cent of inmates at the Port Augusta Prison who are on remand are there due to an infraction of bail conditions. He believes this figure is consistent across the state. He has informed me that, in turn, 70 per cent of those on remand will receive a sentence less than the time they have already served in remand.

When a person is charged, it is the police who request and make submissions to the court about bail conditions. My constituent believes that harsh bail conditions guarantee that people will fail, which, in turn, ensures that they will inevitably be imprisoned. He gives the recent example of a woman charged with begging. This woman, like many in that position—people living on the edge—had mental health issues. She was required, under the bail agreement, to report to the police four times a week, including once on a weekend, and my constituent was told by the Port Augusta police that this is common. By contrast, David Hicks, who members know that I believe has done his time and should be left alone but whom the government regards as a dangerous person, is required to report to the police only three times a week.

If my informant is correct, substantial amounts of taxpayer dollars are being wasted and the lives of hundreds of people who are already down on their luck are being made even more difficult. My questions are:

1. Does the minister believe that it is reasonable for a person charged with the trivial offence of begging alms to be forced to report to police four times a week, including on a weekend?

2. Will the minister advise whether reporting to the police four times a week for minor offences is common?

3. Is it correct that 70 per cent of people on remand are being held for breaking bail conditions?

4. Does the minister see this level of reporting for minor offences as a prudent use of police resources?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:05): The matter of bail and bail conditions is often raised, although normally it is raised from the reverse direction—that is, the suggestion is that there are actually people out on bail who, because of the seriousness of the offences they have committed and the number of convictions they have, actually should not have bail. So, I have to say that most people who complain on talkback radio, in correspondence to me, or through other parts of the media tend to take the complete reverse position to the one taken by the Hon. Sandra Kanck.

The Hon. Sandra Kanck: I beg your pardon!

The Hon. P. HOLLOWAY: Well, I would have to look at the case, as the honourable member suggests. All I can say is that I am aware of many cases where people are granted bail even though they have a lengthy list of criminal convictions for similar offences—and they are much more serious than begging.

Without knowing the circumstances of the honourable member's case it would not really be prudent for me to comment. There is police bail, but in most circumstances it is the courts that ultimately determine whether or not someone on remand is granted bail. There has been much debate on the issue in this place and ultimately it will be this parliament—through the legislation that comes out of this place—that determines the conditions for bail, but I am sure we will have further debate on this matter in the relatively near future.

The honourable member also mentioned David Hicks, but in that case they are parole conditions which, I think, were set by the commonwealth courts, and I do not think we should confuse parole conditions with those of bail. However, the question of bail is a complicated matter, as I said, and there are many views on it.

If the honourable member believes that in the particular instance to which she refers there was some injustice then I invite her to raise that with me in detail. As I said, most of the correspondence I get suggests the reverse; that there are many people who, given the seriousness of the offences and their criminal history, ought to be remanded.

I do concede that we have more remand prisoners in custody than most, if not all, jurisdictions in this country—and that has been the case for many years. It is often commented upon and I know a number of attorneys-general, members of the courts and other commentators on our legal system have tried to determine why that should be so and how we can improve that situation. However, that is really a matter for the Attorney-General.

HOUSING POLICY

The Hon. R.I. LUCAS (15:08): I seek leave to make a brief explanation before asking the minister representing the Minister for Housing a question on housing policy.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that the government and the minister last year made major changes to governance arrangements in relation to housing policy in South Australia. Information from senior levels within the housing portfolio have indicated that there are now very significant concerns about the government's policies and actions in this area. One of the many issues raised with me relates to the minister's and the department's handling of a major fraud case. The information provided to me indicates as follows:

1. There has been a case of major fraud in relation to Aboriginal housing within the portfolio.

2. Internal Audit conducted an investigation in relation to this particular fraud case.

3. Police were called in.

4. Some officers have now been moved out of their positions of responsibility.

Sources within the housing portfolio have expressed concerns about the way this particular case has been handled, both at the time and subsequently.

A search of various annual reports indicates that there is no reference in the Auditor-General's annual report for 2006-07 in relation to this issue. There is no reference in the 2006-07 Aboriginal Housing Authority annual report or the Community Housing Authority annual report. However, there is a reference to a fraud case in the South Australian Housing Trust 2006-07 annual report (a brief one on page 81), which states that there was one instance of potential employee-related fraud reported during the 2006-07 year, that the matter had been referred to SA Police and that the investigation into this case was yet to be finalised.

It is clear that we are now some eight months into the next financial year and after the end of that particular financial year. My questions are:

1. Will the minister provide details of this case of fraud and, in particular, can he confirm the cost or revenue lost in relation to this case of fraud, the number of officers who were involved in this case of fraud and what action has been taken in relation to those officers?

2. When was the minister first advised of this case of fraud, and what actions, as the minister, did he take in relation to this issue?

3. When was the Auditor-General's office advised in relation to this issue, and why is there no reference in the Auditor-General's annual report for 2006-07 to this case?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:11): I thank the honourable member for his question in relation to housing policy. I undertake to refer his questions to the Minister for Housing in the other place and bring back a response.

CORRECTIONAL SERVICES AWARDS

The Hon. R.P. WORTLEY (15:12): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the recent 2008 Correctional Services awards ceremony.

Leave granted.

The Hon. R.P. WORTLEY: I understand that the Minister for Correctional Services attended the Department for Correctional Services awards ceremony on 11 February this year, held at the Adelaide Town Hall, to present awards recognising outstanding professionalism and conduct by the staff of the department. Will the minister provide some details of the awards presented?

Members interjecting:

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:12): Isn't it a shame that those opposite are not interested in what our public servants do and their good work? I thank the honourable member for his important question. It gave me great pleasure to attend the third Correctional Services awards ceremony, and I congratulate all the award recipients, not only on behalf of the government but also personally, for their hard work and achievements.

I recognise the six individual award recipients in this place. Individual commendation awards were given to Ms Carmen Bryan, Mr Warren Elliott, Mr James Rutter, Ms Kerry Gregory, Mr Mark Humphrys, and Ms Tracy Watkins. The Meritorious Service Award was given to Ms Dee Stevens. Australia Day Achievement awards were presented to Mr Stephen Deane, Mr Seng Lim, and Mr Sel Proctor. I also recognise the outstanding efforts that were recognised by the team excellence awards.

The Professional Services Unit at the Adelaide Women's Prison has approached the task of developing strategies for reducing recidivism of female offenders in an innovative, professional and creative manner. The unit is widely acknowledged within the Department for Correctional Services, and by external agencies, for its commitment to best practice program delivery and for its holistic approach to the rehabilitation of female offenders.

The Edwardstown Special Needs program is attended by up to 100 offenders at the Edwardstown Community Corrections Centre. The program has resulted in the rehabilitation and significant improvement in the living skills of offenders. The award recognises the innovative approach to the continual development and achievement of outstanding results by a highly dedicated and motivated team.

Members of the Mobilong Prison Swim for Kids Organising Committee have raised $117,000 for Novita (formerly the Crippled Children's Association of SA) over the past 12 years. The award recognises the committee for its outstanding commitment and selfless and exceptional service, for its valuable partnership formed within the community, and for its dedication to the special needs of children and their families.

The Mount Gambier Community Corrections and Regional Project Office is a community service program, which has brought great benefits to the community, the department (Forestry SA) and community service offenders through the removal of bridal creeper—a noxious weed impacting on the health of forests. The award recognises the team's high standard of work, initiative and dedication, ensuring the program's success.

The Operations Security Unit is a small but highly trained and specialised unit providing a strong security management focus for South Australia's prisons. Emerging from the original dog squad, the unit has broadened its responsibilities in recent years and supports all prisons with a range of predominantly security-related tasks and activities. These include the operation of the successful passive alert dog program through which the introduction of illicit drugs into prisons is prevented, and support for prison-based emergency response teams. The unit ensures that prisons can better identify and target security issues and risks and therefore achieve a safe environment for staff to work in and for prisoners.

The Port Lincoln Prison bushfire recovery team was a unique program that provided tremendous benefits to prisoners and the community. The assistance ranged from erecting and replacing fencing, clearing farm areas, creekbeds, building retaining walls, concreting and painting, water pipe trenching, tree planting, landscaping and welding. The award recognises the selfless commitment and dedication of the team in assisting the community in times of great trauma and desperate need. It is clear from the responses received that the team has been very much appreciated and held in high regard by the community and the Port Lincoln prison. I am sure members opposite will also join the rest of us in this chamber in congratulating those public servants.

MARATHON RESOURCES

The Hon. M. PARNELL (15:17): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Marathon Resources.

Leave granted.

The Hon. M. PARNELL: Yesterday minister Holloway and Premier Rann released a press release under the heading 'Government suspends drilling operations'. They followed it up with a ministerial statement reporting on the PIRSA investigation into significant breaches of exploration licence conditions by Marathon Resources in the Arkaroola Wilderness Sanctuary.

Despite the impression given yesterday that this represents harsh punishment by the government, cracking down on a rogue operator, not only has Marathon Resources been allowed to continue drilling as normal in the four weeks since PIRSA and the EPA went to Arkaroola to investigate the buried waste but I understand that PIRSA has given permission for the company to continue on and complete its current drilling operations, which Marathon estimates will take another 10 days beyond yesterday's announcement.

This morning Marathon company chairman, Peter Williams, certainly did not seem too perturbed by the so-called suspension, saying on ABC Radio:

> Every year we've been out between April and October and that would have been the case this year. We would have been vacating in March, so it's brought that forward by a few weeks.

As far as the company is concerned, it seems it expects to be given permission to start drilling again in the wilderness sanctuary at the end of this year.

The other revelation that came out yesterday was that this incident was not just some hasty rubbish disposal but a systematic and sustained abuse of licence provisions, including, most disturbingly, vandalism of a unique geological outcrop at Mount Gee—a site which I remind

members has been listed as a geological monument on the register for the national estate. I also remind members that the uranium exploration at Mount Gee is not, as stated by the Premier in January, occurring in an area nearby but is smack bang in the middle of the Arkaroola Wilderness Sanctuary. My questions to the minister are:

1. Will he confirm that Marathon has been given permission to complete its current drilling operations, which is likely to involve another 10 days of drilling actively beyond yesterday's suspension announcement?

2. When will the joint EPA/PIRSA investigation be finalised and when will it be released to the public?

3. Does he accept that the area under investigation by PIRSA and the EPA is inside the Arkaroola Wilderness Sanctuary and not, as stated by the Premier, in an area nearby and, if so, why is the government continuing to spread this misinformation?

4. Given that we have some 22,800 bags of waste, some containing radioactive drill cores, disposed of in two pits 35 metres long and 2.7 metres deep in the middle of a wilderness sanctuary, and a mechanical assault on the Mount Gee geological monument itself, what would a mining company have to do to have its operations discontinued permanently?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:20): The fact is that Marathon Resources has been told to halt its operations there forthwith. Of course, it does have to not only clean up the deposits that were put into the pit against the requirements of that company but also clear up the drilling activity. When you drill a hole, of course, you dig a pit with a plastic liner around it to catch the water that is used in the drilling process, and we expect that as part of completing those drilling operations the company has to restore the drill holes. It will take a little while to clear that up and remove those sumps, as they are called, that are part of the drilling activity but, as I made clear yesterday, no new drilling will be permitted by that company.

To put that in perspective, it is interesting that, when Marathon made a statement to the Stock Exchange on 31 January this year, at the time I think the company was talking about a program of 50 drilling holes up to June 2008. My advice is that the company has drilled 23 holes, and it will remain at that number. So, to try to suggest that somehow or other this government is permitting those activities to continue is completely incorrect. However, the drills will be on site for a few days to complete their work on the particular holes on which they are currently active because, obviously, that needs to be cleaned up as part of our requirements. Incidentally, of course, that is why the company will retain a mining licence, because obviously it can do that work only if it has access through a mining licence.

The honourable member also talked about where the activity is. Where Marathon Resources has been drilling is on Mount Gee, which is inside the Arkaroola area. I believe the Premier referred to it as being near the resort. It is about 10 kilometres from the Arkaroola resort, which most people would recognise. As I said, I do not think anyone is disputing that it is within the broad Arkaroola area. That is obviously understood.

The honourable member referred to the alleged damage to a particular geological monument. I referred to that in my statement yesterday as one of those matters on which the government obviously is seeking a response from the company. Of course, there has been some removal and certainly the circumstantial evidence would suggest that has been done by the company. We are still awaiting a response from the company in relation to that particular matter, but how the responsibility for that can be determined of course remains to be seen. Clearly, the fact that there was some damage to that area—in other words, a piece of equipment was used where it should not have been—is obviously one of the factors the government has taken into account in making its decision.

The honourable member in his question also raised issues about the appropriateness of this government's response. Let me say that, as a result of the action that this government has taken, there will be significant financial harm to this company, and I think one only has to look at the Stock Exchange to see the evidence of that. I can only repeat that this government will not tolerate that sort of behaviour. Certainly, as I said, the dumped waste, which is simply the material that has been driven from the cores, is radioactive; because of course the company was exploring for uranium, and the waste does have some uranium present in it, I suspect.

I suspect it is less radioactive than this building, which is made of granite. I am sure that, if we brought a Geiger counter into this building, there would be very significant readings because of

the granite that this place is made of—probably higher, I suspect, than the uranium samples in the ore that has been put back in the trench. However, that is another issue.

I also want to indicate that the area of Mount Gee within the Arkaroola sanctuary, where this operation has taken place, was extensively explored originally in the 1940s but also during the 1960s and 1970s by companies such as CRAE and Exoil and, indeed, the tracks within the Arkaroola sanctuary, where the drilling was taking place, are those original tracks, which have been there for 30 or 40 years, which were originally left in that area by prior exploration—in particular, by Exoil. As part of Marathon's licence to operate on that place, the requirement was to restore those tracks. So, as a result of the operation, some of those pre-existing tracks will be rehabilitated to ensure that they return as near as possible to their natural state, as quickly as possible. However, they had, in fact, been pre-existing, and I think that needs to go on the record.

Marathon Resources has fully cooperated with the government in relation to the investigation. Nevertheless, I can only repeat what I said yesterday: this government will not tolerate, particularly in such sensitive areas, breaches of our conditions. The message goes out to all companies that we expect those conditions to be adhered to.

While I am on that subject, I indicate that PIRSA is currently working closely with the South Australian Chamber of Mines on a revised and upgraded code of practice for mineral explorers in South Australia, which will be released early in 2008. The South Australian Farmers Federation is also engaged in the development of the code. I think that, given the big increase in exploration that we have experienced, it is appropriate that we should upgrade our codes of practice in relation to that and, obviously, the experience in the light of this Marathon incident will certainly be included in that.

I should also point out that there was an independent report on a national scorecard of mining approval processes in 2006, which was released by the Minerals Council of Australia. This scorecard was prepared for the Minerals Council by URS Australia Pty Ltd, environmental consultants, and it reports the results of a workshop involving a representative from each of the five consulting firms that have extensive experience in the mining industry.

That scorecard was developed to assess and compare approval processes in seven state and territory jurisdictions and assess performance against 17 criteria in two key areas, namely, the design and administration of policy and legislation. Of the 17 criteria assessed, South Australia received the highest rating in eight criteria, the second or equal second highest ranking in six criteria and the fourth highest in two criteria.

This state has worked hard to develop the best and most efficient and, at the same time, the most stringent regulatory processes for the mining industry in the country. This government has set out to promote mining, but we realise that that can happen only if there are rigorous and effectively enforced practices and regulations that go with it. I believe that that scorecard, in fact, indicates that we have achieved that, and we intend to ensure that that reputation continues.

There are many ways in which this government does require the reporting and assessment of operations at mineral exploration sites and, certainly, what we have seen with Marathon Resources will simply harden the government's resolve to ensure that those practices and standards are kept and maintained.

MARATHON RESOURCES

The Hon. M. PARNELL (15:30): I have a supplementary question. Will the minister confirm that Marathon's continued presence in the Arkaroola Wilderness Sanctuary will be limited to clean-up, restoration and removal of equipment and that there will be no drilling and no further mineral exploration?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:30): I have already made it clear that there will be no new holes drilled by Marathon. That does have to be completed. It will take a few days for the clean up effort in relation to the sumps, and so on. If drilling is halfway through and the bit is down there, it has to be taken out of the hole. That process will be allowed to continue. After all, if the equipment is there we do not want it left on the side of the hill.

We have set a number of objectives or requirements on the company. First, it has to remove the material that has been placed wrongly in those pits. It then has to do a thorough review and report to government in relation to its environmental practices, because the company has other tenements within the state. The government wants to ensure that the company does a thorough

review of those practices. As we indicated yesterday in a statement, the company will have to talk to and re-engage with stakeholders, including the Sprigg family (the operators of the resort at Arkaroola), before this government would ever contemplate any further activity by the company in this area.

It is up to the company as to what it does now. Certainly, it can undertake any environmental or baseline studies if it so wishes and if it believes they are valuable. In relation to drilling, once the work on the holes it is working on now is completed—and I mean restoring the sumps which are there to collect the material—we expect the drilling rigs would be removed. As I said, there will be no further drilling for an indefinite period.

BHP DESALINATION PLANT

The Hon. C.V. SCHAEFER (15:32): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the pilot desalination plant at Port Bonython.

Leave granted.

The Hon. C.V. SCHAEFER: The prawn industry in South Australia is worth $36 million, $26 million of which is exported. It is very concerned about any possible effect of saline discharge from the proposed BHP Billiton desalination plant at Port Bonython on the prawn nursery in Upper Spencer Gulf. A pilot plant is being developed currently to investigate, among other things, the environmental effects of a larger plant before final government approval is given for that larger plant. Will the minister confirm that, even though the saline waste from the actual large plant will be discharged into Spencer Gulf, the salt from the pilot plant is not being discharged into the gulf? Will she explain how the results obtained from this trial can possibly be an accurate gauge of future environmental effects?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:33): The Olympic Dam expansion project, which was declared a major project by the state government, is proposed to include a desalination plant, which will be situated in the Spencer Gulf area. In preparation for the establishment of the proposed plant, a pilot desalination plant is being planned currently by BHP. The intention of the pilot plant is to provide BHP Billiton with a working example of how the process will have to be developed in order to ensure appropriate quality water is produced by the proposed major desalination plant.

I am advised that the EPA has granted a licence to operate a pilot desalination plant, to be constructed at Port Lowly near Whyalla. Among other things, the EPA licence includes conditions that require BHP Billiton to develop and implement a monitoring program that is acceptable to the EPA.

The monitoring program is expected to include specific details relating to the dilution of discharge being emitted into the marine environment from the pilot plant, as well as verification in relation to appropriate plant discharge water salinity. BHP Billiton will also be required to confirm that concentrations of water treatment chemicals will not adversely impact on the ecosystem, specifically on the giant cuttlefish.

As I said, this has to be done in a way and monitored in a way that is acceptable to the EPA. If the EPA is not satisfied with the current arrangements that have been established and with the monitoring that is being done, if it believes that the current monitoring does not enable it to measure those impacts then, quite clearly, it would not be acceptable to the EPA, and it would be required to do things differently.

The program has been received and is currently being assessed by EPA staff. They are carefully involved in this. It should be noted that the requirements for this pilot plant do not have a relationship that obviously might be required for a full size desal plant, due to the different levels of output between the two and the different salinity levels of the discharges.

In relation to the final desal plant in Spencer Gulf, the studies to be included in the environmental impact statement include water quality modelling, both local to the discharge and far field modelling to consider circulation in the gulf, a range of assessments to determine the potential toxic impacts on the local and regional ecosystems, including specifically the giant cuttlefish, and also benthic surveys to determine the existing health of the marine ecosystem. As I have outlined, the monitoring does have to, in effect, meet the needs of the EPA and be acceptable to it. It is involved throughout this process, both at the pilot level and also the final desal plant development.

VIDEO CAMERA THEFT

The Hon. A. BRESSINGTON (15:37): I seek leave to make a personal explanation.

Leave granted.

The Hon. A. BRESSINGTON: Yesterday, during the debate on the Criminal Law Consolidation Act, I made a comment about a video camera that was taken from my office and that my staff had driven to Noarlunga and picked up the camera. That, in fact, is not the case, which I found out yesterday when I got back up to my office. My staff were travelling to Noarlunga to pick up the camera when the police rang my staff member to tell me that they already had possession of the camera. For the record, I would like to clarify that. I thank you for allowing me to give the explanation.

MATTERS OF INTEREST

SOLAR ELECTRIC BUS

The Hon. R.P. WORTLEY (15:39): I rise today to bring to the attention of the chamber the recent launch, here in Adelaide, of the world's first 100 per cent solar electric bus. The Lord Mayor, Michael Harbison, presided at the unveiling of this addition to the Adelaide City Council's free connector bus service. I had the pleasure of attending the event and learning about the operation of our city's unique new commuter transport vehicle.

This remarkable innovation in environmentally sustainable public transport represents the realisation of Adelaide City Council's eight-year, million-dollar plan to deliver an entirely electric community bus. Built by new Zealand's Designline International, the vehicle has no combustion engine, nor is it a hybrid. In fact, the 27-seater bus named Tindo, in acknowledgment of the Kaurna people's word for 'sun', will use 100 per cent solar energy. Consequently, Tindo is not only emission-free and carbon neutral but is also extremely quiet. This is a particular benefit when its use as a free service through the Adelaide connector bus service, both in the city and residential areas, is taken into account. Tindo is powered by 320 photovoltaic panels (supplied by BP Solar) mounted above the new Adelaide central bus station. This is now the largest grid-connected solar panel system in Adelaide.

I am sure that members would be interested to know that a significant portion of the funding for this unique solar photovoltaic system was provided by the commonwealth government by means of the Adelaide Solar City program. This is a partnership approach that involves commonwealth and local government, the private sector and local communities in rethinking ways in which energy is produced and used to ensure a sustainable future in urban locations.

I should add that Adelaide is hosting the third International Solar Cities Congress next week. Leading business, planning and policy representatives will gather to discuss the realities of increasing energy needs and the situation where many resources are finite—and Tindo will be used to transport the delegates to the centre.

I note that the Adelaide City Council also committed substantial funds to the Tindo project. The Lord Mayor and the council should be congratulated on taking the lead that I am sure other communities will be glad to follow.

Independent of the South Australian grid, the generation of electricity to power Tindo will remain, as I have mentioned, entirely carbon neutral. Up to 70,000 kilowatt hours of zero carbon emissions of electricity will be produced every year. This will enable Tindo to operate for some 200 kilometres between charges, given typical metropolitan conditions, with no tail pipe emissions.

It is Tindo's innovative battery technology that provides the vehicle's exceptional energy storage capacity and operational range. Its 11 sodium/nickel battery modules are resistant to external temperature extremes and, as a bonus, are also essentially maintenance free and, consequently, highly economical.

Tindo began operations from Calvary Hospital, with the Lord Mayor on board, on Monday 11 February. I am advised the bus was full by the time it reached the city.

Not only does Tindo represent a sizeable investment in Adelaide's sustainable future, it also represents yet another win for South Australia in terms of innovation. It is widely acknowledged that the generation of ideas and their realisation and application are the essential drivers of social, economic and, increasingly, environmental health and wellbeing.

It is hard to dispute the assertion that a community—indeed, a nation—which embraces technology will flourish and prosper. It is in this context that, once again, South Australia, and specifically Adelaide, lead the way in the application of cutting edge technologies. This lead has been recognised by transport and environmental observers and commentators all over the world. A simple internet search reveals applause for Adelaide's selection of Tindo from interested parties in Canada, the United States and Eastern Europe, as well as those closer to home.

The creative use of technology has been one of the hallmarks of our community here in South Australia. Now more than ever we join with the wider Australian community in dealing with the social and environmental challenges we face as a nation. Dismissed or, indeed, simply ignored, by the previous federal government, the innovation imperative is crucial to meeting these challenges. Labor in the states and territories and in the federal sphere acknowledges and is prepared to act on this imperative.

As my colleagues in this chamber are aware, federal Labor will implement an emissions trading scheme by 2010 and will make the investments that are required to help the economy prepare for emissions trading.

Time expired.

JUDICIAL SENTENCING

The Hon. R.D. LAWSON (15:44): In parliament yesterday I was pleased to hear the Hon. Dennis Hood's apology to Judge Marie Shaw for remarks the member made both inside and outside parliament on 22 November last year. Immediately after he made those remarks in parliament, I had suggested that the government had prior knowledge of them and had failed to defend the integrity of the judge. I am now assured that the government did not have that knowledge and, therefore, I am happy to withdraw those imputations. On 22 November the Hon. Mr Hood had said:

> Freedom of information data received by Family First shows that Judge Shaw did not sentence any persons charged with rape or unlawful sexual intercourse to prison last year despite hearing 12 cases charged with those offences.

The member went on to describe them as 'deplorable sentencing statistics'. I was in the chamber when those words were uttered and they surprised and, I suppose, rather shocked me. Rape is one of the most serious crimes in the criminal calendar and invariably attracts a sentence of imprisonment, and for any judge to release every offender was a matter of serious concern. If I had not personally been aware of the integrity of the particular judge, my confidence in her would have been seriously compromised.

I quite appreciate that the words spoken were literally true—namely, that the judge had heard 12 cases and did not sentence any of those accused to imprisonment. However, the clear implication of the statement was that she had 'failed'—and that was the word used by the honourable member—to imprison any of the offenders when she had had an opportunity to do so. Why otherwise would the statistics have been described as 'deplorable'? Everyone knows that literal truth can often be misleading. A person could say that he had never been found guilty of any offence and may be speaking the truth, but the actual fact of the matter could be that he had pleaded guilty to 20 offences, which means that he had not been found guilty. So, an entirely wrong impression can be obtained.

I do not suggest that the honourable member deliberately suppressed this information, because in an earlier speech to parliament on 23 October 2007 in relation to the Victims of Crime bill he specifically mentioned that the 12 rape and unlawful sexual intercourse cases of a particular judge (whom he did not name) had resulted in 'six acquittals and six prosecution withdrawals'. So, the honourable member was not disguising that fact and was clearly aware of it; however, using it in the context he did created an entirely wrong impression for those in the chamber as well as for those outside, and I do not believe he should have attacked the judge on the ground of her failure to do something that she could not have done.

The member also based his attack on the judge's sentencing of an offender, Christopher Niehus, who was given a suspended sentence on the day of those remarks. However, the honourable member's outline of the facts of that case to the parliament, which were quite detailed, were not (as I read the transcripts of those sentencing remarks) the same as the facts upon which the judge was required to sentence that particular offender. I note that the DPP has not appealed against the judge's decision in that matter.

I do not for one moment doubt the sincerity of the member's dissatisfaction with the general level of penalties handed down in the criminal courts and the frustration he shares with many victims. He has been running a persistent campaign, as he is entirely entitled to, and I encourage him to do it. However, the intention of my remarks this afternoon are to remind all members, myself included, of the need to ensure that information provided to the parliament is fair and accurate—otherwise, the credibility not only of the member concerned but also the parliament itself will be compromised. This is especially true where remarks touch upon the reputation of a particular individual.

STOLEN GENERATIONS

The Hon. I.K. HUNTER (15:49): Today is a day of days, a day when all of us can be justly proud of the institution of parliament. For the first time in a really long time I can rise in this place and say that I am unequivocally proud of our federal government and our federal parliament. Today I am proud to be an Australian. Prime Minister Kevin Rudd has today acknowledged the pain and suffering experienced by the Stolen Generations of Aboriginal people and their families and offered an apology on behalf of us all. In so doing, it begins a new chapter in the history of this country.

No-one who has had even a cursory look at the 1998 Bringing Them Home report can deny that, as a group, the Stolen Generations deserve an apology.

Over a decade ago, in the other place, the then premier Dean Brown did something that, sadly, his federal counterparts never found the stomach, or perhaps the heart, to do: to apologise to the Stolen Generations. Faced with the release of the Bringing Them Home report, this parliament was united in its apology, and premier Brown spoke for our state when he said:

> We apologise for the actions of past parliaments which allowed Aboriginal children to be taken without consent from their parents, to the children who were taken from their mothers and fathers, to the mothers and fathers who watched in pain as their babies and children were taken from their side or taken from their schools. To those people, we apologise.

I echo those sentiments unreservedly today. Some commentators have pointed out in their mean-spirited way that an apology is useless and that it does nothing to help the indigenous people in any real sense. Of course, it is true—indeed, it is self-evident—that an apology will not address all the problems facing the indigenous people of Australia. It will not break the cycles of poverty, of drug and alcohol misuse and of violence that disproportionately affect Aboriginal people.

An apology was never intended to solve these problems, but an apology opens up a dialogue between indigenous and non-indigenous Australia. It demonstrates, albeit in a small way, that the rest of us are ready to listen. It is, I think, a new beginning, a way of acknowledging the past and then moving forward. Solutions can best be built on a bedrock of trust and mutual respect, and saying sorry is a necessary first step. Besides, surely we can make symbolic gestures and do the hard work at the same time; one does not preclude the other.

It has also been argued in some quarters that an apology is not necessary because whatever happened is not the fault of the current generation. This argument is fatuous at best. I can be sorry and say that I am sorry about the death of a friend's relative without implying that it is somehow my fault or that I should pay reparation. This argument has wasted far too many column inches in recent times; let us not hear any more of it.

It has even been suggested by some that those taken are now somehow better off for the experience. A study quoted in the Bringing Them Home report makes short work of this argument. The study found that, compared with those indigenous people raised by their own families or in their own communities, the members of the Stolen Generations were:

- less likely to have undertaken post-secondary education;
- much less likely to have stable living conditions and more likely to be geographically mobile;
- twice as likely to report having been arrested by police and having been convicted of an offence;
- three times as likely to report having been in gaol;
- twice as likely to report current use of illicit substances; and
- much more likely to report intravenous use of illicit substances.

This sad list of dysfunction goes on and on. It is up to all of us now to seize this opportunity and to build on the goodwill that will be generated today. It is my hope that an apology and a recognition of past wrongs, delivered sincerely by the whole of parliament, will go some way to opening up the dialogue we all need. I want to add my voice to that of the Prime Minister and the millions of Australians who support this apology and say very simply: I am sorry.

VISITORS

The ACTING PRESIDENT (Hon. B.V. Finnigan): I acknowledge in the gallery the presence of the member for Norwood in another place and her guests.

MATTERS OF INTEREST

VICTORIA PARK REDEVELOPMENT

The Hon. T.J. STEPHENS (15:53): As opposition spokesman for sport, recreation and racing, I would like to use my time today to reflect on the future of Victoria Park. I have to say that I am left scratching my head when I think about the Rann government's current stance on Victoria Park, because I know how many government members previously supported its redevelopment. The Premier supported the redevelopment.

The Treasurer worked hard to make the redevelopment happen (albeit in a dogmatic way) and, if he was being completely honest with us all, we know how much he would like it still to go ahead. His good mate, the member for West Torrens, supported it. Last year, Mr Koutsantonis lashed out at the 'elites', as he called them, who opposed the Victoria Park redevelopment and called on his colleague the member for Adelaide to get behind it. I am advised that even the member for Newland has joined an online networking group that supports a redeveloped Victoria Park—and good on him for doing so. The Attorney-General's comments on FIVEaa radio on 18 December also clearly express his view, as follows:

> I'm working back in my office, I thought I'd give you a call about a very nice thing I was able to do on Friday, along with 10,000 other South Australians, and that was to go to the races at Victoria Park for the twilight meeting... people had a really good time, even though, of course, the Victoria Park racecourse is dilapidated. But marquees were erected all over the place and people were back to racing, and I think it would be very sad if racing left the central business district. It's been there for 100 years...

I echo the Attorney-General's comments. It will be very sad if the South Australian Jockey Club walks away from racing at Victoria Park just because the Rann Labor government abandoned it. For Premier Rann and his government to blame the Adelaide City Council for the redevelopment's failure is unacceptable. Luckily the government still has the opportunity to show true leadership and vision by adopting legislation to take the original proposal forward.

Because of recent events in Melbourne, another very real threat to Victoria Park's future as a central entertainment hub has arisen. Formula One boss Bernie Ecclestone has stated that Formula One likely will quit the Albert Park racing circuit after 2010. Ecclestone reportedly has said that the contract has little chance of being renewed beyond 2010 because of spiralling costs for Formula One and a lack of support from Victorian Premier John Brumby.

Some of us might not feel much pity for Victoria, given that there is still some bitterness over Adelaide losing the Grand Prix. However, we need to understand that, should Formula One leave Melbourne, the city will push hard for other racing events to take place on the Albert Park street circuit. The smart money would have to be on Victoria challenging South Australia for the mantle of holding Australia's largest domestic motorsport event—a mantle we currently hold with the Clipsal 500. We must remember that Albert Park is big race ready and as a result will be ready to pounce.

The Grand Prix Corporation's annual report revealed that it cost Victorian taxpayers $34.6 million to host the 2007 event. Given that the Victorian government has the infrastructure in place at Albert Park and this sort of budget to spend on a motor race, we simply have to expect a serious challenge to our race after 2010.

The Clipsal 500 is currently breaking all sorts of records. Last year's attendance grew 2.4 per cent on the 2006 figure. The economic benefit to South Australia in 2007 was around $30 million—up $3 million from 2006. The 2007 event attracted 15,000 interstate and international visitors. We can expect all of these impressive numbers to be challenged after 2010 should Victoria lose Formula One and focus on the other premier racing event, V8 super car racing. Because of this very real threat to the status of our Clipsal 500, now is not a time for settling for second best. Now is not the time for settling for a demountable stand and shadecloth.

As respected columnist Rex Jory pointed out in *The Advertiser* yesterday, there is a mood for change in South Australia right now. South Australians are calling for an era of flair, growth and excitement. Jory wrote that people are sick of being denied facilities and infrastructure, which are arising like Jack's beanstalk in Perth and the eastern seaboard.

We need to make the most of this mood for change and press ahead with exciting, progressive development that benefits South Australians and future generations of South Australians. The Victoria Park redevelopment must go ahead.

PARADISE COMMUNITY SERVICES

The Hon. A.L. EVANS (15:58): Paradise Community Services (PCS) is a welfare branch of the Paradise Community Church. This year PCS will celebrate its 10 year anniversary. Although PCS is church based, the majority of its work occurs outside the church environment with people who have no other connection with the church.

The clients of PCS are usually doing it tough on their own, have experienced prolonged hardship, are desperate for answers and are consumed by hopelessness and thoughts of suicide. Many of the clients have had family breakdowns, and the only people they have in their life are in similar circumstances. It is little wonder people give up.

There is often a misconception that people who access welfare services must be mismanaging their resources or making unwise decisions about their lives. There are a few such unwise people, but many others are simply struggling through illness and disability, particularly mental illness. There are people who grew up in fractured or abusive homes or alternative care placements and have never learnt how to manage a home or how to develop healthy family relationships. These people struggle to gain employment and have been unemployed for so long that they have no vision for stable employment.

PCS has found that the common denominator in most people who access the services is isolation, loneliness, fear, hopelessness, low self-esteem and little confidence in their own ability to survive. The process of restoration can take years to undo the damage that has been done in people's lives. PCS provides a range of services, including the provision of welfare in the form of items such as food, furniture, clothing, household goods and so on. From the welfare services it provides social and recreational programs, recovery and life skill programs and volunteering opportunities. Clients have support to address issues in their lives or advocacy to help deal with needs that require greater intervention.

Services are provided at the three branches of PCS, namely, Paradise, Elizabeth and Hendon, and also at juvenile training centres, prisons and other sites (on invitation). Last year PCS incorporated its home care service to provide in-home respite care for clients of all ages who are impaired through illness, ageing or disability.

Last year PCS provided assistance to over 15,000 people, and the demand for services increases every month. It is estimated that about 80 per cent of its clients have been affected directly by abuse. PCS provides training, child protection and child abuse notification to all volunteers in Australian Christian Churches (SA) who are involved with children or young people in their paid or voluntary work. In 2005 PCS was acknowledged with a highly commended award in the category of Services to Service Providers at the National Child Protection Awards.

PCS is financed primarily through donations of goods, finances and volunteer hours. The rewards for the team are to be welcomed into the lives of people who are struggling and see people restored with resilience that comes from security, stability and significance from relationships, positive occupation of time, and a change of lifestyle.

GENETICALLY MODIFIED CROPS

The Hon. C.V. SCHAEFER (16:02): Late last year the Victorian and New South Wales governments lifted their ban on growing GM crops, specifically, canola. Our government under the act was required to review the Genetically Modified Crops Management Act by April 2008. A committee with expertise and chaired by the Hon. Anne Levy was set up to conduct that review and brought down the following recommendations:

- that the Genetically Modified Crops Management Act 2004 be retained;
- that the South Australian government endorse the NACMA Market Choice and Access Plan as a way of achieving the desired nationally consistent approach to market and trade issues;

- that the cultivation of GM canola in South Australia, other than on Kangaroo Island, be permitted; and
- that the cultivation of InVigor canola and Roundup Ready canola be prohibited on Kangaroo Island until 31 March 2010.

In other words, other than on Kangaroo Island, it recommended that the moratorium for the growing of GM canola in South Australia be lifted.

I want to know what act of utter lunacy caused the government late last week to spit in the face of the recommendations of its own committee. Is it aware of some—just some—of the ramifications of its decision? Is it aware that it may well have put the future of the Plant Genomics Centre at Waite Institute at risk? Why would sponsors put money into South Australia when Victoria is showing all the signs of encouraging, not discouraging, research? Why would a young plant scientist consider a future in South Australia when they can only do half a job? And can the government not see that research will now be concentrated on the southern and eastern states' climatic conditions rather than on the drought and salt-tolerant plants we so desperately need in South Australia?

This government speaks of market access and competitive advantage. There is none. There is not one cent of premium pricing for canola in South Australia, and that is the grain we are discussing. South Australia grows approximately 250,000 tonnes of canola per annum. Ten per cent is crushed in South Australia for biodiesel and the remaining 90 per cent is sent overseas to crushers that are already accommodating GM canola. Yet this government is arguing that the extension of the moratorium is on the ground of market advantage. I repeat: there is none. The government is prepared, therefore, to jeopardise our crop plants research for what is a figment of someone's imagination. More importantly, it has given no indication as to how it is going to enforce this moratorium extension now that Victoria, our nearest neighbour, has very sensibly lifted its moratorium.

Will there be roadblocks at the border to ensure that no farmer from the South-East gets a bag of seed from his neighbour in Victoria? Will a farmer who has half his farm on either side of an imaginary line be forced to grow our old redundant canola on half of his farm but be able to use the new technology on the Victorian side? Does this then prevent free trade between the states for grain or seed? Does it also mean that contract harvesters and carters who work across the border will no longer be able to do so? And, if they are able to, will they have to have certification? Who will carry out the inspections?

In spite of minister McEwen's press release suggesting an extension of two years to the moratorium, my information is that the intention is for this to go on for the duration of the life of the act; that is, 10 years. Further, no protocol has been put in place to assess South Australia's performance or markets against Victoria's. This decision will conservatively cost South Australian farmers $20 million per annum and put them behind their Victorian neighbours in the safe use of technology. It will risk our grain research and development industry and our future as modern farmers. I repeat: who in cabinet precipitated a decision that is unwarranted, ill considered, illogical and simply will not work?

Time expired.

AGED-CARE FACILITIES

The Hon. SANDRA KANCK (16:06): It is concerning to observe that high-care residential aged-care facilities in South Australia are more likely than those in other states to be operating under sanctions. According to the nursing home accreditation website of the federal Department of Health and Ageing this week, of the eight states and territories, only four had sanctions, and two of these were in South Australia. Fortunately, this is fewer than in October last year, when we had five.

These facilities are home for the most vulnerable people in our community: the frail aged. Most elderly people live in their own homes and will never live in a nursing home but, for those who do, we should provide the highest possible standard of care. Other states can come through the commonwealth accreditation process without sanctions, so it should sound alarm bells that South Australia cannot do so. Staffing levels appear to be too low to allow for the human touch of care (that is a funny concept in a nursing care place!) in aged-care facilities.

Recently, my office heard about an elderly gentleman living with dementia in a nursing home. His family reported that, on a number of occasions when it came time for them to leave, they

would search around for a staff member to assist him back to his room and find none. They talked to other residents, who also reported having difficulty in attracting the attention of staff. For some, obtaining assistance to get to a toilet became an excruciating experience, without being able to get staff assistance. The wife of a resident from another facility contacted my office and said:

> There are quite a few nursing homes that have the look of 'money making machines', in that there is very little provision of adequate leisure space within and not enough garden areas for residents to easily access and/or view.

Staffing levels which do not allow for the proper care of residents have an impact on staff morale, on retention of staff and reliance on agency staff. Imagine what it does to the residents! We should be encouraging and assisting people who have complaints about nursing homes to formalise them, so that standards can be maintained until these institutions are consistently beyond reproach.

In 2005, I introduced into this place a human rights monitors bill. Sadly, it lapsed, although the feeling that legislation of this kind is needed was expressed to me by honourable members. The effect of such legislation would be to allow trained people to conduct spot and random checks on facilities, paying particular attention to the rights of residents.

In the absence of a bill of rights and a clean sheet from the aged-care standards and accreditation agency, there remains a need for human rights monitors. When I hear that even a government-operated facility is failing accreditation, I have to ask: what is going on in our aged-care system? South Australia has to get on top of this issue, and we need to do it quickly, as we have the fastest ageing population of all the states.

In the process there is the potential to create models for others to follow, as well as to pick up on world's best practice. For instance, we could establish a teaching nursing home in order to promote aged-care nursing as a specialty. Another innovation could be the use of the Snoezelen therapy rooms for nursing home residents in order to reduce depression and anxiety, particularly in dementia patients.

Attracting, training and retaining quality staff in aged care requires a sign of commitment from the state government. I suggest that we add a target to the State Strategic Plan that 'no South Australian nursing home will have sanctions applied to it'; then we could set about creating 'the state of graceful ageing'. Some baby boomers like to skite about growing old disgracefully, but no-one wants to see poor conditions for residents of nursing homes. We, especially, must not allow the staff to patient ratio to fall victim to the profit-driven corporatised aged-care sector.

PEAK OIL

The Hon. SANDRA KANCK (16:11): I move:

1. That a select committee of the Legislative Council be established to inquire into and report on the impact of peak oil in South Australia with particular reference to—

   (a) The movement of people around the state, including—

      i. the rising cost of petrol and increasing transport fuel poverty in the outer metropolitan area, the regions and remote communities;

      ii. ways to encourage the use of more fuel efficient cars;

      iii. alternative modes of transport;

      iv. the need to increase public transport capacity; and

      v. implications for urban planning;

   (b) Movement of freight;

   (c) Tourism;

   (d) Expansion of the mining industry;

   (e) Primary industries and resultant food affordability and availability;

   (f) South Australia's fuel storage capability including—

      i. susceptibility of fuel supply to disruption; and

      ii. resilience of infrastructure and essential services under disruptive conditions;

   (g) Alternative fuels and fuel substitutes;

   (h) Optimum and sustainable levels of population under these constraints;

   (i) The need for public education, awareness and preparedness; and

(j) Any other related matter.

2. That standing order 389 be so far suspended as to enable the Chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the Council.

4. That standing order 396 be suspended to enable stranger to be admitted when the select Committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

Our world is in the process of being substantially altered as a consequence of a phenomenon known as peak oil. Peak oil is a shorthand term to describe the dwindling world oil supply—a shortage that will only get worse as time progresses. This is because all the big easy-to-find and easy-to-extract oil fields have largely been discovered and exploited. What remains are the smaller ones with greater technical extraction difficulties and with, of course, associated high costs. We will not run out of oil—at least not in the short term—but there will be less of it and it will be more expensive. This problem is being exacerbated by the burgeoning economies of India and China; so, just as supply is decreasing, demand is increasing. The latest BP 'Statistical Review of World Energy' states, 'It is no secret any more that for every nine barrels of oil we consume we are only discovering one.'

I first became aware of the concept of peak oil 12 years ago when I attended a talk given at Adelaide University by a former oil company researcher, Brian Fleay. He had knowledge of a secret Saudi report showing that our world was getting close to the halfway point of exploitation of all known and unknown oil reserves. As a result of that talk, I became aware of the work of M. King Hubbert, a Shell oil petroleum geologist, who in 1956 predicted that the US production of oil would peak in 1971—and he was proved correct. He was listened to with great respect after that and his theory has come to be accepted as fact.

The pessimists believe that the world peak was reached in 2006, and the supreme optimists are even hanging out for a 2035 scenario—although I have to say that the numbers of those optimists are dwindling. Then we even have the occasional ostrich with its head buried in the sand—such as OPEC—which says that there is no problem. But it is well known in the industry that OPEC fudges the figures and, when looking at this issue, we should be acutely aware that the value of an oil company on the stock market is almost entirely dependent on the amount of oil in any one basin it owns. It is always in their commercial interest to exaggerate the amount of their oil reserves.

The evidence is against the optimists, and it is instructive to look at World Energy Outlook reports of the International Energy Agency (IEA). In its 2005, WEO report the IEA was predicting a crude oil price of $US47 a barrel by 2012, gradually increasing to $US55 by 2035. I should point out that when I am talking dollars at any point in terms of the price of oil I am talking US dollars.

Anyone who drives a vehicle knows that, despite the fact that that was only three years ago, those figures are wildly inaccurate. In each successive year the WEO report becomes increasingly dire. A report entitled 'Peaking of World Oil Production' by Hirsch, Bezdek and Wendling, prepared for the US Department of Energy, and handed to that department in 2005, states:

> The world has never confronted a problem like this, and the failure to act on a timely basis could have debilitating impacts on the world economy. Risk minimisation requires the implementation of mitigation measures well prior to peaking. Since it is uncertain when peaking oil will occur the challenge is, indeed, significant.

In so many ways economies at state, national and international level are built on oil. The massive movement of people and goods around the world utterly depends on it. I turn again to the comments made 12 years ago at that seminar I attended by Brian Fleay. He said, 'Wealth is based on energy and all costs are energy costs.' It is clear that we have failed to recognise this concept and we have treated oil as if it is inexhaustible. What is closing in on us is the equivalent of an economic tsunami and we, especially the state government here in South Australia, are going about our lives in ignorance of it. Peak oil does not even rate a mention in our State Strategic Plan.

South Australia has no transport plan. If there was an understanding of peak oil, we most certainly would have one. The transport minister's recent rejection of the extension of the Noarlunga line has further demonstrated that lack of understanding. The extension of Adelaide's urban growth boundary and development such as the proposed Buckland Park urban subdivision is

reflective of that same lack of understanding in the urban development portfolio. Buckland Park is both a climate change and peak oil nightmare.

At the national level that same ignorance exists. As I have previously elaborated in this place, the transport-related promises of both the Labor and Liberal parties in the recent federal election were, despairingly, almost entirely about roads. Yet, in May 2005, the then Premier of Queensland, Peter Beattie, listened to the concerns of the member for Hervey Bay, Andrew McNamara, and set him up as the chair of the Queensland Oil Vulnerability Task Force. Its report was tabled in the Queensland parliament in October 2007 and it recommended the development of a Queensland oil vulnerability mitigation strategy and action plan. Queensland's minister for sustainability responded by saying that Queensland would have to adopt a wartime mentality in regard to oil use, and a committee has now been set up to prepare that recommended strategy.

That will be released later this year. It will be more than three years since the report was commissioned, but it is three years ahead of South Australia.

The Senate's Rural and Regional Affairs and Transport Committee conducted an inquiry based on a very conservative question, somewhat like: will the sun rise tomorrow? The question was whether Australia should be concerned about peak oil. It tabled a report entitled 'Australia's Future Oil Supply and Alternative Transport Fuels' in February 2007, but I am unaware of any government response or actions arising from that.

The Queensland report considered three scenarios of low, central and high in relation to petrol prices and made observations about the implications under each of the scenarios. The authors assumed that the most likely scenario was the central one; that is, oil prices averaging—listen to it—$58 to $60 a barrel between now and 2015, then reaching $70 to $80 a barrel by 2050. The high scenario assumed that prices would rise to $110 to $115 a barrel by 2050.

History tells us that, only two months after the release of that report, the average price for December in the world was $87 a barrel and it hit an historical peak of $100 a barrel early in January this year. Although it has fallen back a little since then, it remains remarkably high and the average January price, which I understand will be revealed by OPEC in a few days, is expected to be $94.

We are already facing the high scenario that the Queensland Task Force did not think would be with us until nearly 2050. It demonstrates how quickly this situation can get out of control without government having strategies in place. We might be able to exert some control over the situation, but oil market volatility could plunge the economy into crisis. We think of oil principally in terms of transport—driving cars and trucks, running buses and trains, and flying planes. Higher prices for use of the private car will most certainly result in social disadvantage. Anywhere in our large cities those with less income are pushed to the boundaries in order to obtain housing. Adelaide's urban sprawl is a direct result of oil dependence and an unstated expectation that oil will always be there.

People living on the edges of cities are almost always car dependent because public transport appears never to be factored in with urban expansion. They are usually carrying higher levels of debt, often having recently purchased housing and, because they live on the outskirts, often there is no business or industry to provide employment, so they are forced to commute long distances in their cars. They start off being on lower incomes, they have more debt, more of their income is expended on fuel, and the impact is worse, creating fuel poverty. This raises serious questions about the wisdom of expanding Adelaide's urban growth boundary. Peak oil will most certainly increase locational disadvantage.

Regional areas will be hit harder still because, as always, their food and commodity costs include the extra cost of petrol to get those commodities there. The state government will have to look seriously at providing assistance to rural cities and towns with public transport. One of the risks associated with rising costs in rural areas is a further loss of population to Adelaide and larger regional cities. Our government will have to find strategies to deal with that influx of population.

The South Australian government could be taking action on a variety of fronts to encourage the use of fuel-efficient cars by, for instance, offering lower registration costs. I know members would be aware of the Solar Shop's attempts to have the Reva electric car registered; it has been refused because of the question of impact in a road crash. However, we do not refuse to register motorbikes, despite the impact that occurs to them in such crashes. We know that the Reva has potential as an alternative mode of transport. Why not simply create a new category of registration?

Another thing, in terms of transport, the government will need to consider is car pooling, and perhaps it may have to become compulsory. We need to look at bus-only lanes; we need to look at the soft technology, such as scooters, cycling and walking. As far as work is concerned, we are going to have to look more at telecommuting, where we stay at home to do our work but we communicate via our computers.

Quite simply, a very obvious solution is developing public transport. More services more often will be an essential part of moving people around. As international destinations like Toronto, Vancouver and Portland have demonstrated, people do not take their cars to work when they know they will never have to wait more than 10 minutes for a bus, train or tram.

As well as the carrots, such as the increased frequency of public transport, we may have to look at a little bit of stick as well. For instance, we may have to look at a congestion charge for people taking their car into the city at certain times of the day. If we were to do that, I would suggest that the money raised would be hypothecated back to public transport infrastructure and rolling stock. Even a congestion charge has social implications, because it would mean that taking one's car into the city at those times of the day would be the preserve of the rich.

What are the implications for urban planning? How much urban consolidation do we need? I have certainly advanced transport-oriented development, where we allow much heavier density of housing close to our railway stations, for instance. In the suburbs, should we be encouraging the quarter-acre block, revisiting the way in which we restrict water usage at the present time and encouraging people to become food self-sufficient? I will talk more about that when I get to agriculture.

In regard to the movement of freight, greater investment in rail infrastructure should be happening now, simply because it is far more fuel efficient. Air travel is highly fuel intensive, and it is likely that in the future this mode of travel will be used only for business purposes rather than tourism. Andrew McNamara, the MP who was chair of the Queensland task force, says:

> You can't fly 747s on biodiesel or ethanol or hydrogen—it is air gas or nothing...the viability of the international tourism industry by air transport is at stake..we need to be looking very hard at how we use fuel for petrol for those things that only petrol can do.

The tourism industry is highly reliant on transport mobility, whether that be bus, car or plane. However, if the fuel gets too costly, such holidaying will become an option for the rich, with the resultant economic impact on our tour and hotel operators. I hope that, once this committee is up and running, the Department of Tourism will make a submission to the committee about how it proposes this matter should be addressed.

We are told by the South Australian government that we are on the brink of a mining boom. I do not have figures for South Australia, but the Queensland task force report does, and I suspect that, given the distance of mining ventures from cities and ports in Queensland, there would be a great deal of similarity.

The Queensland report states that the mining industry is the second largest consumer of petroleum products in that state, with oil-based products making up 50 per cent of its energy use. The more remote the mine, the more it is likely to consume, particularly in regard to the use of diesel for power generation. The amount of processing that occurs on site also determines the degree of oil dependence and, therefore, vulnerability.

The exploration stage of mining is highly oil dependent. The South Australian government, with its airborne surveys for geomagnetic anomalies, is dependent on avgas, and on the ground mining companies use diesel or petrol to do their mapping, drilling and collection of samples. Once up and running, the mines use oil products for the extraction and trucking of ore, and flights into and out from the mines in remote areas are essential.

In the case of those mines located close to rural towns and cities, it is highly desirable for moving casual and contract labour to and from those mines. I have a relative who lives on the Gold Coast and who periodically works for BHP Billiton at Roxby Downs, and that company flies him from the Gold Coast down to Adelaide and up to Roxby Downs and then, when he has finished his month or whatever period of time there, they fly him all the way back.

The Queensland report gives some interesting examples of the dependence on oil. New Hope Coal Australia uses 16,063,000 litres of oil to produce 2,068,000 tonnes of coal. that is, 7.6 litres of diesel to produce one tonne of coal. The Association of Mining and Exploration Companies needs 10 million litres of diesel to produce 100,000 ounces of gold, that is, 100 litres for one ounce. A Caterpillar 77D large truck hauling 95 tonnes in a load uses 77 litres per hour of

diesel, when it is a well-tuned and well-maintained vehicle. So, one truck uses 1.5 million litres of diesel per annum. The mining boom predicted for South Australia will not happen in a hurry unless the peak oil issue is addressed.

I turn to the issue of farming and food, and I quote again from the Queensland report, as follows:

> If it can be synthetically produced commercially (rubber, chemicals, plastics, dyes, inks, fibres, adhesives paint) it will today probably derive from the oil or gas industry.

Agriculture is often described as a way of turning oil into food. Not only do farmers need oil fuel for their tilling, reaping and taking their product to market but they also need it for their fertilisers and pesticides. Ninety per cent of the energy used in agriculture is oil-based.

In Australia we begin food production with low fertility soils. We have been exporting our produce to the world, but this has been possible only because of the use of oil-based fertilisers. Queensland's report recommends that no subsidy be given to farmers, and the resulting price increases will force them to adapt and create efficiencies. So, should farmers have to absorb the extra costs, and, if we are telling them that that is the case, are we talking about forcing farmers off the land? I suspect that in the end farmers will have to pass on the costs on a user-pays basis, because I do not think we can expect the farming community to bear that. Without the pesticides and fertilisers they have become used to, will farmers have enough produce left to export? If not, what impact will that have on our state's economy?

As a consequence of climate change and reductions in water we can expect dairy products to increase in cost, so we are already bearing a cost in terms of our food. I was also surprised to find out, during my research, that fishing will be quite strongly impacted by peak oil, given that 30 per cent of their costs are fuel-related, and this has been increasing as distances to reach fishing resources have increased. So, we can expect the price of fish to rise. I raised the question earlier regarding whether or not we will have to revisit water restrictions and the way we use water to, perhaps, encourage people to plant their own agricultural products in their own backyards and become self-sufficient in their own food.

Australia has already reached its oil peak and our reserves are on the decline, with less than 70 per cent of our oil coming from local fields. This means that we are now seriously dependent on imported oil, often from parts of the world which are politically unstable. Australia is supposed to maintain an equivalent of 90 days' oil supply, according to the Agreement on International Energy. In practice, Australia is lucky to have 50 days' supply at any one time.

At a state level the situation is far more drastic since the closure of the Port Stanvac refinery. South Australia holds between 10 and 17 days of petrol, and there were two days in December last year (I am talking about only five or six weeks ago) when the supply of diesel was one day short of nothing—a potential disaster for our freight transport and Adelaide's train services.

Without a refinery the South Australian government might have to start prioritising the use of diesel. For instance, most remote communities are dependent upon diesel for their electricity generation, and perhaps the state government will be able to assist many of these communities with the installation of solar and wind alternatives. If Port Stanvac was used as a tank farm it could give a 30 days' reserve supply to South Australia, but this would put in doubt the state government's plans to use that site for a desalination plant.

Alternatives to fossil fuels must be investigated and advanced. There is a federal rebate at the moment to convert cars to gas, but this is only a short-term solution as the world is also running out of natural gas. Biofuels are touted as one alternative, but they can also result in food price increases when land that was producing food for human consumption is turned over to crops that can be used to create transport fuels.

The International Monetary Fund says that in 2006 around the world this accounted for a 10 per cent increase in the price of food over the previous year. Ethanol is another possibility, but overall ethanol is a net energy loser; more energy is used in the cropping and production than is produced. Dutch Crown Prince Willem-Alexander says, 'The amount of water needed to produce biofuels for the tank of an SUV equals the amount of water needed to feed one person on grains for a whole year.' This demonstrates that in finding fuel alternatives we must also look at climate change and related water impacts.

Some in Australia see the abundance of coal as a potential saviour, but the process of converting coal to oil produces huge amounts of greenhouse gases. Forgetting all the other

arguments I have about nuclear energy, it is not a solution because it is not an alternative to oil. I do recall that as long ago as 1986 Professor Martin Green was saying that, with the solar technology we had, we could turn the roofs of our carports into solar collectors, put in an electric car, and we would have enough charge in our batteries to travel 80 kilometres—which would allow most people to get to and from work every day. That is another possible solution.

I go back again to the REVA car; if we are prepared to create another registration category we might have just a part of the solution. We have seen the announcement of the closure of Mitsubishi, and I have called for that site to be used for the manufacture of solar buses; however, it could equally be used for an electric car industry.

When the squeeze is on resources, as it is as a consequence of climate change and related water scarcity, combining those two factors with peak oil must cause us to question those who argue for increasing our population in South Australia. The so-called international green revolution allowed the growth of populations throughout the world because agricultural output was increased through the use of fertilisers and pesticides but, as the price of these increase in response to peak oil, will that revolution grind to a halt? Can the existing population be sustained at the current levels of affluence? I contend that if we are to increase the population here in South Australia we will have to accept a lower standard of living.

I have no facts or figures but, in talking to members of the public, it is clear that knowledge of peak oil is severely lacking, with many people never having heard the term. This is somewhat akin to the situation in the late 1980s when the environment movement talked about the greenhouse effect. Given the huge potential for economic and social dislocation, it is important that the public becomes aware of peak oil so that when government has to implement drastic action the electorate can at least understand what is happening and why.

The IEA's 2005 report, Saving Oil in a Hurry, recommends development of a plan. What a great idea! It states:

> Communicating this plan to the public also appears very important. If the public is not well informed of plans ahead of time and supportive of them, they may be less likely to cooperate and do their part to help the plan succeed during an emergency. Strong support and cooperation from the business community is also essential.

When MPs move a motion such as this, we usually include a final term of reference, 'any other related matter', to cover things we might have neglected to include in the terms of reference. I have done this quite deliberately, because I know that I have left out some items in the terms of reference. However, here is a sample of some of those things that others, when they make submissions to or appear before the committee, might raise with us.

Plastics have become a mainstay of the developed world; think of just the bottles of water we purchase and think of the plastic around our computers, the consoles, the package in which the hard drive sits, and the screen; they are all plastic. Some of the fabrics of our clothes are made from petrochemicals, as are our phones, paints, garden hoses, radios and TVs. If you look around, you will find how dependent we are on plastics and, therefore, oil.

Lester Brown, from the Earth Policy Institute, has somewhat wryly observed that supermarkets and service stations are now competing for the same commodities. So, what are the alternatives to plastics? What will be the impact on essential services is another question we have to ask. What about health? The pharmaceutical industry is highly dependent on the petrochemical industry. What sort of industries will we be able to sustain in South Australia, and where will they be located?

How will we deal with the intransigence of the road transport lobby when recommendations are made to reduce road construction? How will climate change interact with peak oil? Will we have double the trouble, or does dealing with one assist the other? Will our new super schools have to be disaggregated and relocated in order to put them within walking and cycling distance of the homes of the students? These are just some of the many questions that might be put to the committee.

I would like to look at what is happening internationally—again, perhaps to illustrate that we are behind the eight ball here in South Australia. There are a few places in the world that have understood the seriousness of the situation, and the select committee might be able to turn to them for inspiration and example. Sweden aims to be close to becoming oil free by 2020 by replacing all fossil fuels with renewables. Its Minister for Sustainable Development says that oil dependency is one of the greatest problems facing the world.

A series of self-designated 'peak oil transition towns' have been set up in the UK, including Totnes (which has developed its Energy Descent Action Plan), Bristol, Lewes, Falmouth and Stroud. Individual cities in the US, such as Ashland in Oregon, Austin and Dallas in Texas, Oakland and San Jose in California, and Seattle in Washington, have publicly recognised that there is a looming problem. When you look at the public transport systems that already exist in some of the cities, it is clear that they have a head start on us.

Other cities, such as Portland in Oregon and Bloomington in Indiana, have gone beyond that and have action plans. Portland has established a Peak Oil Task Force that produced a report with a principal recommendation of 'act big, act now', and I cannot think of a much better recommendation. The US House of Representatives has a bipartisan peak oil caucus, and it has recommended that the US, in concert with its allies, should establish an energy project along the lines of the 'Man on the Moon' project it set up in the late fifties and early sixties. It says that this should be done with the same urgency and creativity with which that project was tackled. Eight months ago, the British parliament formed its All Party Parliamentary Group on Peak Oil and Gas.

As I reach my conclusion, I want to thank members of BOSA (Beyond Oil South Australia), namely, Michael Lardelli and Jennifer Bain, for assisting me in refining the terms of reference for this committee. Michael regularly sends me BOSA news, which keeps me up to date on the good and the bad news about peak oil.

Jennifer emailed me a copy of a large report on peak oil she has prepared and sent to her local MP, Jane Lomax-Smith. I know that she was about to meet her local MP to discuss it, and I sincerely hope that Jane Lomax-Smith has read it because, if she has, she will be a convert to this cause and, I believe, will argue the case with her colleagues that they support the setting up of the select committee.

I have to say that this report was a marvellous resource. I had prepared my speech, but I found that I needed to expand it, as her research directed me to other reports, projects, comments and websites. Yet, despite enlarging my remarks, I have merely skimmed the surface of the dimensions of the problem that is peak oil.

I remind members, as I have told them before in this place, that the former US secretary James Schlesinger said last year that there was no longer a debate on whether or not the peak oil concept was arguable, that 'we are all peakists now', and that we will face great difficulty in dealing with it. The IEA predicts that the first supply crunch will happen within five years, so we need to act quickly.

Ian Dunlop, a former oil, gas and coal industry executive, speaking on the convergence of climate change and peak oil, said, 'Policy must ensure that solutions to one reinforce and do not conflict with solutions to the other.' Eleven months ago, he said that Australian governments had to act within six to 12 months. The Hirsch report, which I have referred to before, states:

> Without massive mitigation more than a decade before the fact, the problem will be pervasive and will not be temporary. Previous energy transitions (wood to coal and coal to oil) were gradual and evolutionary; oil peaking will be abrupt and revolutionary.

It is highly likely that we do not have the decade for preparation the Hirsch report recommends, in which case this committee, and any recommendations it might make, are urgently needed.

Brian Fleay told the meeting I attended 12 years ago that the substitution of energy for labour will no longer be viable when peak oil begins impacting, that a global economy will not be viable and that economic growth will end. Governments should be acting now while they have money in the coffers to deal with it. Delaying action will exacerbate the problem as the tax revenue will begin to decrease as peak oil takes its hold.

Ian Dunlop said that 'visionary, principled long-term leadership is needed for government, community and business'. I cannot indicate to members just how strongly I feel about this subject. I have a huge sense of frustration. It seems that we are standing on a precipice with blindfolds on our eyes. Supporting this motion might take us just one step back from the edge of the cliff. I hope I gain the support of all members in getting this committee established urgently.

Debate adjourned on motion of Hon. I.K. Hunter.

STATUTES AMENDMENT (SURROGACY) BILL

The Hon. J.S.L. DAWKINS (16:47): Obtained leave and introduced a bill for an act to amend the Family Relationships Act 1975, the Births, Deaths and Marriages Registration Act 1996 and the Reproductive Technology (Clinical Practices) Act 1988. Read a first time.

The Hon. J.S.L. DAWKINS (16:47): I move:

That this bill be now read a second time.

On 21 June 2006, I introduced the Statutes Amendment (Surrogacy) Bill 2006 to facilitate what is known as altruistic gestational surrogacy. Most members in this chamber would be well aware of that, although I understand that the Hon. Mr Darley is new to this and I will endeavour to explain it as well as I can, without labouring the point.

I have been working for several years now with a number of female constituents who are unable to carry children, even though they can become pregnant. One of the constituents, Kerry Faggotter, now has a son due to the willingness of her cousin to be a surrogate mother of the child, who has the genetics of both Kerry and her husband Clive. This surrogacy was carried out interstate as such practices are illegal in South Australia. Under the bill, the opportunity for surrogacy would apply only to heterosexual couples either in a marriage relationship or a de facto relationship that was considered under the law in this state to be the same as a marriage relationship. The people in that relationship would benefit from the wishes of a family member who had had children, and no money would change hands under such an agreement.

The bill also addressed the current situation where the biological mother is not recognised on the child's birth certificate. One only has to sit down with people in that situation to learn about the difficulties that causes parents, particularly where the child has the parents' genetics, but because there is an absence of the name on the birth certificate it causes all sorts of problems when going on an aeroplane trip interstate or overseas if the child is under a certain age and does not have that person's name on their birth certificate, or for the practice of enrolling at a preschool or kindergarten.

Following a referral from the Legislative Council in September 2006, the bill progressed through the Social Development Committee, which recommended that the state government prepare a bill legalising gestational surrogacy and making necessary changes to birth certificate arrangements. Despite the committee's overall recommendation to the government, I am concerned about the prospect of further delays. Following a 14-month process through the committee, it has been almost three months since the committee reported and to my knowledge there has not yet been a response from the government. So, I have decided to reintroduce my bill in an amended form.

The bill I introduce today includes the following amendments to the original bill: first, removing the requirement that the surrogate mother must have already given birth to a child; secondly, removing the idea that the effect of an order under the scheme is the same as an adoption order under the Adoption Act 1988 and replacing it with provisions about the effect of an order. I refer to new sections 10HB(13) and 10HD and new part 3, 'Amendment of Births Deaths and Marriages Registration Act 1996'.

The amendments to this bill also include amendments to the Births, Deaths and Marriages Act 1996 to deal with access to information in the register, which was an issue raised by the select committee report. Also included is a power to discharge an order in limited circumstances, and I refer to new section 10HC, which reflects part of the proposed Western Australian scheme. It also alters the amendments to the Reproductive Technology (Clinical Practices) Act 1988 to address a comment in the select committee's report about the validity of the current provisions of that act. It also includes a scheme that would allow the court to recognise certain agreements entered into before the legislation is enacted as valid and effectual surrogacy agreements under the bill, and I refer to schedule 1.

It is important to recognise that I have retained the provision that this legislation would be available only to heterosexual couples who are married or those in a de facto relationship that is recognised by the law of this state as the same as a marriage. I have resisted the suggestion in the committee's report that legalised surrogacy in this state be made available to individuals. Certainly, I think most of us (not all) would agree that, if it is to be available, it should be for couples.

I would like to note the work of the Social Development Committee and all who contributed throughout the hearings. I made some comments about that late last year when I spoke to the noting of the report, but I sincerely acknowledge the work of the members and staff of the

committee and, as I said, all the people who gave evidence, because I think the report is a considerable study into this issue. I congratulate the chairman, the Hon. Mr Hunter, and the members and staff for producing that body of work, because it has a lot of information about all the complex issues that have affected the people who are experiencing these difficulties in having children.

This matter remains a conscience issue for members of the Liberal Party. I respect the decision of the party room enormously, because it is one of those conscience issues that we in our party hold dear, and I respect the views of a range of my colleagues. However, I must say that, wherever I go, there is strong general support across the community for assisting people who have great difficulty in having their own children, particularly those who can access a loving family member who is prepared to be a surrogate mother. I think we should treasure the fact that people are prepared to do that for their loved ones.

I pay tribute here to the sincerity of those people who have been so passionate about developing the law in this state and across the country in relation to surrogacy. I noted in my speech in November that one of the witnesses commented to the Social Development Committee that they were prepared to come along and talk about their insides. I think that is a wonderful comment because, let's face it, how many of us are prepared to go and give evidence to a parliamentary committee and talk about the problems inside our body? Some of these people were prepared to do that.

I think that shows the level to which they see that we should make sensible changes to the legislation in this state. I think that the preparedness of those people to come along and give evidence as they did only added to that body of work that was prepared by the committee, which I think can be an excellent reference for people who are interested in the whole gamut of reproductive technology issues and the advances that have occurred in the past 20 to 25 years or so.

That brings me to my own personal experiences. My youngest child will be 25 this year, but it seems like only yesterday that my wife and I were experiencing considerable trouble in having our second child. We had planned to have our second child two years after the first, but that did not happen, and we had all sorts of intrusive testing and other things that one would not normally experience in one's life when we were in our 20s. This was before the days of IVF, but we still went through all sorts of tests to try to see a way in which we could have another child. Ultimately, we gave up and my wife went back to work, and 12 months later it happened.

The Hon. D.W. Ridgway: You just relaxed a little bit.

The Hon. J.S.L. DAWKINS: Yes.

The Hon. T.J. Stephens interjecting:

The Hon. J.S.L. DAWKINS: I beg your pardon? I will not go into that. I think that experience—and, as I said, that is 25 years ago—allows me to understand the trauma that these people go through.

People who have been married for any length of time and who have not had any children are beset with people asking, 'When are you going to have a baby?' It is a very difficult situation, and I feel very much for them. Our situation was very much at the small end compared with the situation which a lot of people I have met have had to deal with over many years. It is a great tribute to those who are prepared to be public, and Kerry and Clive Faggotter have been prepared to put themselves into the public spectrum. I pay tribute to them and those who have done far more behind the scenes to support them, to give evidence to the committee and to do other things.

We need to examine the fact that there are people in this state who would like to benefit from surrogacy. I stress the fact that we talk about surrogacy that will not involve any money changing hands, other than simple expenses. The cost of going interstate for the testing and going interstate during the pregnancy is a terrific burden on some people, and it has made it impossible for some people to access it. That is why it should be available to them in South Australia.

I will not delay the chamber to any great length. If any member wishes to get more information about this bill, the speech I made on 21 June 2006 is available in *Hansard* and explains it in greater detail. I commend the bill to the council. I hope that the government introduces a bill in the near future (as has been suggested). I have been here long enough to know that the hope of a government bill being introduced in the short term is a forlorn one.

The people who have been waiting have already endured a 14-month committee stage and it has been another three months since the committee reported. I urge members of the council to support my bill so that it can go to the lower house, which will test the will of the government to do something about this issue. I commend the bill to all members. I seek to leave to incorporate the explanation of clauses into *Hansard* without my reading it.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will come into operation 3 months after assent. This period will provide an opportunity for any necessary regulations to be prepared and promulgated, and for any necessary administrative arrangements to be put in place.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Family Relationships Act 1975

4—Amendment of section 5—Interpretation

This is a consequential amendment. The definition of fertilisation procedure currently found in section 10A of the Act will now also be relevant for the purposes of proposed new Division 3 of Part 2B of the Act. It is therefore necessary to include the definition under section 5.

5—Amendment of section 10—Saving provision

The saving provision in section 10 of the Act confirms that the determination of the status of a child under Part 2 of the Act does not affect the operation of a law that may provide for a subsequent change in the status of the child. A consequential amendment must therefore be made to make reference to the consequences of an order under proposed new Division 3 of Part 2B of the Act.

6—Amendment of section 10A—Interpretation

This is a consequential amendment (see clause 4).

7—Amendment of section 10B—Application of Part

This amendment includes another provision in the nature of a saving provision by confirming that the operation of Part 2A of the Act does not affect the operation of another law that may provide for a subsequent change in the status of a child (as that status relates to the mother or father of the child).

8—Insertion of heading

A new form of surrogacy arrangement is to be recognised under Part 2B of the Act. Such a surrogacy arrangement may have lawful operation. It is therefore necessary to divide Part 2B of the Act into a number of divisions.

9—Amendment of section 10F—Interpretation

A new form of surrogacy arrangement is to be recognised under the law of the State. For the purposes of the law, these arrangements will need to be in the form of recognised surrogacy agreements, as described in proposed new section 10HA.

10—Insertion of heading

The existing provisions as to the illegality of certain surrogacy agreements will now appear in a particular division of Part 2B.

11—Amendment of section 10G—Illegality of surrogacy and procuration contracts

The existing provisions as to the illegality of surrogacy agreements will not apply to recognised surrogacy agreements.

12—Insertion of new Division

A new form of surrogacy arrangement is to be recognised under the law of the State.

New section 10HA sets out the criteria that will apply with respect to these arrangements, which will need to satisfy the requirements for a recognised surrogacy agreement, being an agreement—

(a) under which a woman (the surrogate mother) agrees—

(i) to become pregnant or to seek to become pregnant; and

(ii) to surrender custody of, or rights in relation to, a child born as a result of the pregnancy to 2 other persons (the commissioning parents); and

(b) in relation to which the following conditions are satisfied:

(i) the parties to the agreement are—

(A) the surrogate mother and, if she is a married woman, her husband; and

(B) the commissioning parents,

and no other person;

(ii) all parties to the agreement are at least 18 years old;

(iii) the commissioning parents have cohabited continuously together in a marriage relationship for the period of 5 years immediately preceding the date of the agreement;

(iv) the commissioning parents are domiciled in this State;

(v) the surrogate mother is a prescribed relative of at least 1 of the commissioning parents, or has a certificate issued by the Minister in relation to the proposal that she act as a surrogate mother for the commissioning parents;

(vi) the surrogate mother and both commissioning parents each have a certificate issued by a counselling service that complies with specified requirements;

(vii) the agreement states that the parties intend—

(A) that the pregnancy is to be achieved by the use of a fertilisation procedure carried out in this State; and

(B) that at least 1 of the commissioning parents will provide human reproductive material with respect to creating an embryo for the purposes of the pregnancy, unless the commissioning parents have a certificate issued by a medical practitioner that certifies that this is not appropriate from a medical perspective;

(viii) the agreement states that no valuable consideration is payable under, or in respect of, the agreement, other than for expenses connected with—

(A) a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; or

(B) the birth or care of a child born as a result of that pregnancy; or

(C) counselling or medical services provided in connection with the agreement (including after the birth of a child); or

(D) legal services provided in connection with the agreement (including after the birth of a child); or

(E) any other matter prescribed by the regulations;

(ix) the agreement states that the parties intend that the commissioning parents will apply for an order under proposed new section 10HB after the child is born.

In addition, it will be necessary for the agreement to be set out in writing and the signatures of each party attested by a lawyer's certificate.

New section 10HB allows an application to be made to a judge of the Youth Court of South Australia to give effect to the terms of a recognised surrogacy agreement after the birth of a child.

An application will only be able to be made if the child is between the ages of 6 weeks and 6 months. In deciding an application under this section, the welfare of the child will be the paramount consideration. The Court will be able to require that any party provide an assessment from a counselling service before deciding whether to make an application under this section.

New section 10HC will allow the Court to discharge an order in special circumstances.

Special provision is also made in relation to the register of births under new section 10HD.

New section 10HE will provide that the record of court proceedings must be kept confidential.

New section 10HF provides that orders cannot be subject to appeal or review.

New section 10HG will allow a judge of the Youth Court to address a situation where there has been a failure to comply with a requirement of this new Division but the Court is satisfied that in the circumstances it would be just and appropriate to dispense with the requirement.

Section 10HH allows the relevant Minister to delegate his or her functions or powers for the purposes of the new Division.

13—Insertion of heading

14—Amendment of section 13—Confidentiality of proceedings

15—Amendment of section 14—Claim under this Act may be brought in the course of other proceedings

These are consequential amendments.

Part 3—Amendment of Births, Deaths and Marriages Registration Act 1996

16—Amendment of section 4—Definitions

17—Insertion of Part 3 Division 6

18—Insertion of section 29A

19—Insertion of section 49A

These amendments provide for surrogacy orders to have effect under the Act.

Part 4—Amendment of Reproductive Technology (Clinical Practices) Act 1988

20—Amendment of section 3—Interpretation

It will be necessary to make provision for recognised surrogacy agreements under the Act.

21—Amendment of section 10—Functions of Council

The code of ethical practice will need to take into account the use of artificial fertilisation procedures to give effect to recognised surrogacy agreements.

22—Section 13—Licence required for artificial fertilisation procedures

A licence under the Act will extend to the ability to carry out procedures for the purposes of recognised surrogacy agreements.

Schedule 1—Transitional provision

1—Transitional provision

Provision is to be made to recognise the effect of certain kinds of existing agreements.

Any changes to regulations under the Reproductive Technology (Clinical Practices) Act 1988 will need to come into operation when this measure is brought into operation (despite the provisions of section 20(4) of that Act).

Debate adjourned on motion of Hon. I.K. Hunter.

ADELAIDE PARK LANDS (FACILITATION OF DEVELOPMENT OF VICTORIA PARK) AMENDMENT BILL

The Hon. T.J. STEPHENS (17:04): Obtained leave and introduced a bill for an act to amend the Adelaide Park Lands Act 2005. Read a first time.

The Hon. T.J. STEPHENS (17:04): I move:

That this bill be now read a second time.

This bill can potentially make a significant difference to how South Australia is perceived currently, both from outside and within the state. For too long we have had a culture of settling for second best and, when the government had the opportunity to do something special—something it believed in until it all got too hard—it simply dropped the ball and walked away. By walking away from the Victoria Park master plan, the Hon. Mike Rann and the Labor government have shown they lack the courage of their conviction and lack what South Australians are crying out for; that is, true leadership and vision.

The opposition accepts that the Rann government showed some vision in the Victoria Park master plan, and that is why we were flabbergasted when we gave the government the opportunity to still push ahead with the plans but it chose to immediately dismiss the offer. It dismissed the offer and, instead, chose to invest in a $20 million demountable stand and some shadecloth.

The Clipsal 500 race is a premier motor race which warrants top-class facilities and significant investment. What it delivers to the state from both a tourism and economic perspective is tremendous and it merits more than a demountable stand. It merits more than just second best.

The South Australian Jockey Club is now unsure of its racing future at Victoria Park because of the government's failure to act, and racing misses out on the very best facilities that it should have been delivered. Local residents also deserve better, and this bill is about ensuring that local residents will not have to endure an extra two months each year of disruption, traffic congestion and unsightly looks. The Victoria Park master plan's main objective was to improve the amenity, use and appeal of Victoria Park for community, cultural and major event activities. A demountable stand does nothing to help meet this objective.

It is with some sadness that we introduce the Adelaide Park Lands (Facilitation of Development of Victoria Park) Amendment bill. The opposition feels some pity and sadness for the

Rann government, as we know it should never have got to this stage. We firmly believe that strong decision making and leadership should have prevailed instead of the Hon. Mike Rann caving in to the enemy within. Premier Rann wanted this master plan to go ahead. Treasurer Foley and a host of senior frontbenchers, as well as vocal government backbenchers like the member for West Torrens, wanted it to go ahead.

Regrettably, the member for Adelaide did not share their enthusiasm. The member for Adelaide was given an extraordinary and unique exemption to say her cabinet colleagues had got it all wrong and was allowed to publicly humiliate the Treasurer. However, this plan can still go ahead because the opposition truly believes in the objectives of the master plan.

The opposition believes in returning significant amounts of land to open space. The master plan predicted that some 56,000 square metres of land will be made available for use as open space. We support the planting of some 1,000 native trees. We believe in removing redundant buildings and other dilapidated structures. We believe in Victoria Park realising its potential as a special events and entertainment hub of which we can all be proud. We believe in a future for Victoria Park.

In 1837 Colonel Light declared the area now known as Victoria Park should be used for horse racing and public recreational activities. Our bill supports Light's vision by helping to give racing and other activities a future at this unique inner city venue. The Adelaide Parklands (Facilitation of Development of Victoria Park) Amendment Bill is about securing a future for sporting, leisure, cultural and recreational activities. The bill provides for the approval of the lease for the development which was approved by the Development Assessment Commission in application number DA/500/2007.

Through the bill, the authority to secure the development would rest with the state Treasurer. The bill provides for the Treasurer to secure access to the site either by negotiation for a lease with the Adelaide City Council or by notice in the *Government Gazette*. This bill provides for up to a 99-year lease and for the right of occupation as an exclusive right that prevails over all other interests.

Occupation rights to other entities such as the South Australian Jockey Club and the South Australian Motor Sport Board can be granted by the Treasurer, and reasonable steps would take place for negotiations with the Adelaide City Council for other events, such as the rights of sporting clubs to use facilities. Where the government is not using any of the land for the purpose described, the surplus land would be returned to parklands.

As this bill provides approval only for the facilities described in DA/500/2007, additional buildings or any other variance would need to go before the Development Assessment Commission. The bill authorises the Treasurer to authorise persons to carry out work, including access to the site for the building of facilities. This bill prevails should there be conflict between the Adelaide Parklands Management Strategy and the bill.

Only a few days ago the Motor Trade Association's magazine arrived on my desk. The President's report was entitled 'A Time for Action' and focused on the Victoria Park redevelopment. I am certain the MTA President would not mind if I read out part of his report, as it indicates the exact reasons why the opposition introduced this legislation today. The report states:

> For the state government to appear to walk away from the project which it had committed to and to not immediately proceed with legislation in state parliament is puzzling, especially given the state opposition took a bold stand and promised to back legislation allowing the granting of the lease and, as such, allowing the project to proceed. The government had a perfect opportunity to be bold and dynamic and has paused with the chequered flag in sight.

The article then goes on to state:

> The opposition has indicated it is ready to go. Our challenge to the government is: rise to the challenge, do not settle for a temporary compromise. The government will now spend $20 million to develop the world's largest fully demountable building for the race, and seat shading. This is not the result we want and need. The Treasurer also said legislation cannot force cooperation or common sense. That's true, but what legislation can do is force an outcome, and that's what we demand. We need to position this state for the future—not the past.

I urge members to support this bill because, by supporting this bill, we would truly be positioning this state for the future and would be doing something positive for our children and future generations. This is sensible legislation that has been drafted because the government failed to act. I pray the Rann government now has the courage to accept that it should not have walked away, that it made a mistake by doing so and that it can now correct this error in judgment by supporting this bill. I commend the bill to the council

Debate adjourned on motion of Hon. I.K. Hunter.

PUBLIC TRUSTEE

The Hon. A. BRESSINGTON (17:15): I seek leave to move the motion standing in my name in an amended form.

Leave granted.

The Hon. A. BRESSINGTON: I move:

That the Statutory Authorities Review Committee inquire into and report upon the Office of the Public Trustee and, in particular:

1. The management systems, processes, procedures and protocols in place to deal with allegations of misappropriation of funds and any other improper conduct at the Office of the Public Trustee (but excluding any matter which may be currently sub judice).

2. The management of client files and their funds, including the management systems, processes, procedures and protocols in place to ensure that the clients' files and funds are effectively and efficiently managed.

3. The management systems, processes, procedures and protocols in place to deal with allegations of inefficient or incompetent handling of client files.

4. Allegations of workplace bullying and harassment in the Public Trustee's office and the management systems, processes, procedures and protocols in place to deal effectively and efficiently with such allegations.

5. Whether clients and/or potential clients of the Public Trustee are appropriately advised as to likely consequences and costs of engaging the services of the Public Trustee, particularly in relation to the drawing of wills and the management of estates.

6. Any other matters relevant to the operation of the Office of the Public Trustee or the legislation under which it operates.

I have been approached by a considerable number of constituents with complaints about the Public Trustee whose issues are yet to be resolved. These complaints range from the annoying inconveniences and disruption to people's life in relation to poor administration of people's finances to the much more serious allegation of mismanagement and possible abuse of public office and authority.

I realise that the Public Trustee, Mr Mark Bodycoat, has raised his concerns about the adverse publicity his office has received in the media of late. However, it is too important to ignore the voice of people who have been adversely affected by what they claim to be wrongful, if not questionable, decisions and decision-making processes. For this reason—and the need for probity and transparency—it is important to investigate these allegations and to find solutions, if need be.

To highlight some of the problems, I will provide members with a summary of a few of the cases of constituents who have contacted my office. However, I will, of course, leave out names because of confidentiality issues.

In 1994, Mrs L suffered an aneurism that left her with brain injuries and on a disability pension. After many years of improvement, she was then involved in a serious car accident, which left her with head injuries, which resulted in her being unable to read, as well as a massive health setback. In November 2006, this same person was awarded half a million dollars in compensation, but a court order was in place. Her husband complains that the Public Trustee will not allow her to access her money when she needs it. For example, she needed $650 for car repairs and $1,000 for the Christmas period for food and gifts, etc. for the family get together. The Public Trustee refused her the money for the car repairs and gave her $500 over Christmas. This would not be so awful if it were not for the fact that the Public Trustee took out $11,000 in fees for itself. Meanwhile, this person was granted permission to purchase a $2,000 horse but not the equipment, food and other items needed for its upkeep.

Another such case is that of Mr J who, on 13 June 2007, was placed under the Public Trustee via a judge at the Guardianship Board after it was falsely stated by this person's step-daughter that she did not know a person whom the family wanted to act as executor of this person's estate, as well as the financial management (this person had had experience in these matters over a period of years). The daughter had known this person for 20 years and had been in his company only four days prior to the court hearing. The person was admonished by the judge when he queried the statement that his daughter did not know the person.

At the time, Mr J's house in Highbury was valued at $500,000. His wife had passed away two months earlier. Mr J was a keen gardener and kept his property immaculate. Prior to the family

knowing about any earlier valuations, this person's former stepdaughter had a valuation of $480,000 on his house. Since then, another valuation has valued the property at $415,000. This person received a letter in early January of this year indicating that the Public Trustee would be selling the property for $350,000. When this person queried this valuation via a telephone call on 30 January 2008 (only two weeks ago), he received a letter advising that the property was now being sold for $365,000.

Meanwhile, this person had discovered that the garden had not been looked after and that perhaps there could be a small devaluation on the value of the property, but nowhere near the amount the Public Trustee claims is the top dollar he could get for it.

This person's home was cleaned out by the Public Trustee without any notification being given to his liaison person. Not even a toilet roll was left. Even beautiful timber features on the walls for displaying ornate items were removed and taken to an auction house on Torrens Road. This person is a keen golfer, but even his golf clubs were taken for auctioning. After much persistence by his brother, the golf clubs were finally returned, but a $500 golf club is still missing.

I am advised by this person that his daughter and her mother had coerced this person to alter his will to his stepchildren's favour and leaving his only daughter $20,000 out of an estate worth considerably more than $500,000. This person was also pressured to mortgage his house so that his daughter could purchase a house mortgage free. Prior to this, the daughter was bankrupted in New South Wales. However, when she arrived to live in Adelaide she was able to afford for her child to attend a private college, which was paid for by her father.

It seems that these cases are only the tip of the iceberg. My office has been contacted by a redeployee from the Office of the Public Trustee, and they have provided my office with at least 120 cases requiring further scrutiny. Many of these would raise alarm bells.

Some examples (and just a few) given by this person include a women denied $5,300 for home repairs but whose purchase of a $7,000 car was later approved. The designated driver of the car was the woman's aunt who lived in Salisbury, while the woman needing the transport for medical appointments and shopping actually lived in Whyalla. When the woman subsequently received a statement showing the asset of a car, she claimed to not know anything about the vehicle and has sought to get her money back, which has been a battle. She did not actually put in any request for the purchase of that car to the Public Trustee.

Another client with two cars had two insurance policies approved, both on one vehicle. Parents of a client, who were also the client's carers, had a holiday approved at her expense while the client stayed at home. They received air fares, car hire, accommodation and $150 a day spending money. They retrospectively claimed reimbursement for their holiday. No-one appeared to question why a person who required two carers had been on a trip with only one carer or whether she had even been on the trip at all. Receipts were not even provided for some claims made by these parent carers.

A $294,000 estate was projected, at the then rate of expenditure, to be wiped out within eight years with nothing but a 14 year old car to show for it. This redeployee explained that the Office of the Public Trustee would have a hard time explaining such an outcome to a court but was told by one of his supervisors to 'stop questioning other people's decision-making.'

This redeployee has tried to raise his public-interest disclosures on many occasions and has endeavoured to seek the protections of the Whistleblowers Protection Act through the Commissioner for Equal Opportunity and various other authorities but to no avail. He was advised that the Commissioner for Equal Opportunity did not consider his disclosures to be in the public interest at all. Perhaps we should ask the clients who are at the receiving end of some of the Office of the Public Trustee's poor and questionable decisions.

The deeply distressing aspect of the redeployee's story has been his appalling treatment by the Public Service bureaucracy which, when presented with his disclosures, fobbed him off, marginalised him and, ultimately, took him out of the work which he was employed to do and which evidence will show that he did with a great deal of passion and conscientiousness, with his clients in mind, as a true public servant. I am now advised that this person is on a medical certificate validating his work-related stress and using up his own superannuation income (not the taxpayers' workers compensation system), and being hampered in his own efforts to return to work.

In fact, this person's solid work ethic as an ASO4, when he entered the department some 9½ years ago, resulted in a colleague advising him to slow down because 'You're making everyone else look bad.' Five months later this person was promoted to team leader (ASO5). This person

describes his job as both challenging and rewarding from the point of view of servicing his clients' needs; however, this was also hampered when dealing with his own department. This person describes the morale in the department as one that 'dumbed down' officers to a lower standard rather than one which would raise the level of professionalism within the department.

As team leader, this person reported in a memo to the Deputy Public Trustee at the time that a subordinate officer was not competent in his duties. This person was ordered to destroy the memo and warned never to make such a claim again. Significantly, this person was told by the subordinate officer, during an annual review of his work performance, that 'someone from your socioeconomic background should not be criticising someone from my socioeconomic background.' To add insult to injury, when this person reported to the then Deputy Public Trustee that his authority was being ignored by the officer, this person was told, 'What you are actually telling me is that you can't do your job.'

This person has vigorously pursued these and other disclosures by taking them to the government investigation office within the Attorney-General's Department, which referred the matters to the Crown Solicitor, who recommended an independent audit. However, this audit examined only the cases this person had highlighted or brought to the attention of the authorities. Those cases were resolved or dealt with, but no further attempts were made to detect other instances within over 3,000 files under the control of the Public Trustee's Personal Estates Branch. This person believes his sample group was merely a snapshot of bungled or poor decision-making.

Amongst his many allegations he claims that it was common practice for team leaders and branch managers to falsify audit compliance reports. If true, this allegation must surely be investigated further through a proper inquiry. In fact, instead of leaving this person to thoroughly identify and rectify the systemic problems he was uncovering and seeking his support, the then General Manager of Client Services had this person seconded to the position of senior project officer working directly under his day-to-day direction.

Mr President, as you will no doubt be aware, the Hon. Nick Xenophon indicated on 26 May 2007 that he would be moving a motion for an inquiry into the Public Trustee, and my motion today seeks to take this very important matter further towards bringing closure for so many people whose quality of life has been diminished or put on hold and, hopefully, to prevent these situations from occurring.

Debate adjourned on motion of Hon. I.K. Hunter.

INTERNATIONAL PANEL ON CLIMATE CHANGE

Adjourned debate on motion of Hon. M. Parnell:

1. That this council notes—

   (a) the release this week of the final part of the Fourth Assessment Report of the International Panel on Climate Change; and

   (b) that a 2° Celsius (median value) increase in global average surface temperatures above pre-industrial levels is accepted by the European Union as the limit beyond which there will be sufficient adverse impacts on the earth's biogeophysical systems, animals and plants to constitute 'dangerous' climate change;

2. And agrees that the imperative of constraining global temperature increase to no more than 2° above pre-industrial levels should underpin government policy responses to global warming.

(Continued from 21 November 2007. Page 1488.)

The Hon. I.K. HUNTER (17:29): I rise to support the motion of the Hon. Mark Parnell. I know the honourable member has a real and abiding interest in these issues, and I welcome his usually excellent contributions to debates in this place about the threat of climate change.

As he has said, there is no greater challenge to this state and this country than the dangers of climate change. Governments around the world now agree that not only is climate change a threat to our environment, it is also a threat to our national and global security.

It is heartening that now, at both state and national level, we are taking serious and responsible steps to meet the challenge. Under Prime Minister Rudd and Senator Penny Wong (Minister for Climate Change and Water), Australia is moving towards becoming a world leader in addressing climate change and implementing strategies to reduce our carbon output.

Since the release of the UN report, we have seen the federal government ratify the Kyoto Protocol as its very first official act. The Prime Minister and Senator Wong played a key role in

getting meaningful agreements at the UN's climate change conference in December last year. What this report and the subsequent agreements in Bali show us is that, in the words of the United Nations Secretary-General, Mr Ban Ki-moon, there are real and affordable ways to deal with climate change.

Both the state and federal governments now recognise not only the enormity of the task but also its vital importance to the future of the planet. What we are seeing is an acceptance of the science of climate change and an end to the days when the climate change deniers listened only to the messages they wanted to hear.

Beyond ratifying Kyoto, the federal government's program to address this challenge includes: implementing a protocol and a commitment to playing a pivotal role in the development of a new global climate change agreement to take us beyond 2012; establishing a national emissions trading market by 2010; investing in low carbon technologies, such as clean coal and renewable energy technologies; setting a 20 per cent national target for renewable energy by 2020 to significantly expand the use of renewable energy sources, such as solar and wind; and implementing a $200 million Great Barrier Reef rescue plan to help secure the reef from the serious threat posed by climate change and declining water quality.

Last year also saw the state government, under Premier Mike Rann's leadership, take historic and tough decisions to deal with the threat of climate change. In June last year, South Australia became just the third jurisdiction in the world to set real targets for emission cuts, aiming to cut the output of greenhouse gases by 60 per cent from 1990 levels by 2050. The Rann government also set an interim target of a cut to emissions to 1990 emission levels by 2020. At the same time, the Rann government mandated that 20 per cent of the power produced in the state come from renewable sources by 2014. South Australia already produces 48 per cent of the nation's wind power and 47 per cent of its solar power and is the site of 97 per cent of geothermal energy exploration.

We can no longer afford to ignore the threat of climate change, and we have, at last, a consensus at state and federal level about the imperative for long-term planning and cooperation to achieve lasting results. It is my firm belief that the state and federal governments now have the will and the requisite leadership to work in a real partnership to tackle the challenges of climate change, and I am happy to support the motion.

Debate adjourned on motion of Hon. J. Gazzola.

FAIR WORK ACT

The Hon. R.D. LAWSON (17:33): I move:

That the regulations under the Fair Work Act 1994, concerning clothing outworkers, made on 18 October 2007 and laid on the table of this council on 23 October 2007, be disallowed.

I propose to make some introductory remarks this evening about this matter but will seek leave to conclude my remarks on the basis that, as a result of a briefing provided to me by the Employee Ombudsman earlier this week, I understand that an official from one of the organisations deeply concerned with this matter will be in Adelaide to brief all members about the code before the next sitting week.

This proposed code of practice will commence on 1 March this year, unless disallowed before that date. It is proposed that there be an amnesty for a further six months after that commencement; therefore, we do not have perhaps the urgency in considering this matter that might otherwise apply.

This particular code of practice is fairly unique, and it has a number of features of which the council ought be aware. In particular, this code of practice will apply to retailers in South Australia. It will oblige them to provide certain information to SafeWork SA and also to the union that has been conducting this campaign, namely, the TCFUA (the Textile, Clothing and Footwear Union of Australia).

It is a fairly extraordinary code of practice. Within the Fair Work Act, there are already detailed provisions relating to outworkers, provisions which are designed to protect their interests generally. There are also provisions within both the state and federal Clothing Industry Award that deal specifically with outworkers. Of course, those provisions bind employers within the industry, as do most industrial instruments.

Third parties, such as retailers, customers and other people, are usually not bound or required to do anything under an industrial award. An industrial award is an instrument that binds employers and employees and does not impose obligations on others, such as retailers or other businesses.

This code, however, will bind some retailers. It will require them to provide information about their businesses. It will require them to supply, for example, details of orders and suppliers on a quarterly basis, require them to fill in a very extensive form and file these returns with the union, and provide details of their business on a quarterly basis. It has always been sold on the basis that Business SA, the employers' group on behalf of employers in this industry, agrees with the code and supports it. Material has been published in an explanatory brochure containing that implication.

However, on 7 February this year Business SA wrote to the chief industrial relations adviser at SafeWork SA, saying that it did not agree with the outworker code of practice or its immediate implementation. A letter signed by Mr Peter Vaughan, the chief executive, expressed severe reservations about the code, but more particularly about the process that has led to the code being promulgated. The Liberal Party supports the conditions of the industrial award and supports the provisions that exist for the preservation of outworkers' entitlements contained in the Fair Work Act.

We support those instruments and do not approach this issue with any hostility towards outworkers or with any desire not to ensure that outworkers are protected: we seek to have them protected, but we also seek to know exactly what effect, not only on outworkers but on other sections of the economy, is wrought by these regulations. Mr Vaughan writes:

> While some may consider it a priority to introduce new regulations to address the exploitation of outworkers, a number of factors must be considered before any such regulation is introduced. Business SA maintains that there has been inadequate consideration and assessment of the need and impact of the introduction of the clothing outworker code of practice. The accepted method for this is through a regulatory impact assessment (RIA). A formal RIA would have, one, assessed the scope of the outworker problem in South Australia. It must be noted that no empirical evidence has been provided with respect to the scope of the problem in South Australia.

I interpose that when I had a briefing I asked the Employee Ombudsman how many retailers would be affected by this and what was the situation in South Australia regarding the number of outworkers and organisations employing outworkers and similar detail, and he was unable to provide me with any, other than the fact that an academic survey conducted in New South Wales a couple of years ago estimated that there were 3,000 outworkers in Australia, but it provided no detail of the break-up for South Australia or the extent of the problem.

I return to Mr Vaughan's letter, in which he suggested that a regulatory impact assessment would also have:

> ...assessed the scope, that is, the number and size of businesses that would be covered by the proposed regulation. Business SA's research and feedback from members has indicated that the scope of coverage is far greater than that which would have been indicated by both the government and those who are proposing the code. Thirdly, a formal RIA would have revealed whether the mandatory code regulation would indeed achieve the intended outcome. Fourthly, such an assessment would have provided an analysis of the difference in imposition on business, particularly small business, relating to the volume and regulatory codes. Fifthly, it would have analysed the cost of compliance, particularly on small business, of both the regulations and volume codes.
>
> Sixthly, it would have analysed current methods and resources available to address outworker issues and provided transparent and subjective analysis as to why methods and resources are inadequate to address the problem in South Australia. Next, it would have analysed whether it is appropriate for employers bound by the clothing trades awards, and complying with the awards' onerous requirements, to also be required to comply with even further regulatory obligations on top of award requirements. Next, it would have revealed that there is, first, a lack of clarity in the terminology used in the code and, secondly, in the practical impact of the code on business covered by the regulation. Next, it would have revealed that there are differences in definitions used in other state and federal legislation. Next, it would have identified what is required to ensure appropriate consistency with other jurisdictional activity with respect to outworkers. Appropriate courtesy between jurisdictions is essential to encourage and support economic development in South Australia.
>
> Next, an assessment would have ensured that the imposition of significant record keeping requirements on small business is required and is therefore not in conflict with the Premier's commitment to reducing the red tape burden on South Australian businesses by 25 per cent. Next, it would have researched the impact on the equivalent regulation on small business in New South Wales. This research would also have included an analysis of the adoption of the volume code and whether businesses resorted to supplies from overseas rather than Australian suppliers, and next it would have identified the requirements of a comprehensive process for public comment.

Mr Vaughan goes on to say:

The failure to address the above issues through a regulatory impact assessment or indeed any transparent process raises considerable doubts as to the validity or requirement for the need to introduce the legislation. While a public comment period has been for approximately three months, this period of time included the Christmas period and public holidays—a time when small business would not be able to be focused on the proposed regulation. There is a significant and disturbing lack of awareness of the proposed regulation throughout the employer community, who would be required to comply with the excessive compliance paperwork.

A further concern is that the voluntary code was not made available with the proposed regulation so that concerned businesses could make an informed decision. Until the issues identified above and, in particular, those with respect to a regulatory impact assessment have been addressed, it will be inappropriate to proceed with the proposed regulation. Yours sincerely.

So these concerns raised by Business SA are indeed significant and important, and it is a matter that the government and the minister proposing these regulations ought to identify. It is all very well to be keen to protect outworkers and, as I say, we do not run away from that, but, in their eagerness, the proponents of this code have not investigated important issues about the cost of compliance and also whether or not South Australia needs regulation of the rather heavy-handed kind that one finds in this proposed code.

One of the matters that concerns me is the fact that this code is mandatory. There already exists in New South Wales a voluntary code. This mandatory code that is being presented in South Australia has an out, and it does not require every South Australian business to comply with this code. It says, 'You must comply with the code or you can take the outlet and subscribe to the New South Wales voluntary code.' That is a form of blackmail

We normally have laws in this state which say, 'You have to comply with the law of the state of South Australia.' We do not say, 'You have to comply with the law of South Australia unless you are prepared to sign up to some voluntary code that is privately established in New South Wales' and meet whatever obligations are contained there. It is interesting to note that this regulation does not actually spell out where you find the New South Wales so-called voluntary code. It is, indeed, in the Homeworkers Code of Practice, a code of practice that constitutes an agreement between the union and other organisations in New South Wales.

The fact of this method of forcing some South Australian retailers to sign on to another code is a matter of concern. But the real difficulty is that there does not appear to have been any attempt to ascertain who are the retailers in South Australia, how many there are and how much clothing they sell. There are many businesses that sell, for example, T shirts, and no doubt there are garages, Ford dealers and Holden dealers out there selling Clipsal memorabilia, some of which might be covered by this code. Those businesses on a very part-time basis conducting clothing retailing are required to sign up to this code and are required to go through the business of filing quarterly returns and providing their business information to a union.

It is all very well for the explanatory note that accompanied the Clothing Outworker Code of Practice that was presented to the Legislative Review Committee to talk about rogue employers and the like and mentioning an invisible workforce that is being exploited, but there was no mention of who they are, where they are and how many they are. One would have thought if there are these rogue employers out there we should be attacking the rogue employers. We should be attacking the rogue dealers. What we are apparently doing is attacking the South Australian clothing retailers and requiring them to do the work that a vastly expanded sector inspectorate in SafeWork SA ought to be doing itself.

With those preliminary remarks, I will seek leave to conclude my remarks later, because I wish to present to the chamber other information which the Employee Ombudsman says will be provided to us. I urge members to examine carefully the extensive regulations that were gazetted on 18 October. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

SUMMARY OFFENCES (DRUG PARAPHERNALIA) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.P. WORTLEY: I rise to support this bill. We are all aware that drugs are probably the most significant curse that we face in our community. Many would argue that the worst gateway drug of all is cannabis, but many other drugs can be consumed by different items of drug paraphernalia readily available from various outlets around the state. I believe that this bill is responsible and has enormous merit.

The aim of the bill is to ban the sale of drug paraphernalia throughout South Australia. I have long been appalled that drug paraphernalia, particularly in the form of bongs for the use of marijuana, are freely available within our community. There is no age restriction on purchase. Outlets from which they are sold include tobacconists, but have expanded to include specific purpose shops such as those in Hindley Street—names such as Off Ya Tree, Smoke Signals and Freewheelin. To give members an idea of what we are all about here, these shops are not even thinly disguised. They openly promote and sell items designed to promote illicit drug consumption.

Until now, prosecution has depended upon police being able to prove that the paraphernalia was purchased with the specific intent that it would be used to consume illicit drugs. Fortunately, this situation is about to come to an end. This legislation will make the sale of drug paraphernalia in our state illegal. The logic of this bill is quite clear. It would be the height of hypocrisy to allow this ornate paraphernalia, clearly associated with drug use, to be freely displayed and available for purchase, while at the same time trying to say that we are discouraging the consumption of illicit drugs. The younger generation would, quite rightly, accuse us of failing in our duty to care for the community.

I recall the comments of the Hon. Ann Bressington, who introduced the bill. She told us of a young person aged about 12 going into Off Ya Tree in Hindley Street. She said that this young person was given comprehensive advice on the use and maintenance of a bong. The shop assistant even explained the variety of illicit substances for which a bong could be used to consume. I also draw attention to the research and medical evidence that clearly shows how cannabis inhaled through a bong or a water pipe is much stronger. Research shows that it is responsible for the early onset of emphysema. It is time to remedy the folly that we have lived with for many years. As Ms Bressington said, we have gone down the wrong path. Evidence abounds that cannabis is a dangerous and addictive drug. It is not the benign, soft drug that many of us would have believed.

Anyone who may fondly recall their hazy student days of the 1970s must understand that the cannabis used today is an entirely different drug, many times more potent, than that of years past. We have a clear responsibility to every citizen of South Australia, which is to legislate in their best interests. I am confident that this legislation does that. This bill will be good for our state. Moreover, it will ensure that the Rann government keeps a promise that it made before the last election. This bill is also consistent with State Strategic Plan objective No. 2, improving wellbeing, and the government's child protection program, Keeping Them Safe.

Simply put, the bill would outlaw the sale of drug paraphernalia in South Australia. The ban covers bongs, hookahs and like items, water pipes, hash pipes, ice pipes and cocaine kits. I am under no illusions, and I am not suggesting that this measure will stop the use of drug paraphernalia, but it will say to all South Australians: 'We are not in favour of use drug use and we do not condone it. Moreover, we will do whatever is deemed responsible to discourage it.' The government commends the Hon. Ann Bressington with respect to this bill. She came to us with passion and a concept and we were happy to work with her to achieve this result. The bill shows that the Rann government puts the people of South Australia first. We will always listen, and we are prepared to accept good ideas and support them, no matter from where they originate.

[Sitting suspended from 18:00 to 19:45]

Clause passed.

Remaining clauses (2 to 4), schedule and title passed.

Bill taken through committee without amendment.

Bill read a third time and passed.

WATERWORKS (MAKING OF RESTRICTIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 November 2008. Page 1310.)

The Hon. I.K. HUNTER (19:50): The government will not be supporting this bill. The current drought has focused the community's attention like never before on the importance of efficient water use and the need to develop new sources of supply. However, this bill confuses water restrictions with water conservation. In accordance with the current Waterworks Act, restrictions are contingency measures. They are based on a technical assessment of water availability. Water restrictions are a contingency measure designed to deal with a potential shortfall

in supply. As a result, water reductions need to be flexible and able to be imposed, amended or removed quickly. In contrast, water conservation measures are designed to provide the public with general guidance and encouragement in the sensible use of water resources. These measures are a long-term feature of life in this state.

It is absurd to suggest that SA Water's advice to the minister on these issues is somehow not in the best interests of this state. The Rann government accepts the advice of SA Water, but it also consults widely with stakeholders. The Minister for Water Security has already established an urban water drought reference group, with broad representation from groups with a vital interest in water restrictions and conservation. They include the Nursery and Garden Industry Association, the Australian Car Wash Association, the Australian Lawn Mowers Association, the Landscape Association, the Swimming Pool and Spa Association, the Turf Association, the Motor Trade Association, the Water Industry Alliance, the Local Government Association, the South Australian Council of Social Services and the Conservation Council. Another statutory committee, such as the stakeholders water advisory committee proposed by this bill, is unlikely to achieve a better result in the current drought in terms of water conservation. For these reasons the government will not be supporting the bill.

Debate adjourned on motion of Hon. C.V. Schaefer.

STATUTORY AUTHORITIES REVIEW COMMITTEE: MEDICAL BOARD OF SOUTH AUSTRALIA

Adjourned debate on motion of Hon. J. Gazzola

That the report of the committee on an inquiry into the Medical Board of South Australia be noted.

(Continued from 24 October 2007. Page 1127.)

The Hon. SANDRA KANCK (19:53): Every year I get complaints about the Medical Board of South Australia. When the Statutory Authorities Review Committee's interim report into the Medical Board of South Australia was tabled in March 2006 it contained some very strong recommendations, including recommendation No. 4 that the Medical Board of South Australia be stripped of its powers to investigate complaints and undertake disciplinary hearings in relation to medical practitioners, providers and medical students. I greeted that news with a congratulatory media release. Finally, it looked like we would have moves to hold the Medical Board accountable for its failures to adequately investigate complaints of malpractice and inappropriate behaviour against doctors.

However, the final report, tabled in July last year, sees the committee backing away from this. In the Presiding Member's foreword it states:

> In my view medical practitioners are best qualified to assess the clinical judgment and practice of other practitioners. This can lead to a perception that doctors protect their own and, in some areas of great specialty, it means peers assessing the performance of their friends and close colleagues. I am not satisfied that non-practitioners, whatever their experience in the health system, can truly make an adequate assessment of whether doctors have acted appropriately in a medical sense. I am gravely concerned that such a model has the potential to imperil the lives of patients by substituting a less than optimal judgment in the interests of transparency.

I note that a number of members of the Statutory Authorities Review Committee, who heard the majority of evidence, were replaced after the 2006 election, and perhaps the new composition is the cause of this apparent backing away from the earlier position.

The inquiry started hearing evidence in October 2004, shortly after the passage of legislation which included reform of the Medical Board. The interim report highlighted the reluctance of the board to be forthcoming with information—and little has changed. Since the committee finished hearing evidence, I have continued to be made aware of very disturbing ways in which the Medical Board conducts its business.

Perhaps the Statutory Authorities Review Committee thought that the new act would solve the problems. However, peer review has not worked in the past and it is unlikely to work in the future, as other medical practitioners have a conflict of interest in censuring, if they are required to censure, other practitioners. During the enquiry, Mr Hooper, the Registrar of the Medical Board, spoke of the need to look at the legal consequences of any decision which the board may hand down.

All practitioners pay indemnity insurance and, if a medical practitioner is found guilty of inappropriate treatment, there is a strong likelihood that indemnity payouts will occur, with a

consequent rise in premiums for doctors. Conversely, when an indemnity claim is not settled in this way, the premiums are unlikely to increase.

The board hearings are quasi judicial, requiring experts from the field of medicine to present their view as to whether the actions of the person being complained about were adequate. If the board hears evidence of the practitioner being complained about in the absence of someone with specific expertise in that speciality, there is potential for the findings of the board to be flawed. A mix of people with a clinical and non-clinical judgment is better placed to give a balanced judgment.

I will proceed with some examples. I suggest that, while there may have been some change in the manner in which the Medical Board operates, which change appears to have satisfied the Statutory Authorities Review Committee, the board is still not acting satisfactorily for it to protect the health and safety of the public.

I am going to spend some little time on one particular instance around one particular practitioner. It involves two separate instances of charges of unlawful sexual intercourse with daughters of family friends, including a 13 year old. There were two separate trials regarding two different people. This doctor was the perpetrator in both instances. However, despite the challenges, he was still working in a field of medicine which is predominantly accessed by women.

Indeed, the young woman who came to me to complain about her treatment by the Medical Board obviously had no knowledge of the charges at the time she visited this doctor. I am sure if she had the knowledge she never would have walked inside. However, she told me that she was uncomfortable at the time of her medical examination by him because he seemed to leave his hand just a little too long on her upper thigh and she wondered why an examination for spider veins on her legs required him to touch her upper thighs. That was not the reason, by the way, for her complaint to the Medical Board. It was one of those after the event 'aha' moments of insight when she found out a little bit more about this doctor's history.

In mid-2006, after the first finding of guilt by the court, this practitioner had limitations placed on his practice by the Medical Board, including that he was not to treat anyone under 18 years of age; he was to have another person present when treating women—and I note that the only other person in that practice who fulfilled that requirement was the medical practitioner's wife, who was also the receptionist; and he was only to perform certain procedures on the face and legs.

When I contacted the Medical Board to ask why these limitations were not put in place earlier—that is, before the finding of guilt in the first case—their answer was that the bail conditions imposed by the court were adequate. I wonder which of his patients knew about either the charges or the bail conditions, particularly as the man's name was suppressed. With all these factors, I had concerns for the safety and welfare of patients he was treating, as I was aware of this but the general public was not.

I contacted the Registrar about this but found no relief, being informed that there was nothing more that the Medical Board could do. However, when I read the act, it was clear to me that there was action that could have been taken. The board had the power to suspend the medical practitioner, but it chose not to, instead putting these practice limitations on him. The practice limitations were not known to the public, so any members of the public who visited that doctor were not in a position to report any breaches.

The woman who came to see me about the Medical Board's treatment of her complaints was also informed by the board that it does not police any of these practice limitations. The reason the board gave to her for that was that it does not have the resources to do this. So, how is the board protecting the interests of the public? If the board is not in any way checking to see that the doctors are observing the limitations the board imposes, there seems little point, in the first instance, in imposing the limitations. Perhaps the logic of the Medical Board was that the doctor concerned was appealing the sentence, so it had to assume that, even though the court had found him guilty, he was still innocent. Over a period of years, this doctor went all the way to the High Court with his appeals.

I became aware of the fact that, as well as his practice on Payneham Road, he had also been practising at Surrey Downs. Because I had some anecdotal information that this doctor might have breached the practice conditions imposed on him—and, might I say, the breach was minor; but, nevertheless, it was a breach—I telephoned the Surrey Downs practice and asked whether they had been told about the bail conditions or the practice limitations. They were very cagey and referred me to their company in Canberra. So, I tracked that company down via the White Pages and phoned it and received a similar response. To this day, I do not know whether the medical

practice at Surrey Downs was aware that either bail conditions had been in place at one time and then practice limitations. It appears the doctor is under no obligation to let anyone else know.

I found out, from contacting the Medical Board, that the board does not see it as part of its duty to inform potential employers of such limitations. So, how was the public interest protected in this particular case? The only one who got protection was the doctor concerned, and surely the role of the Medical Board is to ensure that the public get the best results.

The High Court decision was handed down mid-December, and this man's name no longer appears on the Medical Board's website as a practising doctor. In order to confirm this, I telephoned the Medical Board, and I was informed that this doctor's licence has been completely suspended. My constituent, in an email to me, said, 'I used to naively believe that the doctor you saw was competent or else they wouldn't be practising.' She learnt to her cost that this is not the case.

My experience of this one case leads me to believe that having doctors investigate doctors leads to a great deal of tolerance of behaviour that ought not to be tolerated. I have been made aware of other irregularities relating to limited registration. From time to time, under the Controlled Substances Act 1984, medical practitioners who have not adhered to that act are prohibited from prescribing certain drugs. Contraventions of this act are printed in the *Government Gazette*. However, some of the medical practitioners who are gazetted as not being able to prescribe certain pharmaceuticals still had full registration at the time this was printed, while others had limited registration.

Another constituent rang the Medical Board last year to find out what limitations were imposed on a specific medical practitioner. This person was initially denied any information by the board. After some insistence, the Medical Board's staff member suggested that he see the Registrar, who would explain. This constituent met with the Registrar who advised that the medical practitioner had asked to be given limited registration as protection from drug addicts.

It does not seem very plausible, especially when the name of the medical practitioner appeared in the *Gazette* as having contravened the Controlled Substances Act. So, why was the Medical Board covering for him? Patients have to be very well-informed about how the system works to ensure their own wellbeing. So, who reads the *Government Gazette* on an ongoing basis?

In another instance, a man suffering significant back pain visited his medical practitioner and was told to take Panadol, which made no difference to his condition. One of my staff members, a friend of the man concerned, was able to check and found out that this medical practitioner had limited registration, which had been gazetted under the Controlled Substances Act. She suggested that he see a different medical practitioner, where he received appropriate pain management and ongoing treatment. So, we had one happy customer, but not everyone has friends who would know where to look for that information.

These quite recent anomalies and the inability of the general public to obtain information about limitations could lead one to conclude that the Medical Board is still conducting its activities without regard for the health and wellbeing of the public. So, I am concerned that the Statutory Authorities Review Committee appears to have backed down on recommendation 4 of its interim report of March 2006. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

SECURITY AND INVESTIGATION AGENTS (CROWD CONTROLLER LICENCE SUSPENSION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 September 2007. Page 683.)

The Hon. SANDRA KANCK (20:07): I indicate support for this bill. I think this is simply a matter of natural justice. We have had, and continue to have, a lot of legislation in this place that seems to abrogate the rule of law and judge people as guilty until proven innocent. In relation to security and investigation agents, this bill ensures that they are innocent until proven guilty.

Debate adjourned on motion of Hon. I.K. Hunter.

ENVIRONMENT PROTECTION (BOARD OF AUTHORITY) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (20:09):

Obtained leave and introduced a bill for an act to amend the Environment Protection Act 1993. Read a first time.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (20:10): I move:

That this bill be now read a second time.

The purpose of this bill is to separate the roles of the chief executive and the person who presides at meetings of the Board of the Environment Protection Authority.

This government introduced amendments to the Environment Protection Act 1993 in 2002 with the aim of strengthening the independence of the Environment Protection Authority. At the time the Premier said that the EPA had not been meeting the expectations of the community for some time. He stated that a fundamental part of the government's environment policy was strengthening the powers of the EPA to investigate and prosecute environmental offenders and that for this reason the authority was to be recast as a truly independent body. That remains the government's position today, and this bill will reinforce that independence by improving the authority's governance.

The bill will improve the governance of the EPA in line with current governance theory and reinforce the independence of the board and its power to direct the activities of the administrative unit which supports it in all matters relating to its statutory functions. The bill now before the council preserves the requirement for the chief executive to give effect to the board's policies and decisions related to its functions under the act but no longer gives him or her any vote on what those policies and decisions will be.

The bill provides for the board of the authority to continue to have up to nine voting members. One will be appointed by the Governor as the presiding member, and a deputy may also be appointed to preside in the absence of that person. The chief executive will be an additional member of the board so that he or she is available to contribute to discussions of the board. However, the chief executive will not have a vote on any resolutions.

A consequential amendment removes the requirement for the chief executive to preside at round-table conferences, which assist the minister and the authority to assess the views of interested persons. In future it may be that the chair of the board will want to preside at such functions, so the act is being made less prescriptive to allow for this. The act continues to require the chief executive or a member of the board to be present at round-table conferences. I commend the bill to members.

I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Environment Protection Act 1993

4—Amendment of section 3—Interpretation

This clause amends the definition of Chief Executive in the interpretation section in the principal Act. The amendment is consequential upon the substitution of section 14A.

5—Amendment of section 14—Powers of Authority

This clause amends paragraph (b) of section 14 of the principal Act to authorise the Authority to make use of the services of the employees and facilities of an administrative unit of the Public Service with the approval of the Minister administering the administrative unit. The amendment enables the Authority to make use of the services of the employees and facilities of more than 1 administrative unit with the approval of the relevant Ministers.

6—Substitution of section 14A

This clause deletes the existing section 14A to remove the requirement for a separate appointment of the Chief Executive of the Authority under this Act.

14A—Chief Executive

Proposed section 14A provides that if the Authority makes use of the services of the employees and facilities of an administrative unit and the Minister administering that administrative unit approves the application of the provision to the position of chief executive of that administrative unit then the person for the time being holding or acting in the position of chief executive of that administrative unit will be taken to be the Chief Executive of the Authority.

7—Amendment of section 14B—Board of Authority

This clause makes amendments to section 14B of the principal Act to facilitate the appointment of a presiding member and deputy presiding member of the Board of the Authority. This reflects the amendment to section 16(2) to provide that the Chief Executive of the Authority will no longer be the presiding member of the Board. The proposed amendments to section 14B(2) and 14B(3) provide that the Board is to consist of 7 to 9 members appointed by the Governor and the Chief Executive who is a member of the Board ex officio. Proposed section 14B(3a) and 14B(3b) respectively provide that 1 of the appointed members of the Board will be appointed by the Governor to be the presiding member of the Board and another appointed member will be appointed to be the deputy presiding member of the Board. Proposed section 14B(8) clarifies that a deputy of a member may act as a member of the Board during any period of absence of the member.

8—Amendment of section 16—Proceedings of Board

The proposed amendments to section 16(2) and 16(2a) are consequential upon the amendments to section 14B. The proposed amendment to section 16(6) is consequential upon the insertion of section 16(6a), which provides that the Chief Executive of the Authority is not entitled to vote at a meeting of the Board.

9—Amendment of section 19—Round table conference

This clause deletes section 19(5) and is consequential on the deletion of section 16(2).

Debate adjourned on motion of Hon. D.W. Ridgway.

LEGAL PROFESSION BILL

Adjourned debate on second reading.

(Continued from 17 October 2007. Page 1002.)

The Hon. R.D. LAWSON (20:12): I rise to indicate that Liberal members support the second reading of this bill and its ultimate passage, subject to a number of significant amendments, to which I will refer later in this contribution.

The regulation of the legal profession in South Australia has a longstanding history. In fact, in Act No. 6 of 1845 there was an ordinance to regulate the profession of the law in this state, and ever since that time—and subject to many amendments over the years—the legal profession has been regulated by legislation. Under legislation the Law Society was established and will continue to exist under the new legislation, and it plays a central role in the regulation and affairs of the legal profession here.

I mention that, in the historical context, in 1859 the Public Notaries Act enabled notaries to be appointed. That legislation provided that every person who was desirous of being appointed as a notary should apply to the court. This was followed by another significant amendment in 1911, the Female Law Practitioners Act, which enabled women to be admitted to the bar in this state.

One of the highlights of South Australian jurisprudence occurred in 1920, when the first female practitioner, Mary Kitson, having been admitted to practise as a lawyer, applied to be a notary public. I mentioned a moment ago that the Public Notaries Act provided that every person desirous of obtaining appointment as a notary should apply to the court. The Full Court of South Australia held that the word 'person' could hardly include women; therefore, Mary Kitson was not entitled to be appointed as a notary public. It required subsequent amendment to overcome that absurd conclusion.

This current version of the Legal Practitioners Act is the first occasion on which there has been an attempt to unify the laws relating to legal practice across the whole of the country. The current process began in 2001, with a resolution of the Standing Committee of Attorneys-General. Since that time, a great deal of work has been done to provide, in effect, for the establishment of an Australian legal profession in which persons admitted to practise anywhere in Australia are, subject to conditions, entitled to practise anywhere in the country.

This has led to legislation which is, I have to say, somewhat complex and prolix. We are here replacing the current Legal Practitioners Act, which comprises some 50 pages and 100 or so sections, with the bill before us, which comprises 153 pages and 500 clauses. It is a very significant enlargement. I will give the chamber accurate figures: we are replacing an act of 84 pages and

255 sections with one which will have 153 pages and some 500 sections. So, in the age of deregulation, we are certainly verbose in our regulatory scheme.

More importantly, there are a number of entirely new provisions, which deal not only with the question of the rights of Australian legal practitioners to practise throughout the country but also with foreign lawyers and which allow, for the first time, foreign lawyers to practise foreign law in Australia, that being the sort of provision which the larger Australian firms insisted upon to enable them, hopefully, to practise Australian law in other foreign jurisdictions.

The bill introduces and allows multidisciplinary partnerships, whereas previously lawyers could be in partnership only with other legal practitioners. There is now an opportunity for partnerships to be formed between lawyers and other professions. The rules relating to incorporated legal practices have changed. Generally speaking, the previous regime was that an incorporated legal practice could be established, but all its owners had to be legal practitioners or persons related to legal practitioners. This requirement disappears, and it will be possible for legal practices to be owned by persons who are not qualified.

It will be possible for major corporations to establish legal practices. It will be possible for legal practices to be owned by public companies, and already, pursuant to provisions introduced elsewhere, there are publicly listed legal firms whose shares are quoted on the Australian Stock Exchange and whose shareholders are purely investors.

In another place, the shadow attorney-general (Isobel Redmond), herself a former sole practitioner, has lamented the fact that this new organisation of the legal profession is, in her view, leading to the loss of many of the important characteristics of the former profession. She sees legislation of this kind as the end of sole practices, and it is certainly true that for the sole practitioner or a small firm the arrangements relating to the conduct of legal practice are being complicated.

One of the difficulties about regulating the legal profession is that it is a widely divergent profession; there are many different modes of practice within it. There are on the one hand very large commercial firms, especially on the eastern seaboard, comprising large staff and operations that extend beyond states and internationally—some of these firms have offices in London, Hong Kong and Singapore—but at the other end of the scale there are very many sole practitioners or small firms, many practising in suburban areas and in small towns, handling a wide range of family legal problems, whether it be family law, small criminal matters, small business issues, wills, estates and the like.

There are at one end of the scale legal aid lawyers employed by community legal centres, in the Aboriginal Legal Rights Movement and the like, being paid a salary. There are lawyers in large corporations and specialist boutique firms, some of which are highly remunerative. Much legal practice, especially sole practitioners and small firms, struggle to make financial ends meet. They provide a good service to their clients, but the manner of practice and challenges they face are far different from those in the big commercial firms where lawyers are highly remunerated.

There are barristers, some of whom are highly skilled and act in major commercial and constitutional matters; they are being paid significant fees. There are other barristers at the other end of the scale undertaking legal aid and pro bono work and whose remuneration is not at all significant, given their qualifications. Yet this legislation seeks to cover, in an overall way, the whole of legal practice. The widespread public perception that all lawyers are well remunerated is certainly a misconception.

The Liberal Party has taken the position that this legislation, developed as it has been nationally and more or less uniform (although there are significant state differences), is to be supported. In so far as it helps break down barriers between states, we certainly support it. It is important to remember that this legislation deals with the regulation of the legal profession—and the Attorney-General described that profession in his second reading speech in rather glowing, flattering terms—as constituting the bulwark of the independence of the courts and essential for a fair and effective legal system. He also described the profession as 'not simply another economic activity' and stated:

> Some of its activities have a profound impact on the self image of society, on its standards of justice and civilisation and on its commitment to the rule of law and the defence of rights. The abiding challenge facing the legal profession as it enters a new millennium is one of preserving the idealism and professionalism of a potentially noble calling dedicated to the attainment of justice, while paying more attention to the realities of delivering that same justice to ordinary people.

These are high sounding ideals, but in many ways the legal profession is the provider of services to the community, and one of the most important aspects of any bill of this kind is the protection it offers to consumers. The notion that the legal profession is solely a noble profession is regrettably being overtaken by the notions of market economics where the legal profession is a supplier of services and a business like any other business.

I am a legal practitioner and have been for a number of years. I am, and am proud to be, a member of the Law Society, but we have to face the fact that the constraints of ordinary trading businesses apply to the profession and that service to the consumer, protection for the consumer, is an important and paramount element in legislation of this kind. We do not regulate the legal profession merely for the purpose of regulation. We regulate the people who are actually allowed to practise law and the privileges they have in being able to practise law, in the interests of their clients, to ensure that the clients have persons of competence and integrity handling their legal affairs and also to ensure that the courts have appearing before them barristers and solicitors committed to high standards of integrity and professional conduct.

It is unnecessary to outline in any detail the provisions of the bill: in another place the shadow attorney-general did that at great length. There is, however, one aspect of this legislation that ought be changed and addressed. Since 2001, when the process of developing this legislation began, there has occurred in South Australia certain circumstances that have exposed the weakness of some of the provisions of the legislation—and I here speak of the Legal Practitioners' Guarantee Fund, which I will describe in some detail in a moment.

However, as a result of the collapse of an old established legal firm, many clients in South Australia have suffered considerable inconvenience, loss and delays and their plight, which is continuing, has exposed the need for a better system. The enactment of this legislation provides the parliament with a timely and appropriate opportunity to ensure not only that the suffering of those persons cease but also that, if similar circumstances occur in the future, clients will not have to suffer the loss, delay, inconvenience and trauma that they are currently suffering.

The new bill's funding arrangements were described in the following terms by the Attorney-General in his second reading explanation:

> Funding arrangements will continue as at present. The combined trust account and the statutory interest account will operate as they do now, as will the Litigation Assistance Fund, the Professional Indemnity Insurance Scheme and the Legal Practitioners' Guarantee Fund. These funding arrangements and the general arrangements will continue as at present.

In other words, the government and the proponents of this legislation have not looked at a new model: they simply propose that what occurs now will continue in this regard. That in itself shows a level of complacency, and I think the attitude of the Law Society, regrettably, and of the government, to the plight of the Magarey Farlam claimants, indicates also that complacency.

When the bill was introduced in September last year, the Attorney-General was well aware of the Magarey Farlam issue. Indeed, he referred to it in the following terms:

> I am seeking advice on what, if any, changes may be required in the wake of the recent collapse of an established South Australian practice, Magarey Farlam. However, as this matter remains the subject of action and given the fact that the profession is eagerly anticipating the bill, the government did not want to delay its introduction pending finalisation of possible amendments.

Although the government has tabled certain amendments here in relation to this bill to be moved in this council, and further amendments were tabled this day by the Minister for Police and have not yet been studied, the fact is that the Magarey Farlam issue has not been addressed in the bill. It suited the Law Society not to have it addressed because, as one might imagine, it is keen to have the legislation enacted so that it can join the national profession, and anything that might lead to any delay in that is something that it is keen to avoid. Unfortunately, we take a different view—a view that is justified, I think, to a great extent, by the course of the Magarey Farlam matter.

It was in July of 2005 that a serious irregularity was identified in relation to the trust accounts at Magarey Farlam. It appeared that a longstanding employee of that firm, who was not a lawyer, was involved in dealings with a trust account and that there was a significant shortfall in the trust accounts of the firm at the time the irregularities were discovered. On 1 August 2005, the Council of the Law Society appointed a supervisor of the trust accounts. That supervisor was, indeed, a member of the staff of the Law Society, and it was her task to ascertain and verify entitlements to the trust accounts.

Her role proved to be complex and difficult. Accountants were engaged. The Law Society subsequently appointed, in addition to the supervisor, a manager of the practice, who was a partner in a leading Adelaide law firm. A number of lawyers and accountants were engaged to assist in ascertaining the loss, which was fairly quickly identified at $4.5 million, and thereafter investigations occurred. There has been an application by the supervisor for directions to the Supreme Court. Extensive expenses were incurred and paid out of the guarantee fund—over $1 million was paid up to 30 June 2006—and the applications to the Supreme Court in relation to that matter are ongoing.

Indeed, the applications came before Justice Debelle. One of the principal issues was whether a freeze that was placed on the trust account of the firm should apply to the whole of the trust account and, secondly, whether those clients whose balances had not been interfered with at all should be forced to have their claims pooled with others who had identifiable losses and whose assets within the trust accounts had been dissipated or were missing. These claimants were identified as the pooling claimants and the tracing claimants. That led to an application to the court, and the court made a decision after hearing many lawyers representing many parties.

Subsequently, there was an issue about whether or not the claimants should be allowed their costs out of the Legal Practitioners Guarantee Fund, and the judge ruled that they were entitled to recover their costs. The Attorney-General appealed against that order, because he considered that the Legal Practitioners Guarantee Fund should not be used to pay legal costs of that kind. There was an appeal by the Attorney-General against that decision, and the Attorney-General's appeal itself was dismissed by the Full Court of the Supreme Court in August 2007. It is interesting to note that, after the court had ruled against the Attorney-General, the Attorney-General introduced an amendment to this bill to overcome the effect of the judgment of Justice Debelle—in effect, to reverse Justice Debelle's decision—and to say that contrary to the Full Court's decision those persons who had lost money were not entitled to have their legal costs paid out of the fund.

The difficulty with the current system is that there are caps on the amount of money that goes into the guarantee fund. For the record I should explain briefly the way in which the practitioners guarantee fund operates. A number of years ago interest on solicitors' trust accounts was not paid by the banks. There was a feeling within the profession—not universally—that banks should not have the benefit of the interest on solicitors' trust accounts; that a better scheme would be to require the banks to pay interest on those funds and that the interest would be applied in a certain way for the benefit of clients and the profession. The argument was a reasonable one. Why should banks enjoy the use of the money of the clients of lawyers? It was the clients' money: it should be applied to the benefit of the clients.

A scheme was established whereby that interest was paid into certain funds; first, a statutory interest account and, secondly, the Legal Practitioners Guarantee Fund. From the guarantee fund as established—and I will come to the limits on that fund shortly—there was to be paid money to reimburse clients who had suffered a pecuniary loss as a result of the default of a solicitor. It was an extremely good scheme, because it enabled lawyers to advertise to their clients that, if there was a defalcation and the lawyer was unable to meet the defalcation, the client would have a call upon a guarantee fund. So, if a client went to a lawyer, he had the benefit of that guarantee fund. If he went to an accountant or land broker, or some other form of professional for advice, he would not have the benefit of that fund.

However, not all the interest derived from this account was to be applied to the guarantee fund; some of it was to be applied for other purposes. It is perhaps best to describe this by reference to the current act. Before so doing, I mention that there was a great deal of debate at the time of the introduction of this scheme. Whilst most members of the legal profession considered that the banks should not enjoy the benefit of clients' money, many considered it was inappropriate to use interest earned on clients' money for purposes other than giving it to the clients themselves.

However, the scheme eventually agreed upon was one which allowed the benefit to pass through the Legal Practitioners Guarantee Fund to the general body of clients of lawyers, rather than to those particular clients whose money was invested in trust accounts.

Section 53 of the current act establishes a combined trust account, and legal practitioners are required to pay an amount of their trust account to the combined trust account. That has operated, I think, since 1981 at least. The Law Society was required to establish and maintain a statutory interest account into which all interest earned from the combined trust account was to be paid. The balance of the statutory interest account, after paying accounts, etc., was to go

five-eighths to the Legal Services Commission and the remaining three-eighths to the Legal Practitioners Guarantee Fund.

The Legal Practitioners Guarantee Fund was to be established up to a limit, and that limit was an amount calculated by multiplying $7,500 by the number of legal practitioners in the state. The current balance of that account is something over $20 million. When the Law Society reported in December 2006, the total assets of that fund were $21 million. I think it is now $22 million calculated in accordance with that formula. The excess over that $21 million is to be paid and applied by the Law Society to the Legal Services Commission and for certain other purposes approved by the Attorney-General and the Law Society.

The Legal Practitioners Guarantee Fund comprises the money paid into it from the statutory interest account and a certain proportion of money from the fees that are paid by lawyers for their annual practising certificates. The purposes for which money in the guarantee fund may be applied are fairly extensive. They include matters such as investigation of complaints against legal practitioners and legal disciplinary proceedings against legal practitioners; costs of the fees paid to members of the board and the Legal Practitioners Disciplinary Tribunal; and educational publishing programs conducted for the benefit of legal practitioners. It is important to note that no payment may be made from the guarantee fund except with the authorisation of the Attorney-General.

As to other interest accruing on legal practitioners' accounts—that is, the accounts that remain in their trust accounts—50 per cent of that money is to be paid to one or more of the Legal Services Commission or the community legal centres in such shares and subject to such conditions as the Attorney-General directs; 40 per cent of the money must be paid to the guarantee fund; and 10 per cent must be paid to a person nominated by the Attorney-General, subject to such conditions as the Attorney-General directs. So, significant funds are generated.

I have mentioned one limitation on the guarantee fund, and that is the one derived by the formula mentioned. That is described as a cap. Another cap is that any claim against the guarantee fund is limited to 5 per cent of that fund. That means, in a case like the Magarey Farlam case, where a number of clients have suffered loss as a result of a particular series of incidents, the total amount available to all of them will be 5 per cent of the fund—something like $1 million. That 5 per cent can be changed by regulation. However, the issue highlighted in the Magarey Farlam matter is the fact that there are $4.5 million worth of losses, there are millions of dollars of costs, yet section 64 of the current act, which is replicated in the new legislation, provides that the amount that can be applied towards the satisfaction of all claims in that matter is limited to 5 per cent.

That has led to injustice. The amendments proposed by us, foreshadowed in another place but not accepted by the government in another place, was that those caps be lifted and that the impediments which are presently placed in the way of satisfying the Magarey Farlam claims be removed.

The course of the proceedings in the Magarey Farlam matter have been tortuous, and they have been criticised by Justice Debelle in colourful and trenchant language. In the course of delivering one of the judgments in this case, the judge said:

> The more I have to do with this matter, and the more I am concerned as to how people who innocently suffer loss are put to extraordinary cost, the more it seems to me that, when this is all over and done with, I will be writing to the Attorney-General, I have to say, to see if some better system cannot be put into place. I mean, I can recall way back some 12 months ago almost, I think, saying, 'There's got to be a better way than this,' and 'Is there not some means whereby the insurers can sort out the position in consultation with the Attorney-General?' That's obviously not transpired and the deplorable state of affairs that costs are continually being incurred to a point where, rather like Bleak House, by the time the costs are paid what is going to be left for those people who innocently suffer from the fall of another. There must be a better system.

Indeed, there is a better system, and the amendments I will be moving provide a way forward.

On 23 November last year, the respected legal commentator Chris Merritt wrote in *The Australian*:

> The failure of law firm Magarey Farlam is one of those catastrophes with ever more repercussions. It's bad enough that South Australia's flawed regulatory structure prevents the Law Society from compensating those who lost money in this firm. But now it looks like the inability of the government to solve this problem has delayed the passing of the state's new Legal Profession Bill.
>
> Attorney-General Michael Atkinson has given up trying to get the bill through parliament this year. But he had the courtesy to tell the Law Society. Until that bill makes it through the parliament, South Australia's lawyers will be left out of the uniform regulatory system in other jurisdictions...Atkinson's problem is that the opposition, and some of the minor parties in the upper house—

The PRESIDENT: Order! It is either 'the honourable minister' or 'the Hon. Michael Atkinson'.

The Hon. R.D. LAWSON: Yes. Well, Mr Merritt describes the Attorney-General simply as 'Atkinson'. I certainly mean no discourtesy to the Attorney: I am quoting from Mr Merritt's remarks. Mr Merritt goes on to say:

> ...[the] problem is that the opposition, and some of the minor parties—

I think that is another mistake. They are not minor parties: they are significant representatives in this place—

> want to amend the Legal Profession Bill to permit a quick compensation deal for Magarey Farlam victims...Laid on these different approaches is the fact that any long-term change to ensure there is no repeat of the outrageous treatment of the Magarey Farlam victims will have one big loser: the state government. The logical solution is for the government to permit legislative change that will make it possible for future victims of failed law firms to be immediately compensated from the solicitors' guarantee fund. But that would require the government to sacrifice budgetary interests to ensure the financial welfare of consumers of legal services.

Mr Merritt continues:

> South Australia is not the only state that bludges on consumers of legal services in this way. But is definitely the worst.
>
> In New South Wales, Victoria and Queensland, consumers of legal services who lost money in a failed law firm would never be subjected to the mindless shenanigans that passes for consumer protection in South Australia. The Law Society has enough money in the solicitors' guarantee fund to pay out all Magarey Farlam victims tomorrow. The only thing stopping it is state law. And until the law changes, it is a permanent reminder that the South Australian government cares more about itself than the financial welfare of consumers of legal services.

There is a good deal of truth in those sentiments. We believe the opportunity to correct the wrongs of the present, and also to ensure that they are not repeated in the future, is presented to the Legislative Council through the amendments I will be moving in the committee stage of this bill. But, as I say, whilst we support the regulatory provisions, the consumer protection provisions and the other important reforms, we do believe that it is just as important that this measure, which is ultimately a consumer protection measure, is amended in the manner foreshadowed.

The Hon. D.G.E. HOOD (20:58): Family First sees many good aspects to this bill; we have a number of concerns as well. The bill contains provisions which are keenly sought by lawyers and legal organisations and which are part of national model legislation. Members would be aware of a number of opposition amendments, to which Family First is favourably disposed at this point. However, we are principally concerned that the victims of a current case (that is, the case the Hon. Mr Lawson mentioned a number of times in his contribution, namely, the $4.5 million Magarey Farlam lawyers fraud) be paid compensation for all stolen money and costs. That is Family First's primary objective in dealing with this bill.

South Australians should be deeply disturbed by the handling of this case, because the tens of thousands of people who use our legal system, from children to retirees, are at risk, and will continue to be at risk, under this system. Unfortunately, this bill in its original form will do little to help them. In fact, this legislation, some might argue, should never have come before this parliament in its current form.

But for a pressing need, according to the Law Society of South Australia, to implement the bill by 1 July, as well as a desire to assist Magarey Farlam victims as quickly as possible, Family First may very well have opposed this bill until comprehensive changes to the trust account and guarantee funds provisions had been made. The rights of victims should always be paramount, and that is certainly true in this case as well. For that reason, we are inclined to support the bill, with consideration of the amendments the opposition will put forward in due course. They are largely designed to help the Magarey Farlam victims. We also give notice that we are considering the introduction of a private member's bill that will put to rest those unjust aspects of the current system.

A damning indictment of the current system was made by Justice Debelle (also referred to by the Hon. Mr Lawson) during a Supreme Court directions hearing into the Magarey Farlam matter, when he said on 28 November 2006:

> ...the more I have to do with this matter, and the more I am concerned as to how people who innocently suffer loss are put to extraordinary cost, the more it seems to me that when this is all over and done with, I will be writing to the Attorney-General, I have to say, to see if some better system cannot be put in place.

He goes on:

I mean, I can recall way back, some 12 months ago almost, I think, saying, 'There's got to be a better way than this' and 'is there not some means whereby the insurers can sort out the position in consultation with the Attorney-General?' That's obviously not transpired and one has the deplorable state of affairs that costs are continually being incurred to a point where, rather like Bleak House, by the time costs are paid, what is going to be left for these people who innocently suffer from the fall of another? There must be a better system.

For a Supreme Court judge to make such a damning statement about a law mid-way through a case is extraordinary indeed, and it should have been enough for the government and the Law Society to take immediate and decisive action to resolve the matter, recognising that victims were being put through protracted litigation with heavy legal costs as well as other costs and losses (as usual, the lawyers are the winners and everyone else are the losers). Yet they rebuffed all attempts to reach an out of court settlement, with the government opposing and, with the society's support (to its shame), appealing, unsuccessfully, against the victims' application to the court for their costs of proceedings to be paid directly from the guarantee fund—a fund that victims can claim is now nothing more than a Law Society slush fund and of little, if any, use at all to victims.

I intend to concentrate on the major steps in this matter, emphasising the unjust impact on victims, and then cover the systemic problems highlighting why sweeping changes are needed—and needed urgently. The Magarey Farlam matter—again, as highlighted by the Hon. Mr Lawson—began with the discovery in July 2005 of the first of a series of thefts during a 15-year period of some $4.5 million from 42 of the 250 trust accounts managed by the Adelaide-based firm of Magarey Farlam lawyers. The actions of the Law Society and the government subsequently resulted in a number of things:

- a court intervention by the society without providing victims with a chance to sort out the matter with the Magarey Farlam partners;
- a 21-month Law Society freeze of the remaining assets of all 250 victims, not just those beneficiaries of the 42 defrauded trust accounts. How can that be justified?;
- the refusal of the Law Society to discuss an out of court settlement with the victims, and the failure of the government to convene promised mediation;
- an absolutely needless three-day case with about a dozen direction hearings into how the remaining moneys were to be distributed, the society splitting victims into two groups—essentially, those stolen from and those not stolen from—and then initiating Supreme Court action which forced the two groups to fight against each other. However, the groups were never defined properly, causing difficulty for some clients in determining to which group they belonged;
- a one day hearing of an application by all victims for their costs of proceedings to be paid directly from the guarantee fund;
- a one-day full bench appeal against that decision;
- about 25 different solicitors and five barristers acting for clients, with a supervisor retaining a solicitor and a barrister;
- the Solicitor-General appearing in the appeal for the Attorney-General;
- the failure of the government, the Law Society and the lawyers involved in the case to heed the call of the Supreme Court's Justice Debelle for a conference aimed at settlement to heed Justice Debelle's 'Bleak House' statement;
- more than $2 million spent by the Law Society (mainly on legal fees), all of which came from the guarantee fund—which, as I will cover later, is financed largely by money from the clients of law firms. The expenditure, which all has to be authorised by the Attorney-General, may be close to $3 million if reports are correct that the Law Society's financial statements do not make clear all the expenditure;
- an estimated further $1 million spent on legal fees by victims, the amount being subject to adjudication and Supreme Court proceedings.

Again, I ask: how does this advantage anyone but the lawyers themselves? All that was achieved was a decision about how the remaining assets were to be distributed. Those victims whose assets were plundered are still trying to recover their losses, with some only recently having started legal action to do that. The lawyers win again. By the time the action ends, the total legal fees will almost certainly exceed the amount stolen of approximately $4.5 million. Let me say that again: by the time all of this legal action ends, the total legal fees will almost certainly exceed the

amount initially stolen from the Magarey Farlam clients of some $4.5 million. The lawyers win yet again.

It is a disgraceful situation, particularly as it was initiated by the peak organisation of lawyers in this state. If the Law Society had opted not to intervene in the matter, or had immediately acted to compensate the defrauded victims for their $4.5 million, this huge expenditure and clogging of the courts would probably never have occurred at all. In addition, the beneficiaries of all the 250 trust accounts administered by Magarey Farlam will have suffered losses and costs because of the society-initiated 21-month freeze, including interest on trust account moneys that were held by the society in trust for 21 months instead of the few days it is usually held, costs associated with recovering assets (mainly dividend payments) found to be missing when the society-appointed manager of Magarey Farlam lawyers returned the assets; and yet to be assessed losses and costs caused by the freeze. These include:

- income associated with the frozen assets;
- costs associated with restructuring finances;
- losses connected with inability to develop and maintain businesses;
- costs of relocation to take up essential employment;
- forced sale of property and equities to meet living costs and legal fees;
- lost equity trading opportunities;
- court attendances, travel, accommodation, etc.; and finally
- mental and physical hardship.

At present, there is no way of quantifying these costs and losses. There should probably be a mechanism for calculating and collecting these claims, but there is none at the moment. Some of the victims in court today never actually had money taken from their accounts, yet they have their assets frozen nonetheless; their accounts were never touched yet their assets have been frozen. Unless victims can recover those costs, they will have been put in the unjust situation of having suffered losses and costs to have returned to them their assets, which were never stolen in the first place. What a farcical situation! The lawyers win again.

To understand why innocent victims of crime should be put in this position, an understanding of the system forced upon them is needed. A chart of the system used to appropriate funds from lawyers' clients has been sent to some members. It is a 'spaghetti junction' and shows the complex funding and distribution system created by the act—a system that will be maintained under this bill.

In very simple terms, interest earned on clients' assets in lawyers' trust accounts is appropriated and managed by the Law Society—not their money. The majority of the interest earned goes directly to the Legal Services Commission for Legal Aid. A smaller amount is granted directly to community legal centres. However, like all taxpayers, clients already make contributions to Legal Aid and community legal centres through their taxes. Why should they give twice?

The state government is, therefore, double dipping into the funds of tens of thousands of its citizens, forcing them to make two contributions to two organisations that should clearly, as a matter of equity, be funded entirely by the commonwealth and state revenues that already exist. I can conceive of no logical reason to argue why, for example, a user of commercial legal services should necessarily be required to fund, via interest on their assets in lawyers' trust accounts, criminal defence work via the Legal Services Commission. Why should they fund this?

In any event, the system is structured so that clients' trust account interest actually ends in the pockets of lawyers via Legal Services Commission certificates and the community legal centre employment of lawyers. Again, the lawyers win. Incredibly, the system means that the Magarey Farlam victims are making a double contribution to the defence costs of the person who allegedly committed the fraud, as he is, I understand, also receiving Legal Aid. How ironic!

Another considerable proportion of the interest on those assets is deposited in what is known as the Legal Practitioners Guarantee Fund. The fund also receives a prescribed proportion of lawyers' practising certificate fees. It also receives funds from investments, costs recovered in disciplinary proceedings, fees paid to the conduct board, any money the society sees fit to provide, disposal of investments, and income from other investments.

Key figures taken from the society's 2006-07 annual report show that the guarantee fund's total income of $5.3 million included $2.4 million (or some 46 per cent of total income) from interest on clients' assets—not their money; $616,812 (or approximately 11.6 per cent of total income) from lawyers' practising certificate fees; and $1.6 million (or approximately 30.9 per cent of total income) from investment income.

Calculating the exact proportion of clients' contributions is difficult, because the amount of interest on clients' assets in the guarantee fund's investments is not known. One estimate that has been used is that it is approximately 75 per cent. It is a very cosy situation indeed. The fund provides direct grants, first, to the Legal Practitioners Conduct Board; secondly, to the Legal Practitioners Education and Admissions Council; and, thirdly, for a range of costs, including those consequent upon the appointment of a supervisor or manager, for example, handling cases of financial irregularities at law firms, such as in the Magarey Farlam case we have been discussing.

The second issue therefore follows. Lawyers' clients, because they are contributing the bulk of the guarantee fund's income (which, as I said, has been estimated as 75 per cent), may be said to be paying the bulk of contributions to the conduct board, which received $1.7 million from the guarantee fund in 2006-07. There seems to be no reason for that in connection with the conduct board, which handles complaints against lawyers. A fifty-fifty contribution by clients and lawyers would seem fairer, or a case could be argued for lawyers to be the sole funders.

The amount of the grant to the LPEAC, which oversees practitioners' education, training and admission to practise, is not clear from the society's financial statements. In any case, again there seems to be a compelling case for lawyers to pay their own costs for these activities and no reason whatsoever for their clients to support them. As I mentioned, as with funding to the Legal Services Commission, funding provided to the conduct board and to the LPEAC again ends directly in the pockets of lawyers, as they are briefed and retained for court matters or education purposes.

There is simply no justifiable reason for this. The major function of the fund should be to pay compensation to the victims of fraud. Again, under the current system, this is not the case. The lawyers win again. One reason is that the act provides for the balance of the fund to be manipulated and for a cap, based on the balance of the fund, to apply to compensation payments.

The manipulation of the balance can be effected in two ways: first, there is provision for the excess between the amount of the fund and the amount calculated by the number of practising certificate fees, multiplied by $7,500, to be diverted to the Legal Services Commission and (guess what?) therefore to lawyers themselves. Secondly, under the act, the society is able to invest money from the fund and to transfer money from the fund to what is known as the Statutory Interest Account, interest from which is granted to the Legal Services Commission.

In the first way, the balance of the fund can be maintained at about $20 million. This is a key factor, because the amount of compensation that can be paid is capped by a formula established by regulation. At present, it is 5 per cent of the fund's balance at the date of the last audit. This means that currently the cap is about $1 million, which is, as I said, about 5 per cent of the fund.

At this stage, there is no agreement about whether the cap applies to an individual claim or to a case involving claims by more than one party. However, on 17 October last year, in the other place, the Attorney-General indicated that the latter applied. If this view is correct, the 42 trust accounts defrauded in the Magarey Farlam case would have an unsatisfactory $1 million to share between them, despite the fact that there is some $20 million in the fund and the fraud total is $4.5 million.

This interpretation results in a completely unfair outcome for victims again, many of whom are struggling retirees who are now put in a difficult financial position due to fraud. It is clearly a matter of justice that each and every victim should be able to claim the full extent of their losses. The money is there. Why should these people not have what is theirs? Otherwise, the guarantee fund guarantees nothing and should instead be called what it is: an investment and employment fund for lawyers. That is exactly what it is, and it is the only purpose it serves.

The opposition's amendments partly seek to provide some relief to the victims, and Family First views them favourably. In the second way of manipulating the fund's balance, the society has an opening, if it knows or suspects that large claims may be about to be lodged in a forthcoming financial year, to ensure that there is a minimal balance in the fund when it is audited. Further systemic problems affecting clients arise because, under the act, the society or the Attorney-General may, but is not required to, appoint inspectors, who are known in the bill as 'investigators'.

A Law Society handbook obtained in early 2006 says, in chapter 20, entitled 'When the inspector calls' that the inspector's roles are, first, to detect and prevent fraud; secondly, monitor and report on compliance with the legislation; and, finally, to improve the standard of trust accounting through a process of education and training. Despite this, the Law Society has claimed to the Magarey Farlam victims that the audits are 'system audits' and not financial audits at all—a claim contradicted by some lawyers who have been inspected themselves.

Then there is a provision in the act that when a law firm suffers financial irregularity, that is, fraud in many cases, the society 'may' appoint a supervisor of trust moneys and a manager of the firm. The supervisor's role is to ascertain and verify entitlements to trust money and to dispose of trust money. The problem is that the government and the society have a major conflict of interest. They appoint inspectors to audit law firms and almost certainly become vicariously liable if those inspectors fail to detect and prevent fraud. Then they have a role in dispersing remaining funds and in determining claims. The conflict is very obvious but not often highlighted.

I now comment on the systemic problems facing clients when they seek to make claims for losses. The fact that there is a guarantee fund—and one into which law firms' clients forcibly (not of their own decision) contribute substantial amounts of money—suggests that compensation is readily available to victims of fraud: indeed, that is what the fund is for. Unfortunately, this is not the case. If victims have assets stolen, the act requires them, before claiming compensation from the fund, to show that 'there is no reasonable prospect of recovering the full amount' of the losses from other sources.

Thus, the fund is known as a fund of last resort. Victims have to pursue all other potentially liable parties, probably the law firm, its auditors, banks and even the Law Society itself because of its auditing role before they can claim compensation from the guarantee fund. That inevitably involves various insurance companies, including the Law Society owned law claims, and it involves a vast amount of time, energy and money. Because of this, as I have been advised by the Law Society, successful claims are surprisingly very rare indeed. Even after a claim is made, the society has some restrictive options, including the cap mentioned earlier. The Attorney-General also has to authorise all payments from the fund. That means he can refuse to authorise payments, despite not having to approve them.

The last resort provisions of the act are not supported by Family First. The guarantee fund is, as explained, largely funded by clients of the law fund. The money is readily made available for legal aid, for community legal centres, the conduct board, and education and admissions: read 'for all the lawyers who want access to it'. However, when clients need it to recover what they have had stolen from them they are forced to take legal action and possibly battle with the society and possibly the government itself, yet the plain fact is that it is their money. What a disgraceful situation!

In the Magarey Farlam case, the matter has been made worse by the dithering and inability of the Law Society appointed supervisor to decide how the remaining moneys were to be distributed. It forced all clients through the two court cases to make an appeal before those who had been defrauded even started claiming their losses. That creates a double pay situation because the supervisor's costs, including their extensive legal fees, are taken from the guarantee fund. Remember, that is the clients' money in the first place.

The fund is largely financed by law firm clients who have to pay their own costs. If the costs are recovered, and the Supreme Court has awarded them to victims (although the government is currently attempting to limit them) then there is a double drain on the guarantee fund. Then we have the problem of the litigation and losses and costs suffered even by those victims who had nothing stolen from their trust accounts in the first place, and that arguably is a greater injustice than the thefts and litigious nightmare the victims who had their money stolen have to endure.

Victims in this category are faced with the further absurdity of trying to claim some of their legal costs from the guarantee fund, through a Supreme Court order for costs by Justice Debelle, by attempting to recover the balance of their costs from the same fund by applying directly to the Law Society. The second application has had to be made without any knowledge of the amount recoverable from the first. There is also no certainty that legal costs associated with the recovery of trust account balances that have not suffered fraud are recoverable from the fund under either the current act or the bill before us. These issues are currently before the Supreme Court.

There was an issue yesterday morning, 12 February, but I have not yet heard the outcome. When the available financial data is analysed, the entire trauma for the innocent victims of crime, the clogging of the courts and the shovelling of millions of dollars in fees into the bank accounts of

lawyers involves a fairly small amount of money in comparison with overall government revenues. Working from Law Society annual reports, it appears that about $6.4 million was taken in 2006-07 in interest on clients assets—again not the lawyers' money, but the lawyers received it in the end. The Legal Services Commission was granted about $3.5 million and community legal centres about $400,000—let us call that roughly $4 million in total, although analysis of previous years' data suggested a discrepancy between the society's and the commission's figure. The commission's grant therefore could be even higher.

If the government were to find about $5 million a year approximately and as a maximum from general revenue put it into legal aid and community aid, this nightmare of a system for victims of fraud at law firms could be put to an end once and for all. The Law Society could be allowed to continue with its auditing of lawyers, but the current conflict of interest could be eliminated by removing it from any part of the supervision and management of the trust accounts of law firms that encounter fiduciary irregularities and from handling compensation claims.

In place of the current compensation system there could be a far more just and streamlined system, perhaps an insurance-type scheme launched using clients' money currently in the guarantee fund and estimated to be about $16 million, less whatever the payments to Magarey Farlam victims might tally. It could operate as simply as the society being required to take insurance cover for the clients' assets for the time they are in the lawyers' trust accounts, and often this is just a few days or weeks at most. This should be done at lawyers' own cost, in the same way as does every other organisation when it insures its services against such misgivings.

We will be considering this for the foreshadowed private member's legislation I mentioned earlier. It would allow the large amount of interest currently usurped for legal aid and community legal centres, and the obvious double dipping, to be retained by the lawyers' clients and not the lawyers themselves.

Much of that interest comes from what is known as the Combined Trust Account, which is funded by biennial, formula-based amounts of capital from clients' funds in lawyers' trust accounts. The capital remains the clients' but the interest is split between the Legal Services Commission and the guarantee fund. At 30 June 2007, the combined trust account balance was $52.9 million and the guarantee fund balance was $22.8 million. This shoddy system has been operating, as I understand it, since at least 1981, so a rough estimate based on 1981 as the starting date is that potentially some $200 million has been stripped from clients' accounts and taken by the legal profession over that period. Many of their clients would no doubt like it back.

This money was taken from them legally, but the morality of it is questionable, to the extent that it could be termed 'legalised misappropriation'. The concern is that this system is being continued under this bill. I stand against the dubious practice that takes hard-earned money from clients and puts assets into the trust accounts of South Australian lawyers. It is not their money: it is the clients' money.

It is for all of the above reasons that Family First views favourably the opposition's amendments, so as at least to ensure that Magarey Farlam victims get paid their losses and their costs as quickly as possible. The Law Society has put to us that the major proposed amendments lifting the cap and making the payments to individual claimants will result in increasing claims and the guarantee fund being exhausted. Those views simply cannot be accepted.

The society is saying, in effect, that there are either many more claims for fraud than are reported or that a greatly increased cap will result in more fraud as law firm staff are stealing more than is currently known, in the knowledge that their victims will be compensated. What an absurd proposition! If these theories are good, then it is the Law Society's role to improve its regulatory efforts and then cover such practices. The penalties for the failure of self-regulation should fall on the regulated, not on the clients.

As far as exhausting the fund is concerned, all I can say is that the fund should exist to compensate victims and, if the fund is depleted (which, by the way, I consider extremely unlikely), then so be it. As in any insurance-like scheme, premiums will increase appropriately. It seems to work in every other sphere of insurance.

Let me conclude with the views of one of the victims of the Magarey Farlam case in this sorry tale, and I quote directly from him, as follows:

I've incurred a lot of fees mostly because of the time I've spent discussing the matter with my solicitors, mainly thrashing through the injustices and offering ways and means about overcoming them. While they've admitted that there needed to be a circuit breaker to resolve the matter, they've offered and done nothing. They've just

talked—and the meter was ticking all the time [of course]. When I made what I thought were positive ideas for getting resolution, they retreated behind the 'it's the system' argument. One suggestion was simply trying to get all victims' solicitors and victims together to forge a joint appeal to the Attorney-General and society to end the affair. Another was to ask the court to declare that a 'last resort' situation existed, providing grounds for compensation to be paid...But nothing was accepted or done. I now know that all my efforts have been really a prolonged scream for professional help—and it has never been provided. I know other victims who hold a similar view. One of the prime criterion for an occupation to qualify as a profession is that its practitioners act in the best interest of their clients. That has, in my strong belief, not happened in the Magarey Farlam case. I think that professionalism among the lawyers involved lay dormant because they were too scared of the society and more concerned about protecting themselves than helping their clients. I now call it the legal occupation and not the legal profession.

Other than that, 2½ years of my life has already been disrupted by the way this matter has been handled by the Law Society and lawyers.

Family First will carefully consider the further debate on this bill. As I initially stated, we support the introduction of a national framework, but I point out again that we will be most interested in a debate on how to ensure that the families affected by the Magarey Farlam matter will be compensated quickly and fairly. Again, the primary concern is that of the victims of this sorry affair, not the welfare of the lawyers involved.

Debate adjourned on motion of Hon. I.K. Hunter.

HEALTH CARE BILL

Adjourned debate on second reading.

(Continued from 12 February 2008. Page 1631.)

The Hon. C.V. SCHAEFER (21:27): I am reminded as I speak of the history of the small hospital of which I was a board member for some eight to 10 years, during which time regional hospital boards increasingly became disenchanted with centralist administration of the health policy and finances of regional and rural health. When the Brown government came to power in 1993, the then health minister (Hon. Michael Armitage) attempted to reform the Health Act at that time, giving true autonomy to local hospital boards.

That particular piece of legislation was thwarted by the opposition and Independents in the upper house at the time, so what we were left with was something of a compromise, or even a mishmash of what Michael Armitage's original intentions had been. But there was a genuine attempt to devolve power out of the city and back into country areas, and that was very much appreciated by country people. So, I guess what I see is: what goes around comes around, because we are now back in the throes of a Labor government that has decided to recentralise all real power, all real administration, and particularly all real budgeting, back into a central pool in the city.

This is an ideological gap which does not seem to be able to be cured between the ALP in its view, which seems to me to be that if you live in the country you could not possibly have the brains to administer your own health budget, and the Liberal Party, which vehemently disagrees with that.

As I said, my experience comes from having been on the board of a country and regional health service for a number of years, and I wonder at the thought process that if you go to work in a high-rise building in the middle of the city you will definitely know more about country health and how people wish to have their country health dollar administered than if you happen to live in a regional city or even a small town.

It disappoints me greatly, because the history of small country hospitals has been very much built on volunteerism. In many cases, the land on which the hospitals are built was donated, and the hospitals themselves were built with voluntary labour. Certainly, until I left Kimba in 1998, a large component of the capital improvements to the hospital was donated, and much of the painting and general maintenance was done by volunteers. None of that will be the case under the current legislation.

The government has said that it is improving, I think, four or five regional hospitals across the state. What it has done, as it is very clever at doing, is a pea and thimble, a sleight of hand trick. Its headlines at the time that this bill was announced were, 'Additional funding to country health'. What it failed to say is that it is very slowly squeezing the life out of country health: drip by drip; just like water dripping on marble. Very slowly, health services in country South Australia are eroding to nothing, other than the money which is being spent, and which I am sure will be gratefully accepted, in these few super hospitals, for want of a better name.

However, it will be cold comfort for someone who has a farm accident at Kimba to know that they have marvellous and upgraded facilities at either Port Lincoln, which is three hours' drive away, or Whyalla, which is two and a half hours' drive away. Of course, those of us who have lived out there know that, if you take away the facilities of a hospital, you then take away any incentive for a general practitioner to practise in that town, because they have no equipment to use. You take away the incentive for nurses to continue working at that hospital. So, eventually, as I said, drip by drip, drop by drop, what you have is a series of nursing homes, with no facilities and possibly a very scaled down emergency facility.

I think everything that needs to be said about this piece of legislation probably has been said: I just wanted to add my perspective. Members of my family have had very serious accidents and illnesses, and they have been very well treated at small hospitals. Certainly, the care and consideration that is given to one in a small hospital by the nursing staff, who very often are people who you know and with whom you socialise, is second to none. However, none of these facilities will, in fact, exist once these super hospitals are built and once any autonomy and any decision making is taken out of the hands of the local community. That is what this bill seeks to do, and that is what it will achieve. Eventually, if you take away that volunteer aspect, that sense of ownership—both real and perceived—of people within a community, you take away their interest in their own community.

I see this piece of legislation as absolutely disastrous for country communities. As these hospitals gradually close or are downgraded to such an extent that they are a mere facade, it will also take away one of the major employment opportunities within small country towns. For instance, a nursing staff of 20 may well be supporting 20 families, and 20 families taken out of a small country town means that the closure of the supermarket or the general store, whichever the case may be. This piece of legislation has very far-reaching effects for our isolated communities, our smaller communities and our communities that are increasingly forgotten by an increasingly arrogant and centralist government.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

CRIMINAL LAW (SENTENCING) (VICTIMS OF CRIME) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 February 2008. Page 1635.)

The Hon. M. PARNELL (21:36): The Greens will be supporting this bill, as we have supported the other bills in the suite of legislation dealing with the victims of crime. One thing that I want to put on the record is to state my disagreement with the Attorney-General when he said in the media last year that the Greens would be opposing a bill that recognised the victims of crime because that is the sort of thing that we do. I had a brief correspondence with the Attorney-General and reminded him that we had supported the other bills and that we will be supporting this bill, as well.

The nature of the criminal justice system is that we collectively prosecute crimes on behalf of the state, and I think that is important. If the victims were prosecuting crimes we would have very much private interests superseding the community interests. We prosecute crimes on behalf of the community, but that does not mean that the victims of crime have no role. They do need to have a voice in sentencing criminals. In judging the appropriate penalty, our courts need to be aware of the impact of criminal activity on individuals and groups in the community, and on the community itself.

This legislation acknowledges that those rights deserve to be entrenched in our sentencing laws and our criminal laws; and that is an appropriate place to insert those rights. It would not be appropriate to give the victims a greater right than the right to explain to the sentencing decision maker what the impact of the crime is. If we were to give victims a greater right than that, no doubt we would have the death penalty back, because the needs of individuals for retribution, their desire to see criminals punished, may be out of proportion with the needs and desires of the community as a whole to see criminals treated appropriately. With those words, the Greens will be supporting the second reading of this bill.

Debate adjourned on motion of Hon. I.K. Hunter.

ELECTRICITY (FEED-IN SCHEME—RESIDENTIAL SOLAR SYSTEMS) AMENDMENT BILL

The House of Assembly agreed to amendments Nos 1, 3, 5 to 15 made by the Legislative Council without any amendment; agreed to amendment No. 2 with an amendment and a

consequential amendment as indicated in the annexed schedule; and insisted on its disagreement to amendments Nos 4 and 16 as indicated in the following schedule:

No. 1. Clause 4, page 3, after line 9—Insert:

small business customer means a customer who acquires electricity primarily for the purposes of—

(a) a business—

(i) Where not more than 20 persons are employed (and, for the purposes of this paragraph, the relevant number of persons will be determined by counting people who work full-time in the business, or full-time equivalents); and

(ii) where the business does not form part of a larger business; or

(b) a business that satisfied other criteria (if any) prescribed by the regulations for the purposes of this definition;

No. 2. Clause 4, page 4, line 18—Delete: 2013

and substitute:

2028

Schedule of the amendment and consequential amendment made by the House of Assembly to amendment number 2 of the Legislative Council

Legislative Council's amendment—

No. 2. Clause 4, page 3, before line 1—Insert:

Qualifying customer means—

(a) a domestic customer; or

(b) a small business customer

House of Assembly's amendment thereto—

Clause 4, page 3, before line 1—

Definition of *qualifying customer* –Substitute:

qualifying customer – a small customer is a qualifying customer for the purposes of this Division;

and makes the following necessary consequential amendment:

Clause 4, page 2, lines 16-19—

Clause 3, inserted section 36AC—delete the definition of *domestic customer*.

At 21:40 the council adjourned until 14 February 2008 at 14:15.