LEGISLATIVE COUNCIL

Tuesday 6 May 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:18 and read prayers.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:19): I seek leave to move a motion without notice concerning the conference on the bill.

Leave granted.

The Hon. P. HOLLOWAY: I move:

That standing orders be so far suspended as to enable the sitting of the council to be continued during the conference with the House of Assembly on the bill.

Motion carried.

PAPERS

The following papers were laid on the table:

By the Minister for Police (Hon. P. Holloway)—

Regulations under the following Act—
Workers Rehabilitation and Compensation Act 1986—Scales of Medical and Other Charges—Variation

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

Regulations under the following Act—
Development Act 1993—Significant Trees

By the Minister for Environment and Conservation (Hon. G.E. Gago)—

Regulations under the following Act—
Public and Environmental Health Act 1987—Controlled Notifiable Diseases

APY LANDS INQUIRY

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:20): I table a ministerial statement made today by the Premier in relation to commissioner Mullighan's report into the APY lands.

HEALTH AND MEDICAL RESEARCH

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:20): I table a ministerial statement made in the other place by the Hon. John Hill on the review of health and medical research in South Australia.

QUESTION TIME

DESALINATION PLANTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning and Minister for Regional Development a question about the proposed new port for the Upper Spencer Gulf.

Leave granted.

The Hon. D.W. RIDGWAY: In February 2006, Premier Rann announced that the state government would participate with mining giant BHP to investigate the development of a seawater desalination plant in the Upper Spencer Gulf.

Yesterday, Premier Rann issued a media release entitled 'Proposed new port for Upper Spencer Gulf.' The release stated that 'expressions of interest will be called for today in developing 500 hectares of industrial land for a new export harbour at Port Bonython.' My questions are:

1. What is the estimated cost of the new export harbour, how will it be funded, and will it be funded by a PPP?

2. At what stage is the environmental impact statement for the proposed new harbour?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:22): Yesterday, expressions of interest were called, and there have been a number of inquiries from a number of bodies which run ports and which are interested in establishing a port there. Presumably, that will be funded by the export of all the minerals that have been discovered in this state in recent years. So, the expression of interest—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: As I understand it, it was members opposite who privatised the port here; that is how our ports operate. Flinders Ports operates the port. Of course, originally it was established by the government, but Flinders Ports is the operator of it. As I understand it, Flinders Ports has a long-term lease on it, and it gets its income from the fees it charges for exporting. What the government is seeking here is the establishment of a port by an established operator and, presumably, it will be paid for in the same way as Flinders Ports funds its operations for the rest of the state.

In relation to an environmental study, it depends on the outcome of the expressions of interest as to what proposal is ultimately adopted. I believe the Premier has indicated that there will be a thorough environmental examination before any port goes ahead. In relation to planning, though, I can say that significant work has been done on the Port Bonython area, and a master plan has been prepared through the Office of Infrastructure. My colleague the Minister for Transport is essentially responsible for the project and, if there is any further information, I will seek it from him. Obviously, as the Premier indicated yesterday, there will need to be a substantial environmental study before any such port proceeds.

DESALINATION PLANTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:24): I have a supplementary question. How will the proposed new export harbour co-exist with the desalination plant?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:25): It will co-exist.

The Hon. D.W. Ridgway: That's a smart answer.

The Hon. P. HOLLOWAY: Well, obviously, they are both together. How would it not co-exist?

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: How would it not co-exist? I have visited the port at Coloso in Chile, where BHP Billiton has a significant desal plant just out of the city of Antofagasta. On the edge of that desal plant is the harbour where exports are made from the large mines that BHP runs in Chile. There is really no reason why the two cannot be very close to one another; they are sort of industrial uses. The important thing is that the environment be protected.

PLASTIC BAGS

The Hon. J.M.A. LENSINK (14:25): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation questions about the proposed plastic bag ban.

Leave granted.

The Hon. J.M.A. LENSINK: A report of the Shop, Distributive and Allied Employers Association's (dated February 2008 and commissioned by Zero Waste SA) contains a number of recommendations, including a very specific design for an alternative to the plastic bag, as follows: that the dimensions of the current green bag be retained; that the bag size of food supermarkets be limited to carry a maximum of 6 kg; and that the bag be made from firm strong woven material.

The report also recommends that the bag have a strong material loop on one side to attach to a hook at the counter; a strong easily gripped handle for carrying; a firm rectangular base of 30 x

20 cm to sit on the stand for easier packing; and a height of 33 cm, with clear washing instructions attached to the reusable bag; insulated bags to have the same internal dimensions as a standard recycling bag; and a smaller version of the bag to be available for bottles and cans to allow for their weight. My questions to the minister are:

1. How much did this particular report cost, that is, how much was the grant to the SDA?

2. Is the minister confident that retailers will be ready to implement these changes by 1 January 2009?

3. Will the government mandate the design for the alternative bags, also known as reusable or green bags, to the South Australian public?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:27): I thank the honourable member for her most important questions. Indeed, the Rann Labor government has had a firm and longstanding commitment to the phasing out of free, single-use, lightweight plastic bags. In terms of national interest, South Australia tried to work through the appropriate inter-ministerial forum to see whether we could come up with a nationally consistent approach to the phasing out of these plastic bags, of which I remind people that we use almost 4 billion a year in Australia.

Unfortunately, at the last meeting there was a wide range of different views from different jurisdictions, so we were unable to sign off on a nationally consistent approach. Given that we do not meet again until November, South Australia, to fulfil its commitment, announced that we would go it alone, that we would show the courage, leadership and fortitude necessary to rid ourselves of these most unnecessary plastic bags.

In terms of the questions asked by the member and the report to which she refers, it was, indeed, commissioned and paid for by the South Australian government. The SDA then managed the completion of the report. From memory—and I am happy to double-check this—I think it was a grant of $70,000 for the report, but, as I said, I am not absolutely sure about that; I think it was around that mark. I am happy to double-check that figure and, if it is something other than the $70,000, I will bring that back.

The report was an important part of the government's strategy to ensure that the retail sector was, in fact, prepared for and had its mind around the potential for any occupational health and safety implications in relation to the phasing out of single-use plastic bags and their replacement with alternatives. Indeed, the report was very successful in identifying the potential for a range of areas that needed to be looked at, particularly by the retail sector, to ensure that their employees are employed in a way that their health and wellbeing is protected.

The report did identify a number of issues in the design of the check-out concerning the weight of bags and the potential to overload them, and also there were cleanliness issues around the bags. So, the retail sector will need to look at those and implement changes where appropriate. We will continue to work with industry to assist it, where appropriate, to ensure that it fulfils its obligations and that transition arrangements operate in a smooth way.

I have forgotten the last part of the member's question, but I think it raised the issue of the replacement of single-use plastic bags with alternatives. The legislation for the banning of bags has not been completed yet, so the detail is still being worked through. I have just been advised that the report cost approximately $24,500, so I put that on the record. Retailers are being consulted with these new proposals, and I am confident that they will find ways to manage those important changes.

In relation to the bags, the legislation will seek to prohibit the use of the single-use, high density polyethylene plastic bags of anything lighter than, I think, 45 microns. That definition will be refined. It will leave way for alternative bags to be used, and a range of alternatives is available. Research shows that the bag that has the highest environmental footprint currently is this single-use, high density polyethylene bag. That has been identified to have the largest environmental footprint over and above other alternatives that we would commonly see here in Australia, such as what we know as the 'green bag'.

The green bag is a thick plastic bag that has been identified as having—again, I cannot remember the exact number of years—a life of a number of years, compared with the thin plastic bag. If I recall, I think it was five or six years, so it has quite a long life. It is made of a thicker plastic that is much more durable and has a much higher re-use rate than the single-use plastic bags. We

know that because the single-use plastic bags are of such a poor integrity that they often end up torn and with holes in them.

I am advised that the research indicates that only one in seven of those single-use plastic bags actually ends up as bin liners. So, although people do tend to re-use them, their re-use rate is much lower compared to other products such as the green bag. The green bag has a much higher reusable rate than the single-use plastic bags, which have a very low reuse rate.

These are, obviously, much better environmentally. In fact, the research shows that most of the products on the market at the moment that are of a heavier density result in an increase in those articles being able to be reused, which has a significant impact on helping to reduce the environmental impact. Fundamentally, any reusable bag generally has a much lower environmental footprint than single-use bags. I believe that answers all the questions.

PLASTIC BAGS

The Hon. A. BRESSINGTON (14:35): I have a supplementary question. Will the minister give us some indication of the government's intention, in the future, to ban plastic water bottles, given that Don Burke has said that the environmental impact of plastic water bottles is about 100 times greater than that of plastic bags?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:36): As I said, the legislation that this government is looking at goes to banning a particular defined plastic bag. We do not intend to go any further than that. We do not intend to mandate that reusable bags are necessarily put in place, either. Legislation will not deal with that; it will simply deal with what is not able to be used and will leave it to the market to decide what alternatives will be put in place.

Single-use plastic bags are probably iconic of our disposable society and the wastefulness of our society. There are many other alternatives to single-use plastic bags that have a much lower environmental footprint than these plastic bags. I accept that we have become used to having them in our lives and it will mean some inconvenience at the time of change, but people's behaviour will have to adapt. We will forget our cloth bags, as I already do on occasion, and that will be inconvenient. However, I believe that people's behaviour and shopping practices will change, and they will change very quickly when this legislation is in place—and the environment will be better off for it.

There is something like 1,600-odd tonnes of plastic coming from single-use plastic bags which are introduced into our environment here in South Australia. This is simple and easy to avoid by simply replacing this type of plastic bag that does not have a high reuse rating, when you compare it to other heavy-duty products. Many of these other products have, as I said, a much higher recycling rate than these bags. It is a very simple and easy thing for us to get rid of them. We do not need these bags in our environment. As I said, it is a symbol of unnecessary waste and our attitude of simply 'Toss it out and dispose of it.'

PLASTIC BAGS

The Hon. R.D. LAWSON (14:39): My supplementary questions are as follows:

1. Has any study been made of the economic impact of the banning of single-use plastic bags?

2. By whom and when was that economic study undertaken?

3. Will the minister tell the council what will be the cost to the consumer and to industry of this ban?

4. What evidence does the minister have that the additional costs associated with this ban will not be passed on to consumers in the form of higher prices?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:39): A range of cost-benefit studies has been done in relation to plastic bags. Quite simply, many of the cost-efficiency and effectiveness formulas that we use do not incorporate strong environmental values. They are basically economic rationalist formulas and, according to these formulas, unless they impact on commercial fish stock, they do not have an economic value.

We know that our environment has an enormous value. As one person has said to me, some of the work done by Planet Ark reveals that around 100,000 marine animals are killed or injured each year because of these plastic bags. The question is: what is the cost of a dolphin's

life? I do not believe that environmental values are incorporated or weighted enough in these formulas, and I challenge them.

In terms of the cost, as I said, some 4 billion unnecessary items of plastic are in the Australian environment, and we do not need them in our environment or in our life. Significant environmental work and studies have been done that compare the environmental footprint of the different alternatives and, to the best of my knowledge and the information I have, each one has shown that the item with the largest environmental footprint is the high density, single use, polyethylene plastic bag.

These plastic bags are an unnecessary element in our environment and, as Planet Ark has stated, the cost is the death of 100,000 marine animals each year. These bags are unnecessary both in terms of wastefulness and natural resources. We know that other alternatives have a much smaller environmental footprint, and there is much evidence to prove that.

Plastic bags are a completely unnecessary part of our environment. As with seat belts, it was very difficult for us to make the change and to remember to put them on, but we made the change very quickly and we now feel most uncomfortable if we do not have a seatbelt on. We will feel very much the same way about plastic bags.

In terms of occupational health and safety issues in relation to these changes, the South Australian government commissioned and paid for the study so that potential impacts could be identified ahead of time and so that we could work with industry to plan and ensure the safety of our workers. That shows a very responsible government and one that is prepared to show some environmental courage and leadership.

APY LANDS INQUIRY

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:44): I lay on the table the report of the Commission of Inquiry into the sexual abuse of children on the Anangu Pitjantjatjara Yankunytjatjara lands.

Report received and ordered to be published.

QUESTION TIME

DANGEROUS OFFENDERS

The Hon. S.G. WADE (14:44): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about dangerous offenders.

Leave granted.

The Hon. S.G. WADE: Last week, I asked the minister about the implementation of the dangerous offenders legislation. In her response, the minister stated, 'There is no list of prisoners who have been identified as dangerous offenders.' The minister also implied that she had no role in the process relating to dangerous offenders, explaining that 'the role of the correctional services department is to ensure that all relevant information on any prisoner is made available to the Crown Solicitor and the Attorney-General if and when requested'. However, in July 2007 when asked on radio FIVEaa whether she would be involved in preparing a list of which prisoners would be subject to the legislation, the minister told listeners:

> I will be involved in that when that legislation eventually does pass the parliament.

Again, the Attorney-General also stated in November 2007 that he was 'seeking a brief from the prisons minister' on what other dangerous offenders would be fit subjects for an application to the Supreme Court. My questions to the minister are:

1. Has the Attorney-General requested a briefing from the minister in relation to identifying potential dangerous offenders?

2. Has the minister provided such a briefing to the Attorney-General and, if so, did the briefing include the names of individual offenders?

3. Is the minister now trying to understate her role in the process to distance herself from the hapless Attorney-General?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:45): I do not believe that I understated my role at all. The Department

for Correctional Services has a very important role to play. Clearly, we have to provide the information to the Attorney-General or through the Crown Solicitor's office.

I placed on record last week that we will provide information on prisoners convicted of murder as they become eligible for parole. As I said, I am pretty sure that that includes conspiracy to murder. I was asked what other prescribed circumstances there were. I did not have the full list with me at the time, but I did say to the honourable member to look at the legislation. I am sure that he can do that.

The Attorney-General wrote to me last year, and the Department for Correctional Services has since facilitated a process with the Crown Solicitor's office. Really, it is quite clear to me why the details of those who fall within the ambit of the act and particularly information about their parole release date can be provided by the Department for Correctional Services. Whether they are considered to be dangerous offenders is for further legal process which would require the Attorney-General to apply to the courts for that determination.

CAIRN HILL

The Hon. R.P. WORTLEY (14:47): Will the Minister for Mineral Resources and Development please provide the chamber with details of proposals to mine iron ore from Cairn Hill near Coober Pedy?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:47): I thank the honourable member for his question and for his interest in this subject. I am delighted to inform members that IMX Resources has been granted a mining lease for its iron ore project at Cairn Hill near Coober Pedy in the state's north.

Termite Resources N.L., a 100 per cent owned subsidiary of IMX Resources N.L., was granted the mining lease by the Department for Primary Industries and Resources (PIRSA) for the Cairn Hill project. This announcement is an important milestone for South Australia as the Cairn Hill project is the first new iron ore mining project outside of the Whyalla region. Of course, in many ways, that is really where the steelmaking industry in this country began.

The Cairn Hill project is a high-grade iron ore-copper-gold project located 55 kilometres south-east of Coober Pedy. The lease was granted by PIRSA after an initial mining lease application in January 2008. The planned development of the Cairn Hill iron ore mine comes close on the heels of other mining projects in South Australia, such as the Prominent Hill copper-gold mine and OneSteel's Project Magnet. With an expectant 5½ year mine life, there will be significant opportunities for IMX Resources to further expand its South Australian operation.

I congratulate IMX Resources on its diligence and commitment to working closely with PIRSA to ensure the Cairn Hill project meets best practice standards. The decision to develop Cairn Hill near Coober Pedy follows the recent announcement of the company's partnership with China's Tonghua Iron and Steel Mining Ltd. IMX Resources will ship ore from the project to China for processing into a high-grade magnetite concentrate and a copper-gold concentrate.

Trial mining at Cairn Hill is expected to begin in the third quarter of 2008 after all statutory approvals are finalised. IMX Resources has completed a mining and rehabilitation program (MARP) for its early works program. The company expects to shortly launch a MARP for the haul road and the four extractive mining operations. Importantly, IMX Resources also has native title agreements covering the mining lease, haul road routes and rail siding. This is further evidence that South Australia's mining boom is not simply confined to investment in exploration. A handful of projects, which led to $303 million worth of investment in mineral resources exploration in South Australia in 2007, are now moving toward the construction stage.

The Cairn Hill mine, once operating, is expected to provide employment for 125 people on-site, with about 100 people being employed during the construction phase. Whether it is Project Magnet at Whyalla, Oxiana's development of a copper/gold mine at Prominent Hill, or the latest development by IMX at Cairn Hill, mineral projects are now beginning to come online, generating jobs and exports for South Australia. I congratulate IMX on this landmark step in its development of Cairn Hill.

The granting of the mining lease again highlights South Australia's strong encouragement of our minerals sector, underpinned by sensible and effective pro-mining government policies. The mineral industry's new-found confidence in South Australia is also delivering an unprecedented pipeline of new mines and new mining proposals. PIRSA is case-managing this second wave of

30 new advanced projects and developments, representing a possible investment of $25 billion in capital investment for the state, and Cairn Hill is just the latest.

These projects will create substantial regional employment opportunities and new start-up industry developments across the state in the service and supply of specialist skills training sectors. I look forward to informing members of further developments in the mineral resources sector as the historic level of investment and exploration in this state is gradually transformed into the sorts of mining projects that will underpin South Australia's economic prosperity.

SUSPENDED SENTENCES

The Hon. D.G.E. HOOD (14:51): I seek leave to make a brief explanation before asking the Minister for Police, representing the Attorney-General, a question.

Leave granted.

The Hon. D.G.E. HOOD: District Court Chief Justice Terry Worthington, in an undated defence of suspended sentences on the Courts Administration Authority website, states at the conclusion of that defence that 'a suspended sentence is a real sentence but it gives a last chance'. One wonders how many last chances South Australian drug dealers can have at present.

In the matter of Richard John Francis Hinckley, decided on Tuesday last week, the offender got his fifth consecutive last chance. I will summarise the sentencing remarks, as follows. Police found some 23 grams of amphetamine (1.41 grams of pure amphetamine) at his home. That is a trafficable quantity attracting a maximum penalty of 25 years and/or a $200,000 fine—a serious offence, indeed.

The jury found that he was possessing the drug for sale. He is 44 years of age with no dependants. He was a regular methamphetamine user. He has a long history of dishonesty offences dating back to 1991. He has had the benefit of four previous suspended sentences. He has served time previously after 1993 for four charges of selling and possessing various drugs, including cannabis and amphetamines.

The head sentence in this case was imprisonment for two years and six months, with a non-parole period of one year and three months. The sentence was wholly suspended upon his entering into a good behaviour bond.

My question is: as a result of the Chief Justice of the District Court describing suspended sentences as 'a last chance', and in light of sentences such as that which I have just described, how many last chances does the government think appropriate for convicted drug dealers in this state?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:53): The honourable member knows that the courts system in this state is independent of the executive. Parliament expresses its wishes through the legislation—the sentencing act and the penalties that we apply when we pass legislation through the parliament—as to what we believe should happen. As the honourable member well knows, there are ways in which sentences, if they are considered to be inappropriate, can be challenged. There are courts of appeal and the DPP has the opportunity to appeal against sentences that he believes are manifestly inadequate.

As I have indicated on other occasions when the honourable member has raised these sorts of questions, it is very difficult to comment on individual cases. It is dangerous to draw conclusions from one individual case, whatever first impressions might be. I do not know whether other circumstances apply in this particular case or whether other factors were taken into consideration by the court.

I can understand on the surface why the honourable member is concerned, but there may be other factors involved. I will refer his question to the Attorney-General to consider the matter to see whether further action should be taken by the DPP in relation to this matter.

REPLIES TO QUESTIONS

The Hon. R.I. LUCAS (14:55): I seek leave to make a brief explanation prior to asking the minister representing the Premier a question about replies to questions.

Leave granted.

The Hon. R.I. LUCAS: Almost three years ago on 13 September 2005 I asked a question of the Premier and indicated in explanation that I had been informed that the DPP had again written

to the Premier expressing further concerns about the actions of Rann government advisers and, in particular, the actions of Mr Rann's most senior media person Ms Jill Bottrall. In that explanation I indicated that morning radio announcers Mr Bevan and Mr Abraham on ABC had referred to confidential correspondence from Mr Pallaras dated 14 June 2005 in relation to his remuneration level, and again on 24 August referred to confidential information in relation to an overseas trip by the Director of Public Prosecutions, which had been signed off by the then head of the justice department, Mr Mark Johns, and other confidential detail in relation to that particular trip.

The question I asked, amongst others, was whether the DPP, Mr Pallaras, had written to the Premier or any other Rann government minister, and I again expressed concern about the actions of some Rann government advisers, particularly Mr Rann's senior adviser Ms Jill Bottrall. I asked about the nature of the concern expressed by Mr Pallaras and what action, if any, Mr Rann had taken, and so on, and a number of other questions. That was almost three years ago, and on at least two occasions members of the media have inquired of the Premier's office as to when the Premier would be providing an answer to that question. A spokesperson for the Premier indicated that a reply had been prepared and an answer was on the way. Almost three years later I am still waiting for an answer to that question from the Premier.

Similarly, almost 12 months ago on 20 June 2007 I asked a question in this place about the resignation for what was stated publicly to be personal reasons of the former ombudsman. I asked:

> Was the Attorney-General or any other Rann government minister or any of their advisers advised recently of concerns relating to the behaviour of the former ombudsman? If so, what action was taken in relation to any such concerns and, in particular, were any questions initiated into any such concerns?

Again on a serious issue, almost 12 months later there has been no response from the Premier. My questions to the Premier are as follows:

1. Given that a spokesperson for the Premier has told the media that a response has been prepared to the questions I asked almost three years ago about Mr Pallaras, will the Premier now provide an answer to that question first asked in this place in September 2005?

2. Will the Premier or the Attorney-General now provide an answer to the question on the former ombudsman that was first asked in this place on 20 June last year?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:58): I will refer the honourable member's question to the Premier and bring back a reply.

ROAD SAFETY

The Hon. B.V. FINNIGAN (14:59): Will the Minister for Road Safety inform the council how the South-East community is working together to produce short films that will help spread the state government's road safety message?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:59): Early this year I launched the South-East road safety strategy, which was developed in partnership with the South-East Local Government Association (SELGA) and the Department for Transport, Energy and Infrastructure. One of the priority actions of the South-East road safety strategy is the establishment of stronger road safety coordination between SELGA, local councils and the community road safety groups.

A community arts project, which has been undertaken in the Upper South-East, is an excellent example of such coordination. Country Arts SA officers at Mount Gambier set up a group to explore possible arts projects and decided that short films would be an ideal vehicle. DTEI has provided funding support of $30,000 for this project. While in the early stages of development, the initiative has already brought together people from a variety of different backgrounds, including Keith Area School, Lucindale Area School and SAPOL.

The broad focus of the arts project will be on the perspectives of high school students and the effects of road trauma. Issues identified include drink driving, hoon driving and the perceived invincibility of novice drivers. Students will work in groups under the supervision of an experienced filmmaker to create a series of short films that demonstrate, from their perspective, the effects of road trauma, including the aftermath of a fatality. These films will be judged, and the wining group will work with the filmmaker to produce and launch a final product at a cinema in the South-East.

The filmmaking process will involve collaboration with local emergency services, drug and alcohol agencies, and other relevant bodies. As Minister for Road Safety, I am very pleased that

this community arts project is connecting young people with road safety issues that are very real for them in a properly supported way, with a range of adults in their local area. Hopefully, the end result will be fewer deaths and trauma from road crashes involving young people in the region. I am confident that the use of the arts will prove to be a powerful tool in spreading the road safety message in the South-East community, especially amongst the young.

ROAD SAFETY

The Hon. S.G. WADE (15:01): I have a supplementary question. Is the South-East Road Safety Strategy to which the minister refers an endorsed road strategy of the state government, with similar status to the state road strategy?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:01): As I have said, the South-East Road Safety Strategy is a joint initiative of SELGA and the Department for Transport, Energy and Infrastructure, and it was really born out of the highest number of road deaths in any South Australian region. I believe there were 20 fatalities in 2005, and since then the community has worked together to reverse the trend.

It is the state's first regional road safety strategy, and I commend the region for the initiative. I know the department has worked very hard. The strategy itself has set up a regional target of no more than 76 serious casualties by the end of 2010, which apparently compares with 85 and 90 in each of the past two years. The strategy also sets an aspirational goal of achieving a fatality-free year on the region's roads.

The state government is committed to assisting and implementing the priorities in the strategy, and we hope to use this as a pilot for other regions throughout South Australia. Again, I commend SELGA for its important work in the community.

ROAD SAFETY

The Hon. S.G. WADE (15:03): I have a further supplementary question. If the department has an aspirational goal of a zero road toll in the South-East, is that an aspirational goal for the rest of the state?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:03): That aspirational goal, which is to be commended, was set by the South-East Road Safety Strategy, working with the Department for Transport, Energy and Infrastructure. I do not believe it is for us to say to a group or an association, 'No; you will not set this particular target.' I wish there were no fatalities and no serious injuries on our roads, but this group of people in the South-East wanted to set this target.

VEHICLE SECURITY

The Hon. J.A. DARLEY (15:04): I seek leave to make a brief explanation before asking the Minister for Police, representing the Minister for Transport, questions in relation to vehicle security.

Leave granted.

The Hon. J.A. DARLEY: Honourable members may recall my matter of interest speech on 9 April, when I outlined a matter concerning a constituent whose car was stolen as a result of someone obtaining a copy of their car key from the distributor. This was done by merely quoting the vehicle identification number and licence plate number, without any further identification.

Vehicle identification numbers are not only stamped in the engine bay of cars but they also appear on all registration labels issued after 1989. Considering that both these pieces of information are easily visible from the outside of a vehicle without need of interference, my questions are:

1. Can the minister advise why there is a need for both the vehicle identification number and the licence plate number to be displayed on the registration label?

2. If it is a necessity, why could this not be in a coded form in a similar fashion to credit card scrambling?

3. Is the minister aware of any other situations where vehicle identification numbers have been abused in order to aid the theft of motor vehicles?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:05): I thank the honourable member for his questions. It would indeed concern me as Minister for Police if it was that easy to get keys to vehicles. We are doing what we can to reduce motor vehicle theft; in fact, the police have been very successful. It is one of those areas where there has been a very significant reduction in victim reported crime over the past six years of this government. I think that the question is reasonable. In relation to the latter part, certainly, as Minister for Police I am not aware of this being an issue. I will certainly take it up as Minister for Police, but I will also refer it to the Minister for Transport, who, obviously, has responsibility for the issuing of registration labels, and I will ask him to consider the matters raised by the honourable member.

POLICE PLANE

The Hon. T.J. STEPHENS (15:06): I seek leave to make a brief explanation before asking the Minister for Police a question about the police plane.

Leave granted.

The Hon. T.J. STEPHENS: Members may or may not be aware that, currently, the police plane takes officers to the APY lands and serves the north of the state, including Coober Pedy and other remote areas, on a weekly basis. It is a vital service when you consider the driving time that it takes to get to some of these areas from Adelaide. The plane is a PC 12 model, which carries 12 people.

Sadly, the opposition has been advised that the service may no longer be available for one week out of every four, and, supposedly, this reduction in service is a cost saving measure. This becomes particularly interesting when you consider that relief staff are flown in and out of the APY lands for a week at a time. The question must be asked about what happens to these fly-in relief police staff (as police refer to them) after they have completed their one-week shift but must stay on the lands for another week before the plane returns.

To put it into perspective, the drive to the APY lands takes something in the order of more than 16 hours—and they tell me that 16 hours is a particularly good trip. My questions are:

1. Does the minister realise that the situation will seriously inhibit recruitment, both permanent and relief, to positions on the lands?

2. Is this measure being considered because of budgetary pressures being exerted by the minister himself?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:07): Under this government, South Australia Police has never had bigger budgets. Every year, the police budget has been increased by more than CPI; it is significantly better.

Members interjecting:

The Hon. P. HOLLOWAY: Yes; that's right. It really does require incredible gall from members opposite when their solution to save costs was to have no police at all. There were no police at all on the APY lands when the member's party was in government. Today we have a report tabled by commissioner Mullighan. This government, as a result of its concerns in 2004, has put police back on the lands, and, as I announced today, there will be an extra eight police going into the APY lands. On top of that, three other officers will deal specifically with sexual abuse.

What gall members opposite have, because not only did they reduce the police presence on the lands to zero—there were no police at all—but they also would not allow a parliamentary committee to travel up there to have a look at the situation. Their solution to the APY lands problems was to keep everybody out of it, to do nothing, to keep out the police and parliamentarians—keep everybody out. What you cannot see you obviously are not aware of.

This government bought the police a new Polatis plane, but there are also other aircraft in the police fleet. As a result of the government's decision to increase the number of police on the lands, part of budget considerations will be to ensure that there is additional accommodation for police on the lands. I congratulate the Rudd government for providing significant amounts of commonwealth government money, which my colleague Jay Weatherill negotiated with the federal government, to provide police facilities on the land. Obviously, with the additional police up there, we will need more money to service the police officers in that area. I am sure that that will be forthcoming. So, the honourable member need have no fears whatsoever about this government supporting the police of this state, in terms of the equipment they need or in terms of their salaries.

Another thing that was pointed out in Commissioner Mullighan's report was that, in the last enterprise bargaining agreement for the police in 2007, one of the things that we did was to increase the attractiveness for police officers to move to these remote areas. It is difficult to recruit police into those areas, but one of the things that this government delivered in the most recent enterprise bargaining with police was greatly improved conditions to attract police officers to those remote areas of the state. So, the honourable member can rest assured that this government is looking after the APY lands in a way that was not done by the previous government.

POLICE PLANE

The Hon. T.J. STEPHENS (15:10): What do I tell the constituents—the police officers on the lands—with regard to your answer to my question? Will that police plane fly weekly? You refuse to answer the question.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:11): The honourable member's government refused to provide any police on the lands. Next time you go up to the APY lands why don't you confess to those police officers about how under you there was nobody there? Why don't you tell them the truth?

POLICE PLANE

The Hon. T.J. STEPHENS (15:11): The minister has again refused to answer my question. What do I tell those police officers on the lands? Will that plane fly weekly? Categorically confirm it.

Members interjecting:

The PRESIDENT: Order! The minister answered the question.

HERITAGE AREAS AND TOURISM

The Hon. I.K. HUNTER (15:11): I direct my question about heritage areas and tourism to the Minister for Environment and Conservation.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Hunter.

The Hon. I.K. HUNTER: Thank you, sir. I direct my question about tourism and heritage areas to the Minister for Environment and Conservation.

Members interjecting:

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

Members interjecting:

The Hon. I.K. HUNTER: When you are quite finished.

The PRESIDENT: Order!

The Hon. I.K. HUNTER: I direct my question about tourism and heritage areas to the Minister for Environment and Conservation. Will the minister update the council on moves to better communicate the heritage values of the Flinders Ranges to those who visit the South Australian tourism icon?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:12): I thank the honourable member for his most important question and his ongoing interest in this most important policy area. It is important that visitors to the Flinders Ranges get the most from the experience, including understanding the area's unique heritage. For this reason, commercial tour operators working in the Flinders Ranges have access to a set of interpretative materials for sharing the story behind the region's many special places; materials which are constantly being improved and updated.

The latest in this series of interpretative materials focus on the Old Wilpena Station and are produced by the visitor management branch of DEH. The package, containing easy to understand notes and fact sheets, helps ensure that tour operators and their staff know their content so that they can provide visitors with engaging and enjoyable experiences.

Located just 1.5 kilometres from Wilpena Pound Resort, Old Wilpena Station is at the heart of the pastoral heritage of the Flinders Ranges. For those who have never visited the station, its built heritage and remarkable views of Wilpena Pound offer invaluable insights into the lives of pioneering pastoralists of this state.

An interpretive meeting place, called 'Ikara' in the local language, has been constructed to recognise the local Adnyamathanha people and their vital contribution to pastoral industry. I was lucky enough to be invited to launch Ikara last year and meet some of the local Aboriginal people. The new interpretive material—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wortley and the Hon. Mr Finnigan, the minister does not require your help.

The Hon. G.E. GAGO: I thank you for your protection, Mr President. The new interpretive materials contain detailed information on the old station, the Adnyamathanha people and the local geology, flowers and plants; and it includes conservative initiatives being undertaken in the local area. Already, feedback on the new notes from the industry, including the South Australian Tourism Commission, have been positive.

Thanks to this new resource, visitors can not only get a better understanding of the history of the region but are encouraged to take an active part in the conservation process. For example, people enjoy seeing the yellow-footed rock wallabies in the Flinders Ranges National Park but can appreciate them all the more when they know that the creatures have survived as a result of years of intensive pest management programs through Operation Bounceback. Best of all, visitors take with them a wealth of stories to tell about our park's flora, fauna, people and places. More information about the materials is available by contacting the Visitor Management Branch of the DEH.

POLITICAL DONATIONS

The Hon. M. PARNELL (15:15): I seek leave to make a brief explanation before asking the Minister for Urban Planning and Development a question about the issue of political donations.

Leave granted.

The Hon. M. PARNELL: A *Sunday Mail* article by Renato Castello of 27 April states:

> Business leaders are being charged up to $1100 a head for exclusive audiences with key Rann government ministers.
>
> A series of swish events has been organised by SA Progressive Business, an ALP fundraising group created to 'promote political communication between Labor and business'.

The article goes on to list a series of three fundraising exclusive events in a period of seven weeks, including a two-hour cocktail party featuring Premier Rann, Treasurer Foley, and minister Conlon at the Newport Quays Sale and Information Centre.

This is not the first time concerns have been raised about this type of ALP fundraising. Mike Smithson referred to it in an article in the *Sunday Mail* in August 2006. He said:

> The unashamed grab for cash by Labor—or should it be making hay while the sun shines—has raised a few politically sensitive ethical issues.

This is not the first time that concerns have been raised about Newport Quays being used as a base for ALP fundraising, with minister Patrick Conlon coming under sustained attack in parliament over his attendance at a cocktail party at the Newport Quays Sales and Information Centre on 31 January 2006 which raised funds for Labor.

There was another event referred to in the *Sunday Mail* article, which states:

> On May 8, a boardroom lunch with Police and Urban Planning Minister Paul Holloway, hosted by law firm Ernst & Young, will cost attendees $1100. 'Only 16 people will attend this special luncheon,' the invitation states.

My questions to the minister are:

1. Can he confirm the details of the lunch, including the cost of $1,100 per ticket?

2. Who are the exclusive 16 lucky people and, specifically, will any property developers be attending this special luncheon on Thursday?

3. What is the purpose of the meeting and what will be discussed?

4. Why is it appropriate for a political party to use exclusive access to a minister of the state to raise partisan political funds?

5. What benefit is there for South Australian taxpayers?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:18): Within this country (and in this state, in particular) we do not have government funding of elections, so political parties raise their own money. They have been doing that since the year dot. I am sure the Greens raise money themselves for election campaigns. Something has to pay for those green triangles that we see all over the place.

Unless and until we have some system that I see members of the Liberal Party are now advocating—they did not advocate it while they were in government, of course, but now they are in opposition and their policies are so bad no-one wants to talk to them anymore. There are people like Christopher Pyne saying, 'Let's get rid of all donations.' In an ideal world, if we did have some other form of fundraising for elections, I suppose political parties would not have to do fundraising.

I make myself available to the Labor Party, as do other ministers. I have no idea what is being charged for the dinner. I have no idea who is going. I will have a look at it on—when is it, 8 May? That is in two days. When it comes on (on the 8th) I will have a look and see who is going.

I will repeat what I have said on other occasions: if there are any property developers or other people involved with my portfolio who have a good proposal for this state and they seek to talk to me, I will be very happy to do so.

I challenge members opposite to find somebody who has not had access to my office, unless, of course, they had a matter that was currently under consideration and it would have been inappropriate for me to meet them. Apart from those occasions, I have never refused meetings with anyone who had a good proposal for this state, and I do not intend to do so.

As I have indicated before, the honourable member has a bill before the chamber relating to limiting donations, and it has one obvious deficiency: it does not stop donations across barriers. I again remind him of the case of one development at Enfield, where I met the developer and which I made a major project, namely, the Bradken foundry, whose chairman is Nick Greiner.

I note that Bradken gave a donation of $12,500 to the New South Wales Liberal Party and that, subsequently, a $12,000 donation was given to the Liberal Party. I do not care about that, that is fine; they can do that and that is great. As far as I am aware, no donation from that company has ever been given to the Labor Party. I approved that project because it was in the best interests of the workers of this state—and that is what I will continue to do.

If my party or individual members want me to talk at a dinner or something to help raise funds for the Labor Party, I will do my part as a member of the Labor Party. I think that is what all members should do. However, development decisions are totally divorced from any fundraising activity. I say again: I challenge them to find somebody with a good project whom I have refused to see. They will not find anyone.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:22): I move:

That Orders of the Day: Government Business Nos 1 to 6 be postponed and taken into consideration after Orders of the Day: Government Business No. 7.

The council divided on the motion:

AYES (7)

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

NOES (14)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Hood, D.G.E.	Kanck, S.M.
Lawson, R.D.	Lensink, J.M.A.	Lucas, R.I.
Parnell, M.	Ridgway, D.W. (teller)	Schaefer, C.V.

Stephens, T.J. Wade, S.G.

Majority of 7 for the noes.

Motion thus negatived.

The Hon. P. HOLLOWAY: Mr President, I am pleased that the media are here to witness this. Perhaps the Leader of the Opposition might understand that—

The Hon. R.I. LUCAS: I have a point of order, Mr President. Under what standing order is the minister standing up and making a statement?

The Hon. P. HOLLOWAY: Perhaps we can discuss this one, Mr President. Perhaps I will just let it go through; after all, this is another bill that has been on the *Notice Paper* since October last year that the opposition has refused to debate.

Members interjecting:

The Hon. P. HOLLOWAY: You refused to debate it; so, come on, bring it on. Let the world see what you are like.

Members interjecting:

The PRESIDENT: Order!

DEVELOPMENT (REGULATED TREES) AMENDMENT BILL

In committee.

(Continued from 18 October 2007. Page 1008.)

New clause 3A.

The Hon. SANDRA KANCK: Before I move my amendment, I would like to ask the minister a question about where we go on this bill. As he interjected, this bill was last dealt with in October last year, and it was the government's choice not to proceed. However, groups such as the Conservation Council are keen to meet with the minister in an attempt to come up with a compromised version of this bill. Other groups, such as aboriculturists and some members of local government, were concerned about this bill, but many of them who saw some value in some parts of the bill would like that opportunity. So, I ask the minister whether he would be willing to meet with these groups to talk about the drafting of a better bill, one that really provides protection to these trees.

The Hon. P. HOLLOWAY: I have discussed it with those groups, and I am always happy to do so. Mr Chairman, given that the opposition has decided that it wants to run this parliament, we are in its hands as to what we discuss. It is up to you.

The Hon. D.W. RIDGWAY: In October, when this bill was last debated, as the opposition spokesperson on this matter I indicated that we did not support the government's bill in its current form and that, if the minister wanted to progress it, the bill could progress through this chamber and be dealt with by members in the other house; and, if not, that he might like to go away and consider a less cumbersome and more workable solution. Has the minister taken the time to try to consider a more workable solution? I notice that he tabled regulations in relation to significant trees. Is he now using the regulations as the method in which to deal with this matter? I suggested that was a more sensible way in which to do it.

The Hon. P. HOLLOWAY: I have dealt with a particular issue in relation to Mount Barker—and I am pleased to have done so. A much better way in which to progress the issue in relation to trees would have been to pass the bill. I appreciate that I did not have the numbers—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Members opposite said they would defeat it. The fact is that, as we just saw in the division and as we saw in the divisions last Wednesday and Thursday, members opposite are playing games with the WorkCover bill. They do not want to deal with it, even though in the last six months of 2007 the WorkCover liability went up by more than $2 million a month.

The Hon. R.I. LUCAS: I have a point of order. Mr Chairman, will you please indicate to me which clause in the trees legislation refers to the WorkCover liability? If there is no clause, will you rule the Leader of the Government out of order?

The Hon. P. HOLLOWAY: Mr President, he is quite right: I am out of order. I am pleased that a precedent has been set and I expect it to be followed when we move to the next piece of legislation.

Progress reported; committee to sit again.

SERIOUS AND ORGANISED CRIME (CONTROL) BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: This bill was introduced on 26 February. The Hon. Mark Parnell opposed the bill on 4 March but filed 44 amendments at 4.41pm on Monday 31 March. Of course, I had sent out a notice to all members of this parliament which indicated that it was our priority bill for the week commencing 1 April. Not unreasonably, I might say, the opposition said that it needed to consider the amendments.

The Hon. Ms Kanck spoke in opposition to the bill on 6 March but filed 38 amendments at 2.29pm on 1 April. Even though the bill was introduced in February, when I listed this bill for priority consideration by this parliament, these amendments from the two minor parties meant that we could not consider the bill at the time. Last week, when the government had the WorkCover bill as the priority bill, the same thing happened. It is coincidence!

Nonetheless, I am pleased that we are now able to deal with this important piece of legislation. It is one of several important pieces of legislation which we need to get through this council. I hope members opposite will cooperate in the speedy passage of this bill and, indeed, the WorkCover legislation, because both pieces of legislation are very important for this state. We need to consider them urgently, and I look forward to the debate.

The Hon. M. PARNELL: Before moving my amendment to clause 1, I will respond to what the minister has just been saying.

The Hon. P. HOLLOWAY: We have just seen the Hon. Mr Lucas quite rightly take a point of order against me, and I suggest the same point of order should be upheld against the Hon. Mr Parnell.

The CHAIRMAN: I uphold the point of order.

The Hon. M. PARNELL: In the past 48 hours we have seen the wildest of accusations from the Attorney-General, when he suggested that the crossbench members have been delaying the passage of this bill, and the minister knows it is a lie.

The Hon. P. HOLLOWAY: On a point of order, sir, what relevance does this have to clause 1, which is the title of the bill?

The CHAIRMAN: I ask Mr Parnell to move his amendment and speak to it.

The Hon. M. PARNELL: I move:

Page 3, line 3—Delete '(Control)' and substitute '(Restrictions on Freedom of Association)'.

In speaking to my amendment, we need to set the record straight on why the bill has been delayed. The Hon. Sandra Kanck and I have amendments, as does the Hon. Stephen Wade. The amendments were prepared a month ago, and they have been out there for the government to consider. We have turned up day after day ready to debate the legislation, with the so-called bikies bill under our arm, and every day the government has stood up and said that it was not ready to debate this bill. We have been ready time and again, and now we have this outrageous situation where we have two important pieces of legislation and, as a result of what happened on the weekend, we get a dummy spit from the government, where it says, 'We're going to keep you in at morning tea, we're going to keep you in for lunch, and we're going to stop you having dinner.

The Hon. P. HOLLOWAY: On a point of order, Mr Chairman, I suggest that the Hon. Mark Parnell is not debating clause 1.

The CHAIRMAN: I remind the Hon. Mr Parnell that he should speak to his amendment. I fully heard all the reasons why and why not on Radio 891 the other day and I do not need to hear them again.

The Hon. M. PARNELL: Before I debate the merits of my amendment to clause 1, my question of the minister is: which of us on the opposition benches or crossbenches called for this debate to be adjourned in the two weeks it was listed as a priority bill?

The Hon. P. HOLLOWAY: I already answered that question when I said that the government listed it as a priority. We were ready to debate it on 1 April, but you introduced amendments at 5 o'clock on the afternoon before, so how could we debate it? The opposition quite reasonably wanted to consider those amendments.

The CHAIRMAN: Perhaps we will move on to the amendments.

The Hon. M. PARNELL: I will shortly, Mr Chairman. In response, my question of the minister is: is it now government policy to not tolerate any amendments to government legislation, even if it has had them for a month, on the grounds that it somehow holds up debate?

The CHAIRMAN: The bill is in committee, so let us debate the bill and the amendments and get on with the show.

The Hon. P. HOLLOWAY: I indicate that the government obviously opposes the amendment moved by the Hon. Mark Parnell. His first amendment is to change the name of the bill. We believe the purpose of this bill, the Serious and Organised Crime (Control) Bill, is all about controlling serious and organised crime, as its name says. The honourable member wants to make a political point by changing the name of the title and we oppose it.

The Hon. M. PARNELL: I know the government's position, but I still look to my colleagues on the crossbenches and to the Liberal Party to support the amendment. It seeks to replace the word 'Control' in the title of this bill, the Serious and Organised Crime (Control) Bill, with the words 'Restrictions on Freedom of Association'. The title of the bill will be the Serious and Organised Crime (Restrictions on Freedom of Association) Bill. The reason for moving this amendment is that it more accurately reflects the detail of the bill

Members need only reflect on what the bill does. It declares certain organisations to be outlaw organisations, but we do not know which ones; the word 'bikies' is mentioned a lot, but 'bikies' is not mentioned anywhere in the bill.

The bill also provides for control orders against individuals, which have the effect of restricting those individuals' freedom of association. I should say that, regardless of the merits of any of these amendments, what I am doing in my amendment is calling it what it is: a restriction on the freedom of association. We have the ability in this bill for the police to lock down areas, to exclude people from areas. Again, these are restrictions on the freedom of association.

We have in this bill laws which enter the bedrooms of South Australians; laws that prevent people from having a relationship with someone who might be the subject of a control order or who might be a member of one of these organisations that is about to be outlawed. It is a very rare occasion when the law enters the bedroom. It is saying to the boyfriends and girlfriends of motorcycle club members that they are not allowed to have that relationship any more on pain of five years in gaol. That is what this bill is saying.

An honourable member: Scaremongering.

The Hon. M. PARNELL: It's not scaremongering. This bill exempts only a very narrow range of close family members from being able to have associations with those whom the government declares to be persona non grata. Too bad if it is a cousin, an uncle or an aunty—these people are not protected by the legislation. Think about Aboriginal communities, and think about the extended family relationships they have. Under this bill, the restriction on freedom of association is going to prevent people from having those normal relationships.

My point to my crossbench colleagues and to the opposition is: let us have some honesty in legislative naming. Let us call bills what they are. That is why I say that the name of this bill should be the serious and organised crime (restrictions on freedom of association) bill.

The Hon. SANDRA KANCK: I indicate Democrat support for this amendment. As the minister has observed, I spoke to this bill on 6 March during the second reading debate. So, it is actually the two-month anniversary today.

The Hon. R.I. Lucas: Happy anniversary.

The Hon. SANDRA KANCK: Thank you. In that time, an increasing number of people have contacted MPs indicating their disquiet with this bill. I see that the Law Society and the Bar Association sent something on 7 March, after I spoke; SACOSS sent something on 9 April; the Human Rights Coalition sent something on 27 April; and, just today, and it is very relevant to this particular amendment, the Women's International League for Peace and Freedom sent us all a brief raising its concerns with this bill. I will read just a couple of paragraphs of what it had to say:

The inherent right to fundamental human rights is promoted in the Australian government's Immigration Department website offering information to migrants by stating that 'All Australians are entitled to freedom of speech, association, assembly, religion and movement.' However, if the proposed Serious and Organised Crime (Control) Bill 2007 is passed in our South Australian parliament this will take four of those five universal human rights away from some targeted Australians. Our understanding is that 'all' (in the quotation above) means everyone, that is, government could not exclude anyone from a human right if it was deemed to be a universal human right, as publicly supported in principle by the Australian government on this website.

So, I ask the minister: given that this bill does take away four of those five apparent freedoms that we have, how does this bill sit in relation to the freedoms and human rights to which Australia is already a signatory?

The Hon. P. HOLLOWAY: Briefly, I suppose the freedoms of many South Australians are under threat from the intimidation that they receive from outlaw motorcycle gangs. If you go along to a hotel or some other place where these people congregate, what human rights do you have when you are intimidated? What human rights did those members of the public who were on Gouger Street at the weekend have? There has to be a balance in any society between freedoms and the actions that we take. With the help of very highly paid legal advice, outlaw motorcycle gangs have long been used to the legal system in which we operate. If we are to deal effectively with serious and organised crime, we have to use new methods. Unfortunately, that will require new approaches that will perhaps impinge upon some traditional freedoms. We need to do that in order to guarantee the rights of ordinary people to go about their business without intimidation from those engaged in serious and organised crime.

The Hon. A. BRESSINGTON: I rise to indicate that I will not be supporting this amendment. The reason being—

The Hon. R.P. Wortley: Because you're sensible.

The Hon. A. BRESSINGTON: Of course I'm sensible. The reason is that members here probably have a very different view of motorcycle gang members and people who are involved in organised crime to the rest of us. I know that the Hon. Sandra Kanck brought in motorcycle members to Parliament House; and it is well within her rights to do so. The comment was made, 'Gosh; he's such a nice guy; he's an accountant.'

The fact of the matter is that I worked in hospitality for a very long time. I worked in three hotels as a manager. I was the one on duty when these guys rolled in to hotels, held staff to ransom, threatened our lives because we would not give them free drinks, and absolutely terrorised families having a quiet meal with their children in the front bar of these hotels. These are the sorts of stops that these scumbags pull out.

They pick a hotel, and they just zoom in, and everybody else's freedoms, rights and safety are put on hold while these guys have a drunken bash. And do you know what? They do not care if you are an average, reasonable citizen standing at the bar having a drink. If they feel like smashing you in the face, they will. If they feel like pulling a knife on you in the bar, they will.

I have no sympathy at all for anyone who comes under this bill. The harder we go the better. Stephen Pallaras was on radio this morning making the point that this bill is too soft, and I agree. No more of this 'Let's just make their life uncomfortable'. We must outlaw these gangs now and act on it. In terms of toy runs, are we so stupid to believe that they do it out of the goodness of their heart?

There was a documentary about motorcycle gangs on television about 18 months ago. They are putting in place initiatives to change their image, to normalise what they do behind closed doors—a public image and a behind closed doors image. I think it was Steve Williams who blew that wide open on radio FIVEaa. About two years before he disappeared—and I am sure it was him, but I stand to be corrected—he did a masked voice interview talking about these softly softly initiatives that the motorcycle gangs and organised crime are putting in place.

It is not just motorcycle gang against motorcycle gang or consorting. They consort with all sorts of organised crime and underground people. Maybe we should get *Underbelly* and play it in here, and see whether this is really the extent to which we want this to go in this state. Enough is enough. We need our safety; we deserve our safety. The civil libertarians of the state can go suck a sav as far as I am concerned on this particular piece of legislation.

The Hon. P. HOLLOWAY: I thank the Hon. Anne Bressington for her eloquent and colourful tips on that, because I think it puts the point very well. The only thing that I would say, though—and I think that we do need to make the point at the start—is that when we are talking about the criminal element in outlaw motorcycle gangs we are talking about, I think, 250 people.

There are well over 100,000 registered motorcycles in this state. I have ridden a motorcycle, and I have been a member of a motorcycle club. If we are talking about toy runs and things like that, the honourable member is quite right that bikies are trying to change their image by getting involved in that. I think we should make it clear that the vast majority of motorcyclists are—

The Hon. A. Bressington: Normal, law-abiding people.

The Hon. P. HOLLOWAY: Exactly, yes: normal law-abiding citizens. This really is only aimed at the criminal element.

The Hon. D.G.E. HOOD: Members will not be surprised to hear that Family First are opposing the amendment. I think the Hon. Ann Bressington summed it up mostly in a way that we would agree with. The truth is that the times we live in and the events we have seen on the weekend serve as a good example. The truth is that tough laws are needed to deal with this sort of element of the community. There are elements of this law that I think most of us do not like, but we accept that they are necessary. For that reason, as I said in my second reading contribution, we support the bill and we oppose the amendment.

The Hon. S.G. WADE: The opposition accepts that the bill does involve some restriction of freedom of association but, unlike the Hon. Mr Parnell, we do not believe that the bill is falsely characterised by its title. The focus of the bill is what it claims to be: the Serious and Organised Crime (Control) Bill, and we will not be supporting the amendment. We accept that the key object is the freedoms of law-abiding citizens, including the majority of motorcycle users.

The Hon. R.D. LAWSON: I indicate that I certainly agree with the position just put by the Hon. Stephen Wade. I have some sympathy for the Hon. Mark Parnell in moving this amendment, because on a number of occasions this government has been prone to misdescribe legislation. I particularly remember the so-called 'drunks defence bill' that the Attorney-General introduced, with a name that was designed to be a political slogan and not descriptive of the legislation.

However, on this occasion I believe that the title given to the bill is the correct and appropriate title; it describes it accurately. To adopt the proposed words that the honourable member seeks would actually be to fall in to precisely the same error that the government made on occasions, namely, to put a slogan in the title to try to convey a political message rather than, as should be the case, simply to describe what the bill contains.

The Hon. J.A. DARLEY: No matter which way I look at the title of this bill, it is to do with serious and organised crime and, therefore, I will not be supporting the amendment.

The Hon. M. PARNELL: Having heard the will of the committee on this clause I give notice that I will not be dividing on it, but I cannot let the Hon. Ann Bressington's comments go without some reply. Whilst I am happy to take her dietary advice in relation to saveloys or any other item, I think that the passion with which she approaches this topic is born out of her experiences in dealing with these people, and I can understand fully where she is coming from.

The main problem that I have had, and still have, with this legislation, unless we amend it, is that it has at its heart an element of trust that our law officers, be they the Attorney-General or Commissioner of Police, will never make mistakes and that only just outcomes will result. We are all horrified at what happened in Gouger Street. There is no place for that sort of behaviour anywhere in this state, or anywhere else in fact, but the difficulty is that this legislation has been described as cracking a nut with a sledgehammer. That is why I believe that renaming the title was an appropriate thing to do.

I will just leave members will one thought. When I was considering a more accurate name for this bill I had toyed with the idea of calling it the 'Trust Us: We're The Government Bill', but in deference to the traditions of this place I did not pursue that title: I went for something that was more descriptive. When people think, 'Yes, you can always trust the government and you can always trust the police', let us just think of the recent Coroner's report into the death of Julie Wilson's son that we discussed in this chamber. The Coroner found 49 mistakes that the police had made in their handling of that matter. You might say one mistake for each member of the gang of 49. Let us hope that the police have the resources and that they do not make those sorts of mistakes. However, at the end of the day, if there are not checks and balances in our legislation, if there is not the ability to go to an umpire to check that decisions that are being made are appropriate, valid and based on sound evidence, then I think we do run the risk that, deliberately or accidentally, we could find legislation such as this used for very inappropriate purposes. However, as I have said, I will not divide on my amendment to clause 1.

Amendment negatived.

The Hon. S.G. WADE: I have a contribution on clause 1. On the issue of the readiness of the council to deal with this bill, I indicate that the opposition had a formal position on all non-government amendments by 8 April—it is now 6 May. I will reiterate, in brief terms, our position on this bill: while the Liberal Party supports the Serious and Organised Crime (Control) Bill 2007, we will maintain a watching brief and support an early review of the legislation because, first, we are yet to be convinced that the regime will be effective in controlling serious and organised crime and, secondly, because we remain concerned to ensure that the regime does not unnecessarily impact on individual freedoms.

Regarding the first concern of the opposition, I draw the committee's attention to statements made in the media this morning by the Director of Public Prosecutions. In an interview with Mr Leon Byner, he made a comment about this bill, and it is relevant to the contribution the Hon. Mrs Bressington made previously. Mr Pallaras said:

> While I applaud and I do agree with the general purpose of the attack on organised crime that is represented in this bill, I think...it was my view, and it still is...that I think that the strategy is not yet quite right...important to understand what the strategy is...the bill provides government really with two main weapons. First of all it provides them with what is called a declaration and the second is what is called a control order and as I read the proposed legislation, the way it is meant to work in most cases is that first of all, the Commissioner of Police will apply to the Attorney-General for a declaration in relation to a particular group of people. Now before the Attorney agrees to make this declaration he has to be satisfied about two things...first, he has to be satisfied that the members of the organisation associate for the purpose of planning or engaging in serious criminal offences and second he has to be satisfied that the organisation represents—

There is a pause in the transcript there, but I take it to mean 'represents a threat to public safety or good order'. The transcript continues:

> If he is satisfied of those things he declares and organisation to be...effectively declared organisation, so let's say the Attorney happens to be satisfied on the application of the commission...that the Hell's Angels meet these two criteria, then he will declare the Hell's Angels to be a declared organisation.

Here we get to the point of the DPP's comments. He says:

> So what?...what impact does this have on the existence of the gang? Well, as I see it, none at all...but what it does allow the commissioner to do is to go to court in relation to individual members of that declared organisation...and seek what is called a control order. Now that might...prohibit individual members from associating with specific persons...or going to certain areas. Now as far as it goes to me that's okay, but when I think it misses the point is demonstrated in the bill itself where it describes the objects of the legislation because the bill describes its objects as being to disrupt and restrict the activities of organisations involved in serious crime.
>
> It's at that point where I believe that it goes soft—the object should not be just to make things uncomfortable for these organisations, the object should be in my opinion to eradicate...destroy them and to get rid of them. Now if we have an organisation that the Attorney is satisfied represented danger to the community and the Attorney is satisfied that they organised themselves with a purpose of serious crime, why does the legislation continue to tolerate their existence? They should be...outlawed...ordered to disband and any continued membership of it should be made an offence. In that way you don't just disrupt and restrict them, you destroy them.

Later in the same interview the DPP said:

> I think there are issues of concern in it, but I think on a crucial issue, as for the overall strategy of disrupting the organisation, I think that's where it goes soft. The object should not be to disrupt, not simply to make it uncomfortable, but to get rid of these gangs altogether.

I think those comments by the DPP do reinforce the concerns raised by the opposition in that this regime may not be the most effective way to control serious and organised crime. As I indicated at the second reading stage, we will be maintaining a watching brief to try to ensure that we do everything we can as a parliament to facilitate public safety in South Australia.

The Hon. A. BRESSINGTON: I am more collected now, so I will clarify what I was saying before. I am very much aware that these control orders target people who are planning or engaging in criminal activity. My son also rides a motorbike, and I know that he is not a member of an illegal motorcycle gang.

I attended the briefing given by the police on this bill, and I think that the Hon. Sandra Kanck attended, too. A point I raised when I first came into this place related to the connection between youth gangs and motorcycle gangs and the fact that these scumbags are recruiting young people to do their dirty work. They are using nine year old children to run drugs at local schools in the north.

I know that the police have said that that has not been proved, but I have spoken to the families of these nine year olds. At nine years old they are lost, because these people exert an influence over these babies because they find somewhere to fit. They supply these nine year olds

with drugs. Who in this place can condone that kind of behaviour and say for one second that these people have rights when they are willing to corrupt our babies?

Over this period of time, I have also been in contact with security workers. Amulet Security deals constantly with a street gang in the northern suburbs called RTS, which is directly linked to the Finks motorcycle gang. They are static guards in places such as McDonald's and, even when families are present, full cans of soft drink are hurled at them and they are used for target practice.

Last Thursday night, I was at a shopping centre in the north when there was a brawl in the food court where I was eating dinner with my six year old son. These blokes started to hurl chairs and tables across the food court within three feet of us. They were members of the RTS. They wear their shirts with pride, and they fear nothing and no-one. It took six security guards to contain the area and move people out of the food court until the police arrived.

These are the civil liberties we are talking about. These are the disruptions the Greens and the Democrats say are all part of our democratic rights. Well, they are not. As I said, I am well aware of the toy run and people on bikes who help people in trouble. I know they exist, and I know that, at the heart of this legislation, they are protected. I think that the Democrats and the Greens should be absolutely ashamed of themselves for putting out misinformation about how the bill will work. It is a discredit to this place that such misinformation can give so many people the wrong idea about the intent of this bill and the people it targets.

If this bill does nothing more than prevent the recruitment of young kids into street gangs, we have done a pretty good job in this place. I deal with the families of the children who have been recruited. They are knocking on my door and sending me emails saying, 'Do not delay this bill.' The security industry is saying, 'Do not delay this bill.' Who are the ones sending these letters and emails to the Democrats and the Greens? Members of motorcycle gangs. I have their emails, too.

I saw the interview with the Attorney-General and a member of a motorcycle gang on *Today Tonight*. He did nothing to sell me his case, saying, 'Tell the Attorney-General to come down here and rip these colours off me himself,' and that sort of intimidatory stuff.

What I would like to see in this bill is exactly what Steve Pallaras mentioned on the radio this morning regarding similar laws that were brought in for the triads in Singapore: that, if anybody verbalised a connection to any illegal gangs for the purpose of intimidation or threats, they had committed a crime and were guilty by association for using that sort of connection to intimidate and threaten people.

I would like to see that in this bill, but I understand that we need to take this one step at a time. We need to see how this will work. I invite members to come and speak with mothers who have lost their children to these people. People are kept in these club rooms where they party on, are fed drugs and do the dirtiest of dirty work for these guys because they have been made all sorts of promises, including the promise of a speedy route to the top of the chain.

It is a disgrace for anybody in this parliament to say that that is acceptable to South Australia or to the average citizens in our suburbs; that we should put these people's civil liberties above our right, as members of society, to live safely.

The Hon. SANDRA KANCK: The Hon. Ms Bressington has severely misrepresented my position. At no stage have I ever condoned the sorts of activities that she is talking about.

The Hon. A. Bressington: That's what you're amendments will do.

The Hon. SANDRA KANCK: No, my amendments will not do that, and we will talk about them when I get to them. I want members to understand very clearly that this is not what my position is. I believe that when people break the law in the way the honourable member describes—supplying young people with addictive drugs, smashing glasses in people's faces, common assault—they need to be prosecuted.

The Hon. A. Bressington: Who would testify? No-one.

The Hon. SANDRA KANCK: Obviously in the case where the Hon. Ms Bressington was talking about the brawl that broke out, she could testify about what she saw.

The Hon. A. Bressington: And I would.

The Hon. SANDRA KANCK: Well, that is good, because this sort of behaviour should not be tolerated. What I have been talking about in all my statements is the unintended consequences of this bill. We have a bill here that is even tougher than what they have in Hong Kong. Hong Kong has an ICAC, by the way. We are going to be taking away hard-won rights, and we do not even

have a human rights act in South Australia to counter it and we do not have an ICAC to make sure that the police get it right.

I remind the Hon. Ms Bressington of the comments she made last week, I think—or it may have been the week before—in relation to the double jeopardy bill, when she talked about the eagerness of our police from time to time to get a conviction at any cost. It applies equally in this situation as it does to the particular circumstances that she was describing.

While the Hon. Ms Bressington is creating the impression that I am responding to emails from bikie groups, I remind her that the ones that I referred to when I spoke earlier were from SACOSS (South Australian Council of Social Services), the Human Rights Coalition, the Women's International League for Peace and Freedom and a joint submission from the Law Society of South Australia and the South Australian Bar Association. These are not people who get out and mix with bikies by any stretch of the imagination; they are people who have generally high standards of behaviour.

The final paragraph of this submission to, I think, all MPs—I do not think that the Hon. Ann Bressington was exempted from receiving it—states:

> Our society rightly prides itself on the fairness of its justice system and the acknowledgement of personal freedom from executive control. The legislation undermines basic and fundamental civil and political rights of all—

and I stress the word 'all'—

> groups and individuals. We should not allow oppressive and repressive laws to become the norm. The dangers posed by this legislation are too great. It should be withdrawn in its entirety.

That is my position, as well. This is such a broad-brush piece of legislation that it will catch people in its net who were never intended to be caught. That is the crux of what I have been saying. I have never at any stage been defending the criminal actions of members of motorcycle gangs; and I want that to be clearly on the record.

The Hon. S.G. WADE: This morning's *Advertiser* quotes the minister as having revealed yesterday that more than 400 firearms have been seized from bikies in the past four years, including 36 rifles and 26 pistols found during raids by the Crime Gang Task Force. If that information is correct, what years are in question?

The Hon. P. HOLLOWAY: I was talking about the firearms prohibition orders bill which was debated last week. That was the appropriate place at which to ask this question. What has that question got to do with the Serious and Organised Crime (Control) Bill? It is irrelevant to this bill. I am happy to get the information for the honourable member, but we debated the firearms bill last week; and that is where we were dealing with those matters.

The Hon. S.G. WADE: I thank the minister for the clarification. This article was published by *The Advertiser* in relation to bikie gangs. I apologise for the misunderstanding. I thought it related to this bill. It does raise a question about whether police do collect crime statistics in relation to the association of members. The article suggests that the Crime Gang Task Force does collect crime statistics in relation to members of outlaw motorcycle gangs. If that is the case, will the minister advise in a general sense what the data shows?

The Hon. P. HOLLOWAY: It is probably more appropriate to deal with that matter later. Obviously, in relation to firearms the Crime Gang Task Force collects information, which is essential for the operation of the bill and, similarly, it collects information for firearms. I had a lot of statistics available to me last week, but I do not have them with me now. I can get that information for the honourable member. Clearly, we need a package of measures, and the firearms prohibition orders are a key part of dealing with the issue of firearms. Here, we are dealing with a criminal association.

The Hon. S.G. WADE: I am happy to receive that information later. In view of the fact that we have had a significant increase in the number of people associating with outlaw criminal motorcycle gangs (which was made evident during the government's briefing), what has been the pattern in relation to offences? I look forward to receiving that information at some appropriate point during progress of the bill.

The Hon. A. BRESSINGTON: So we are clear and it is on the record, the Commissioner can approach the Attorney-General to apply for control orders when there is sufficient police intelligence to indicate that the person (for whom a control order is being applied) is participating in criminal behaviour. Is it correct that, as a shop owner, if one of these people comes into my shop to

buy a pie and peas, I cannot have a control order slapped on me because I am conducting my normal business of selling pies and peas?

The Hon. P. HOLLOWAY: Essentially, that is right. The control orders are contained in clause 14. The court applies control orders on the application of the Commissioner. The Commissioner applies to the court and the court, if it is satisfied that the defendant is a member of a declared organisation—and that is another process—can issue a control order. In the case the honourable member is referring to it does not apply.

The Hon. S.G. WADE: This highlights the danger of asking general questions at clause 1, but I understand that public safety orders can be been placed on somebody who is not a member of a declared organisation, so I suggest we explore these issues at the relevant part of the bill.

Clause passed.

Clause 2.

The Hon. SANDRA KANCK: This is the commencement clause, I recognise, but there is a great deal in this bill that relies on regulations, and presumably the bill will not be able to commence until the regulations are ready, so I would like feedback from the minister on how far advanced is the preparation of the regulations.

The Hon. P. HOLLOWAY: The bill will need regulations to be effective. I am advised that the government is working on them right now.

The Hon. SANDRA KANCK: Does the minister have an indication as to when they will be ready? It would be good if we could see a draft of them.

The Hon. P. HOLLOWAY: The government wished to commence it on 1 July. Whether that is possible obviously depends on the passage of the bill. Obviously time frames are getting tight.

The Hon. S.G. WADE: In that context, the Hon. Sandra Kanck says the regulations are necessary for the legislation to be effective, but it would be totally ineffective until we declare an organisation. As well as the regulations being ready, will the minister indicate whether the police are ready to provide information to the Attorney to declare an organisation?

The Hon. P. HOLLOWAY: Since 2001-02 we have had Operation Avatar, which has been paced by the organised crime task force. It will depend on the provisions, given some of the amendments, but the police are obviously proceeding with the work in relation to these bodies. They are familiar with them and have been dealing with them for many years.

The Hon. S.G. WADE: I take it from the minister's comments that the government would expect that, if the government is aiming to get the regulations in by 1 July, presumably the first declaration will have been made by 1 July.

The Hon. P. HOLLOWAY: The declaration cannot be made until the regulations are in effect, but hopefully it will not be too much after that point.

The Hon. SANDRA KANCK: Who is being consulted in the preparation of the regulations?

The Hon. P. HOLLOWAY: At this stage the people drafting the bill have contacted a number of government agencies: the police, the Drug and Alcohol Services Council, DECS, DFEEST, Correctional Services and other like bodies. Obviously it is still in the early stages and, until the bill is in its final form, it will not be possible to go beyond that.

The Hon. SANDRA KANCK: Will the government consult with groups like the Law Society, which would have a lot of expertise to bring to this issue?

The Hon. P. HOLLOWAY: It is not normal practice to consult with such groups on regulations, but it is certainly the case in relation to legislation. With regulations it is not normally the practice to consult with those bodies.

Clause passed.

Clause 3.

The Hon. M. PARNELL: I move:

Page 4, lines 7 to 11 [clause 3, definition of criminal intelligence]—Delete the definition of criminal intelligence.

This amendment, even though I have 44 on file, is one of around nine themes. The theme addressed by this amendment is that of criminal intelligence. I will use this amendment as a test amendment for my amendments Nos 4, 8, 9, 10, 11, 28, 39, 43 and 44. All of those amendments relate to criminal intelligence. The Attorney-General has been inviting us, over the past couple of days, to get on and vote on this bill, so we will vote on this amendment.

The area of criminal intelligence goes to the heart of the overreacting attack on our civil liberties. The misrepresentations from the Attorney-General against me and my crossbench colleagues continue to be repeated today, including from the Hon. Ann Bressington. I remind her that there are valid differences of opinion in our approach to this. I have never criticised the police in calling for powers such as the power to have evidence declared criminal intelligence. I do not criticise the police for doing that. The job of the police is to put to government the tools they say would help them to do their job, but our job as members of parliament is not just to accept holus bolus everything that every police department and government agency or department tells us they would like. Our job is to scrutinise and test those requests against standards. The standards we are talking about here are long-held, democratic principles that have been the mainstay of our legal system for centuries.

So, for the honourable member to suggest that my amendments, such as this one, are somehow driven by a swag of email correspondence from outlaw motorcycle gang members is absolutely incorrect. Unless I have run into one of them of the corridors in this place, I am not sure that I have ever met a member of an outlaw motorcycle gang. I have heard media reports about some of the outrageous things they do, and we need to deal with them. We need to use the law to deal with them, and we need to use resources to deal with them.

However, my inspiration for these amendments, including this amendment on criminal intelligence, come from the organisations the Hon. Sandra Kanck mentioned. These are not outlaw motorcycle gangs: they are the Law Society and the Bar Association; people who together represent those who prosecute, as well as those who defend. They are not people who are unacquainted with the criminal life and with the tactics of criminal organisations. I listen very carefully to what they say, and I listen also to the civil liberties groups, which have their finger on the pulse of our democratic institutions and what it is to be a free society like Australia.

However, I am also listening to groups like SACOSS. I do not recall in my time here SACOSS ever having weighed in to one of the many law and order debates we have had in this place. Let us remind ourselves about SACOSS. SACOSS is an umbrella body for those hardworking groups in the community which deal with the disadvantaged in our society and which deal with, in many ways, the underbelly of society—the people who are dealing with the poor and the disadvantaged. They are the ones who are saying that they think these laws go too far. They are the ones at the coal face, they are the ones out in the distant suburbs, having to deal with the impacts of some of the crimes that members such as the Hon. Ann Bressington have referred to. They are not unacquainted with the situation on the ground, and they are saying that these laws go too far.

My criticism is not of the police; they can ask for whatever they think will help them do their job. Our job as members of parliament is to scrutinise those requests and to decide what is a reasonable course of action to take. I do not accept the Hon. Ann Bressington's position that any measure is worth it, regardless of the cost, as long as it achieves the result we want.

The issue I have with criminal intelligence is that it perverts a longstanding legal concept, which we refer to as evidence. Evidence in criminal proceedings consists of facts and sometimes opinions that are given in documentary form or given on oath by witnesses, and they are given in an open court where the veracity and the value of those statements can be tested—tested by cross-examination, by questioning either from lawyers or from the tribunal itself; the judges themselves. Having evidence in open court is one of the mainstays of our criminal justice system.

The government's rationale for criminal intelligence is to say, 'Well, when it comes to these bikies, no matter how they might have been offended against, their code of silence means that they never come forward to give evidence; therefore we need to have a category of evidence that is kept secret.'

The government is also worried about people who may be targeted or victimised if they are seen to give evidence. These are valid concerns; however, the difficulty is that a blanket provision such as the declaration of criminal intelligence is so open to abuse. Our law enforcement officers are used to collecting evidence to a standard that will stand up in court but, if they know the

evidence will never be tested in court, they do not need to apply that same standard. Rigour, in terms of evidence, is out the window.

We have heard evidence, both in this place and in the media, that we are to have volunteers collecting evidence to assist our law enforcement officers. They have been dubbed 'Dad's Army', and we have heard about people with binoculars looking through the venetian blinds into car parks to try to catch car thieves. Leaving aside the merits of having volunteers doing that police work, the real problem with the juxtaposition of these two things—Dad's Army and criminal intelligence—is that we have untrained people perhaps getting it terribly wrong in their collection of evidence—mistaking what they see or who they see and when they saw it—and having it bundled into a category called 'criminal intelligence' which is then untouchable. It would be accepted with very little question by judicial authorities, and there would be nothing the subject matter of the intelligence could do about it.

The Hon. Sandra Kanck referred to the two-page joint submission from the Law Society and the Bar Association. One section of this brief submission refers to the idea of criminal intelligence under the heading 'Control orders and prosecutions based on "secret" information'. It says:

> For example, an individual wanting to object to the making of a controlled or public safety order after it has been made in their absence will have to state the grounds of their objection fully and in detail and in addition must give evidence on oath. They will have to do that where they may not know and are not ever to know what is alleged against them.

That is unprecedented in the criminal law in South Australia, the idea of not knowing what it is that is alleged against you. If the information has been collected by law enforcement officers but in a less than thorough way, or if it has been collected by Dad's Army and might just be plain wrong, if it is evidence that would never be admitted in a court of law—for example, hearsay—under this legislation it can still be relied upon and may result in orders. This is a very slippery slope for us to be going down, to accept this concept of criminal intelligence. What we need to do instead is look at other ways of gathering information. We have witness protection programs, and there are a range of other tools that can be used that do not involve going down this slippery slope of secret evidence. That is why I say that we need to delete these provisions from the bill, and that is what my amendments—and I gave the numbers out before—seek to do.

I will conclude by asking a question that relates to the Dad's Army evidence: can the minister give us any assurance that evidence collected by volunteers or amateurs will not fit within this category of criminal intelligence and therefore be prevented from disclosure?

The Hon. P. HOLLOWAY: I will deal with the amendment first, and I will answer the question later. This is the first in a series of amendments filed by the Hon. Mark Parnell, as he has indicated, so this should be a test clause. This series of amendments removes the prohibition against disclosing information classified as criminal intelligence that is submitted by the commissioner in the course of a declaration application or court proceedings for control orders or public safety orders.

The government submits that this amendment should be treated as a test amendment for the series. This amendment deletes the definition of criminal intelligence from clause 3 of the bill. The definition is crucial to the provisions that prohibit disclosure of criminal intelligence. For this reason it is opposed. Criminal intelligence is defined in clause 3 of the bill to mean information relating to actual or suspected criminal activity whether in this state or elsewhere, the disclosure of which would reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relative to law enforcement, or endanger a person's life or physical safety.

For obvious reasons, criminal intelligence cannot be disclosed to the criminals about whom it relates. I recall making these very points in the Firearms Prohibition Order Bill last week. Criminal intelligence may take the form of information from police informants or undercover officers from covert surveillance, including electronic surveillance, or from victims of crime and other witnesses. What is important is that the information, whatever its source, satisfies the definition in clause 3 of the bill. If it does not, it is not criminal intelligence and it is not protected from disclosure.

Criminal intelligence is protected from disclosure by clauses 13, 21, 29 and 43 of the bill. Clause 13 prohibits the Attorney-General from disclosing information classified as criminal intelligence by the Commissioner of Police that is provided for the purpose of a determination under part 2 of the legislation—a declaration decision. The only exceptions are disclosure that is

authorised by the commissioner or disclosure to the retired judicial officer conducting the annual review of the powers under the legislation.

Clause 21 deals with proceedings for control orders, and provides that information provided to the court for the purpose of the proceedings that is properly classified as criminal intelligence by the commissioner may not be disclosed except to the Attorney-General, the retired judicial officer conducting the annual review of powers, the court, or to a person so authorised by the commissioner.

Clause 29 deals with public safety orders and prohibits disclosure of criminal intelligence used by a senior police officer when making a public safety order, or which is provided to a court in proceedings relating to public safety orders and related orders in much the same way as clauses 13 and 21 deal with the protection of criminal intelligence considered in the course of declaration application or control order proceedings.

Clause 43 amends the Freedom of Information Act to protect information classified as criminal intelligence by the commissioner from disclosure under that act. These clauses are by no means unique. Information in the nature of criminal intelligence, as it is defined in this bill, that is relevant to administrative decisions and determinations or that is tendered as evidence in court proceedings is protected from disclosure under a number of South Australian acts, including the Liquor Licensing Act, the Security and Investigation Agents Act, and the anti-fortification provisions of the Summary Offences Act.

South Australia is not alone in recognising the need to protect highly sensitive information from disclosure in court proceedings. As I mentioned the other day in relation to the firearms prohibition orders bill, section 76(2) of the West Australian Crime and Corruption Commission Act 2003, for example, protects from disclosure criminal intelligence tendered in review proceedings under that state's anti-fortifications provisions. This provision has recently been upheld as constitutionally valid by the High Court in the Gypsy Jokers Motorcycle Club Incorporated versus the Commissioner of Police (obviously, the West Australian commissioner).

As honourable members may also be aware, claims for public interest immunity against disclosure of information of the kind that would meet the definition of criminal intelligence has been a feature of our legal system for some time. These provisions are important. Without them, information relevant to declaration determinations and control order and public safety order proceedings will be unable to be put before the Attorney-General or the court, as to do so would risk disclosure of the information to the criminals to whom it relates.

I stress again that the only information that will come within the definition is information the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of a confidential source of information or endanger a person's life or physical safety. The government's position is that information which could prejudice criminal investigations, disclose a confidential source of information or place a person's life or physical safety at risk should not be disclosed to the criminal to whom it relates. For this reason, the government opposes this amendment and any other that seeks to remove the protection from disclosure afforded to criminal intelligence.

The Hon. A. BRESSINGTON: I do not support this amendment either, the reason being that I can comprehend fully the need for this sort of information gathering. Mr Pallaras made it very clear that, even though police may be able to identify offenders, it is very difficult to get people to give evidence or go to court because their life is threatened. I would like to draw attention to the fact that we had a gentleman in South Australia, Steve Williams, who was literally 'crossing the floor' on motorcycle gangs, as I understand it. It took them about three weeks to be able to dispose of him effectively.

I would also like to make the point again of a personal experience of someone in the northern suburbs who agreed to give evidence against RTS. This person was seen going into the police station to make a complaint. Within an hour their house was surrounded by 70 young people carrying baseball bats and tyre irons. They smashed through the front door of the house and held that family to ransom for about 15 minutes, and the family were warned with words to the effect of, 'You give evidence, you talk about what we've done, you talk about what you know, and this little seven year old over here won't be here for much longer.'

I think that, while we are working through all these amendments, the reality is that these people operate below what we could consider to be anywhere near reasonable behaviour. The Hon. Sandra Kanck said that it is very easy for me to go and give evidence, but I have a six year old son living with me. It is not that easy. They all know where everybody lives and it does not take

them long to find out. They have an intelligence network that is quite profound. I do not think that has actually been grasped yet. So, any measures we can take to protect witnesses, to gather information and to be able to assist the police to execute their duty should be included in this bill.

The Hon. SANDRA KANCK: I remind the Hon. Ms Bressington of the comments she made last week about the double jeopardy bill, and I do not understand why she takes a view in regard to the police on that one and then takes a different view in regard to this one. I indicate Democrat support for this amendment. Criminal intelligence is part of the underlying powers, I suppose you could call it, in this bill that has potential for abuse. Again, I go back to what the Law Society and the Bar Association have to say. First, they acknowledge that the objects of the bill and the matters that it is attempting to deal with are admirable, and I think we all would; then they go on to say:

> However, this legislation goes too far. It undermines the presumption of innocence, restricts or removes the right of silence, lacks proper procedural fairness, and removes access to the courts to challenge possibly biased, unfounded or unreasonable decisions of the Attorney-General or Commissioner of Police.

I think that is where the problem lies: in the accuracy of the information that has been gathered and that inability to challenge it. They go on to talk about the control orders and they say:

> The bill provides those orders are to be made on the basis of 'facts' established on the balance of probabilities rather than the criminal onus of proof beyond reasonable doubt. The individual affected by such an order may never know the case against him or her where it is based on what the commissioner claims is 'criminal intelligence'. There is then no ability to challenge the truth or reliability of what may be unfounded and malicious allegations.

I again give the example, as I did in my second reading contribution, of the Haneef case. It was fortunate, in a sense, that the allegations came out and were given a great deal of public scrutiny in the publicity that then surrounded that particular case. What it showed was that the premise on which the police were basing the allegations (their criminal intelligence) was indeed unfounded. We need to be very careful when we give away these rights that we have won over the years through our criminal justice system.

If we do not allow this to be challenged then we face the possibility that there could be a malicious allegation, and it could be part of this payback procedure that goes on between the bikie gangs, but because of this particular provision we are not going to be able to find that out. When we are looking at the prospect of innocent people being caught up, we have to be very careful. That is why I am supporting this amendment.

With the example that the Hon. Ann Bressington gives, where a group of these gang members stake out a house, then you have got to bring the full force of the law down on them, but you do not have to distort the law, as the government is doing now.

The Hon. D.G.E. HOOD: The proposed amendment of the Greens seeks to remove the interpretation of the term 'criminal intelligence' from clause 3. I will just read that briefly to the chamber:

> 'Criminal intelligence' means information relating to actual or suspected criminal activity (whether in this state or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety.

Family First will not be a party to that and, as such, we oppose the amendment.

The Hon. S.G. WADE: I do not propose to rise on every amendment to reiterate a point, but if I could indicate to the council that the Liberal Party's general position is that we support the Serious and Organised Crime (Control) Bill, but we will maintain a watching brief and support an early review because of our concerns about the effectiveness of the regime and its impact on individual liberties. The practical implication of that is that we do not want to make any amendments to this legislation that would tamper with the basic regime. It is the government's proposed regime, as I understand it, as requested by the police, and we will, as an opposition, keep the government accountable for it. In that context, we will not be supporting the amendment of the Greens.

The Hon. M. PARNELL: I have a question of the minister. In light of what has been said so far, and I acknowledge the contribution of the Hon. Dennis Hood, where he has set out the evil that is to be overcome by this clause in terms of putting witnesses at risk, my question of the minister is: what protection is there in the case of a vindictive, malicious or unfounded accusation—for example, someone with the appearance of credibility who goes to the police and spins a tissue of lies about a person?

They say, 'I know this person. They are involved in serious crime. They are a member of an outlaw motorcycle gang', whatever story they want to tell. They might even have some corroboration, they might have another mate come in on it as well, and they give what appears to be credible information: 'I saw them going into such and such a location. I saw them do this. I saw them do that.' Let us say it is a tissue of lies. What protection is there to ensure that some innocent person's freedom to go about their business is not curtailed by a tissue of lies that is beyond legal challenge?

The Hon. P. HOLLOWAY: The police are obviously obliged to check out any evidence that comes to them. Just because someone comes in and makes an allegation does not, of itself, constitute a case, and the police would obviously need to be satisfied that that evidence was genuine. It is not unusual that sometimes people will try to raise erroneous evidence, and obviously the police would be mindful of that before they would proceed under these relevant sections.

The Hon. M. PARNELL: The police do need to be mindful that they are not being led down the garden path, that they are not being spun a tissue of lies. One of the great checks and balances is that they know that the witness in a normal criminal case is going to have to give evidence and, if the evidence is no good, then the case is going to go down in a screaming heap. So, what incentive is there for the police not to cut a few corners and to be less satisfied than they normally would need to be in relation to the veracity of this information?

They know that it cannot be tested, they know they are never going to have to put it to the accused. The accused will never have the chance to say, 'Oh, he's got it completely wrong. It wasn't me; I wasn't there.' No chance of an alibi. No chance of, 'I wasn't in the country; I wasn't in the state.' None of that stuff will come out if there is no ability for the person actually to even know the nature of the evidence, let alone its specifics.

So, I ask the minister again: what checks are there that will satisfy us—or satisfy me—that the police will apply as rigorous a standard to evidence in relation to criminal intelligence as they will to evidence to be disclosed in open court?

The Hon. P. HOLLOWAY: Ultimately, of course, it is the court that determines what is criminal intelligence. If the court determines that the information provided to it is criminal intelligence then, of course, those provisions would apply and the honourable member is correct. So, the court itself makes a determination on the basis of the evidence put to it. As I said, the operation of these laws is in a number of other acts such as the Security and Agents Acts, and it will be in the Firearms Prohibition Orders Act, if that bill is passed through the lower house.

As I said, it has been employed in Western Australia through its Crime Commission Act and it is also in—I think there is one more—the Liquor Licensing Act and the anti-fortification provisions of the Summary Offences Act. So, this information has been around for a while, and I do not think there is any evidence that it has been misused, but ultimately, of course, the court—and the police are obviously required to use their judgment—will make the determination.

The Hon. R.D. LAWSON: I have a slightly different perspective on the discussion concerning this proposed amendment relating to criminal intelligence. The Hon. Sandra Kanck has mentioned the submission of the Law Society and the Bar Association. It is a short two-paged statement, which is really more a polemic than an argument, and it speaks of things such as fairness in the justice system, personal freedom from executive control, undermining basic and fundamental civil and political rights of all groups and individuals, and that we should not allow oppressive and repressive laws to become the norm.

That is the rhetoric that one often hears in relation to any bill which in any way affects freedoms. A couple of examples of the grossest invasion of a person's integrity and freedom are the granting of a warrant to search a person's property or an order that a phone be tapped.

These procedures have been used for years. There is no opportunity for the person against whom the warrant or the order for a phone tap is made to come forward and ask, 'Why are you doing this? Tell me the basis of your evidence?' We have procedures within the law which allow those freedoms to be infringed.

The police are required to put in an affidavit. They are required, in the case of phone taps, to put an affidavit to a judge to get an order. In relation to phone taps they are required to report the fact that they have undertaken that to the Attorney-General. I happen to have seen the sort of affidavits you get from the police for these invasions.

These procedures were all attacked. It was asked, 'How could you possibly allow the police to get access to innocent people's phone lines and enter premises to search? How can you allow

their bank records and other information to be examined?' When those things were first introduced the Law Society, the Bar Association and civil libertarians all put forward exactly the same argument: 'This is the beginning of the end.'

The Hon. Sandra Kanck: But that was not criminal intelligence.

The Hon. R.D. LAWSON: It is akin to criminal intelligence. It is not saying that you have to go to a court and that you have to prove your case before you are entitled to a warrant. We allow people to do that now, and it is the same with the national crime authority, now called the Australian Crime Commission. Those bodies were established to attack organised crime. They allow a body to examine a witness and to require the witness to answer, and there is no right to silence in those tribunals. Why did we do that? Why did we, as legislators, pass those laws? It was because it was acknowledged that the existing tools of law enforcement were inadequate to get the information that was needed. The so-called hallowed right of silence no longer applies in those particular cases.

The right to silence, for example, was taken away many years ago. Normally when asked by a police officer to produce your driver's licence and state your name and address there was no obligation to do that but we, as a parliament, decided it was appropriate that people should not have a right to silence in those circumstances and that we, as a society, are entitled to know, to enable the police to do their duty.

I think the Law Society and the Bar Association, in their little polemic, have gone too far. They put up the traditional argument that the end of the world is about to come because we are allowing criminal intelligence. We are allowing criminal intelligence on the basis that it is rational to do so. The Hon. Mr Hood read out the requirements for criminal intelligence, and I think it is important to repeat it. It states:

> The disclosure which would reasonably be expected to prejudice criminal investigations, to enable the discovery, existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety.

It is all very well to say that the police will not take any notice of that and they will simply ignore the law and proceed in disobedience of the law. The protection here is that a person against whom a public safety order has been made may appeal to the court. The court is required to take into account various factors, which are listed in the act. For example, section 14(6) provides that, in considering whether or not to make a control order, the court must have regard to a number of factors. They are as follows:

> (a) whether the defendant's behaviour, or history of behaviour, suggests that there is a risk that the defendant will engage in serious criminal activity;
>
> (b) the extent to which the order might assist in preventing the defendant from engaging in serious criminal activity;
>
> (c) the prior criminal record (if any) of the defendant and any person specified in the application as persons with whom the defendant regularly associates;
>
> (d) any legitimate reason the defendant may have for associating with any person specified in the application;
>
> (e) any other matter that, in the circumstances of the case, the Court considers relevant.

So, there is in that clause, and in other clauses, the protection that the court must have regard to a number of significant factors. I do not think that you can suggest, based on any evidence, that judicial officers will ignore their responsibilities in relation to these matters, go outside the criteria that are specified in the act and simply accept any fanciful claim to protection under this criminal intelligence provision.

The Hon. SANDRA KANCK: I want to take a little further the example that the Hon. Mark Parnell gave. We have a malicious report that has been made to the police. They have now gone through the process, one way or the other, of deciding whether or not it is criminal intelligence and they have made a mistake. Despite the fact that it is fictitious and malicious, they have somehow missed the boat, and they have not worked out that it is fictitious and malicious.

The minister says that the court will then determine whether it is criminal intelligence. Could the minister please take us through the next step of how the court does that? Is the person, who is effectively then defending themselves against a charge on the basis of criminal intelligence, then going to be part of any court hearing that determines whether the evidence is criminal intelligence?

The Hon. P. HOLLOWAY: The first point to make is that criminal intelligence is not used in criminal proceedings. It is just that: criminal intelligence. You may have a case where somebody comes in and actually signs a written statement but, for various reasons (perhaps for the reasons the Hon. Ann Bressington pointed out earlier), they may not be willing to go to court in relation to that for fear of reprisals or other reasons. Police would always seek to corroborate any evidence. It is not just a matter of someone coming in off the street.

There is a lot of information that comes in to police from all sources, but obviously they would seek some corroboration. There could even be signed statements, and if someone signs a statement, even if they do not proceed with it in court, presumably there would be some legal weight given to that if they were to provide misleading information. Obviously the police would seek to get some independent corroboration; you would not just take one person's word for it.

There would have to be some independent verification that those allegations were correct, and there are obviously a number of grounds on which they could do it. I think the Hon. Robert Lawson very eloquently referred to the broad range of ways, with phone tapping and the like, that have become available to us over a number of decades. There are a number of ways in which that information could be corroborated, and obviously the police would seek to do that. I imagine the courts would also require a reasonable level of corroboration, or evidence of corroboration from the police themselves.

The Hon. SANDRA KANCK: My question was not answered adequately, I am afraid, so I just have to come back to it again. This legislation puts a lot of control and a lot of trust in the police to get it right. They do not always get it right, and earlier on, when we were talking about clause 1, the Hon. Mark Parnell reminded us of the findings of the Coroner in relation to the police in respect of one case where there had been 49 different mistakes. I was listening to a program last night—admittedly it was in Dallas in the US—where they are in the process of reviewing cases in terms of DNA evidence. So far, of the first 40 cases that they have reviewed, they have had to set 17 people free because the police got it wrong. I think that we have to be very careful. We know that the police do not always get it right; hence, I come back to what I was saying before.

If, as in the case the Hon. Mark Parnell talked about, fictitious and malicious claims are made to the police, they are supposed to investigate them further to ensure that they are not fictitious or malicious, but somehow this is overlooked—and, again, look at what happened in the Haneef case. The police then report to the court and say that they will charge somebody on the basis of criminal intelligence. The minister has said that the court will decide whether or not it is criminal intelligence. What I want to know is: what is the process whereby the court decides what is criminal intelligence?

The Hon. P. HOLLOWAY: The point is that no-one will be charged from criminal intelligence. We are not talking about charging people, we are talking about an order. If someone has a control order, they will know that and will have the means to challenge it, but no-one will be charged.

The Hon. Sandra Kanck: How will the court determine it in terms of the control order? How will it assess whether it is criminal intelligence?

The Hon. P. HOLLOWAY: It is up to the court to determine what is criminal intelligence. We will get to all this when we come to clause 14. As I said, the court determines criminal intelligence now under a whole lot of other acts, and we have mentioned at least three or four. It does it for security agents, it does it in the liquor licensing area and it does it with fortifications.

Another point is that it is really unfair to be talking about the Coroner's so-called 49 errors made by the police. In the Wilson case, I do not think there was any evidence of the police acting improperly at all; rather, in that case, as we know, somebody turned up at the front door of the police station (one of the busiest police stations in the state). Obviously, the police could have been more diligent in relation to that case, and they have been criticised accordingly by the Coroner.

It has been suggested that that case is somehow linked to what would be presented to the court by the Police Commissioner in relation to criminal intelligence. The criticism in that unfortunate case was that police officers did not pay enough attention because of all the other issues they had at the time. I do not think that it is really fair to suggest that, if the Police Commissioner applied for a criminal intelligence order under clause 14, it would not be properly researched. Some of the criticisms in the Wilson case related to areas such as whether minutes of some meeting were retained; they were not about the quality of the information put before the court being checked.

Quite clearly, it is up to the courts to determine not only whether it is criminal intelligence but also how much weight they give to the evidence. They can only determine whether it is criminal intelligence. If they regard it as not being substantial enough, shall we say, they can disregard it.

The Hon. R.D. LAWSON: The honourable member is questioning the process if somebody provides malicious information against a person. As the minister indicated, the process is really at clause 14 of the bill, which we will come to in due course. The court will make a control order against a person if the court is satisfied that the defendant is a member of a declared organisation. That is the where the court must make the order. To satisfy a court, the commissioner will have to produce information verified by affidavit (clause 14(4)). That will mean that, presumably, a police officer will swear an affidavit setting out the information that they have obtained.

If the only information is simply that Mrs Smith over the back fence says that so and so is a Hell's Angel and she saw him wearing a Hell's Angel costume, I would be very surprised, in fact I would be amazed, if the court could be satisfied on the basis of that information alone that the defendant was a member of a declared organisation. I would be amazed if the police would even have the temerity to go to the court and ask for a control order if that was the flimsy nature of the evidence they had. Presumably, it would be that we have had this information from Mrs Smith who lives next door to him and does not wish her name to be revealed because she fears for her safety; we have had information from so and so who says such and such; and we have had information from so and so that this person was also seen at the bikies' camp. A great bundle of information would be presented to the court in order to satisfy it that it was appropriate to make an order of this kind.

I think the honourable member is underestimating entirely the integrity and competence of the judiciary in this state to say that they will simply be snowed by anything the police seek to put forward. The honourable member has mentioned the Coroner's Court in relation to a particular matter where a number of errors were made by the police. That is a good example of a judicial officer who was not satisfied with the police explanation and he made his findings. In the case of an application for a control order, if it came before, let us call him Judge Johns, he would throw it out on the basis that he was simply not satisfied and could not be satisfied, and would not be applying the law if he made the order in those circumstances.

The Hon. SANDRA KANCK: Mr Chair, am I able to ask a question of the Hon. Robert Lawson, given that he has a greater understanding of the courts?

The CHAIRMAN: I remind members that we are discussing clause 14. We are dealing with an amendment in the name of the Hon. Mark Parnell.

The Hon. SANDRA KANCK: This is an amendment to remove the definition of 'criminal intelligence', and this is what I am talking about. Am I or am I not able to ask a question of the Hon. Robert Lawson?

The CHAIRMAN: Yes.

The Hon. SANDRA KANCK: Obviously the Hon. Robert Lawson has more experience of courts than the minister. If the judge has a collection of affidavits from the police and he is dissatisfied, how does the judge then go about looking at this question of whether or not it ought to be accepted as criminal intelligence? Does the judge then, for instance, get in those people who signed the affidavits?

The Hon. P. HOLLOWAY: If the court was unsure about the contents of the affidavit, the court could well ask the police officer who signed the affidavit to come in and question him in relation to that. The advice is that it would probably be done in chambers rather than in an open court, because obviously the disclosure could be a problem, but the court has that capacity. That really is the safeguard in this whole process.

The Hon. R.D. LAWSON: Just to add to that—and I agree—in the ordinary course, a judge would be likely to say, 'I am not satisfied on this evidence, go away and get some more evidence', and the police would go away and come back with further material to provide the necessary level of satisfaction.

The Hon. SANDRA KANCK: The other thing for which I wanted an explanation is: if the court is dissatisfied with the affidavits and what the police have said, does it always come back to the police officer concerned to provide extra information and prove that the criminal intelligence classification is justified, or can the court ask for some of the informants who signed the affidavits to come in and appear in chambers?

The Hon. P. HOLLOWAY: If the court is not satisfied with the case that is put, it will reject the control order. The honourable member has read the views of the Law Society. I am not being critical in saying this, but we know there is a bias within the legal fraternity towards civil liberties. I expect that a very high standard will be set, and that is not unreasonable, but the court will require that it be properly satisfied given what is at stake here. That really is a fundamental protection.

The committee divided on the amendment:

AYES (2)

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

NOES (19)

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

Majority of 17 for the noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: I move:

Page 5, Lines 1 to 4 [clause 3, definition of serious criminal offences]—

Delete the definition of serious criminal offences and substitute:

serious criminal offences means offences of the following kinds:

(a) an offence against Part 5 Division 2 or 3 of the Controlled Substances Act 1984;

(b) an indictable offence against the Firearms Act 1977;

(c) an offence against the person under Part 3 of the Criminal Law Consolidation Act 1935:

(d) an offence of robbery or aggravated robbery;

(e) home invasion;

(f) an offence of damage to property by fire or explosives;

(g) a conspiracy to commit, or an attempt to commit, an offence referred to in a preceding paragraph;

(h) an indictable offence committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence.

The bill refers to serious criminal offences, which are absolutely integral to the bill, yet there is no definition. Paragraphs (a) to (h) of my amendment define what is a serious criminal offence. This amendment has been put together on the basis of what the minister said in his second reading explanation. It does not make any surprise moves. I think it is sensible, rather than leaving too much to regulation, to define what is a serious criminal offence.

The Hon. CARMEL ZOLLO: I advise that the term 'serious criminal offences' is defined in clause 3 of the bill to mean:

(a) indictable offences (other than indictable offences of a kind prescribed by regulation); or

(b) summary offences of a kind prescribed by regulation.

The Hon. Sandra Kanck's amendment is to delete this definition and replace it with one that is made up of a list of specified offences. The government opposes this amendment. The term 'serious criminal offence' is an important one. It is the threshold level of offending required for declaration (a control order) and is the level of offending relevant to considering whether the making of a public safety order is appropriate, although that is but one factor to be considered in this context.

SAPOL has advised that the definition proposed by the Hon. Sandra Kanck fails to include a number of offences engaged in by members of criminal motorcycle gangs and their criminal associates. These offences include: weapons offences (including summary firearms and weapon offences); possession of body armour; money laundering; explosives offences; and blackmail.

The CHAIRMAN: Order! The cameraman in the gallery is not to point the camera at anyone who is not on their feet speaking. If you do it again, I will have you removed from the gallery.

The Hon. CARMEL ZOLLO: SAPOL advises that to restrict the definition of 'serious criminal offence' to those offences listed in the Hon. Sandra Kanck's amendment would fail to take account of the diverse nature of offending by criminal motorcycle gangs. SAPOL's advice is that the Hon. Sandra Kanck's definition is too narrow. The government accepts this advice.

The Hon. SANDRA KANCK: What I would like to do, then, with the leave of the house, is to further amend my amendment to take into account those things that the Hon. Carmel Zollo indicated were not included. Is that permissible?

The CHAIRMAN: It is permissible, but if they are already included in the bill, as the honourable minister said—

The Hon. SANDRA KANCK: No, they are not. The minister said that SAPOL's advice is that my amendment is too narrow, and she indicated I think four things that are missing, and I am prepared to include those.

The Hon. S.G. WADE: On that point, could I ask a question of the minister? I understand that SAPOL is already developing regulations to implement this legislation. Have the regulations that relate to the definition of 'serious criminal offences' been drafted? If so, would they readily allow themselves to be used as the basis of an amendment?

The Hon. CARMEL ZOLLO: I advise the Hons Sandra Kanck and Stephen Wade that they were just some of the examples which SAPOL have given.

The Hon. S.G. WADE: It is the general view of the Liberal Party that key clauses, such as the definition of a serious criminal offence, are most appropriately in the legislation rather than the regulations. Obviously, we want the definition to be robust and include all relevant activities of outlaw motorcycle gangs.

The Hon. SANDRA KANCK: I am contemplating whether I should move that we report progress. Can I move to do that in order to further amend this clause? Can I do that or can only the minister do that?

The Hon. CARMEL ZOLLO: Perhaps I should explain to both members that by prescribing them by regulation then either house can have the ability to disallow them and scrutinise them. I would think that is a good way for us to prescribe them in subordinate legislation, so everyone has a say.

The Hon. S.G. WADE: I remind the minister that legislation comes through both houses; we have a say either way.

The Hon. SANDRA KANCK: It is because the current definition of 'serious criminal offence' relies entirely on regulation that I want to get this right. When we get the regulations they are likely to deal with not just the issue of serious criminal offence but also a whole range of other things, and the chances of their being disallowed are quite minimal. I think it is important that we get it right at this point. I did seek your advice as to whether or not it is appropriate for me to move that we report progress. Is it appropriate for me to do that?

The CHAIRMAN: If you want to move that way, you can move that way.

The Hon. CARMEL ZOLLO: Before the honourable member does that, we still maintain that it is best to prescribe the offences in the way in which we are suggesting. We foresee offending behaviour adapting, depending on what we see in the future. I think it is better for everyone that they are prescribed in the regulations. Clearly, people may try to adapt some other type of offending, so we should have the ability to prescribe in regulations.

The Hon. SANDRA KANCK: I move:

That the committee report progress.

Motion negatived.

The Hon. SANDRA KANCK: I will have to do it on the run in that case.

The Hon. CARMEL ZOLLO: This is probably a good example. We need the ability to capture offending patterns as they change, and we could not have a better example of trying to do something like this on the run. I think it is just not appropriate. As politicians and as legislators, we do need the ability to capture offending patterns of behaviour.

The Hon. SANDRA KANCK: I understand that, from advice I have been given, rather than delaying the committee at this stage, the solution might be to recommit this clause when we have completed everything else. I am not quite sure. Do we vote on that and defeat it?

The CHAIRMAN: The honourable member would have to withdraw the amendment. The clause will pass unamended and she can then ask for a recommittal.

The Hon. SANDRA KANCK: I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

Clause passed.

Clause 4.

The Hon. SANDRA KANCK: I move.

Page 5, lines 12 and 13 [clause 4(2)]

Delete 'Without derogating from subsection (1), it is not the intention of the parliament that the powers in this act' and substitute:

The powers in this act must not.

As much for the *Hansard* record and people reading this, this clause deals with the objects of the act. Subclause (2) provides:

> Without derogating from subsection (1), it is not the intention of the parliament that the powers in this act be used in a manner that would diminish the freedom of persons in this state to participate in advocacy, protest, dissent or industrial action.

I gave a number of examples in my second reading contribution, but I will remind members of the sorts of concerns that I had of the unintended consequences of this legislation. I suggested, for instance, that, if this act had been in place at the time of the Webb Dock dispute, and we had a Liberal government in power, it could well have used this legislation to declare the MUA as an outlaw organisation.

The Hon. T.J. Stephens interjecting:

The Hon. SANDRA KANCK: Obviously that had some appeal for some opposition members. It is the unintended consequences. I talked about my own experiences of being at the Narrunga demonstrations in the 1980s and how, for instance, some people pulled down fences. It is quite possible that, again, had this legislation been in place, as a peaceful protestor I could have somehow got mixed up in that and found myself to be not a declared organisation but to have a control order taken out against me because of this guilt by association. As I say, I gave a number of examples at the time. I will not go through them all, but they are just a couple of examples where there could be that potential for the legislation to net people whom even the government has no intention to net.

I am concerned that it is simply not strong enough to say 'it is not the intention'. My amendment makes it much stronger—rather than say 'it is not the intention', it will say 'the powers in this act must not', and so on. In effect it is saying that there is an absolute directive that they cannot be used for these other purposes. I would hope that, given that the government has gone in a timid sort of fashion in the objects to give a statement of intention, it would support me now in making this a much more robust instruction.

The Hon. CARMEL ZOLLO: The Hon. Sandra Kanck's amendment will make subclause (1) of the objects provision subject to subclause (2). The government opposes the amendment, which will undermine the effectiveness of the control order and the public safety order provisions, while providing little, if any, additional protection to people engaged in genuine protest, advocacy, dissent or industrial action. As to control orders, this will mean that a person's right to participate in advocacy, protest, dissent or industrial action will override the otherwise legitimate use of the powers, creating uncertainty as to when a control order can be made and the terms of any order so made.

It is not, for example, clear the effect the amended provision will have on the mandatory condition in a control order founded on a person's membership of a declared organisation, that the defendant not associate with other members of declared organisations. Proceedings for control orders will be frustrated as defendants argue that proposed prohibitions on them associating with specified people or attending specified premises would breach amended subsection (2). Members of declared organisations and others on control orders may avoid prosecution for breach of the order by attaching themselves to protest groups and carrying out their criminal associations under cover of the group's activities.

The amendment will lead to no end of legal challenges to orders and prosecutions for breaches of orders and, as a result, will undermine the effectiveness of the control order regime. As to public safety orders, clause 23(5), already provides quite clearly that a public safety order must not be made if it would prohibit a person or class of persons from being present at any premises or event or within an area if, first, (a) those persons are members of an organisation formed or whose primary purpose is non-violent advocacy, protest, dissent or industrial action, and (b) the officer believes that advocacy, protest, dissent or industrial action is likely reason for those persons to be present at the premises or event or in the area.

This is reinforced at clause 23(2)(c) of the bill, that requires the officer to have regard to the public interest in maintaining freedom to participate in advocacy, protest, dissent or industrial action when determining whether or not to make an order. Given these provisions, it is difficult to see what the amendment adds to the public safety order provisions.

There are other powers in the legislation affected by this amendment. These include: the powers conferred upon police officers to enable service of control orders and public safety orders on uncooperative people; to search premises and to stop and detain vehicles necessary for proper enforcement of public safety orders; and, to require personal details from people reasonably suspected of associating in breach of the new criminal association offence.

The effective use of these powers, which are essential for the proper enforcement of the legislation, will be undermined if, each time a police officer is required to use the powers, he must first determine whether he will be infringing upon a person's right to participate in advocacy, protest, dissent or industrial action. Criminals will use the limit on the use of the powers to frustrate service and enforcement of orders.

The Hon. Sandra Kanck's amendment will cause no end of problems and will be exploited by criminals seeking to avoid the legislation. For these reasons the government opposes this amendment.

The Hon. S.G. WADE: I want to explore the minister's assertion that the Hon. Sandra Kanck's amendments would cause no end of problems. Will the minister clarify what the impact of the objects are, considering that there are already provisions for protection within the legislation itself in relation to advocacy, protest, dissent or industrial action? What effect do objects have? My understanding is that, as a matter of statutory interpretation, they are not effective sections of the act and they are relevant only if there is ambiguity in the legislation.

The Hon. CARMEL ZOLLO: I am advised that the honourable member's interpretation is basically correct. The objects clause makes clear parliament's intention in relation to the use of the powers, and the Hon. Sandra Kanck's amendment places a limitation on the use of the powers.

The Hon. S.G. WADE: I wish to clarify a point. If the Hon. Sandra Kanck's amendment were to be supported it would have no impact unless there was ambiguity in the provisions, such that the courts would need to look back at the objects. The minister does the committee a disservice by melodramatically overstating the impact of an amendment. We do not intend to support it because, basically, it is of little impact. However, for the minister to come in here and tell us that the bill will collapse like a pile of cards if it is supported does not help the progress of the bill.

The Hon. M. PARNELL: I endorse the comments of the Hon. Stephen Wade up to the point when he said that he would not support the amendment. I think he is on to something here, because what we are talking about is the objects clause of the act. The Hon. Sandra Kanck is effectively replacing a fairly wishy-washy provision, 'It is not the intention of parliament that this law be misused,' with 'This law must not be misused.'

The way this would operate in practice is that any member of the police force or anyone who is exercising powers under this act will have regard to the objects, as they must. Whether the objects state 'It not supposed to be used for this wrong purpose' or 'It must not be used for this

wrong purpose' is a question of degree only. However, the debate will never arise until after some action is taken.

Let us say that a decision is made that diminishes the freedom of persons in this state to participate in advocacy, protest, dissent or industrial action. Whether the objects clause says you should not do that or you must not do that is beside the point. It will not become a live issue until we are in some position of dispute—until we are before a court, for example, arguing whether the powers of the act were properly exercised. It seems to me that 'the sky is falling' attitude of the minister is made even more untenable when we superimpose the privative clause in clause 41, which provides:

> (1) Except as otherwise provided in this act, no proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—

and there is a list of decisions under this act that cannot be challenged. It seems to me that this legislation has a very limited range of decisions that can be challenged. If the challenge that you want to bring is one of the very few that is allowed by this legislation, when members of the parliament are interpreting the proper exercise of a power, whether they are considering if something should not or must have been done is beside point: they are going to be looking at whether the powers were abused. So, I cannot see that the passing of this amendment interferes at all with the remainder of the act.

I disagree with the Hon. Stephen Wade in relation to his lack of support for the amendment because I believe it is symbolic, and it is important for us to state categorically in this legislation that this act must not be used to prevent these important civil liberties, in particular, in relation to protest and free speech. I will be supporting the amendment.

The Hon. CARMEL ZOLLO: The Hon. Sandra Kanck's amendment provides that the powers 'must not' be used. The amendment does not talk about misuse: it says that the powers 'must not' be used. The government firmly believes that this would create ambiguity as to whether or not the powers would be used, and we believe the court would reference back to such a provision in the act. For that reason, the government opposes the amendment.

The committee divided on the amendment:

AYES (2)

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

NOES (19)

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

Majority of 17 for the noes.

Amendment thus negatived; clause passed.

Clause 5.

The Hon. SANDRA KANCK: I move:

Page 5, lines 15 to 18—Delete clause 5.

This amendment deletes clause 5, which is about burden of proof. I am moving to delete this because it turns our whole legal system on its head so that decisions will be made, as it says in part 1, 'on the balance of probabilities' and not 'beyond reasonable doubt'. It is my view that the court should decide the standard of proof. If we return that power to the courts—

Members interjecting:

The ACTING CHAIRMAN (Hon. B.V. Finnigan): Order!

The Hon. SANDRA KANCK: I would be pretty amazed if the court were to decide on the balance of probabilities. Nevertheless, we have trained these people—who have been lawyers and who have been chosen by the government as the best and brightest—to go into the courts as

judges, and they are very capable of making decisions along these lines. I believe it is inappropriate for this parliament to direct the court that the decision must be made on the balance of probabilities.

The Hon. S.G. WADE: The opposition does not support the amendment; we also dispute the reasoning given. It is not uncommon for the parliament to specify burdens of proof. It is not as though 'beyond reasonable doubt' is the standard burden of proof; 'balance of probabilities' is used from time to time, and we think it appropriate that the parliament consider what is an appropriate burden of proof in the circumstances. In terms of the Serious and Organised Crime (Control) Bill the opposition accepts the government's proposal that the burden of proof be the balance of probabilities.

The Hon. P. HOLLOWAY: The government also opposes the amendment, for the reasons just given by the Hon. Mr Wade.

The Hon. SANDRA KANCK: I recognise that from time to time we do have legislation that gives instructions to the court but, of course, we have to determine whether that is appropriate. I do not believe that simply because something has been done previously is justification for doing it in the future. I would like the minister to explain why this clause is here in the first place and why the government considers that decisions based on the balance of probabilities are a better way to go with this legislation.

The Hon. P. HOLLOWAY: As to which burden of proof is appropriate, the government's position is that control orders and public safety orders are civil orders; that there is, upon the making of an order, no criminal sanction imposed upon a person to whom an order relates. Control orders and public safety orders are akin to restraining orders and domestic violence orders.

Section 99K of the Summary Procedure Act and section 70 of the Domestic Violence Act, respectively, provide that the civil standard of proof applies to restraining and domestic violence orders, other than proceedings for offences. That is what clause 5 provides in respect of control orders and public safety orders.

Amendment negatived; clause passed.

Clause 6 passed.

Clause 7.

The Hon. M. PARNELL: I move:

Page 5, lines 22 to 28—Delete clause 7 and substitute:

7—Delegation

The commissioner may not delegate any function or power of the commissioner under this act except to a deputy commissioner or assistant commissioner of police.

This amendment (my amendment No. 3) is a test for a number of my other amendments, including Nos 13, 14, 15, 16, 19, 20, 21, 22, 23 and 26. The purpose of this amendment is to ensure that significant decisions are made by an appropriate decision maker. In particular, my amendment seeks to prevent the delegation of decision making to other than the most senior police officers.

The Attorney-General himself acknowledges in his second reading speech that this legislation grants unprecedented powers to the police and to the Attorney-General. I believe that it is an appropriate check and balance for these 'unprecedented' (the Attorney-General's word) powers to be granted to only very senior members of SAPOL. The effect of my amendments is to ensure that only the commissioner of police, a deputy commissioner, or an assistant commissioner can exercise these powers.

At present, clause 7 provides that the Commissioner may not delegate the function of classifying information as criminal intelligence except to a deputy commissioner or an assistant commissioner. That is one particular task which could be delegated only to those senior officers, but clause 7 goes on to provide that the Commissioner may not delegate any other function or power of the Commissioner under this act except to a senior police officer. That is where my amendment comes in—to remove the reference to senior police officer and to make sure that it is only the Commissioner himself or herself, a deputy commissioner, or an assistant commissioner who can act under delegated authority. I look forward to support for this amendment from colleagues in the committee.

The Hon. P. HOLLOWAY: Clause 7 of the bill provides that the Commissioner may delegate any power or function under the legislation to a senior police officer except the

classification of criminal intelligence where his or her power to delegate is limited to a deputy or assistant commissioner. A senior police officer is defined in clause 3 to mean an officer of or above the rank of inspector. Clause 23 of the bill empowers a senior police officer to make a public safety order.

The Hon. Mr Parnell has placed on file amendments to restrict the power of delegation to a deputy or assistant commissioner and to require that the Commissioner make public safety orders, which, under the limited power to delegate, will mean this may be done only by a deputy or an assistant commissioner. I submit that these amendments, which are all aimed at restricting the exercise of powers under the legislation to the Commissioner, a deputy, or an assistant commissioner, be treated as a series, and that this amendment, the first in the series, be treated as a test amendment.

The functions and powers that may be delegated to senior police officers under parts 2 and 3—declarations and control orders—are relevant to the making of applications; that is all. The substantive decision to make a declaration or make a control order and the terms of any order is not made by the officer: it is made either by the Attorney General in the case of the declaration or the Magistrates Court or Supreme Court on appeal in the case of a control order.

In terms of court proceedings, officers below the rank of inspector prosecute offences every day and regularly appear before the courts on applications for restraining orders, paedophile restraining orders and domestic violence orders—all analogous to control orders. As to public safety orders, although an officer of or above the rank of inspector may make an order, this power is strictly limited.

Clause 25 of the bill provides that an order of the Magistrates Court is required before an officer can make a public safety order that will last longer than 72 hours or longer than the duration of a particular event. The right of objection is afforded to any person affected by an order where the order extends beyond seven days.

Senior police officers of or above the rank of inspector already make assessments and issue orders that impact upon individuals, including issuing drug search warrants under the Controlled Substances Act; hearing and determining applications for the conduct of forensic procedures that impact upon individuals under the Criminal Law (Forensic Procedures) Act; assessing circumstances and issuing orders to declare an area as dangerous, and excluding people from entering the area under the Summary Offences Act; and assessing and authorising the removal of children at risk under the Children's Protection Act.

From an administrative and enforcement point of view, SAPOL advises that restricting the making of a public safety order to a deputy commissioner or assistant commissioner will unduly hamper its ability to react swiftly in urgent cases. The government accepts this advice. In each case, the power conferred on the officer is limited. The government sees no reason why the efficient and effective administration of the legislation need be hampered by unduly restricting the exercise of the powers to assistant commissioner or deputy commissioner level. The Commissioner is comfortable with the current delegation provisions and so is the government.

The Hon. SANDRA KANCK: The Democrats will be supporting this amendment. In many ways, we are treating the people who are going to be subject to a control order in the same way that we intend to treat terrorists under the terrorism act and, in fact, some of the wording is very similar. Under those circumstances, when we are treating people at this level, with the capacity to make mistakes—and I know that people do not seem to want to admit that the police can make mistakes, but they do—I think it is really important that we have our most experienced police officers deal with all of these matters.

The Hon. M. PARNELL: I accept what the minister says that officers below the rank of inspector routinely prosecute offences, and that is just fine by me, because they are effectively lawyers in court who are presenting a case to a decision maker who will make that ultimate decision. The difference here is that the decisions that are being made by senior police officers are beyond challenge and review.

The minister pointed out that, when it comes to these public safety orders, those of a fairly lengthy duration have to go through a slightly more convoluted process, but there is nothing in this legislation to stop a more junior officer (an inspector, for example) locking down a suburb for a short period of time. We would hope they would not use it to infringe the civil liberties of people engaged in genuine protest, hence the amendment we talked about before. But it seems to me that, when you have decisions being made that are unchallengeable, one of the best checks and balances that we can have is to make sure that very senior people are involved in those decisions.

I do not think that this unduly gets in the way of the administration of these provisions. For example, in relation to public safety orders, one of the senior police officers can be on the phone very quickly to an appropriate more senior decision maker to get that final decision made, so I believe it is appropriate. I remind members that, in the Attorney-General's own words, these powers are unprecedented, so let us make sure that they are not exercised lightly and that only the most senior of our police officers are entrusted with these unprecedented powers.

The Hon. P. HOLLOWAY: I point out to the committee that we are applying public safety orders to individuals. You cannot lock down a suburb. You can only apply them to an individual or a number of individuals but, unless you were to issue a public safety order to an entire suburb, how do you lock down a suburb?

The committee divided on the amendment:

AYES (17)

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

NOES (2)

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

Majority of 15 for the ayes.

Amendment thus negatived; clause passed.

Clauses 8 and 9 passed.

[Sitting suspended from 18:05 to 19:45]

Clause 10.

The Hon. SANDRA KANCK: I move:

Page 6 , line 25 [clause 10(1)(b)]—After 'order' insert:

in this state

I draw members' attention to my amendment No. 6, which I suppose will be consequential to this, so that if this amendment is defeated, then I will not be moving my amendment No. 6. I am moving this amendment now because of what is in clause 10(3)(d), although I am talking about clause 10(1)(b) at the moment. Clause 10(1)(b) is about declarations and, if the Attorney-General is satisfied on either one of two points, then an application by the commissioner can be put into effect by the Attorney-General.

Clause 10(1)(b) of the second qualification is that the organisation represents a risk to public safety and order and, because of what it says in 10(3)(d), I am adding the words 'in South Australia'. Clause 10(3)(d) states that in considering whether or not to make a declaration under this section the Attorney-General may have regard to any of the following subclauses including:

(d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity.

As I put those two things together, it is pretty clear that if the Attorney-General knows that a chapter of the Hell's Angels in California is associating for these purposes then he can use that as the basis under clause 10(1)(b). I cannot see any rhyme or reason for groups of any sort here in South Australia to be tarred with the same brush as a group in another state or another country. If my amendment passes, it would require that the Attorney-General would need to be satisfied that the group in South Australia was a risk to public safety and order.

The Hon. P. HOLLOWAY: In relation to amendment No. 4, the government does not see that being linked necessarily to amendment No. 6.

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Yes, but we see them as different matters. I will explain that as we go along. Clause 10(1) of the bill sets out the matters about which the Attorney-General must be satisfied before he may make a control order. These are: (a) that the members of the organisation associate for criminal purposes; and (b) the organisation represents a risk to public safety and order. Ms Kanck's amendment would add the words 'in this state' to paragraph (b). That is, the Attorney-General would have to be satisfied that the organisation represents a risk to public safety and order in South Australia and only South Australia. We do not have any problem with that particular amendment because, with or without those words, the Attorney-General's focus is going to be on the risk or threat the organisation poses to this state. That is the intention of the provision and that is the purpose of the legislation. We see no difficulty in amending the provision to make that clear, as the Hon. Ms Kanck proposes.

However, in relation to her later amendment, we would not support that because clause 10(3) sets out the matters the Attorney-General may have regard to when determining an application for a declaration against an organisation. Under paragraph (d) he may consider information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the relevant criminal purposes. Obviously, we believe that is highly relevant to a gang. However, in relation to the first part, yes, the Attorney's focus will obviously be on a threat here in South Australia, to take action here in this state, so we can support the Hon. Ms Kanck's amendment No. 4, but we would oppose her later amendment No. 6.

The Hon. M. PARNELL: I support the Hon. Sandra Kanck's amendment. I think it is a sensible clarification to make sure that the risk to public safety and order should be one that is relevant to the people of South Australia. I think there is a connection, as the Hon. Sandra Kanck has pointed out, between this and a later provision which provides that overseas information might be used in making a decision in relation to one of these organisations. I think the two are connected but I am pleased that the government has supported this sensible clarifying amendment.

The Hon. A. BRESSINGTON: If a motorcycle gang (using that example again) is doing an interstate run from Western Australia to South Australia and some of its members from Western Australia are coming over our border and staying here for a while, and doing regular trips backwards and forwards as we know they do, is this not going to restrict the level of intelligence that the police can gather and limit the order if, in fact, they are regular visitors to this state?

The Hon. P. HOLLOWAY: It is not really about the intelligence. All clause 10(1) relates to is the matters about which the Attorney-General must be satisfied before he makes a control order. If they are crossing the border, and they are a risk to South Australia then the Attorney can make a control order. If they were in New South Wales crossing into Queensland and they were not a threat to South Australia, then the Attorney would not make a control order anyway: that is essentially all we are saying. However, in relation to the later amendment, we say that the Attorney should have regard to that interstate information.

If you have an interstate chapter that is engaged in serious criminal activity—it might be a West Australian chapter—that is a factor that the Attorney should take into consideration. That is why we oppose the Hon. Sandra Kanck's later amendment, because she says that should be taken out. We say that, no; that should be a factor in the Attorney's determination, but before he actually issues the control order he has to be satisfied that it does represent a risk to public safety and order in South Australia. That is just obvious, because we cannot be responsible for other states.

The Hon. S.G. WADE: I would like to explore this suggestion by the minister because, under the definitions, an organisation is defined as 'any incorporated body or unincorporated body however structured whether or not the body or group is based outside South Australia, consists of persons not ordinarily resident in South Australia or is part of a larger organisation'.

As I understand it, it may well be that we make a declaration of an organisation which has interstate chapters and, presumably, by declaring the Hell's Angels in South Australia we would have access to the relevant orders in relation to chapters of that organisation beyond. However, it may well be possible either currently or in the future that an outlaw motorcycle gang—or let us just say an organisation liable to be declared a declared organisation under this act—might become active and, as the Hon. Ann Bressington envisages, might actually threaten public safety in South Australia prospectively, in the sense that we know that they want to trample all over the countryside.

I would like to explore in this committee stage whether in fact inserting 'in this State' at the end of (1)(b) actually inhibits the apparent capacity in the definitions to include organisations

beyond South Australia, because there is in my hearing a sort of currency about the word 'represents'. It suggests, if you like to use an inappropriate term, 'a clear and present danger'.

The Hon. P. HOLLOWAY: This would be an organisation that represents a risk to public safety and order and this would just add 'in this State', so in other words the risk has to be in South Australia. The intelligence could be gathered from outside, and that is why we would oppose the later amendment, because we need that information. Essentially, the Attorney will issue a control order only if there is a risk in South Australia.

It is pretty hard to envisage a situation where a body would pose a risk somewhere else but not here. I cannot think of a scenario where a body that was in South Australia posed a risk somewhere else in the world but not here. It is a pretty hard situation for me to envisage. If they are present in South Australia or they are establishing in South Australia and they represent a risk here, then that is when you would issue a control order. If they are not here and they are not posing a risk to this state, why would you issue a control order? Sorry; we are talking about declarations here.

The Hon. S.G. WADE: I would be more comfortable if the minister were trying to persuade me that I was reading 10(1)(b) too narrowly in the sense of whether or not it needed to be a current risk or a clear risk. To suggest that because they are not in South Australia they do not represent a risk is contrary to the definition the government puts forward in 'organisation'.

The Hon. P. Holloway: I am saying that they have to represent a risk in South Australia.

The Hon. S.G. WADE: I understand that. I think it is quite conceivable that an organisation outside South Australia could represent a risk to public safety and order in South Australia, just as the Hon. Ann Bressington has rightly pointed out. These are notoriously mobile people.

The Hon. P. HOLLOWAY: They are, but as soon as they pose a risk in South Australia a declaration is issued; if they are not a risk to South Australia, that is a problem for Western Australia or Victoria if it is a risk in their state.

The Hon. A. BRESSINGTON: If someone resides in Western Australia, they come here regularly and meet with people who are known to be involved in organised crime and whatever else but stay here only two or three days, plotting and planning about whatever it is they are going to do or whoever they are going to blow up, and they hop on a plane and go back to Western Australia, they are a risk to but are not residents of South Australia.

When they are here, can an order be issued against them so that, when they are here, they cannot associate and, if they do, they will come under the control order while they are here?

The Hon. P. HOLLOWAY: There are two issues here. Clause 10(1) is the test the Attorney must apply before he is satisfied about an organisation prior to his making a declaration under that clause. He must be satisfied that the organisation represents a risk to public safety and order. This amendment states 'in South Australia', and that is where the Attorney is responsible. However, clause 10(3), which is the conditions, provides:

> (3) In considering whether or not to make a declaration under this section, the Attorney-General must have regard to any of the following:
>
> (a) any information suggesting that a link exists between the organisation and serious criminal activity;
>
> (b) any criminal convictions...

Clause 10(3)(d) provides 'any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating'. The risk has to be in South Australia, but the Attorney would consider their interstate behaviour. It is a factor, and it is what he takes into consideration when he issues a declaration. The ultimate test is that there must be a risk to public safety and order in this state. Obviously, the Attorney in South Australia is unlikely to make a declaration if there is no risk in this state.

The Hon. A. BRESSINGTON: I am not being obstreperous about this, but I just want to get it clear. If a guy who comes over from Western Australia to South Australia is a member of the Hell's Angels, say, and he is here for only a couple of days at a time (the Hell's Angels is a declared group in South Australia; it is stamped and so on), if he meets with people from the chapter in South Australia, because the Hell's Angels is a declared organisation can we slap a control order on him because he is consorting with known members? He is not a resident of South Australia. I know that this relates to declaration, but it also ties in with the control order, that is, he is a visitor but also a member.

The Hon. P. HOLLOWAY: Clause 10 does not talk about control orders; that is clause 14. Here we are talking about the Attorney's declaration about organisations: it would be about whether or not some particular gang is to be declared. For him to declare it, the test is that he has to be satisfied it is a risk to public safety and order in South Australia, if Ms Kanck's amendment is passed. The Attorney could hardly say that there is no risk in South Australia but there is a risk somewhere else. I think he is hardly likely to use the act. However, we would oppose the later amendment because, in making that declaration, we think it is relevant that the Attorney should have consideration to what happens interstate, but we will come to that in a minute.

The Hon. M. PARNELL: I want to tease this out a little more because I think the Hon. Sandra Kanck has opened a can of worms. There are two provisions, which, side by side, I think might lead to some constitutional or, at least, some jurisdictional problems. The first is that the definition of 'organisation' makes it clear that the organisation can be based outside South Australia and it can consist of persons who are not ordinarily resident in South Australia. For example, there could be a group based in Dimboola consisting entirely of residents of the state of Victoria. It could even be the case that not one single member of that organisation has ever ventured across the border into South Australia, yet perhaps this group has been running amok in the western district of Victoria and the Attorney-General forms the view that, given the proximity of the western part of Victoria to South Australia, by their very existence just across the border they represent a threat to us in South Australia.

That is my reading of this clause, because clause 10 provides that the Attorney has to be satisfied, first, that these people associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and, secondly, the organisation represents a risk to public safety and order. Even if we do amend it to say 'a risk to public safety and order in South Australia', it seems to me that we are giving the Attorney the ability to declare organisations whose connection with this state is very remote indeed and based purely on the fear that they might cross the border. I note in clause 10(3) that paragraphs (a) to (f) list the things to be taken into account and states 'any' of the following, not 'all' of the following. It is not 'and', 'and', 'and' between each of these: it is 'any' of these, which means any one of these.

The Hon. R.D. Lawson: Disjunctive.

The Hon. M. PARNELL: Thank you to the Hon. Robert Lawson SC. My question of the minister is: given the fact that we can be declaring in this state organisations consisting entirely of members who are resident in another state and whose base is in another state, and where there might be no past connection but only a fear in relation to South Australia, are there constitutional or jurisdictional questions with our imposing as a state our declarations on such an interstate organisation?

The Hon. P. HOLLOWAY: Most of these criminal outlaw motorcycle gangs have chapters; some of them are in all states or most states. If you have a gang that is based solely in one of the states, but if that gang comes into South Australia periodically—if it is running a protection racket or doing something such as that—and it is a threat in South Australia, then the Attorney may consider declaring it and he would take into consideration the paragraphs in clause 10(3). Obviously he will consider whether it is a risk in South Australia. He may take into account what that organisation (or its fellow chapters) is doing in other states, because that will give him a better picture about the risk posed. All the Hon. Sandra Kanck's amendment does is say that the risk to public safety and order has to be in South Australia, but that will be the case with the Attorney, anyway.

I think the Hon. Mark Parnell was posing the situation in relation to a gang where there was no immediate threat but there may be a threat in the future. I think all the Hon. Sandra Kanck's amendment does is clarify what the Attorney would almost certainly do anyway, and that is certainly consider the risk here in South Australia, not necessarily the threat somewhere else. But the reality of these gangs is that they are national bodies and have chapters all over the place, and their national behaviour is obviously a relevant factor, we believe, for the Attorney to consider. But at the end of the day it is the risk here to this state, whether or not they are mainly based here, that the Attorney should be considering before he makes the declaration.

The Hon. M. PARNELL: Is there any legal or jurisdictional difficulty in declaring an interstate organisation a declared organisation under South Australian law when no member is resident here and the organisation is not based here?

The Hon. P. HOLLOWAY: If one looks at the later clauses such as clause 9, for example—publication, notice of application, in the *Gazette*, and all this sort of thing—there clearly has to be some link to South Australia. The Attorney is essentially concerned about the risk here in

this state. We cannot be responsible for what happens in other jurisdictions, but it could well be that chapters of a particular organisation are based mainly in other states and conducting raids into South Australia and causing a risk in this state. If they are, and the evidence is there, you would expect the Attorney to make a declaration because there is a threat to this state. If there is not a threat to this state, why would he make a declaration?

The Hon. S.G. WADE: My understanding of the Hon. Mark Parnell's questions is that they are relating more to constitutional competence. Clause 6 of this bill talks about extra-territorial operations. It states:

> It is the intention of the parliament that this act apply within the state and outside the state to the full extent of the extra-territorial legislative capacity of the parliament.

My understanding of that capacity is that we can make laws in relation to poodles being walked in Paris, so why can't we make rules about the Dimboola Raiders? If I am right and the Hon. Mark Parnell is talking about competence, I think we do have the competence.

The Hon. R.D. LAWSON: Perhaps if I can mention the elephant in the room, which is based on the terrorism legislation, and the first declaration that the federal Attorney made under that legislation, the competent legislation, was to declare al-Qaeda a prescribed organisation, notwithstanding the absence, as far as I am aware, of any such chapter in Australia. But I think that illustrates the point that, in order to make this legislation workable, the Attorney has to have the power to declare any organisation which he considers is a threat to South Australia. Presumably he will not make the declaration if it is the Inuit sewing circle.

The Hon. S.G. WADE: To tease out this point further, I think it is a reasonable provision because, if the government has grounds to believe that an organisation external to South Australia has, shall we say, expansion prospects in South Australia, why should it have to wait to get criminal intelligence that they are within South Australia to act? Considering that the process of declaring an organisation does take time, if under clause 10(3(d) they have information about this group's activity and reason to suspect that they might be planning a South Australian chapter, why not nip it in the bud?

The Hon. P. HOLLOWAY: Exactly, and that is why we support the retention of clause 10(3)(d), but we are quite happy to clarify that the risk has to be in South Australia. That is really all it is.

The Hon. D.G.E. HOOD: I think the fact that we have debated this for some time now serves to highlight the fact that this amendment adds some confusion to the bill, I believe. It is very generous of the government to offer to support the amendment, because it is not supporting many of the Hon. Ms Kanck's amendments. I believe that adding this phrase to the bill serves only to confuse the matter. I am sure that was not the intention, but that is the outcome. The reality is that we are a state parliament and we deal with issues that affect this state. That is obvious: it is the elephant in the room, as the Hon. Mr Lawson said. Family First will oppose the amendment. I think it serves to add confusion rather than clarity.

The Hon. A. BRESSINGTON: For the same reasons I am inclined not to support this amendment. Poor old Dimboola Raiders (or whatever they are called) may be in Victoria and be making regular visits here, as the Hon. Mr Wade said, in order to expand. Why do we need to wait until that happens? If the Attorney-General has the criminal intelligence to indicate that another troublesome group is coming over the border to set up, it has been getting organised for the past six months, we should declare them before they get here. I will not be supporting the amendment.

The Hon. P. HOLLOWAY: If it is doing that there would be a risk to South Australia.

The Hon. A. BRESSINGTON: But they are not resident in South Australia.

The Hon. P. HOLLOWAY: I am really sorry in a way that I agreed to do it. We do not see it as being a big thing. In the case of Dimboola Raiders—which is a mickey mouse name for a bikie gang—why would we be interested unless there is a threat to South Australia? We regard it as a very minor point. What is more important is that we keep clause 10(3)(d) because that provides that the interstate intelligence is very important. If the Attorney-General could not be satisfied that there was any risk to South Australia, why would he declare the organisation? Unless there was some evidence it was going to establish here and be a threat, why would we do it? I take the point made in the terrorism example of the Hon. Robert Lawson.

We believe the Attorney-General will have more than enough to do under this bill in relation to those gangs that are operating here in one form or another, even if based somewhere else, to

keep him busy for some time. We do not believe that saying the risk has to be in South Australia will be any real restraint on his behaviour. It is not something over which the government will lose any sleep, whether it goes one way or the other.

The Hon. A. BRESSINGTON: For example, if Dimboola Raiders are in Victoria and we know that they are a risk to South Australia but have not yet established here—because they are recognised to be a risk to South Australia but they have not yet arrived—can the Attorney-General declare them a risk to South Australia before they are actually set up and established here?

The Hon. P. HOLLOWAY: The test is whether he believes they represent a risk to public safety and order. Even if the Hon. Sandra Kanck's amendment was not moved, it would still be implicit that it represents a risk to public safety and order under the Attorney-General's jurisdiction—which is South Australia. If we thought they were establishing here, regardless of whether the Hon. Ms Kanck's amendment is carried, the Attorney-General would want to be satisfied it was a risk within his jurisdiction.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 6, lines 28 to 30 [clause 10(2)]

Delete subclause (2) and substitute:

(2) The Attorney-General must not make a declaration under this section in relation to an application unless—

(a) the Attorney-General has undertaken consultation with the Commissioner for Social Inclusion (or, if no person is appointed as the Commissioner for Social Inclusion, with the Minister for Families and Communities) in relation to the impacts of such a declaration on persons or groups likely to be affected by the declaration; and

(b) the period for making submissions in relation to the application referred to in section 9(b) has expired.

Effectively, while this amendment takes out subclause (2) and puts in a new one, what it is really doing is adding a paragraph (a) and a paragraph (b); so that what is there in the existing clause about making submissions in relation to the application referred to in section 9(b), etc., will still be part of the bill or, ultimately, the act. The bit that I am putting in here is about consulting on the basis of social justice. The Premier of this state has made a great deal out of social justice and social inclusion, having created the position of a Commissioner for Social Inclusion and even having that person able to attend cabinet meetings.

Clearly, it is a very important part of the emphasis that this government puts on all forms of decision making; hence I believe it is very important—given the potential impacts of this legislation, and I am looking at Aboriginal families in particular—that this sort of consultation is undertaken.

The Hon. P. HOLLOWAY: This amendment amends clause 10(2) of the bill that prohibits the Attorney-General making a declaration until the 28 days for submission are up to add a new subclause that will prevent the Attorney-General from making a declaration unless he has undertaken consultation with the Commissioner for Social Inclusion or, if no-one is appointed to that position, with the Minister for Families and Communities in relation to the impacts of a declaration on persons or groups likely to be affected by the declaration. The government opposes this amendment. Given the matters about which the Attorney-General must be satisfied before he can make a declaration about an organisation that members of the organisation associate for criminal purposes and that the organisation poses a risk to public safety and order, the government does not think it appropriate that the Attorney must then go on and consult about the impact of a declaration on those who are likely to be affected by it.

There is no doubt that a declaration will impact upon the members of a declared organisation and people who associate with them for criminal and other purposes, but that is the intent of the legislation. Once the Attorney has reached the point where he is satisfied that the requirements of clause 10(1) are met, the government believes that this should be sufficient for him to make a declaration. The government sees no reason why there should be a statutory requirement that the Attorney-General consider the impact of a declaration on persons or groups likely to be affected by it—in the main, criminals and their associates—before making a declaration.

However, the Attorney can do this anyway under clause 10(3)(f) if he considers it relevant. Clause 10(3(f) provides:

> In considering whether or not to make a declaration under this declaration under this section, the Attorney-General may have regard to any of the following:
>
> (f) any other matter the Attorney-General considers relevant.

If it was a case where for some reason that might be relevant, the Attorney could do that, but we believe there is really no purpose in requiring him to do it every time for the main purpose of this, which concerns outlaw gangs, particularly the criminal outlaw motorcycle gangs.

The Hon. S.G. WADE: Could the minister clarify his understanding of the impacts of a declaration? My understanding is that it has no impact other than the fact that it is relevant to provisions later in the act. In that sense, if the Attorney was asked to consult with the Commissioner for Social Inclusion or the Minister for Families and Communities in relation to the impacts, basically, he would have nothing to tell them because he would not know what the impacts were until a control order, public safety order or whatever was being proposed. In that regard, my understanding is that control orders, such as are provided in clause 14(6), for example, do invite the court to consider a range of matters that are relevant to the defendant, including 'any other matter'. I would have thought that was the place where social impacts could be considered.

The Hon. P. HOLLOWAY: The honourable member is correct. Here we are just talking about the Attorney declaring an organisation—obviously control orders, which come under clause 14, are a different matter. The Hon. Stephen Wade is correct: that is the appropriate place, and under subclause (6) the court must have regard to those factors.

The Hon. M. PARNELL: I support the amendment because it puts this law and order initiative in more of a social context than it was. We must remember that these declarations are the root of a great many other provisions that follow, such as the restrictions and controls on members of those organisations and on those who deal, meet or communicate with those members. The attraction for me with this amendment is that it invites the Attorney to talk to someone at an early stage, namely, the Commissioner for Social Inclusion and to potentially find out that there may well be programs afoot that are dealing with an issue in another way; for example, all of us would have seen over the years on television some of the Aboriginal aunties coming out and talking about their projects to try to get their young people back on track.

It seems that, if the opinion of the Commissioner for Social Inclusion is that programs outside the criminal justice system were having an effect and that they were starting to inhibit or control the behaviour of some of these people, the correct answer might be to not declare that organisation but to let those programs take their course. The minister says that the only target of these declarations are to be criminals and their associates. That may well be the case, but the point is that we are using a very blunt criminal law instrument, which might not be appropriate if we are talking about some of the younger criminals whose path before them is to either go deeper into the morass of organised crime or maybe take the broader path to rehabilitation. It seems to be no great imposition on the Attorney-General to at least ask the opinion of a public officer, whose job it is to try to understand what is happening with disadvantaged groups in the community, and that will include groups of young people at risk of getting into criminal behaviour.

I know that the minister can say that the Attorney can take into account anything that he or she wants; that the Commissioner for Social Inclusion can make a submission because there is a process, but they might not do that—it needs to be drawn to their attention. I would have thought that the very small additional requirement of a phone call or letter saying, 'We are thinking of making this group a declared organisation; have you any thoughts?' may well see the response, 'Don't do that; you'll just lock them in with a stamp of "no-hoper", a stamp of "society rejects you"', when it may well be that there are other social programs that will achieve the same result. It is a sensible amendment, and basically it is a very slight additional check and balance on what is a fairly unfettered ministerial discretion.

The Hon. A. BRESSINGTON: Enlighten me! So, we are now taking a law and order bill and putting it into social justice and we are going to leave the decision up to Monsignor Cappo instead of the Attorney-General.

Members interjecting:

The Hon. A. BRESSINGTON: Why? When was Monsignor Cappo, the Commissioner for Social Inclusion, given the authority to make any kind of judgment at all about whether or not an organisation should be declared?

Members interjecting:

The ACTING CHAIRMAN (Hon. I.K. Hunter): Order! Ms Bressington has the floor.

The Hon. A. BRESSINGTON: Has anyone asked Monsignor Cappo whether he is even slightly interested in this? Why don't we just take them all and give them bed and breakfast first? This is a law and order bill, and we are constantly seeing the Democrats and the Greens trying to water it down to make it into a social justice issue. As regards these people who are being considered to be a declared organisation, there is criminal intelligence behind the decision. It is a law and order decision, not a social justice decision, and I strongly oppose this amendment.

The Hon. P. HOLLOWAY: As does the government. The mind boggles a bit when you think of dealing with the Hell's Angels, the Finks and so on, where a sort of a welfare program might help them. Can you imagine the sort of program that you might put in place?

An honourable member interjecting:

The Hon. P. HOLLOWAY: I think even that would be unlikely to have any impact whatsoever. We are talking here about hardened criminals. There may be some associates at the end—and this is where I guess the control orders come into it, because members will recall that, under clause 10, the Attorney has the duty to decide whether or not a declaration is made about an organisation. It is under clause 14 that the Commissioner applies to the court, and the court would make a control order against a person. So, that is where the person has come in. Whether a young person might be marginally involved, I guess, is an issue to consider at that stage, but there should be no doubt that the sorts of organisations that the Attorney would declare are way beyond programs to assist them. We are not dealing with your—

The Hon. A. Bressington: Cracker in a letterbox.

The Hon. P. HOLLOWAY: Yes, exactly.

The Hon. S.G. WADE: The opposition is not inclined to support this amendment.

The Hon. R.I. Lucas interjecting:

The Hon. S.G. WADE: I am prompted by a senior member of my colleagues to assure the committee that the opposition has very high regard for Monsignor Cappo. I would not want to dismiss out of hand that Monsignor Cappo or the Minister for Families and Communities might have something relevant to provide to the Attorney-General, but I remind the committee of clause 9, which provides that a notice will be published in the *Gazette* and in a newspaper in the state. If Monsignor Cappo or the Minister for Families and Communities had any relevant information, like any other member of the public, they would have been duty-bound to provide that information to the Attorney-General. So, the opposition is comfortable with this provision.

The Hon. SANDRA KANCK: It is not the intention, as the Hon. Ann Bressington asserts, to give the Commissioner for Social Inclusion an overriding power. This is a consultation provision. As I said when I was explaining the amendment, I was looking particularly at Aboriginal people. If the declaration that the Attorney-General is considering is the Gypsy Jokers, he gets on the phone to the Commissioner for Social Inclusion or the relevant minister and says, 'What do you think?' and the answer is, 'Go ahead with what you are going to do.' However, as I said, I am concerned about Aboriginal people. I would be very interested to hear from the minister whether it is the government's intention to declare the gang of 49.

The Hon. P. HOLLOWAY: Let me just hasten to add, as the police have said, that the gang of 49 is not really a gang: it is a term that is used for what was at a particular period of time 49 individuals. As has been pointed out, there is a loose connection between that group, but they operate as a series of individuals who associate. They are not, as such, an organised gang. That is a completely different question. If there are individuals who are part of an organisation that is declared, any issues relevant to those individuals would be considered during the control order stage, not during the declaration of the gang stage.

The Hon. M. PARNELL: I have just been reminded that Monsignor Cappo was, in fact, the author of the Break the Cycle report. He is intimately involved with the criminal activities of the gang of 49 in particular. So, leaving aside—

The Hon. P. Holloway: It's not really a gang—

The Hon. M. PARNELL: No; I understand. Leaving aside whether or not it is an entity that would be caught by a declaration—and I am not going to push this point; it is the Hon. Sandra Kanck's amendment, and the committee has made its view pretty clear—let us not be trite about the fact that it is either social or law and order but there is no overlap between the two. Clearly, the Commissioner for Social Inclusion is engaging himself in the debate about juvenile crime. So, let us

not belittle the amendment. I think it was genuinely moved, and I think it is a sensible amendment. However, if the committee does not see fit to support it, that is the committee's view.

The Hon. P. HOLLOWAY: Just by way of clarification, the so-called gang of 49 has been a convenient media tag for a number of individuals, but it is not—

Members interjecting:

The Hon. P. HOLLOWAY: No; it is not a term that I use and it is not a term that the police use: it is a tag that has been used by the media. It is neither a gang nor is it exactly 49 individuals; as the police point out, it varies from time to time. The police operation, Operation Mandrake, was looking at particular types of behaviour, and it involves a group of targets. I just want to stress that it is not the sort of organisation that would be declared under clause 10 of this bill because it does not qualify as such, and it is erroneous to try to link—

The Hon. R.I. Lucas interjecting:

The ACTING CHAIRMAN: Order! If the Hon. Mr Lucas wants to make a contribution, he can do so by drawing it to the attention of the chair.

The Hon. A. BRESSINGTON: By way of clarification from the minister, the gang of 49 is not considered to be a gang because they—

The Hon. R.I. Lucas interjecting:

The Hon. A. BRESSINGTON: Hang on. I can see the difference between the gang of 49 and a street gang like RTS or MEB, because RTS and MEB have a hierarchy and they have a plan. They meet in clubhouses, and they organise their nightly activities very well. They carry weapons, and they are provided those weapons by motorcycle gangs. The gang of 49 may be 49 Aboriginal youths or people, or whatever, who know each other, and maybe five or six of them get together—

The Hon. P. Holloway: They are not entirely Aboriginal.

The Hon. A. BRESSINGTON: Whatever. I don't care if they are—

The Hon. R.D. Lawson: There are only 48 of them.

The Hon. A. BRESSINGTON: Well, 48 black and white individuals who know each other, and maybe five or six of them have a few too many drinks, get together and go out and do a ram raid on a hotel and steal some grog and some cigarettes, or they set alight a car or whatever, but they are not an organised, structured gang, and that is the distinction, is it not?

The Hon. P. HOLLOWAY: Essentially, yes.

The Hon. R.D. LAWSON: I am sort of staggered to hear the minister making these announcements now about a criminal gang which is causing havoc in the northern suburbs of Adelaide and which the government has constantly been railing against, issuing press releases condemning the gang of 49 and its criminal activities, etc. We have the minister tonight saying, 'Oh, no, we're not contemplating that. We don't want to offend Jimmy Barnes because they come from the northern suburbs. We are not going to declare a gang that happens to operate in the Premier's electorate. No, that's not what we have in mind at all.'

I cannot for the life of me see why the so-called loose group of 49, or 48, 47 or 53, or whatever it is, could not be declared under this particular legislation: it could be. So, for the government to be making a political decision here, through the minister, that these people are protected from this legislation is absolutely outrageous and inconsistent with the notion of this bill, which is serious and organised crime. Frankly, if that group of people who are regularly harassing people in the northern suburbs are not engaged in serious and organised crime, I do not know what they are engaged in.

Monsignor Cappo has been mentioned in this context, and I remind the committee that, as Commissioner for Social Inclusion, the monsignor regularly makes submissions in relation to dry zone declarations. The government declares an area to be a dry zone, and the commissioner's office—or him personally, for all I know—regularly makes a submission about that in response to the notices published in the *Gazette*. So, as my colleague the Hon. Stephen Wade has pointed out, this legislation, and in particular clause 10(3)(e), allows submissions to be made by any member of the public. Monsignor Cappo and anyone else—the Kindergarten Union—can put a submission in relation to a proposed declaration.

The Hon. R.I. LUCAS: I rise to support the comments made by my colleague the Hon. Robert Lawson and repeat, for the benefit of the minister, that it will not be a decision for him or his colleagues sitting in this chamber this evening as to who is in or out in terms of possible candidates for being a declared group. It will be a decision for the current Attorney-General for as long as he is in the position; if the Attorney-General, Mr Atkinson (with all his blessed and wondrous eccentricities), decides that the gang of 49 is to be declared then that will be his decision. It will not be a decision for the Hon. Mr Holloway, unless what he is saying in regard to decisions to be made by the Attorney-General is that this will be voted on by the cabinet.

Contrary to the suggestion made by the Hon. Mr Holloway that this 'gang of 49' is some invention of the media, it is not. It has been led by ministers of this government, by the Premier and the Attorney-General—and indeed by other followers of this government. Certainly, members of the media have followed, and have used the description, but members of the government from the Premier down have used the description of the gang of 49. The Hon. Mr Lawson, who has a greater knowledge of the law than anyone else in this chamber, makes it quite clear that it is possible for an Attorney-General to declare such a group. It would be a decision for the Attorney-General, and it is not for the Leader of the Government in this place to stand up and try to indicate that it is not going to happen. He is not in a position to give that undertaking in relation to the legislation.

The Hon. P. HOLLOWAY: Clause 10 provides:

> If, on the making of an application by the Commissioner [that is, the Commissioner of Police] under this part in relation to an organisation, the Attorney-General...

Yes; it is true that the Attorney makes the declaration on the Police Commissioner's application. All I was pointing out was that the police talk about some Operation Mandrake targets, a loose group of people that varies in number. As I said, the police do not consider them to be a gang. It is the Attorney's decision, but the commissioner has to apply and I was simply pointing out, for the record that, while what is loosely referred to as the gang of 49 is a group of people who indulge in very risky, dangerous behaviour at various levels of criminality, it is not an organised crime organisation as such.

As I said, police refer to them as Operation Mandrake targets, and their numbers vary from time to time, but it is quite different—as the Hon. Ann Bressington, at least, seems to understand. Organisationally it is totally different to an outlaw motorcycle gang, and I was simply pointing out what was the police view of this so-called gang of 49. It was nothing more than that. However, yes, it is the Attorney who would make a decision, but in relation to Operation Mandrake the police would not be applying because they do not regard it as an organised crime organisation.

The Hon. SANDRA KANCK: I seem to be opening cans of worms with my amendments. I did say that my major concern for moving this amendment was in terms of Aboriginal people, and I was specifically thinking of the gang of 49. What the minister said has, I think, added to the confusion of many of us about just what a declared organisation is. I go back to clause 3, which provides that an organisation means any incorporated body or unincorporated group. That is pretty wide, I have to say. Having asked whether the gang of 49 would be declared, can I look at this group: the Middle East Boys? Would they be the sort of group that would be declared, and what is the difference between them and the gang of 49 that would result in one group being declared and the other not?

The Hon. P. HOLLOWAY: The process would be initiated by the Commissioner of Police. If this group is a cohesive organised crime group rather than just a group of people of similar background who are put in a database together because of similar behaviour, which is essentially what Operation Mandrake is about, that is different from a group such as the type that the honourable member just mentioned, which is a group of people who behave in a gang fashion.

The Hon. A. Bressington: An organised fashion.

The Hon. P. HOLLOWAY: Yes, an organised fashion. It is really essentially up to the Commissioner of Police to initiate that process. Again, I am sorry for the confusion in relation to the gang of 49. The name 'gang' is used, but it is essentially just a group of people with like behaviours rather than people who may associate as a group. As I understand it, they do not even associate with each other; a few of them might. There are different groupings amongst them, but they do not necessarily see themselves as part of one group as is the case with outlaw motorcycle gangs and these affiliated groups.

The Hon. R.D. LAWSON: We are actually debating this bill today because of an altercation which allegedly occurred between the Gypsy Jokers and a group, which I presume is unincorporated, called the Middle East boys. Everybody here knows that the Attorney will make a declaration in respect of the Gypsy Jokers and certain other groups that he has been talking about for years; he loves reciting the seven groups. The discussion, especially from the minister, has highlighted the manner in which these declarations can be made on somewhat arbitrary grounds.

If the Attorney-General and Minister for Multicultural Affairs decides that it is inappropriate or politically inadvisable to actually declare the Middle East boys a criminal organisation, notwithstanding the fact that they meet all the criteria of this legislation—

The Hon. R.I. Lucas: You could call it a loose group.

The Hon. R.D. LAWSON: Yes; they are a loose group, and I am sure that they are not an incorporated group. It highlights, I believe, that the real protection that is needed here is an appropriate form of judicial review of the declaration that the Attorney-General makes. We have already heard from the Minister for Police that one unincorporated group, the so-called gang of 49, will not be the subject of a declaration here. He started to squirm a little in later answers by saying the decision was not his, but it is fairly clear that the government's intention is not to declare that particular group; in other words, they will be selective about this.

The Hon. R.I. Lucas interjecting:

The Hon. P. Holloway: It is a series of individuals who have similar behaviour on a database. That is what they are. They do not associate.

The Hon. R.D. LAWSON: The distinction between an unincorporated group and a group of individuals is not made clear in this legislation. This is an invention of the minister on its feet this evening. The point that I seek to make is that the arbitrariness of these declarations has been made perfectly clear by the minister tonight, which brings us to amendments which the Hon. Steven Wade will move on behalf of the Liberal Party and which will ensure that there is a measure of independent judicial oversight of the Attorney's power to make declarations in this manner.

The Hon. P. HOLLOWAY: The first thing that should be pointed out here is the total hypocrisy of the Leader of the Opposition, Martin Hamilton-Smith, in saying that these laws are tough enough when the opposition is moving an amendment that would totally destroy the whole legislation. I think Martin Hamilton-Smith's hypocrisy on this should be exposed to every South Australian. Basically, he has misled the people of this state in saying—

The Hon. B.V. Finnigan: He just doesn't have enough control over these guys.

The Hon. P. HOLLOWAY: Of course, he doesn't. The bikie gangs are rich. Plenty of lawyers around the wealthy eastern suburbs have got very rich and fat off bikie gangs because the gangs have plenty of sources of money through drugs and other things and they pay their legal bills. They hire the best. If the opposition amendment gets up, it will totally neuter the initial impact at least of this legislation because the best QCs will be tying this up by judicially reviewing every single decision right from day one. That is why the cat should be belled here. The Leader of the Opposition went on the radio and said that this is not tough enough, yet he has his members here moving an amendment to neuter it totally like this—

The Hon. S.G. Wade: No; I haven't moved it yet.

The Hon. P. HOLLOWAY: Are you going to move it or not? It reveals the total furphy that has been going on here. Discussions about whether or not Operation Mandrake targets are a gang, because it is a convenient term to use, are totally irrelevant to the sort of issues we are debating here. The fact is that the Hon. Robert Lawson suggests that somehow it is not proper criteria when it is clearly set out. First of all, the Police Commissioner would apply for a declaration and then the Attorney has to meet the criteria that is in there. If the Hon. Robert Lawson is suggesting that the Attorney is going to knock back an application from the Police Commissioner on political grounds and so on, then where are we going? Clearly, what the opposition wants to do—

The Hon. R.P. Wortley: They're trying to sabotage it.

The Hon. P. HOLLOWAY: Of course, and that is what today has been all about. They do not want to deal with other legislation. More than enough time has been spent debating this clause. These issues about the gang of 49 are red herrings to the issue before us.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 7, line 6 [clause 10(3)(d)]—Delete 'or overseas'

We canvassed this one a little before. Basically, clause 10(3) sets out paragraphs (a) to (f) as guides, I suppose, to the Attorney-General about what he may have regard to when he is deciding whether or not to make a declaration. Paragraph (d) provides:

> any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;

My amendment removes the words 'or overseas' because for the life of me I cannot understand why or how a gang of bikies in Dallas, Texas has any relevance to the activities of a bikie gang here in South Australia. Yes, I can see that there would be relevance for Victoria, Western Australia or the Northern Territory, but I cannot see why we need 'overseas' there, so this amendment proposes to remove the words 'or overseas'.

The Hon. P. HOLLOWAY: We need the words 'or overseas' because they are international organisations. Why does the Hon. Sandra Kanck think they have the same name? Does she really think that the Hell's Angels in Australia are totally independent of the Hell's Angels in the United States, and similarly with other bikie gangs? Does she think that they never meet, that they never discuss ideas or that they have no association? Of course they do. In fact, the whole nature of organised crime is that it is becoming more and more international.

One of the issues in dealing with organised crime is that increasingly we need to look not just across borders but across nations. For example, drug trafficking is an international crime, and affiliates are needed in other countries. A lot of the chemicals used to make methamphetamines will come from overseas, and affiliated bodies will assist in the crime over there. So, it is an international problem, and that is why the Attorney should have regard to it.

The Hon. A. BRESSINGTON: I will not be supporting this amendment. I think we have got a bit bogged down with the term 'motorcycle gang'. A constituent of mine who owns a hotel near the city has made complaints to my office—and he has been advised to give the information to the police—that every week he is being shaken down, if you like, by the Albanian mafia, and they are alive and well in South Australia.

Forget bikies as the sole target of this legislation and understand that organised crime involves not just motorcycle gangs but that we have various levels of organised crime here that travel quite freely between here and overseas and bring their families over. So, I will oppose the amendment.

The Hon. M. PARNELL: I would ask the minister to explain a little about the operation of paragraph (d). I fully accept what the minister said about international crime, and I accept what the Hon. Ann Bressington has said, that we know that crime is international. My concern is around the concept of interstate or overseas chapters or branches of the organisation. Those chapters and branches are not defined.

I accept what the minister said, that no doubt some groups will have a common name and regularly get together, and you could see that the Hell's Angels in Los Angeles may well have connections with the Hell's Angels in South Australia—I do not know, but I can certainly envisage that that might be the case. My question of the minister is whether that is the determinant of those concepts of chapter and branch? Are we talking about organisations that have the same name?

The Hon. P. HOLLOWAY: If bodies have the same name presumably that suggests, at least prima facie, that those bodies may have an association, but obviously some of those groups will have a closer association than others. One of the features of outlaw motorcycle gangs is that each one has a different culture, history and structure. They are all quite unique, in a sense. Some of them have a rigorous management structure, if you like, and others have a very loose structure.

Essentially, all we are doing here under clause 10(3) is saying that in considering whether or not to make a declaration the Attorney may have regard to—and this is where paragraph (d) comes in—'any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning...'. But remember that the test is, as we debated at length earlier, under clause 10(1), which says that the organisation has to represent a risk to public safety and order in South Australia. So, that is ultimately the test.

Here we are just talking about the information the Attorney will take into consideration. Obviously, if a group does have overseas affiliates that are known to be involved with the

organisation then surely that is a relevant factor for the Attorney to consider, along, of course, with the fact that it represents a risk in this state.

The Hon. M. PARNELL: That is the reason that I raised this. I think the minister put his finger on it: many of these organisations have different cultures, history and structures. It seems to me that in some circumstances it might be drawing a very long bow, because the way I can see it working is this. Let us say there is an organisation in America with the same name as an organisation in Australia. We need only two people in America who use that organisation for crime. It might be 1 per cent of the organisation because, as we have seen with definitions elsewhere in this bill, as long as any two or more persons associate together for the purpose of planning crime, that is enough to condemn the whole organisation. So, potentially, two people in San Diego could lead to an organisation of the same name being declared or banned (which is another word we are using here) in South Australia.

I accept what the minister says, that the minister needs to be satisfied that there is a risk. The words are 'the organisation represents a risk to public safety and order', but it would seem to me that the Attorney-General's satisfaction could come from the fact that two people in San Diego in an organisation with the same name are running amok, and the fear might be that the people in South Australia, who belong to the organisation of the same name, are equally likely to run amok. I do not think that that necessarily follows given, as the minister has said, that these organisations do have different cultures, history and structures.

Just as it is no doubt a fact that you have criminal organisations crossing international borders, you could equally have two organisations with the same name, one being engaged in crime overseas, but having none of its members engaged in crime here. It seems to me that removing the word 'overseas' does not kill the intent of this bill because the primary satisfaction the Attorney-General has to have is the risk in South Australia, and that intelligence can be gained from other than looking at the behaviour of these people overseas.

The Hon. P. HOLLOWAY: Of course, considering the risk under clause 10(1)(a), the minister also has to be satisfied that 'members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity'. If there are two people overseas doing it, the minister has to be satisfied not only that it represents a risk to public safety and order in South Australia but that the 'members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity'. Of course, again, the commissioner in the first instance who does this work would have to put up the proposition to the Attorney and then the Attorney would have to be satisfied.

So, first of all, the commissioner would obviously have to believe that it would pass the test, otherwise why would he put it up to the Attorney? Then the Attorney would have to be satisfied. There are a number of things that the Attorney considers: there is (a), (b), (c), (d), (e) and (f), where (f) refers to any other matters that he considers relevant. Surely information suggesting that members of an interstate or overseas chapter or branch of the organisation 'associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity' is relevant, if you are considering whether to declare an organisation.

You are not going to do it for Rotary and you are not going to do it for Apex, which are international bodies here; but if there are bodies that in other parts of the world are principally about organised crime, then clearly one should have concerns about what they do in South Australia. Then it is a matter of whether the Attorney is satisfied that the other evidence is such that they represent a risk to public safety and order in South Australia, or that members associate for the purpose of organising, planning or engaging in serious criminal activity.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 7, line 17 [clause 10(4)(a)]—After 'members' insert:

(provided that if the Attorney-General is satisfied that only some of the members associate for that purpose, the Attorney-General must be satisfied that those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members)

The Attorney-General may, for the purposes of making a declaration under this section, be satisfied that members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity—

(a) whether or not all the members associate for that purpose or only some of the members;

My amendment provides a rider because we need to look to see whether we are really catching big fish or little fish—I suppose that is one way of putting it. We could have just a couple of members who are little minnows and they are not going to have any great impact amongst themselves or within the group. This amendment tightens up the requirement so that when looking at it from this perspective—that is, whether or not all the members associate for that purpose—the Attorney-General would also have to consider the number of members concerned or else their status. If we are talking about the equivalent of chairs, secretaries and treasurers—I do not know what titles they would have—those people would have a lot more clout in the organisation than someone who has only recently joined and who is, effectively, an apprentice.

The Hon. P. HOLLOWAY: Clause 10(4)(a) provides that for the purpose of making a declaration the Attorney-General may be satisfied that the members of an organisation associate for the relevant criminal purposes whether or not all the members associate for that purpose or only some of the members associate for that purpose. Clause 10(4)(a) recognises that not all members of criminal motorcycle gangs have criminal records or, indeed, engage in criminal activities, serious or otherwise.

The Hon. Ms Kanck's amendment would add to this provision a requirement that the Attorney-General be satisfied that the members who do associate for criminal purposes constitute a significant group within the organisation either in terms of their numbers or in terms of their capacity to influence the organisation or its members. I hasten to say that I have some reluctance in saying this after what happened with the last amendment, but the government agrees that this additional requirement is an appropriate safeguard and so we can support it.

The Hon. M. PARNELL: I am delighted to hear that the government is going to support it because I am supporting it, as well, and I like to be on the same side as the government on these important issues.

We have a question that we have to ask ourselves about these organisations and why its members get together. It seems that the way the bill was originally framed was that, as long as any two people got together, that would be sufficient to damn the entire organisation. Examples were given during the second reading, and I think the Qantas Club was one of them. The police, in their briefing, said that if you wanted to find bikies go to the Qantas Club. I have no doubt that there are people who might use the vehicle of that organisation to plan crime. I do not know who they are, but it would seem such a massive organisation with thousands of members that you could probably find two.

I think this amendment is a sensible one because it provides that a major purpose for members of the organisation is crime—more than just two. As the minister said, it does not need to be every single person, but it needs to be more than just two; or, if it just two, that those two people are so influential that they colour the activities of the entire organisation. I am pleased that the government is supporting this amendment.

Amendment carried; clause as amended passed.

Clause 11 and 12 passed.

Clause 13.

The Hon. S.G. WADE: I propose to move amendments 1 and 2 together if that is possible, and also to make remarks that anticipate the amendments to clause 41, because this is when we start considering the issue of the privative clause. I move:

Page 7—

Line 38—After 'Part 6' insert:

, a court

After line 39—After subclause (2) insert:

(3) In any proceedings relating to the making of a declaration under this Part, the court determining the proceedings—

(a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

(b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.

I would remind the committee that the privative clause 41 was mentioned in the Attorney-General's second reading explanation in the other place where he said:

A privative clause will try to protect the Attorney-General's decision from the full rigour of judicial review. I do not hold out much hope of this preventing all judges substituting their own decisions on declared organisations for those of the elected Government.

That indicates a distinct lack of confidence on the part of the Attorney-General that the courts will give as much effect to the privative clause as it appears on its face. My understanding of judicial review decisions is that they have often surprised those who have drafted legislation to try to preclude them.

The Liberal Party respects the role of judicial review under the common law. It is important that courts have the power to review actions. I would like to highlight two particular reasons why that is good practice. First of all, judicial review is an element of the rule of law. As Mr Justice Brennan of the High Court commented in the case of The Church of Scientology v Woodward in 1982:

Judicial review is neither more nor less than the enforcement of the rule of law over executive action; it is the means by which executive action is prevented from exceeding the powers and functions assigned to the executive by law and the interests of the individual are protected accordingly.

Secondly, judicial review is an aid to accountability. Mary Crock, in an article entitled 'Privative Clauses and the Rule of Law: the Place of Judicial Review within the Australian Democracy' said:

The most obvious benefit brought by judicial review is that it forces care in administrators and reviewers in their adjudicative process....one by-product of the judicial review as an accountability measure is that it can encourage independence and integrity. A decision-maker whose ruling is subject to curial oversights is less likely to toe a particular policy line or succumb to political pressure to decide cases in a particular way. The court offers security to those who make a bona fide attempt to make findings on the facts and the law as presented and sanctions for those who choose to act on arbitrary or capricious considerations.

Already tonight, my colleagues the Hons Robert Lucas and Robert Lawson have highlighted the way the government is willing to play politics when it comes to the activities of individuals involved in criminal activities. The Liberal Party is of the view that the judicial review is an appropriate, necessary function to maintain unless there are strong reasons not to do so. In that context, we do accept that judicial review, if it is applied to every decision under the regime proposed under the Serious and Organised Crime Bill, could serve to totally undermine the regime.

We do not want that and therefore we are willing to tolerate and support the privative clause 41, except that we believe that there is one decision that is so fundamental to the protection of law-abiding citizens that it should be reviewable, and that is the declaration of the organisation. After all, declaration is the fork in the road. The government tells us that its bill is targeted at outlaw motorcycle gang members, and I seem to recall that we are talking about 250 people, and I am sure that number will ebb and flow.

The Hon. R.D. Lawson interjecting:

The Hon. S.G. WADE: Yes—plus or minus 49, as the Hon. Robert Lawson reminds me. We want to ensure that those who are not the intended subjects of this legislation are not caught up in it. The bill focuses most of its provisions on declared organisations and, once an organisation is declared, a series of legal disabilities apply not just to the organisation but to those who are members and associates of it. The Liberal Party has seriously considered the privative clause, and it is willing to support it with one exception, that is, in relation to the declaration process.

On that basis, we will propose at clause 41 that proceedings can be instituted in relation to that declaration. In anticipation of that, my amendments Nos 1 and 2, amendments to clause 13, provide how proceedings will be handled in such a review. I ask the committee to support clause 13 in anticipation of its support for clause 41.

The Hon. P. HOLLOWAY: This is obviously a test clause for a number of other clauses. I note that there are some amendments on file in the name of the Hon. Mark Parnell and the Hon. Sandra Kanck and that they intend to move those. There are three different approaches, and the government's is a fourth, to what ought to be done.

Clause 13(1) protects from disclosure the Attorney-General's grounds and reasons for making or not making a declaration or decision under part 2 of the bill. It supports clause 41, the

privative clause, which protects the Attorney-General's decision from judicial review or other legal challenge. Clause 13(2) provides that no information provided by the Commissioner to the Attorney-General for the purposes of part 2 may be disclosed to any person, except the retired judicial officer conducting the annual review of powers in accordance with part 6 of the legislation, where that information is classified by the Commissioner as criminal intelligence.

The Hon. Mr Parnell seeks to delete clause 13, although I do not think that he has yet moved that amendment. I understand that the deletion of clause 13(1) relates to a later amendment of his that deletes the privative clause, clause 41, while the deletion of clause 13(2) is part of the series that seeks to remove the prohibition on disclosing criminal intelligence. This series of amendments has already been considered by the committee, and the government opposes it.

The Hon. Ms Kanck seeks to delete clause 13 of the bill and insert a new clause giving a member of a declared organisation a right to appeal to the Supreme Court against a declaration decision by the Attorney-General. This appeal also confers a right upon the Commissioner of Police to appeal the Attorney's decision not to make a declaration. In addition, the amendment inserts a clause protecting the confidentiality of criminal intelligence during the appeal process.

The Hon. Mr Wade seeks to amend clause 13 to require the disclosure of the Attorney-General's reasons for decision and to allow criminal intelligence submitted to him in the course of a declaration application to be disclosed to a court. I understand that these amendments are consequential on amendments to clause 41 which will confer on the members of declared organisations the right to seek judicial review of the declaration made by the Attorney-General that relates to their organisation.

In each case, the amendment is part of a series that seeks to confer on the members of declared organisations a right to challenge in court a declaration decision of the Attorney-General by way of an appeal, under the Hon. Ms Kanck's amendments, and by judicial review under the amendments of the Hon. Mr Parnell and the Hon. Mr Wade. I suggest that each of these amendments be treated as test amendments for the relevant series and, for convenience, I think it best that I speak to all the amendments.

The government opposes each of these amendments. Be it by way of an appeal right or a right to seek judicial review, all the amendments or series of amendments suffer from the same flaw: they will give the well-funded members of criminal organisations the ability to frustrate the operations of the legislation, including applications for control orders, the use of public safety orders and prosecution of the new offence of criminal association.

Clause 41 of the bill excludes judicial review of any decision, determination, declaration, proceedings, act or omission made under the act, or purportedly under the act, or in the exercise, or purported exercise, of powers or functions under the act. It also prevents control orders and public safety orders being challenged in other proceedings, specifically criminal proceedings, for breach of control orders and public safety orders, and for the new offence of criminal association. To allow judicial review or legal challenges to declarations, control and public safety orders will undermine the operation of the legislation.

Members of organised criminal groups are well funded, and that point was made by the shadow attorney-general when she was debating clause 41 in the House of Assembly. They have access to the best legal advice and representation. Without the privative clause, legal challenges to the validity of declarations, control orders and public safety orders would frustrate proceedings under the act, grinding applications for control order applications to extend public safety orders and prosecutions for offences under the act to a halt. In effect, it will neuter it.

As I said earlier, that is why I am totally gobsmacked by the fact that the Leader of the Opposition in another place can say that this legislation is not tough enough, when he has members here supporting something which, effectively, would neuter the bill. I think the leader in another place seems to be advocating that these groups should be all wiped out—I think that is along the lines of the DPP—yet what he is proposing is something that would allow them all to go to court and challenge it, and tie it up for years—and we know what the result of that would be. It is one of the more amazing events of today—

The Hon. R.D. Lawson: Is that a slur on the judiciary?

The Hon. P. HOLLOWAY: It is not a slur on the judiciary at all. I am just saying what will happen. Given the sort of legal advice available to these bikie gangs and how well funded they are, we know they appeal everything. How long did they frustrate the workings of the anti-fortification bill? Members opposite attacked the Premier, the Attorney and others saying, 'Look, this legislation

was too slow in delivering.' Why was it slow in delivering? Because it was being challenged in the courts. Fortunately, that has now been upheld as, indeed, has the Western Australian legislation, but inevitably, if this privative clause is removed, the effectiveness of this legislation, certainly in the short term, would be neutered.

These arguments apply equally to the Hon. Ms Kanck's proposed appeal provision. I take it that these amendments are about ensuring proper scrutiny and oversight of the Attorney-General's use of the declaration powers. Should members be concerned about a lack of scrutiny, I draw their attention to clause 37 of the bill. Clause 37 requires the Attorney-General to appoint a retired Supreme Court or District Court judge to conduct an annual review on whether the powers under the legislation have been used appropriately, having regard to the objects of the legislation. This includes the Attorney-General's powers under the declaration provisions.

Clause 13(1) provides the judicial officer appointed to conduct the review with access to the Attorney-General's reasons and grounds for decisions. Clause 13(2) and clause 37(2) ensure the reviewer will have access to all information necessary to conduct the review properly, including information classified as criminal intelligence. Clause 37(5) requires the Attorney to cause a copy of the review report to be tabled in both houses, thereby ensuring parliamentary scrutiny of the powers and the review process.

The government believes the annual review and parliamentary reporting requirements will ensure proper scrutiny of the Attorney-General's exercise of the powers in part 2 of the legislation, but importantly will do so without allowing the well-funded, well-represented members of declared organisations and their criminal associates to frustrate the effective operation of the legislation through repeated legal challenges of decisions made under the legislation. I would appeal to members of this committee to give this legislation a chance to work. If the privative clause and these associated amendments are passed, then, as I said, many lawyers will become very rich, but it will be far less effective in terms of dealing with outlaw motorcycle gangs.

The Hon. S.G. WADE: I think the minister was attempting to misrepresent the amendments by putting them altogether. The Hon. Mr Parnell's amendments deal, shall we say, more significantly with the privative clause than those that I have presented. There is only one decision that the opposition proposes be subject to review, and that is the decision of the declaration. If the government has identified seven organisations, as was earlier suggested, and we are only talking about 200 or 300 people, we are only talking about half a dozen decisions.

This is not, as the minister suggests, a circus for lawyers. He did not use that word but that was the intent conveyed. We believe that this is, if you like, the fork in the road. This particular declaration is so significant in terms of its potential impact on law-abiding citizens that it should be subject to review. It is our judgment that those seven decisions which might be subject to review should be able to be dealt with by the courts in an expeditious manner, such that the regime would not be unduly delayed.

In that regard I note that it is the government that has been delaying this legislation through this parliament. It is interesting that the Paskeville incidents caused the government to bring it on in the House of Assembly. We had another incident last weekend which caused the government to at least think it might bring it on here. It is a shame that the government seems to be driven more by external events than the need to get this legislation in as soon as possible.

The Hon. Sandra Kanck asked questions on clause 3 which indicated how important it is to get this legislation in as early as possible. We believe that if it is properly considered and implemented the declarations should be able to be put in place quickly; and if, in fact, there is reason to think that the declarations are faulty, then the opposition is of the view that that decision, and that decision only, is appropriately reviewable by the courts.

The Hon. P. HOLLOWAY: It is not a question of whether or not they are faulty. After all this fuss in dealing with this legislation, what is the purpose of getting it up if, inevitably, the first declaration will be appealed all the way through to the Supreme Court and High Court, and beyond? It could take two or three years. Members opposite today have been saying we have to get this thing through but, if clause 41 is removed, or even amended to make the declaration subject to judicial review, it could take years before this legislation is clarified through the court process.

The Leader of the Opposition in another place, and others, have put up this sense of urgency and, for them to try to create the need for urgency and then to move this amendment which would put it in the courts for years is, I think, staggering in its hypocrisy.

The Hon. S.G. WADE: I also point out that the opposition amendment which is being anticipated here, which is amendment No. 5 to clause 41, says:

> ...(and in any such proceedings the onus lies on the applicant for the review to establish the invalidity or illegality of the declaration).

We believe that also supports the fact that we do not want interminable proceedings, and shifting the onus in that way we think facilitates speedy resolution. My understanding of proceedings against a declaration is that the declaration is likely to stand until it is overturned; so, for the minister to suggest that we might be subject to years of delay because of the potential of this particular decision being reviewed, we believe is misleading.

The Hon. M. PARNELL: The Greens support this amendment, although I make it very clear at the outset that it does not go far enough. As the minister has indicated, I have an amendment on file to get rid of the privative clause, to get rid of clause 41. But I find the minister's response to this amendment interesting, which is to say that the effectiveness of this legislation will be neutered if anyone has the right to challenge any decision made under the legislation.

That is quite a remarkable assertion to make because it is an invitation to decision makers to behave improperly and illegally, and without following due process. The reason I can say it in such bold terms is that in any piece of legislation that contains checks, balances and rights, those checks, balances and rights are only as good as one's ability to enforce them. If there are checks and balances that are untouchable by the judiciary then, even if the decision maker goes right outside due legal process, they will get away with making it.

In fact, at law school, legal process 101 lecture 1, the principle is that you can get away with anything until someone can stop you—and that raises issues of standing, that is, the ability to go to court to challenge a decision. If you have no right to challenge a decision, however bad that decision is, it will stand because no-one has the right to go in and ask an independent umpire to overturn it.

It is also important for us to note with these privative clauses that they relate to judicial review. We are not talking here about any form of merits appeal. We are not saying that a decision maker will be able to stand in the shoes of the original decision maker, be it the Commissioner of Police or Attorney-General, and say, 'Well, I would have made a slightly different decision, had it been me, on the basis of that evidence.' That is a merits appeal.

There is no question of merits appeal here: we are talking about judicial review. The grounds of judicial review are relatively limited and they can be summarised in terms of this phrase 'due process'. If the minister or the Commissioner follows due process, then they have nothing to fear from judicial review. If they have taken into account all the relevant considerations, if they have resisted the urge to take into account irrelevant considerations and if they have followed the procedures set out in the legislation then any judicial review will fail.

I think the Hon. Stephen Wade is right. When it comes to a decision such as a declaration, unless the organisation is able to get some sort of interim order or injunction out of the court, then any declaration would stand until overturned. Even if it did take some time, there is no harm done if a good decision was made.

The other point I make about these privative clauses is that those who propose them will often say that any outrageous, illegal behaviour on the part of administrative decision makers will not be protected by a privative clause. I say that is wrong. Unless there is some very recent High Court precedent of which I am not aware, when I wrote my masters thesis in planning and I looked at the issue of privative clause, I tried to test the provision that courts will bend over backwards to overturn a privative clause.

In the face of very clear words in the privative clause they stand. If the government behaves illegally, the decision on the privative clause (if well worded) will stand. As much as the courts would like to intervene, they will not. I say that privative clauses have no place in legislation such as this, because it undermines the whole rule of law and our ability to go to an umpire to get a declaration as to whether proper processes were followed.

We will get to clause 41. In the meantime, I would prefer a privative clause that is slightly less onerous than that which is proposed by the government. The Hon. Stephen Wade's amendment does that. It excludes that one area of declarations from the operation of the privative clause. Therefore, I will be supporting this amendment; and I will be looking to the committee to support my amendment later to throw out the whole thing.

The Hon. P. HOLLOWAY: One of the arguments being used is that the decision will stand until it is overturned. The problem is that the declaration decision may stand, but will the Commissioner get control orders, which will be a costly, involved process? We know how costly it is to go through the courts. Would the Commissioner take the risk of getting control orders if there is a potential that the declaration decision could be subsequently overturned?

It may be challenged. I am not sure what the time limits are on this; I guess it is probably covered in other statutes. I will try to get that information in a moment. Regardless, if there was a potential that the decision would ultimately be overturned, it would be very risky business, I would suggest, for the Police Commissioner to bother to get control orders, and that is why I say that the whole system will get bogged down. Is that not what happened with the fortification laws? Unless it was clarified, there was quite properly reluctance on behalf of the Commissioner—while that was subject to that lengthy legal process—to proceed until it was clarified, and similarly here, but here it would be in every case.

Even if the decision did stand until it was overturned, just the risk of its being overturned at some stage could undermine any control order that had been issued under the subsequent action. It is probably 28 days, but my advice is that it could be extended under the rules. Regardless, the process would take a long time. Even though it is trite to say, 'Yes, the decision stands until it is overturned', it would be reckless, I would suggest, of the Commissioner to seek control orders until that matter had been resolved, and we know that could take literally years.

The Hon. R.D. LAWSON: The minister has just let the cat out of the bag and shown the complete falsity of the government's position on this. He says, 'Would the Commissioner get a control order if there was any prospect of the declaration being upset because of the legal proceedings that would necessarily follow?' A control order itself is subject to appeal. If the minister thinks that any control order will be made and that these well-funded crooks about whom he is talking will lie down and not appeal against that, he is very much mistaken. The falsity of the government's position is that it puts an appeal mechanism in place in relation to control orders. It allows appeals to the Supreme Court. It requires the courts to consider these things, yet the declaration by an Attorney-General in secret is not subject to any judicial oversight. Now, that is a false position.

If you are allowing appeals against control orders, as indeed you do, why not allow appeals against the initial declaration? It is simply because the Attorney-General wants to be able to control this issue politically and does not want to have his declarations examined or subject to any external scrutiny that the government has decided there will be no appeal there. However, in relation to control orders, a right of objection is provided (and, certainly, they will be pursuing that), and there will be a hearing on that objection. There will be an appeal to the Supreme Court, and clause 19 provides that the Commissioner or an objector may appeal to the Supreme Court against a decision on a notice of objection.

The notion that you will avoid expensive and protracted legal proceedings by this mechanism of a privative clause, it seems to me, is entirely mistaken. You quite properly allow appeals in relation to control orders, but, for political reasons, you will not allow the Attorney's decisions to be subject to scrutiny.

The Hon. M. PARNELL: As an additional point, the minister's main concern appears to be around the delay that is inherent with legal challenge, that is, the cost of it. The subtext is also the danger that the person challenging the government decision might actually win.

My concern comes at an earlier stage than that. I am more concerned about the effect this privative clause has on the quality of decision making right across the board. I say that because one of the reasons we get rigor in decision making, whether it is government departments or ministerial decision, is that with any that are subject to challenge that is always in the mind of the decision maker.

They always know that there is a chance that, if they do not do this properly, someone can challenge them. The ability to go to court on a judicial review is a silent sentinel standing there in our legal system, encouraging our administrative decision makers to make lawful and proper decisions and not to cut corners. If you have a decision maker who is facing a situation where they can make a decision, and no-one under any circumstances is allowed to challenge any aspect of that decision, why on earth would you bother following all the due process? You do not need to because nobody can do anything about it if you do not.

That is why I say that privative clauses like this are so dangerous in our legal system, because they lead to shoddy, slack decision making and invite decision makers not to follow due

process. It might not start off as an obvious 'we're going to thumb our nose at the law', but a slackness creeps into administrative decision making. I am more concerned about that aspect of the privative clause than about the risk that it might delay the process or that the subject might actually win their case.

The Hon. P. HOLLOWAY: What has been totally overlooked by both the Hons Robert Lawson and Mark Parnell is clause 37, which provides that a retired Supreme Court judge is there to look at the process. There is a process in there—and a report to parliament out of that—as part of the assessment process. It is all very well for the Hon. Mark Parnell to have this very sentimental, traditionalist legal view of the way the courts work, but the reality is that in 2007 (and probably long before that—probably in the 1980s) people like Alan Bond and others discovered that the legal system is a great way of avoiding justice rather than getting it.

Sadly, that is what groups such as bikie gangs have discovered: that the legal process is a great way of avoiding justice, and that is why people out in the general public are increasingly concerned about the legal system—they are increasingly isolated from it. We need to ensure that modern law delivers value. We cannot have a system which increasingly is utilised to avoid justice rather than to obtain it. There are numerous examples of that.

Part of this bill is a procedure where a retired Supreme Court or District Court judge can conduct an annual review on whether the powers have been used appropriately, having regard to the objects of the legislation. There is a big difference between the declaration and the control orders. The declaration, which the opposition is suggesting should be subject to judicial review, is where the Commissioner asks the Attorney to declare an organisation, and we have gone through in clause 10 the grounds under which that is done.

Under clause 14, the control orders are individual orders. There is a big difference between determining whether an outlaw motorcycle gang is to be declared or not for the purposes of this legislation. It is another matter entirely on how that works with individuals. Individuals can challenge that under this bill, but they are doing that as individuals. Inevitably, given the history of these groups, the declaration would be challenged at great length and the lawyers working for them would use every tactic in the book to delay.

Make no mistake, if this amendment is passed we will see no action I suggest against outlaw motorcycle gangs for the remainder of this parliament, and maybe that is what the opposition wants. On the one hand you have the Leader of the Opposition out there raising the tension: yes, we need to act; we've got to sit today and do this. Then they effectively move an amendment, which will mean that nothing will happen for a very long time. That may be the case, but I can tell you that the public will well understand it if that is what happens out of this.

The Hon. S.G. WADE: For the record, the opposition does not expect that the Commissioner of Police would fail to utilise the act in anticipation of a possible judicial review. I think it is extraordinary that the government expects us to believe that. Let us go down the red herring path that the minister has invited us to go down in relation to clause 37. If, in fact, the retired judicial officer finds that a declaration of an organisation under this act has been made inappropriately, what would be the effect of that finding?

The Hon. P. HOLLOWAY: It would be reported to this parliament.

The Hon. S.G. WADE: Can the retired judicial officer or the parliament revoke the declaration?

The Hon. P. HOLLOWAY: The thing is that it is then in the hands of this parliament. As has been abundantly clear today, the government of the day does not control this parliament. If it is reported that the Attorney has in some way acted improperly—although I guess there are always elements of judgment in this as well—I would have thought that would be a pretty damning finding.

The Hon. S.G. WADE: I just make the point to the council that the minister has come in here and suggested that clause 37 is some form of modern, unsentimental judicial review process to help the Hon. Mark Parnell move into the 21st century. It is merely an administrative review. We are interested in looking at strengthening it as we get to that point. However, to suggest that it is a useful surrogate for the well-developed principles of the common law is insulting to this committee.

The Hon. SANDRA KANCK: I indicate Democrat support for the opposition's amendments. The Hon. Mark Parnell and I have not moved our amendments at this stage, although the Hon. Paul Holloway has spent a great deal of time disparaging them. If the decision of this chamber is that clause 13 will be retained in some form, and if my amendments, once I move them, are defeated, I see this as being a fall-back position—and a valuable fall-back position at

that. This does not go as far as I would like it to go, but I definitely will be supporting it in the first instance.

The Hon. R.D. LAWSON: The minister referred to the annual review provisions in clause 37 as a way of allaying the concerns of the public about the way in which this act will be administered. With the greatest respect to the retired judicial officer who will be conducting this review, this is a pretty lame form of redress.

If you get an elderly judge selected by the attorney-general to undertake this annual review, it does not take much imagination to know that an attorney-general who did not want his decisions interfered with or adversely impacted upon and a police commissioner and a police force with a similar desire—quite appropriate—will not provide material to the retired judge which would enable him to conduct such a review. There is no mechanism: he has no powers. He cannot demand to be given the information. He cannot examine or cross-examine the attorney-general or police officers. He has to take their word for what has happened. He has no staff or other capacity. So, this annual review is really a bit of window dressing.

I certainly would not want to have the annual review removed, but it would be entirely over-optimistic for anyone to place any great reliance upon it to overturn or to criticise a governmental decision by tabling in parliament such a report. I am happy to leave it in, but I do not think one can place any great reliance upon it as a protection for the sort of thing we are looking at here.

Incidentally, I notice that, under amendments to the Criminal Law Consolidation Act, operating a vessel in a dangerous way is a serious criminal offence. I would have thought that a group of persons who sailed boats into the Antarctic for the purpose of preventing alleged research being undertaken and being members of an international organisation would be precisely the sort of group that could find themselves the subject of a declaration under this act. We will be assured by the government that it has no intention to do that at the moment.

The Hon. Sandra Kanck interjecting:

The Hon. R.D. LAWSON: Well, they very possibly could be a risk to the state, especially if the Japanese take some exception to their actions. I think that shows once again the very wide operation of this act. Because it has a wide and undefined operation—not as wide as some claim, I must admit, because there are the essential requirements for some criminal connection—we do not normally give to political officers, such as the Attorney-General, the unfettered and unchallengeable decisions in relation to activities.

We have a whole court system for the purpose of ensuring that there is no abuse of power. We are not suggesting that any attorney-general, let alone this particular one, would abuse those powers, but we have these protections built into all of our legal system, and that is entirely appropriate. We have no truck with those organised crime gangs. We are simply insisting that the usual standards and protections should apply, as the government itself acknowledges must apply, by giving a right of appeal to anyone in respect of whom a control order is made.

The committee divided on the amendments:

AYES (10)

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

NOES (11)

Bressington, A.	Darley, J.A.	Evans, A.L.
Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hood, D.G.E.	Hunter, I.K.
Wortley, R.P.	Zollo, C.	

Majority of 1 for the noes.

Amendments thus negatived.

Members interjecting:

The CHAIRMAN: Order! Members will take their seats. The question is: that clause 13 as printed stand as part of the bill.

Clause passed.

The Hon. Sandra Kanck interjecting:

The CHAIRMAN: The Hon. Ms Kanck did not move her amendments.

The Hon. Sandra Kanck: Hang on—

The CHAIRMAN: The Hon. Ms Kanck indicated that she was supporting the amendment of the Hon. Mr Wade and did not move her amendment.

The Hon. Sandra Kanck interjecting:

The CHAIRMAN: The minister clearly invited you to move your amendment; I heard him invite you to move your amendment.

The Hon. Sandra Kanck interjecting:

The CHAIRMAN: I am afraid you will have to wait until the debate is finished and ask for a recommittal of the clause.

The Hon. S.G. WADE: Can I just clarify on my amendments—

The CHAIRMAN: Your amendments have just been defeated; I will clarify that for you.

The Hon. S.G. WADE: I understood the motion was for consideration of Wade No. 1.

The CHAIRMAN: I would like to make it quite clear. I do not know whether you are all listening properly, but I put Mr Wade's amendments. You voted on those amendments and they were defeated.

The Hon. Sandra Kanck: Don't I get my to move mine—

The CHAIRMAN: No.

Members interjecting:

The CHAIRMAN: Order!

The Hon. M. PARNELL: A point of order, Mr Chairman—

The CHAIRMAN: Order! After the Hon. Mr Wade's amendments were defeated, I put it that clause 13 stand as printed. You wanted the clause out, that was your amendment. You voted no, against that, and I called it for the ayes.

Members interjecting:

The CHAIRMAN: I put that clause 13 stand as printed. After the Hon. Mr Wade's amendments were defeated I told members to take their seats and I put the question that clause 13 stand as printed. If you do not think I did, I am happy to put it again: that clause 13 stand as printed. You have been here long enough to know how the committee stage of a bill works.

The Hon. D.G.E. HOOD: On a point of order, I think people are confused. Our intention was to vote against the Greens' and Democrats' amendments, and against the Liberal amendment as well.

The CHAIRMAN: Well, you are supporting the Greens.

The Hon. D.G.E. HOOD: Now we are doing that because I believe they have the right to put their amendments and, once they have, I will vote against them.

The CHAIRMAN: They have.

Members interjecting:

The Hon. D.G.E. HOOD: But they haven't put them yet; that is the point.

The CHAIRMAN: The Hon. Mr Parnell's amendment was to delete the clause. I will put the question again: that clause 13 as printed stand as part of the bill.

The committee divided on the clause:

AYES (9)

Bressington, A.	Darley, J.A.	Finnigan, B.V.
Gago, G.E.	Gazzola, J.M.	Holloway, P. (teller)
Hunter, I.K.	Wortley, R.P.	Zollo, C.

NOES (12)

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

Majority of 3 for the noes.

Clause thus negatived.

The Hon. P. HOLLOWAY: There is obviously confusion about what happened. We can recommit clause 13 at the end of the procedure. I do not think it was understood that the Hon. Mark Parnell's amendment was effectively to oppose the clause. Let us move on and we will fix it up later.

New clauses 13 and 13A.

The Hon. SANDRA KANCK: I move:

Page 7, lines 31 to 39—

Delete clause 13 and substitute:

13—Appeals to Supreme Court

(1) A member of an organisation may appeal to the Supreme Court against a decision of the Attorney-General to make a declaration in relation to the organisation under this Part.

(2) The Commissioner is entitled to be joined as a party to an appeal under subsection (1) (and may appear in the proceedings personally or may be represented by counsel or a police officer).

(3) The Commissioner may appeal to the Supreme Court against a decision of the Attorney-General to revoke a declaration under this Part.

(4) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.

(5) The commencement of an appeal under subsection (1) does not affect the operation of the declaration to which the appeal relates.

(6) On an appeal, the Supreme Court may—

(a) confirm, vary or reverse the decision subject to appeal; and

(b) make any consequential or ancillary order.

13A—Criminal intelligence

(1) No information provided by the Commissioner to a court for the purposes of proceedings relating to the making or revocation of a declaration may be disclosed to any person (except to the Attorney-General, a person or Committee conducting a review under Part 6, a court or a person to whom the Commissioner authorises its disclosure) if the information is properly classified by the Commissioner as criminal intelligence.

(2) In any proceedings relating to the making or revocation of a control order, the court determining the proceedings—

(a) must, on the application of the Commissioner, take steps to maintain the confidentiality of information properly classified by the Commissioner as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and

(b) may take evidence consisting of, or relating to, information that is so classified by the Commissioner by way of affidavit of a police officer of or above the rank of superintendent.

These amendments put in place a new clause 13 and a new clause 13A. New clause 13 is very new, while new clause 13A is a replacement for what we had as clause 13. Clause 13, as it stands in the bill, protects the Attorney-General from having to disclose the rationale for the seeking or the making of a declaration. I have a concern—and I did not really get around to addressing it in the previous debate on the Hon. Mr Wade's amendment—about the need for a right of appeal against declaring an organisation.

Provision is made for appeal against a control order later in the bill, but there is not a right of appeal against declaring an organisation. So, my new clause 13 restores what is due process in law so that anyone in an organisation that is about to be declared or has been landed with a declaration order will be able to appeal the decision to the Supreme Court. I think the amendment speaks for itself. There are five parts to it and members can have a look at that and see whether or not that is what they want. I hope that, after the Liberal amendments have been defeated, they would see mine as an alternative.

That then takes me to new clause 13A which, as I say, is a replacement for clause 13 of the bill. It ensures that information that is classified as criminal intelligence is properly protected by the court system. I refer members in turn to clause 21 of the bill, which is actually headed 'Criminal intelligence'. What I am doing here is, I think, replicating what is in clause 21. It is basically taking what is in clause 21 and putting it in a different position in the bill as a replacement to clause 13, which I think we might have just removed from the bill.

The Hon. M. Parnell: Temporarily.

The Hon. SANDRA KANCK: Temporarily; but I am not sure of that. So, this is putting back a clause 13, albeit as a way of appeal to the Supreme Court, and a 13A which then deals with criminal intelligence, albeit in the form that it is in in clause 21. I hope that is clear.

The Hon. P. HOLLOWAY: I do not need to repeat the debate or the arguments; we have had it out earlier. When this bill is completed I will seek to reinsert the original clause 13, but essentially we are debating here what the Hon. Sandra Kanck believes should replace it. As I have said, I have argued at length against it during the previous hour or so, and I will not repeat all the arguments now.

The Hon. M. PARNELL: I am working on the assumption that the original clause 13 will find its way back in on a recommittal. So, the question before us is whether the Hon. Sandra Kanck's new clauses 13 and 13A are preferable. I say that they are. We were discussing earlier the idea of judicial review, being able to bring actions in court where a decision-maker has failed to follow due process, and inviting the court to make them follow due process.

The honourable member's new clause 13 goes further than that and does propose for actual merits appeal. I support that in relation to declarations involving organisations. I think she has incorporated some checks and balances in here: certainly the Commissioner will become a party. The honourable member's amendment makes it very clear that the commencement of an appeal does not affect the operation of the declaration to which the appeal relates, so it does not stand in the way of the declaration operating.

I am conscious that the minister said earlier that, whether or not the declaration is technically in force, it will hamstring the police and the Attorney-General. I do not accept that. I do accept that being able to challenge these fundamental decisions in a court (the right to go to the umpire) is a fundamental right of our legal system and I support the amendments.

The committee divided on the new clauses:

AYES (2)

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

NOES (19)

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

Majority of 17 for the noes.

New clauses thus negatived.

Clause 14.

The Hon. SANDRA KANCK: I move:

Page 8, line 3 [clause 14(1)]—Delete 'must' and substitute:

may

Under this bill all that is required for someone to be subject to a control order is that a defendant be a member of a declared organisation. No crime has to be committed and, as we have already established, it is a matter of guilt by association. What this amendment does is simply change the word 'must' to 'may'. Clause 14(1) says that the court must make a control order if the court is satisfied that the defendant is a current member of a declared organisation.

However, in regard to someone who has been a member of a declared organisation or has, in the past, engaged in criminal activity, the court is given some leeway. The court should have that same flexibility for someone who is a current member of a controlled organisation. It is quite possible, and I can think of an example, that the person is an upstanding and contributing member of society, and the court should be able to consider this as a matter of natural justice.

An honourable member interjecting:

The Hon. SANDRA KANCK: The honourable member asked what the example is but I am not going to specify which particular bikie gang it is. However, a law student who was a member of a bikie gang contacted me, and he told me that, for the protection of his future career as a lawyer, he had to resign his membership of that organisation.

The Hon. A. Bressington interjecting:

The Hon. SANDRA KANCK: The Hon. Ms Bressington can laugh but, nevertheless, people do exercise some freedom of choice in our society, even if she does not believe it is possible. In that particular case he did that in order to allow him to go on, when he finishes law school, to become a lawyer.

The Hon. A. BRESSINGTON: I do not quite know whether the Hon. Sandra Kanck understands the structure of and binding commitment that people make to motorcycle gangs. You do not go in and give two weeks' notice and say, 'I want to resign now because I am a law student.' If you are a member of a motorcycle gang and you have gone through the initiation and the whole process, like it or not you are in it for life. You may not participate in doing any more crime but you are still bound by that membership for the duration of your life.

There was an article in the paper about a gentleman who left a motorcycle gang because his niece had an illness, I think it was. He wanted to clean up his life and all the rest of it. However, at no time was he prepared to give information to the police that would help to solve crimes or help to put that motorcycle gang out of business, so to speak, or to try and break their cycle of crime—because he is still a member of that gang. He can find God, he can do all that sort of stuff and change his life, but he always has to live with a foot in each camp.

I just do not think the honourable member gets it; that if you are a member of a motorcycle gang and then go to law school, when you come out you are a fully trained lawyer and you have a very well funded, well-organised group of people who can advance your career quite well and pay you quite well. I will not be supporting this amendment.

The Hon. P. HOLLOWAY: Further to what the Hon. Ann Bressington said, many of these gangs have joining conditions such as committing crime and, often, serving time in prison, which is not going to be at all healthy for a good career as a lawyer.

Nevertheless, clause 14 provides for the making of control orders. Clause 14(1) provides that the Magistrates Court must make a control order against the defendant if satisfied that the defendant is a member of a declared organisation. The making of the order is mandatory. In other cases, orders under clause 14(2) against ex-members and those who engage in serious criminal activity, the making of an order is discretionary. It obviously depends on the organisation.

The Hon. Ann Bressington makes the point, which I am sure is true for the vast majority of these gangs, that basically leaving in a wooden box is probably the only way you can get out of some of them. We only have to look at the case of the bikie in New South Wales , I think, who was shot because he left a particular organisation.

However, if a member leaves, then there is the discretion there. Obviously if they are still associating with former members and have a foot in both camps, as the Hon. Ms Bressington said, in those cases the making of an order is discretionary but, certainly for members, it is mandatory. The Hon. Ms Kanck seeks to amend subclause 14(1) and associated clauses so that the making of an order against a member of a declared organisation becomes discretionary also.

I propose that this be treated as a test amendment. We oppose this series of amendments. The Attorney-General will have already determined that members of a declared organisation associate for the purposes of serious criminal activity, and that the organisation represents a risk to public safety and order. That must already have been done.

Given this, the government believes that it is appropriate that, once it is satisfied that the defendant is a member of a declared organisation—a matter that must be proven by the Crown on the balance of probabilities—the court should be required to make a control order. Furthermore, the court still has considerable discretion. In prohibiting the defendant from, say, associating with other persons who are members of declared organisations (and that is something that can be reviewed on a notice of objection) and possessing dangerous articles or prohibited weapons, the court has a discretion subject to the matters set out in clause 14(6) of the bill as to what prohibitions are to be imposed on the defendant.

The Hon. D.G.E. HOOD: I think the minister has outlined it well. Family First opposes the amendments.

The Hon. S.G. WADE: Just addressing the last few comments that the minister made in explanation, I wonder whether it is a matter of degree rather than anything hard and fast, because the mandatory element in 14(1) is only that there must be an order made. The control order has a discretionary element: subclause (5)(a) provides that the control order may prohibit the defendant from a series of activities, while the mandatory element of subclause (5)(b) provides, 'if the defendant is a member of a declared organisation, must prohibit the defendant from' and then there are two subsections there.

The paragraph goes on to provide, 'except as may be specified in the order.' So, it is conceivable that, even though the bill purports not to give the court a discretion, the court could actually put in place an empty order. The exceptions that may be specified in the order may, in fact, nullify it. Whilst the opposition supports the government in retaining the clause as it stands, again, I think that these things are more apparent than real.

The Hon. SANDRA KANCK: The minister suggested that this be a test amendment. I am not sure what he wants it to be a test for, because I cannot see that the issue of 'must' and 'may', for instance, in my amendment No. 9 has anything to do with my amendment No. 10 about appropriateness of an order. I do not wish to—

The CHAIRMAN: The Hon. Ms Kanck can move that amendment in due course. We are on this one, 'must' and 'may'. at the moment.

The Hon. SANDRA KANCK: It is just that the minister said that he wanted it to be a test amendment, and I cannot understand why it should be.

The CHAIRMAN: The Hon. Ms Kanck is in control of her own amendments.

The Hon. M. PARNELL: I support this amendment, because I do not think that it does great harm to this bill to give the court a discretion. As it is currently worded, the court has no discretion. It must make a control order against the person if it is satisfied that they are a member of a declared organisation. The Hon. Stephen Wade points out that it might be an empty order. I think that is technically possible under subclause (5)(b).

However, that subclause provides that, if the defendant is a member of a declared organisation, then the control order 'must prohibit the defendant from associating with the other persons who are members of declared organisations.' The provision as worded by the government is fairly straightforward in that it provides that, once you have established that you have a declared organisation, and once you have established that a person is a member, then their own personal conduct and behaviour are irrelevant. Their own motivations are irrelevant. They might not be one of the persons who associate in that organisation for the purpose of planning crime. We have previously amended it so that we need a slightly more dominant purpose in that organisation. Nevertheless, there may be one good apple in a barrel of bad apples, one person who might stand some chance of swaying, influencing or turning the organisation around. As the minister said before, these organisations vary widely in their culture and history.

I guess that we are looking at a couple of approaches: the government's approach is that the only response is to smash the organisation by targeting every single member, regardless of their personal conduct; and another approach might be that we leave it to a court to decide whether or not any particular individual deserves to have a personal control order against them.

At the end of the day, the results may be the same; however, I do not think that it harms this bill to give the court a discretion under clause 14(1), in the same way that the court has some discretion under clause 14(2).

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 8, line 5—After 'organisation' insert:

and that the making of the order is appropriate in the circumstances

I think that it is fairly obvious that such orders should be appropriate for the circumstances, and this amendment simply spells that out and ensures that it is in the legislation to give guidance.

The Hon. P. HOLLOWAY: We thought that this amendment was consequential because, if you are saying that the court must make an application if it is satisfied that the defendant is a member of a declared organisation, what qualification do you need? Technically, they can run together, but we oppose this for the same reason we opposed the first amendment; that is, if the court is satisfied that you are a member of the declared organisation, that should be it.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 8, lines 8 to 11—Delete paragraph (a)

I give notice that I regard this amendment as a test amendment for my amendments Nos 6 and 7 because they relate to the same issue, that is, whether or not it is appropriate for this legislation to target former members of these organisations or just current members. My amendments seek to ensure that the law applies only to current active members of controlled organisations.

As the bill stands, citizens who may once have been connected to a controlled organisation, or once involved in serious criminal activity perhaps many years before, are still caught up in the net. This raises the question about where in this legislation is the notion of someone having served their time, paid their debt to society and moved on or of someone perhaps who has never been in conflict with the criminal law but might, of their own volition, have moved on. In my second reading contribution, although I will not repeat it here—

The Hon. R.I. Lucas: Hear, hear!

The Hon. M. PARNELL: However, I can do so if the Hon. Rob Lucas would like a reminder—I gave the example of the former head of the Rebels motorcycle gang who had found his way into the Hon. Andrew Evans' church and who, of his own volition, had moved away from that bikie lifestyle. It seems that there is no redemption and no moving on potentially under this legislation because a control order may, on the application by the Police Commissioner to a court, be made against a defendant if the court is satisfied that the defendant has been a member of a declared organisation or engages, or has engaged, in serious criminal conduct.

Both those two elements together seem to me to be denying the right of people to ever move on with their lives; that is, once a bikie always a bikie, no matter how long ago. Once you have had a criminal conviction, then not only does that stay perhaps on your record in terms of potential employment or things such as that but it can also be brought up and used again to have a control order issued against you. At this stage I pose the question to the minister about whether my understanding of this clause is correct because, whilst in the legislation we have a definition of who is a member of a declared organisation, there is no definition of past member. The words are 'has been a member'.

My first question is: is it time limited at all? Does it mean that the person was a member, a past member of an organisation as currently constituted, or is it that organisation's predecessors in title? How far back does it go? I think it is very unclear. Similarly, 'a person who has engaged in serious criminal conduct', is that over the course of their lives or is it in some way time limited?

The Hon. P. HOLLOWAY: Clause 14(2)(a) of the bill empowers a Magistrate's Court to make a control order against a defendant who has been a member of a declared organisation or who has engaged in criminal serious activity and who regularly associates with members of

declared organisations. The Hon. Mr Parnell's amendment deletes this paragraph. In doing so, the amendment will restrict the court's powers to make a control order against members of declared organisations—mandatory orders—and people who engage or have engaged in serious criminal activity and who regularly associate with others who engage or have engaged in serious criminal activity—the discretionary orders.

The government opposes this amendment and also opposes the honourable member's next amendment which is consequential upon this one, and I think the Hon. Mark Parnell has recognised that fact. The purpose of this legislation is to break down criminal associations between members of declared organisations and between members of declared organisations and others. If clause 14(2)(a) is deleted, there will be a gap—absent proof of serious criminal activity on the part of the defendant or the member of the declared organisation with whom he is associating. The court will have no power to make a control order where the defendant is a former member of a declared organisation who regularly associates with members of other declared organisations, or against a person who engages, or has engaged, in serious criminal activity and who regularly associates with members of a declared organisation.

Two points need to be made. First, the court may only make an order under clause 14(2)(a) where satisfied that the defendant regularly associates with members of declared organisations. The Attorney-General may only make a declaration against an organisation if satisfied that members of the organisation associate for criminal purposes and the organisation represents a risk to public safety and order in South Australia. There has already been a determination as to the nature of the organisation. Secondly, orders made under clause 14(2)(a) are not mandatory: they are discretionary.

Even if the court is satisfied that the defendant and the person (or persons) with whom he regularly associates meet the criteria of clause 14(2)(a), the court must also be satisfied that the making of the order is appropriate in the circumstances, having regard to these matters which are set out in clause 14(6) of the bill: whether the defendant's behaviour or history of behaviour suggests there is a risk that the defendant will engage in serious criminal activity; the extent to which the order might assist in preventing the defendant from engaging in serious criminal activity; the criminal record of the defendant and any other person listed in the application; any legitimate reason the defendant may have for associating with any person specified in the application; and any other matter the court considers relevant in the circumstances. The Hon. Mr Parnell's amendment will leave a gap in the legislation, and for this reason the government opposes it.

The Hon. M. PARNELL: I have a little more to add. There are a couple of difficulties I think with what the minister has just said. The first is that we do have this important issue of retrospectivity, and we need to be very careful in making effectively unlawful now something which, back then, was not. People might say, 'No, we are not creating any new criminal offence. All we are doing is creating a category of people who might be the subject of a control order.' But you have to remember that these former members were not members of organisations that were in any way illegal in the past. If, in the future, they are made illegal, suddenly they are now caught up in the net. So, I think there is a problem with the general legal principle against retrospectivity.

The second point I make is in response to the minister's comment that the removal of paragraph (a) leaves a hole in this legislation. I accept that it does leave a hole, but it is a very small hole that I think is easily plugged both by its surrounding provisions and also by other provisions. Removal of this reference to past members still leaves current members and it still leaves people who, whether or not they are members of a declared organisation, engage in criminal conduct; and they are the two types of people that the government has said all through the debate over the months on this bill it most wants to catch. The government has not said that this is a campaign to get past members. It wants current members, active members and persons engaged in serious criminal conduct, whether members or not.

The other reason I say this small hole left in this clause is easily patched is that, given that the defendant has to, first, have been a member of a declared organisation and also has to currently regularly associate with members of a declared organisation, we can catch those people, if the government wants to, with the new consorting laws. They do not need to have control orders issued against them in their own right. If they are currently regularly associating with members of declared organisations, they are already caught in the scheme. It seems to me that removing this reference to past members does improve the legislation, and the tiny hole that it leaves is easily plugged by other provisions.

The Hon. P. HOLLOWAY: This is about creating loopholes. What we cannot afford to do with this legislation is leave a loophole whereby some member can consider themselves, or purport to be, a past member and therefore use that to avoid the purpose of the legislation.

The Hon. SANDRA KANCK: I move:

Page 8, lines 9 and 10 [clause 14(2)(a)(i)]—Delete 'has been a member of a declared organisation or engages, or has engaged,' and substitute:

is a relevant former member of a declared organisation or engages

I suppose it could be considered that my amendment might plug this small hole that we are talking about. What is important for me in dealing with clause 14(2) is taking up the concerns of the Longriders Christian motorcycle group. These are members of a group who have a criminal record. I think most of them have criminal records. They have served time in prison, and while they were in prison they were converted to Christianity. As a consequence of that conversion, they have decided that it is their mission in life to go out and mix with other motorcycle gangs and attempt to convert those members to their religion, because they see that they have a role in preventing them going down the same track they went and making the same mistakes. But, this clause, as it is worded in the bill, will catch them, and I will read it again. It provides:

(2) The court may, on application by the Commissioner, make a control order against a person (the defendant) if the court is satisfied that—

(a) the defendant—

(i) has been a member of a declared organisation or engages, or has engaged, in serious criminal activity;

They have got them in that they have been a member in the past of a declared organisation and they have engaged in serious criminal activity; and they have admitted that to me when I have been speaking to them. Subparagraph (ii) provides 'and regularly associates with members of a declared organisation'. So they can be got on all three grounds.

These people are in the process of trying to stop crime by converting people to their religious beliefs. Surely, we ought to be doing whatever we can to support them, despite whatever the Hon. Ann Bressington might say about 'once a bikie, always a bikie'.

The present wording is catch-all: 'If you have ever been a member or you have ever been engaged...' My amendment is attempting to finesse it a little so that it catches the right person. Rather than deleting the whole of paragraph (a), what I am doing is to say that that particular person—the defendant—is a relevant former member of a declared organisation. I think that has some chance of protecting members of groups such as the Longriders Christian association.

The Hon. R.D. LAWSON: I make a brief contribution in relation to the proposals of both the Hon. Mark Parnell and the Hon. Sandra Kanck.

It is said that subclause (2)(a) covers a small loophole. I believe it covers a massive loophole. What will happen when these declarations are made is that every bikie will hand in a resignation. He will hand in a piece of paper, saying, 'I have resigned, so I am a former member. I am entitled to get out of it on that basis.' That is not a small loophole but, rather, a massive loophole. There must be a provision of this kind. I remind the committee that it does not require the court to make the order; rather, the court has a discretion to make the order.

In relation to the reformed members about whom the Hon. Sandra Kanck speaks, the protection that they enjoy is the protection given by subclause (6), which provides that the court must have regard to any legitimate reason the defendant may have for associating with a person specified in the application. If these persons are truly reformed Christians seeking to lead people away from a life of crime, I am sure any magistrate would agree that is a legitimate reason to associate with other persons. There is that form of judicial protection in the bill.

One of the purposes of this legislation—and this is an additional point—is to break up bikie gangs. Those who want to associate with them for the purpose of reforming do tend to give an air of legitimacy to the organisation—an air that this criminal organisation encourages: 'Come along with us because you legitimise our criminal activities.'

I do not believe we should encourage do-gooders to join organisations of that kind. We do not say to the Mafia, 'It is quite all right if you are pretending to reform them, however high your motives are.' We want to break up this group and remove it from its pretence of legitimate existence.

The Hon. SANDRA KANCK: The problem with what the Hon. Robert Lawson has said—and, before that, the minister in his argument—is that the person in the Christian motorcycle group will still have to front the court in this whole putting things on its head, the way in which we are changing innocent until proven guilty, and so on. It would appear to me, then, that the Christian Longriders will have to face court again and again. They will have to defend what they do. Obviously, the government and the opposition think that is a good idea. I suspect that it probably might deter them from the activity altogether; and, if there was any chance of their being able to convince these guys to go straight, it will just disappear.

The Hon. A. BRESSINGTON: If the Longriders are associating with illegal motorcycle gang members to try to convert and reform them and, if there is no criminal intelligence on the Longriders for participating in criminal activity or helping to plan criminal activity, there would be no reason in the first place for them to be a declared organisation and no reason for having control orders placed on them at all. As the Hon. Robert Lawson pointed out, this provides that the court 'may', not 'must'. So, there is ample protection for people who are doing good in the community to be able to continue on their merry way doing what they do. I will not be supporting this amendment.

I would like to clarify one other thing. The Hon. Sandra Kanck made the comment that I said, 'Once a bikie always a bikie.' That is not what I said, and I would prefer that she did not put words in my mouth or put something on the record as being my words. I said that once you have been a member of a motorcycle gang you are never fully out of that—you live with one foot in each camp all the time. None of these reformed bikies, as I said, go to the police and give up their mates, or inform the police of the crimes that have been committed so that they can help solve past crimes, or anything else. No; they shut their mouth. That is fine, because their safety depends on it, and they live their life straight from there on. There would be no reason in the first place for the Longriders to be declared an organisation or for control orders to be put on them if they are associating for the purpose of planning and organising crime. Is that correct?

The Hon. P. HOLLOWAY: Clause 14(6) provides that, in considering whether or not to make a control order under subsection (2), the court must have regard to paragraph (d), which provides, 'any legitimate reason the defendant may have for associating with any person specified...' If their purpose is to convert people to Christianity, one would trust that the court would regard that as a legitimate reason.

In relation to the body itself, we must go back to what we discussed at clause 10. The Attorney would have to be satisfied that that organisation represents a risk to public order and safety or that they are associating for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activities. Unless they were doing that, why would they be declared? Even if they were declared, or members of other organisations were declared, if they could satisfy the court that the only purpose they were associating was, as the Hon. Sandra Kanck suggested, trying to convert people, that would be covered by clause 14(6)(d).

The Hon. M. PARNELL: I still require a bit of clarification. Having heard the debate so far, I am wondering whether I might have got it wrong in relation to retrospectivity, because the Hon. Robert Lawson was talking about the loophole, as he described it, or the 'gap' was the minister's word, and that a person could very quickly resign from a declared organisation and somehow escape the operation of this section. That got me thinking about who is covered by this. Where it says, 'the defendant has been a member of a declared organisation', I was working on the assumption that, if a person was a Hell's Angel in 1990 and the Hell's Angels became a declared organisation in 2008, they might be caught by that.

However, there is another interpretation of this word, that is, that it is not retrospective—that it operates, for example, only for people who were a member of an organisation after it had become declared. That is an important one for me. I still have a problem with not allowing people to move on with their lives if they have a past criminal history, but I would like clarification on whether the first scenario I put, namely, that the person who was a Hell's Angels in 1990 can be caught by the words 'has been a member of a declared organisation'.

The Hon. P. HOLLOWAY: The relevant part is clause 14(2)(a)(ii): 'and regularly associates with members of a declared organisation'. So if somebody was a member of an organisation last week or 20 years ago, if they are still associating regularly with members, so be it. I would have thought that would make it apply, regardless of how long they have been out of the organisation. Effectively, clause 14(2)(a)(ii) says that, for all intents and purposes, they are still if not members of the organisation behaving like members of the organisation.

The Hon. M. PARNELL: I need to pursue this because subparagraphs (i) and (ii) both need to be satisfied. It is no good that somebody just regularly associates with members of a declared organisation. They also have to meet the threshold test of 'has been a member of a declared organisation'. I need to know whether a person who was a member of an organisation 10 years ago when it was not declared (because we did not have this legislation) are caught by those words 'has been a member'?

The Hon. P. HOLLOWAY: I think they would be, but however long they have been out of it if they are still regularly associating with members are they not for all intents and purposes if not a member of the organisation acting like one? It is like the old saying: if it looks like a duck, flies like a duck and quacks like a duck, it probably is a duck.

The Hon. R.D. LAWSON: I do not think that example by the minister is all that helpful in this context, but I believed the purpose of inserting this provision was to cover the obvious loophole that arises because subparagraph (i) provides that the court must make the declaration if the person is a member of the organisation. The conclusion is that members would seek to avoid being members of the organisation by immediately resigning. You cover that situation in subclause (2), which provides that 'the court may, if it is satisfied that the defendant has been a member of a declared organisation'. It seems that somebody who is a member presently is not a member of a declared organisation. It is not a declared organisation: no such thing exists at the moment, and it did not exist 10 years ago. A person has to be a member of the organisation after this legislation comes into force and then, if the person resigns, he is covered by subclause (2).

The Hon. M. PARNELL: I need the minister to tell me whether the Hon. Robert Lawson is correct, because we have two very different answers to that question.

The Hon. A. BRESSINGTON: I need clarification. Is it not a fact that, for somebody to be involved in a declared organisation and the control order is whacked on them, there has to be some recent criminal intelligence on that person? There needs to be criminal intelligence on an organisation to have it declared.

The Hon. M. Parnell interjecting:

The Hon. A. BRESSINGTON: If they are known to be associating with the organisation for criminal activity or are planning or undertaking criminal activity. I used the analogy earlier tonight that, if I am a guy in a shop selling pies and peas and members of an organisation come into my deli every day to buy lunch, to buy pies and peas, and I know they are involved in criminal activity, I cannot have an order placed on me because I continue to serve them in my daily business. Am I correct in thinking that the same thing would apply to people who are associating with criminals, such as members of the Longriders, whose drive, calling or vocation is to go out and reform criminal motorcycle gang members but who are not participating in criminal activity? There is no criminal intelligence on them, and there would be no cause for the court to place an order on them in the first place.

The Hon. P. HOLLOWAY: Yes, I can see why the court would do that in that situation. The Hon. Robert Lawson has also raised some issues. Certainly, it is not the way that the government has read it. This bill will obviously have to go back to the lower house, because there have been some amendments. We can undertake on behalf of the Attorney that, if necessary, we will look at clarifying clause 14(2) to ensure that its intention is clearer.

The Hon. SANDRA KANCK: I suggest that, if members were to adopt my amendment, it might solve the problem, so that it refers to a relevant former member.

The Hon. P. HOLLOWAY: I do not think that that is really the issue. It is a matter of clarity. An issue that just occurred to me is: what if everyone resigned from the organisation at once? It would make a bit of a farce of it, and one would hope that the court would see through it. Possibly that could be clarified. As I said, we will have a look at it. We could say that someone has been a member of an organisation which at the time of the application is a declared organisation. I undertake that we will do that before this bill finally emerges from parliament.

The Hon. R.D. LAWSON: There is one point that I think I should make in relation to the Hon. Sandra Kanck's concerns about the Longriders. The Longriders—that is, people who are seeking to reform the bikies—as I understand it, still dress in the colours of the club and still present themselves as members of it and ride out with them in their groups. That sort of activity is giving a legitimacy to an organisation that should not have it. If a young chap standing in the street asks, 'Who are these people?' and the answer is, 'Some of those people are criminals and those other guys are good Christian guys; they are out there riding with them,' the young chap would

probably say, 'I would rather like to get in with that group. It looks as if there are a few goodies and a few baddies.'

An honourable member: The curate's egg.

The Hon. R.D. LAWSON: It is the curate's egg. I do not believe that we should encourage the person who wants to convert the bikies to dress himself like the bikies, to behave like a bikie and go with them on their criminal activities and their activities generally and, as I said, lend an air of legitimacy to an organisation that is not legitimate if it is engaging in the sorts of things this legislation prescribes, namely, criminal activity.

The Hon. M. PARNELL: I want to make sure that we manage these amendments properly. I thank the minister for his undertaking to bring back an answer about my question in relation to retrospectivity, whether it is past members of organisations that subsequently become declared or whether it applies to people only after the organisation has been declared. I think we need to clarify that.

However, I have other concerns about this clause and I am going to pursue the amendment that I have already moved, which is to remove paragraph (a). It is a different question from that raised by the Hon. Sandra Kanck, who was invited to move her amendment. It relates to the same clause, but provides a different solution.

My solution is to remove paragraph (a), and I maintain that is still the appropriate result, regardless of what the minister comes back with in terms of that question on retrospectivity. We still have this issue of prior criminal records being sufficient, in conjunction with regular association with members of a declared organisation, to subject someone to the possibility of a control order. I maintain that the government's approach of using the new consorting laws is the way you capture people who regularly associate with members of declared organisations; you do not need your own control order against you.

I accept what the government has said, that is, that the word 'may' appears in clause 14(2) and that there is a range of issues that are caught and must be taken into account, yet I am keen to pursue this amendment. I would like your guidance, Mr Acting Chairperson, if we are going to have this clause recommitted, whether we will be voting on it then or, if my concerns are serious enough, whether we should be voting on it now, because I do not want to miss the opportunity to test the will of the committee on my amendment to this clause, and there are other amendments which we will deal with in due course.

The committee divided on the Hon. Mr Parnell's amendment:

AYES (2)

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

NOES (19)

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

Majority of 17 for the noes.

Amendment thus negatived.

The committee divided on the amendment:

AYES (2)

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

NOES (19)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.

Hunter, I.K.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Schaefer, C.V.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

Majority of 17 for the noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: Before I move my next amendment, I want to ask a question about clause 14(5). The government has continued to tell us that there are about 250 bikies in this state. In terms of what 14(5) does, is it the government's anticipation that all 250 bikies in this state will be put through this whole process of control orders and apply all of 14(5) to them?

The Hon. P. HOLLOWAY: Essentially, that would be an operational decision for the Police Commissioner. Obviously, if the Attorney declares each one of those (I think it is eight) outlaw motorcycle gangs in accordance with clause 10, it is then up to the Police Commissioner as to how we follow it up. Again, I imagine that that would be based on the intelligence in relation to each member. It may not be every member; it will depend on the evidence.

The Hon. S.G. WADE: I seek to follow up the Hon. Sandra Kanck's question. Whilst we understand the government estimates that there are about 250 current members of declared organisations, is the minister able to advise the council of how many former members the government estimates are in the state?

The Hon. P. HOLLOWAY: My advice is that SAPOL does not have that information to hand.

The Hon. SANDRA KANCK: I move:

Page 9, line 11 [clause 14(6)(d)]—After 'application' insert:

(including, without limitation, any social or cultural reasons or community obligations)

Clause 14(6) allows a judge consider various factors in making a control order, and clause 14(6)(d) provides:

any legitimate reason the defendant may have for associating with any person specified in the application;

By way of this amendment, I am proposing to insert after 'application' the words 'including, without limitation, any social or cultural reasons or community obligations'. As it stands currently, it does not specify what the legitimate reason is and, by including this amendment, this provides a little more guidance so that it does say that social or cultural reasons or community obligations should be able to be included.

I have done this because of the sorts of things that happen in country towns, in particular, where you might find someone who has a previous criminal record who is a member of the local footy club and, without something like this in there, it is possible that the other team members could be putting themselves at risk and, of course, it puts the local football club at risk in some of these small communities because one member fewer can be quite crucial.

I also know of organisations such as those working in the rehabilitation of prisoners who have been discharged from gaol and that volunteers in these organisations could be caught up without this adequate provision. For me, this amendment is a very important one and one on which I will be seeking to divide.

The Hon. P. HOLLOWAY: The government's position is that the Hon. Ms Kanck's amendment adds nothing but uncertainty. The term 'social or cultural reasons or community obligations' is vague and, as such, would be the subject of litigation. This will drag out and complicate control order proceedings.

Paragraph (d) leaves the decision as to what is or what is not a legitimate reason to the court. The government sees no reason why the court's discretion to determine what is or is not appropriate needs to be qualified or extended, as the Hon. Ms Kanck suggests. For that reason, we oppose the amendment.

The Hon. S.G. WADE: The opposition does not share the petulance of the minister. The opposition reads the clause as a whole and sees that in subclause (6)(d) it states 'any legitimate reason the defendant may have' and 'without limitation' in the Hon. Sandra Kanck's proposed addition. There is no qualification. It goes on to state 'any social or cultural reasons'; so, in other words, it is for the court to decide whether a reason is legitimate. We are disturbed to hear the

government suggesting that social, cultural or community obligations are somehow illegitimate. We do not—

An honourable member interjecting:

The Hon. S.G. WADE: That is the implication of what the minister is saying. The Hon. Sandra Kanck's amendment makes it clear that it is without limitation. We would fully expect that social, cultural or community obligations would have been included in legitimate reasons. We do not see any reason to exclude them by rejecting this amendment.

The Hon. M. PARNELL: I think that these are sensible amendments and I do not share the minister's concern that we are adding uncertainty. The structure of subclause (6) is that there are a list of things that the court must have regard to when it has a discretion in relation to these control orders. The first four of those are all matters that are open to interpretation. For example, a person would query, under paragraph (b), 'the extent to which the order might assist in preventing the defendant from engaging in serious criminal activity'.

Clearly, there will be two arguments: someone will say, 'You need this order to help you not engage,' and the counter-argument would be, 'It will make no difference: I am not going to engage and I don't need the control order.' Similarly with the Hon. Sandra Kanck's amendment, it was interesting to hear her explanation in relation to country towns and sport, but also when I read those words it seemed to me that indigenous people would be particularly advantaged by requiring a court to take into consideration their particular social, cultural and community reasons.

The discretion is still with the court as to the order they are going to make, but it seems to me to be no harm, and in fact to be a good thing, to provide that addition to the list of things that the court must have regard to.

The Hon. D.G.E. HOOD: Family First opposes the amendment. We see it as absolutely unnecessary. If you read the clause there, and specifically paragraph (d), it says 'any legitimate reason the defendant may have'. That would include, presumably, social or cultural reasons or community obligations, so it is completely unnecessary and for that reason Family First opposes the amendment.

The committee divided on the amendment:

AYES (10)

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

NOES (11)

Bressington, A.	Darley, J.A.	Evans, A.L.
Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hood, D.G.E.	Hunter, I.K.
Wortley, R.P.	Zollo, C.	

Majority of 1 for the noes.

Amendment thus negatived; clause passed.

Clause 15.

The Hon. SANDRA KANCK: I move:

Page 9, line 32 [clause 15(1)(e)]—After 'section 17' insert:

and information about where legal advice can be obtained.

I think the amendment is self-explanatory. It merely requires that the control order also provides information about where legal advice can be obtained. I think that is a very sensible amendment.

The Hon. P. HOLLOWAY: Clause 15(1) of the bill provides that a control order once made by the court on the ex parte application of the Commissioner must:

(a) be directed at the person specified as the defendant;

(b) set out the terms of the order;

(c) specify whether the order is made under clause 14(1), (2)(a) or (2)(b);

(d) subject to the order not containing any criminal intelligence, include a statement of the grounds on which the order has been made; and

(e) set out an explanation of the right of objection under clause 17.

Ms Kanck's amendment will require the control order also to contain information about where legal advice can be obtained. The government opposes this amendment. First, it is not the role or function of a court to advise parties to proceedings as to where and/or from whom they can seek legal advice. From whom a person seeks legal advice is a decision for that person as, indeed, is the decision to seek legal advice in the first place. How is the court to determine which lawyers or legal services should appear on the notice?

Secondly, this amendment will impose an unreasonable administrative burden on the court staff who will be required to monitor the relevant legal providers and update court documents every time one of them changes address or phone number. Thirdly, the requirement is unnecessary as the services provided by the Legal Services Commission are well publicised, the Law Society operates a referral service, there are committee legal centres, and there is the *Yellow Pages*. In addition, I believe that very few of the 250 bikies would not have had very regular contact with lawyers and have their favourite lawyer. They would well know where to go.

The Hon. M. PARNELL: I think this is a sensible amendment and I had imagined when I read it that it would probably require the control order to contain no more than (after, pursuant to paragraph (e), setting out the explanation of the right of objection under section 17) a sentence, for example, saying, 'The Legal Services Commission of South Australia may be able to assist with legal advice,' and you would leave it at that. The Legal Services Commission of South Australia is an organisation that has been around for a great deal of time and is unlikely to change in the foreseeable future, so I do not see that it is an unreasonable addition to the content of the control order.

Amendment negatived; clause passed.

Clauses 16 to 18 passed.

Clause 19.

The Hon. SANDRA KANCK: I move:

Page 11, lines 16 and 17—Delete subclause (2)

This clause is about appeals to the Supreme Court in relation to the control order. It has five subclauses and I am dealing with subclause (2). Subclause (1) provides that the Commissioner or an objector may appeal to the Supreme Court against a decision of the court on a notice of objection; and subclause (2) provides that an appeal to that lies as of a right on a question of law and with permission on a question of fact.

I am moving to delete subclause (2) because of the nature of this legislation and the way it is turning all our tried and true court procedures on its head. It is not necessary to provide instructions to a court, limiting it about what it may or may not consider. We have to trust our courts to make decisions based on the information that they are able to obtain. I have already argued this before with the Hon. Rob Lawson but I do not believe that it is appropriate to be telling the court how to do its job and that is why I am moving for this to be deleted.

The Hon. P. HOLLOWAY: Clause 19(1) provides the Commissioner and a defendant who has objected to a control order with a right of appeal to the Supreme Court from the decision of the Magistrates Court on a notice of objection. Clause 19(2) provides that an appeal lies as of right on a question of law but with permission on a question of fact.

Ms Kanck's amendment will delete clause 19(2). This will mean that all appeals, including those on a question of fact, will be as of right. The requirement to obtain the court's permission or leave ensures that the appellate court is required only to deal with meritorious appeals, those where the appellant has an arguable case. This amendment will require the court to entertain any appeal founded on a question of fact no matter how lacking in merit. Without the requirement to seek leave, defendants could be expected to lodge appeals in most if not all matters. These appeals would have to be listed and heard, tying up court time, a Supreme Court judge's time and resources. The government does not believe the resources of the Supreme Court should be tied up dealing with unmeritorious appeals over findings of fact in control order proceedings.

Amendment negatived; clause passed.

Clause 20 passed.

Clause 21.

The Hon. M. PARNELL: This relates to the question of the appropriate decision maker which we divided on and considered earlier. It is consequential, and I will not be moving it.

The Hon. SANDRA KANCK: I move:

Page 12, line 4—After 'person' insert:

or Committee

I hope members will excuse me, but I am actually having difficulty staying awake at the moment.

An honourable member: This is legislation by exhaustion.

The Hon. SANDRA KANCK: It is; I really am exhausted, and I am having great difficulty.

The Hon. A. Bressington: If we didn't divide so often on useless—

The Hon. SANDRA KANCK: The Hon. Ann Bressington might think they are useless, but I actually think that it is important to preserve human rights. It has taken us a long time—

The CHAIRMAN: The Hon. Ms Kanck will not get so tired if she refrains from debating the issue with the Hon. Ms Bressington.

The Hon. SANDRA KANCK: I have an amendment later on which is amendment No. 36 and which would give the Legislative Review Committee of this parliament an oversight role. This amendment is pre-sequential to my amendment No. 36, because clause 21(1) basically does not allow anybody access to this information about criminal intelligence. This amendment makes way for my amendment No. 36. If members think that our Legislative Review Committee of this parliament should have an oversight role, then it would be appropriate to support me in this amendment.

I remind members, for instance, that the Natural Resources Committee has an oversight role for the Natural Resources Management Act and for the Upper South-East Dryland Salinity and Flood Management Act. It is not an abnormal thing for a committee of this parliament to have that oversight role and, as I say, I am preparing the way to move amendment No. 36 later on so that the Legislative Review Committee would have access to some of this information.

The Hon. P. HOLLOWAY: This would be a test clause for the Hon. Sandra Kanck's latest amendments. Ms Kanck has placed an amendment on file that deletes clause 38 that requires the Attorney-General to conduct a review of the operation and effectiveness of the legislation at its fifth anniversary and inserts a new clause 38 that requires the Legislative Review Committee of parliament to take an interest in the impact of the legislation having regard to particular matters, the extent to which the act is achieving its objectives and the overall operation and administration of the act.

It authorises the committee to provide recommendations to the Attorney-General in relation to any matter relevant to the administration of the act and consider matters referred to it by the Attorney or by resolution of either house, and it requires the committee to report annually to parliament. New clause 38 also requires that the Commissioner of Police provide reports to the committee that will be tabled in both houses of parliament and requires the committee to maintain the confidentiality of information classified by the Commissioner as criminal intelligence.

This amendment to clause 21 allows criminal intelligence tendered in control order proceedings to be provided to the committee. A similar amendment to clause 29 of the bill will give the committee access to criminal intelligence used in the determination of a public safety order. The government opposes this series of amendments.

As I have already advised honourable members, clause 37 of the bill provides for an annual review of the use of the powers in the legislation by a retired Supreme or District Court judge, that is, an independent review. The judge will have access to all relevant information, including the Attorney-General's reasons for decisions on a declaration decision; a police officer's decision on a public safety order; and all information relevant to the exercise of the powers under the legislation, including information certified as or determined to be criminal intelligence. The judge's report must be tabled in both houses of parliament, giving every member the opportunity to raise concerns about or to press the government on matters arising from the review report.

At clause 38, the bill also requires the Attorney-General to conduct a review of the operation and effectiveness of the legislation after five years. Again, the Attorney-General must cause a copy of the review report to be tabled in both houses of parliament. As such, scrutiny by the Legislative Review Committee is unnecessary.

The government also has concerns about the committee's access to criminal intelligence. I should make clear that it does not have any concern that a member of the committee would disclose such information; rather, SAPOL's ability to collect evidence from confidential sources relies very much on the fact that the source of the information can be confident that their evidence will not be disclosed.

Confidential sources may be dissuaded from providing evidence to police if they know that the evidence they give, and perhaps their identity, may end up being provided to a parliamentary committee. The government doubts whether the secrecy provisions in proposed new clause 38 will be enough to overcome these fears. I think that those of us who look at committees can well understand that.

The government maintains that the three-tiered review and oversight process in the bill, the annual review of the use of powers by an independent retired judge, the five-year review of the operation and effectiveness of the legislation, both of which are subject to parliamentary oversight, and the 10-year sunset period are appropriate.

The Hon. S.G. WADE: The opposition notes that the Hon. Sandra Kanck's amendment would remove the review of the operation of the act under clause 38. We would prefer that review to any involvement of the Legislative Review Committee. We believe that the committee is not set up for that sort of purpose, so we will not be supporting the amendment.

The Hon. R.D. LAWSON: I am a great supporter of the Legislative Review Committee and believe that it fulfils an important function in the parliament. There are similar committees, especially in the federal parliament, such as the Parliamentary Joint Committee on the Australian Crime Commission, which has an oversight role in relation to particular legislation or organisations. I think that it is a fairly good model, although it has not been adopted in this case.

In any event, I would not support any parliamentary committee being given access to criminal intelligence—not because I believe that it would be used by the members but for the reasons given by the minister, namely, that sources of criminal intelligence would dry up if they were informed that we could give this information to anybody, other than a judge or a parliamentary committee. I simply do not believe that those who provide criminal intelligence to the police would have sufficient confidence in members of parliament to be assured that their source would remain secure.

I have previously mentioned that I am not personally comforted by the provision for a retired judge to undertake an annual review and report on the exercise of powers; I believe that that is largely window-dressing. I do not have much confidence in the minister's assurance in relation to that aspect of the matter. Given that this is a test clause that will lead to a provision contained in the honourable member's amendment No. 36, I simply do not believe that it is appropriate at this juncture of the bill—namely, in relation to criminal intelligence—to support it.

The Hon. SANDRA KANCK: It is fairly clear that the amendment will be defeated. However, would the minister answer a question about subclause (1)? Subclause (1) provides:

> No information provided by the Commissioner to a court for the purposes of proceedings relating to the making, variation or revocation of a control order may be disclosed to any person (except to the Attorney-General, a person conducting a review under part 6, a court or a person to whom the Commissioner authorises its disclosure) if the information is properly classified by the Commissioner as criminal intelligence.

Will the minister advise what procedure will occur for information to be properly classified? What does the word 'properly' mean?

The Hon. P. HOLLOWAY: It really relates back to whether that information is criminal intelligence, in accordance with the definition in clause 3. In clause 3, we defined criminal intelligence. It really relates to whether or not it conforms with that definition.

The Hon. SANDRA KANCK: It relates back to the definition of criminal intelligence. That defines what criminal intelligence is, but clause 21(1) says 'is properly classified by the Commissioner'. There must be a process through which the Commissioner goes for it to be properly classified. What is that process?

The Hon. P. HOLLOWAY: Properly, as in properly classified as criminal intelligence. In other words, in accordance with the definition in clause 3. The Commissioner makes the assessment. He then puts it to the court and the court then puts it to the other party as to whether or not they wish to challenge whether it is criminal intelligence.

The Hon. SANDRA KANCK: That is the process of classification.

The Hon. P. HOLLOWAY: Essentially, yes. The Commissioner classifies it first, then the court has to determine whether or not it has been properly classified. If it does, it is kept confidential.

Amendment negatived; clause passed.

Progress reported; committee to sit again.

SUPPLY BILL 2008

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (23:55): I move:

That this bill be now read a second time.

This year the government will introduce the 2008-09 budget on 5 June 2008. A Supply Bill will be necessary for the first three months of the 2008-09 financial year until the budget has passed through the parliamentary stages and the Appropriation Bill 2008 receives assent. In the absence of special arrangements in the form of the supply acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill. The amount being sought under this bill is $2,300 million. Clause 1 is formal; clause 2 provides relevant definitions; and clause 3 provides for the appropriation of up to $2,300 million.

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

STATUTES AMENDMENT (REAL PROPERTY) BILL

The House of Assembly agreed to the Legislative Council's amendment without any amendment.

LOCAL GOVERNMENT (SUPERANNUATION SCHEME) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (23:56): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to make amendments to the Local Government Act 1999, for the purpose of enabling a restructuring of the Local Government Superannuation Scheme.

At the present time, the Local Government Superannuation Scheme is established under the Local Government Act, with the rules being prescribed in regulations. The Local Government Act currently contains reasonably extensive provisions dealing with governance issues relating to the scheme.

The scheme is administered by the Local Government Superannuation Board, which conducts its business under the name of Local Super (SA NT).

Whilst the scheme is established under the Local Government Act, and the legislation currently provides a number of links with the State Government (for example, the scheme's accounts are subject to audit by the Auditor General; the Minister nominates two persons to the Board; and annual reports and actuarial reports are to be tabled in the Parliament), the scheme operates essentially like a private sector scheme and the State Government has no financial responsibility for the scheme. In 1994, the Local Government Superannuation Board elected to become a Commonwealth regulated fund, and as a result the scheme is subject to regulation under the Superannuation Industry (Supervision) Act 1993 of the Commonwealth.

As background, the scheme has around 20,700 members and the number of members continues to grow. 'The scheme' is actually made up of several schemes, both defined benefit and accumulation in style, with all schemes being fully funded.

The scheme has 172 active participating employers that include the 68 South Australian councils, as well as numerous other employers that have been declared by the superannuation scheme to be an authority or body to

which the scheme applies. Of these other entities, 20 are Northern Territory councils and 84 are other non council employers. A significant number of the non council employers are private hospitals.

As Local Super already provides superannuation services to a significant number of employees who do not work in Local Government, and in an environment where a large portion of the workforce can now choose the superannuation scheme into which their employer financed contribution is directed, the Local Government Superannuation Board has approached the Government seeking amendments to the Local Government Act so that the scheme can operate under a governance arrangement more akin to a private sector scheme. Most schemes operating in the superannuation industry operate in terms of a Trust Deed, and the legislation contained in this Bill provides for the existing scheme to be continued but subject to a Trust Deed.

As part of the restructure provided for in this Bill, the terms, conditions, and benefit structure of the scheme immediately before the amendments to the Local Government Act 1999 take effect are to be replicated in the Trust Deed. In other words, there will be no change in the schemes, or in the entitlements of members, when the scheme is established under a Trust Deed. From a member perspective, there will be a "seamless transfer" to the new governance arrangements.

In order to comply with the requirements of the Superannuation Industry (Supervision) Act 1993 (Commonwealth), the trustee will be a constitutional corporation, and the legislation provides for the directors of the company that will act as trustee of the fund to be the same persons holding positions on the Local Government Superannuation Board at the date the restructure comes into operation.

As the Board will be responsible for establishing the company to perform the duties of trustee of the scheme, as well as preparing the Trust Deed in accordance with requirements of this legislation and to the satisfaction of the Treasurer, it is envisaged that the Board will reflect the existing representation on the Board in the company director structure.

The plan of the Local Government Superannuation Board is for the scheme to also become a 'public offer fund' three years after the governance restructure in the Bill comes into operation. As a public offer fund, Local Super will be able to provide its services to any employee and employer. One of the other benefits of being a 'public offer fund' will be that employees who resign from council employment will be more attracted to leave their accrued benefit with Local Super and request their new employer to direct future superannuation contributions back to Local Super as their scheme of choice. As a trade off for becoming a public offer fund, the Local Government Superannuation Board has acknowledged that it will need to forgo the benefit of the existing mandatory requirement for South Australian councils to direct all their new employees into the scheme. In other words, it is proposed that in three years time, Local Super will operate in the Commonwealth's full choice of fund regime, and all new council employees will be able to select the superannuation scheme of their choice. One of the other consequences of moving out into the private sector and competing for new members, is that Local Super also accepts that it will need to allow existing members of the scheme, as an option, to request their employer to direct future employer financed contributions to an alternative fund of their choice.

The Local Government Act, as amended by the Bill, will continue to refer in Part 2 of Schedule 1 to the continued existence of the Local Government Superannuation Scheme. This will enable the existing exemption from the Commonwealth's choice of fund arrangements to continue. Regulations under the Superannuation Guarantee (Administration) Act 1992 (Commonwealth) prescribe members of a scheme established under the Local Government Act as being exempt from the Commonwealth choice of fund arrangements. It is the intention to have this provision expire on the making of a proclamation three years after the restructuring facilitated by the Bill comes into operation, to enable the choice of fund arrangements to come into operation for new local government employees and members of the Local Super accumulation schemes.

The Local Government Superannuation Board and the Local Government Association support the proposal contained in this Bill.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the Act is to commence on the day on which it is assented to by the Governor. However, section 4 is to come into operation on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Local Government Act 1999

4—Amendment of Schedule 1—Provisions relating to organisations that provide services to the local government sector

This clause deletes Part 2 of Schedule 1 of the Local Government Act 1999 and substitutes a new Part. Part 2 currently contains provisions relating to the Local Government Superannuation Scheme, including provisions dealing with such matters as the continuation of the Local Government Superannuation Board (the Board), investment of funds, auditing of accounts and reporting requirements.

Those provisions are to be deleted and a new clause substituted in their place. New clause 3(1) provides that the Local Government Superannuation Scheme continues in existence. This subclause applies subject to the operation of Schedule 1 of the Local Government (Superannuation Scheme) Amendment Act 2008, which provides for the continuation of the scheme under a trust deed. The Local Government Act 1999 and the Local Government (Superannuation Scheme) Amendment Act 2008 are to be read together as if they form a single Act. A contribution by an employer for the benefit of an employee who is a member of the Local Government Superannuation Scheme will therefore be a contribution under the Local Government Act 1999.

The new Part is to expire on a day to be fixed by proclamation.

Schedule 1—Transitional provisions

1—Interpretation

This clause provides definitions for a number of terms used in the Schedule of transitional provisions.

The new scheme is the Local Government Superannuation Scheme continued in existence under a trust deed as required under the Schedule. The old scheme is the Local Government Superannuation Scheme under the Local Government Act 1999 before the day on which section 4 comes into operation (that is, the day on which Schedule 1 Part 2 is repealed and replaced by a new Part).

2—Continuation of Local Government Superannuation Scheme

This clause provides for the continuation of the Local Government Superannuation Scheme under a trust deed. A council or other authority or body that is a participating employer under the old scheme immediately before the day on which the amendment to Schedule 1 of the Local Government Act 1999 made by section 4 comes into operation (the relevant day) is to be a participating employer in the new scheme and will also be taken to be a signatory to the trust deed.

Councils and other relevant authorities or bodies are required under subclause (3) to continue to be participating employers for at least three years after the trust deed commences.

3—Making and commencement of trust deed

The Board is required under this clause to prepare the trust deed, which is to commence on a day specified by the Treasurer by notice in the Gazette. The notice may not be issued until the Treasurer is satisfied that a company has been established for the purpose of administering the scheme (as required under clause 4) and that the trust deed prepared by the Board meets certain requirements specified in clause 5.

4—Establishment of company

The Board is required under this clause to establish a company to administer the scheme in accordance with the trust deed.

The members of the Board on its dissolution are to be members of the board of directors of the company on the day on which the amendment to Schedule 1 of the Local Government Act 1999 made by section 4 comes into operation.

Any legal obligation of the Board at the time of its dissolution will become a legal obligation of the company, unless the obligation is excluded by the Treasurer.

5—Requirements for new scheme and trust deed

The terms, conditions, benefit structure and membership of the old scheme are to continue under the new scheme unless varied in accordance with the terms of the trust deed. The company established under clause 4 will be the trustee for the new scheme and is to continue to hold office as trustee unless and until another company is appointed to the role of trustee in accordance with the trust deed.

6—Dissolution of Local Government Superannuation Board

The Local Government Superannuation Board will be dissolved when section 4 comes into operation, that is, when the existing provisions of Schedule 1 Part 2 of the Local Government Act 1999 are replaced with a new Part. The new Part continues the superannuation scheme subject to the operation of Schedule 1 of the Local Government (Superannuation Scheme) Amendment Act 2008, which continues the scheme under a trust deed.

7—Transfer of assets and liabilities

When the trust deed commences, the assets and liabilities of the old scheme will be transferred to the company for the purposes of the new scheme.

8—Stamp duty

Stamp duty will not be payable in respect of a transfer of assets or liabilities arising out of the operation of these transitional provisions.

9—Revocation of regulations

Any regulations made under Schedule 1 Part 2 of the Local Government Act 1999 are to be revoked.

10—Saving provision

This clause makes it clear that nothing done under the transitional provisions will—

- constitute a breach of, or default under, an Act or other law; or

- constitute a breach of, or default under, a contract, agreement, understanding or undertaking; or
- constitute a breach of a duty of confidence; or
- constitute a civil or criminal wrong; or
- terminate an agreement or obligation or fulfil a condition that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy; or
- release a surety or other obligee wholly or in part from an obligation.

11—Application of Schedule

This clause expresses the intention of Parliament that the Schedule comprising the transitional provisions apply within the State and outside the State to the full extent of the extra territorial legislative capacity of the Parliament.

12—Other provisions

This clause authorises the making of regulations of a saving or transitional nature consequent on the enactment of the Act.

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

PAY-ROLL TAX (HARMONISATION PROJECT) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (23:57): I move:

That this bill be now read a second time.

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

Leave granted.

The Pay-roll Tax (Harmonisation Project) Amendment) Bill 2008 makes amendments to the Pay-roll Tax Act 1971 ('the Act').

The Bill makes a number of amendments to the Act following commitments made by the Government at the March 2007 meeting of the States Only Ministerial Council for Commonwealth-State Financial Relations. All jurisdictions agreed to implement changes to pay-roll tax legislation and associated arrangements to improve inter-jurisdictional consistency and cut red tape for businesses.

The changes are the result of an extensive collaborative effort between the respective Treasuries and Revenue Offices of each State and Territory, and the outcome of a separate review of pay-roll tax provisions undertaken by New South Wales and Victoria.

The Bill does not alter South Australia's pay-roll tax rate, which from 1 July 2008 will be equal second lowest in Australia, or the tax-free threshold.

The Bill makes the following changes:

Firstly, all States and Territories have agreed to introduce standardised exemption thresholds for motor vehicle and accommodation allowances based on rates used by the Australian Taxation Office ('ATO').

Currently, motor vehicle and accommodation allowances paid to employees are liable for pay roll tax on amounts in excess of threshold levels that vary across jurisdictions.

The Act is to be amended to align the rate to the ATO large car rate using the 'cents per kilometre' method, and in respect of accommodation allowances, the Act is to be amended to align the exempt rate to the total reasonable amount for daily travel allowance expense as determined by the ATO for the lowest capital city in the lowest salary band.

Secondly, the Act is to be amended so that when fringe benefits are grossed up for pay-roll tax purposes, only the lower gross-up factor (Type 2) under Fringe Benefits Tax legislation is used.

Thirdly, the Act is to be amended to allow the exemption for taxable wages paid or payable in respect of services performed wholly in another country for a continuous period of more than 6 months to apply from the date that period of overseas service commences.

Fourthly, the Act is to be amended to include superannuation contributions for non-employee directors in the pay-roll tax base. Currently, South Australia and Queensland are the only jurisdictions not to include contributions to non-working directors in their tax bases.

Fifthly, the grouping provisions of the Act will be amended.

Pay-roll tax grouping provisions are an anti-avoidance measure to prevent the exploitation of the tax-free threshold. Corporations are grouped if they meet related corporations provisions in the Corporations Act 2001 (Commonwealth). Non-corporate entities are grouped either because a person or persons control the interests of two or more businesses (referred to as commonly controlled businesses) or because there is significant inter-use or sharing of employees.

In order to provide for inter-jurisdictional consistency, the grouping provisions will be amended in the following areas:

- the definition of 'business' is to be amended to include 'the carrying on of a trust (including a dormant trust)' and 'the activity of holding any money or property used for or in connection with another business';
- the criteria for groups arising from the use of common employees are to be amended to align with the New South Wales/Victoria legislative regime;
- the control test is to be changed from '50 per cent or more' to 'greater than 50 per cent'; and
- the adoption of the New South Wales/Victoria tracing provisions to provide for the grouping of entities with a corporation if the entity has direct, indirect or aggregate ownership connections exceeding 50 per cent in the corporation.

South Australia is to retain the Commissioner of State Taxation's discretion to disallow grouping except for related corporations pursuant to the Corporations Act 2001(Commonwealth).

Sixthly, the Act is to be amended to include specific provisions on employee share acquisition schemes to ensure consistency of treatment with other forms of remuneration.

An employee share acquisition scheme is a scheme by which an employer provides shares or rights to acquire shares, or units in a unit trust or rights to acquire units in a unit trust, to an employee in respect of services performed or rendered by the employee.

South Australia currently taxes employee share acquisition schemes through general provisions in the Act relating to the definition of wages. The amendments will make the pay-roll tax treatment of employee share acquisition schemes more transparent.

Seventhly, consistent with harmonised positions in New South Wales and Victoria, South Australia will introduce exemptions, from 1 July 2008, for:

- wages paid in respect of maternity and adoption leave (not including other forms of leave taken in conjunction with maternity or adoption leave);
- wages paid to bushfire and emergency service workers while performing volunteer activities;
- wages paid by charities in respect of employees directly undertaking the charitable activities of the organisation; and
- wages paid under the Community Development Employment Projects Program.

Finally, the opportunity is being taken to make an administrative amendment to change from the use of the term 'eligible termination payment' to 'employment termination payment' and 'termination payment'. The need for this change arises as a result of Commonwealth Government superannuation reforms, which were introduced with effect from 1 July 2007.

This Bill enacts legislative changes to enhance harmonisation, but it is only the starting point in achieving greater consistency. South Australia remains committed to pay-roll tax harmonisation with all States and Territories.

To this end, it is the Government's intention that South Australia, with effect from 1 July 2009, will adopt the uniform pay-roll tax legislative model operating in New South Wales and Victoria. This will maximise the degree of harmony with New South Wales and Victoria and also with Queensland and Tasmania who have announced that they are also adopting the uniform pay-roll tax legislative model of New South Wales and Victoria.

National reform will bring even greater benefits to a greater number of taxpayers and further drive down the cost of doing business across jurisdictions.

I also take this opportunity to thank the members of RevenueSA's consulting groups and Business SA who have taken the time to provide valuable assistance in the formulation of the Bill.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Pay-roll Tax Act 1971

4—Amendment of section 3—Interpretation

A number of amendments in this clause set out definitions that are connected to substantive amendments to be made by this measure or update existing terms.

A key definition under these amendments will be termination payment, which will be in line with the New South Wales and Victorian Acts and provide consistency with Commonwealth legislation. In particular, the amendment defines termination payment as a payment made in consequence of the retirement from, or termination of, any office or employment of an employee. This includes—

- unused annual leave and long service leave payments; and
- employment termination payments (within the meaning of section 82 130 of the Income Tax Assessment Act 1997 of the Commonwealth) that would be included in the assessable income of an employee under Part 2 40 of that Act, including transitional termination payments within the meaning of section 82 10 of the Income Tax (Transitional Provisions) Act 1997 of the Commonwealth, and any payment that would be an employment termination payment but for the fact it was received more than 12 months after termination.

The definition of termination payment also includes amounts paid or payable—

- by a company as a consequence of terminating the services or office of a director; or
- by a person who is taken to be an employer under the contractor provisions of the Act, as a consequence of terminating the supply of services by a person taken to be an employee under those provisions.

Other amendments revise various provisions associated with the concept of wages. For example, the method for determining the exempt component of a motor vehicle allowance will now be set out in Schedule 1 of the Act, as will the rules associated with accommodation allowances. Another amendment will set out the method for determining the value of taxable wages comprising a fringe benefit.

Finally, the treatment of superannuation benefits will extend to directors whose wages are subject to pay-roll tax and wages will be taken to expressly include the grant of a share or option to an employee by an employer in respect of services performed by the employee.

5—Amendment of section 8—Wages liable to pay roll tax

This amendment will allow the exemption for taxable wages paid or payable in respect of services performed wholly in another country for more than 6 months to apply from the date that the overseas service commences.

6—Amendment of section 12—Exemptions

This clause revises and extends exemptions under the Act. A new exemption will relate to wages paid to an employee while engaged as a volunteer member of an emergency services organisation under the Fire and Emergency Services Act 2005 in responding to an emergency situation under that Act. Another exemption will relate to wages paid to an employee in respect of maternity leave or adoption leave. Employers providing paid maternity or adoption leave will be entitled to an exemption from tax for any wages paid or payable to an employee, up to a maximum of 14 weeks maternity leave or adoption leave. The maternity leave exemption is available in respect of leave provided to female employees. The adoption leave exemption is available in respect of leave provided to employees of either gender.

7—Substitution of sections 18A to 18D

This clause provides for a revised set of grouping provisions.

New section 18A provides definitions of business and group for the purposes of this Part.

New section 18B ensures that when 2 or more groups form part of a larger group, the 2 or more smaller groups are not considered as groups in their own right.

New section 18C provides that corporations constitute a group if they are related bodies corporate within the meaning of the Corporations Act. The Commissioner has no discretion to exclude such corporations from a group constituted under this clause.

New section 18D provides for groups arising from the inter-use of employees. Where—

- 1 or more employees of an employer perform duties for 1 or more businesses carried on by the employer and 1 or more other persons; or
- 1 or more employees of an employer are employed solely or mainly to perform duties for 1 or more businesses carried on by 1 or more other persons; or
- 1 or more employees of an employer perform duties for 1 or more businesses carried on by 1 or more other persons, being duties performed in connection with or in fulfilment of the employer's obligation under an agreement, arrangement or undertaking for the provision of services to any of those persons,

the employer and each of those other persons constitutes a group.

New section 18DA provides for groups arising through common control of 2 businesses. Under this section, a group exists where a person, or a set of persons, has a controlling interest in each of 2 businesses. The entities carrying on the businesses are grouped. The rules for determining whether a person (or set of persons) has a controlling interest in a business vary depending upon the type of entity conducting the business (e.g. a corporation, partnership or trust), and generally relate to the level of ownership or control of the business, or of the entity conducting the business. The level of ownership or control required for an interest to be a controlling interest is 'more than 50 per cent'.

In some circumstances, a person or set of persons will be taken to have a controlling interest in a business on the basis that a related person or entity has a controlling interest in that business. More specifically—

- if a corporation has a controlling interest in a business, any related body corporate of the corporation (within the meaning of the Corporations Act) will also be taken to have a controlling interest in the business;
- if a person or set of persons has a controlling interest in a business, and the person or set of persons who carry on that business has a controlling interest in another business, the first-mentioned person or set of persons is taken to have a controlling interest in the second-mentioned business;
- if a person or set of persons has a controlling interest in the business of a trust, and the trustee(s) of the trust has a controlling interest in the business of another entity (being a trust, corporation or partnership), the person or set of persons is taken to have a controlling interest in the business of that other entity.

New section 18DB provides for groups arising from the tracing of interests in a corporation. Under this section, an entity (being a person or 2 or more associated persons) and a corporation form part of a group if the entity has a controlling interest in the corporation. Such a controlling interest exists if the entity has a direct interest, an indirect interest, or an aggregate interest in the corporation, and the value of that interest exceeds 50 per cent.

New section 18DC applies new Division 3 for the purposes of section 18DB.

New section 18DD provides that an entity has a direct interest in a corporation if the entity can directly or indirectly exercise, control the exercise, or substantially influence the exercise of voting power attached to voting shares in the corporation. The section also provides that the percentage interest of voting power which an entity controls is the percentage of the total voting power which the entity can exercise, control the exercise of, or substantially influence the exercise of.

New section 18DE provides that an entity has an indirect interest in a corporation (called the indirectly controlled corporation) if the entity is linked to that corporation by a direct interest in another corporation (called the directly controlled corporation) that has a direct and/or an indirect interest in the indirectly controlled corporation. The section also provides that the value of an indirect interest in an indirectly controlled corporation is determined by multiplying the value of the entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation.

New section 18DF provides that an entity has an aggregate interest in a corporation when it has either a direct interest and 1 or more indirect interests, or 2 or more indirect interests. The section also provides that the value of an entity's aggregate interest is the sum of the entity's direct and indirect interests in that corporation.

8—Insertion of heading

9—Repeal of section 18H

These clauses are consequential.

10—Substitution of section 18I

New section 18I, to be enacted by the amendment in this clause, provides the Commissioner with a discretion to exclude a member from a group if satisfied that the business conducted by that member is independent of, and not connected with, the business conducted by any other member of the group.

In considering the application of this discretion, the Commissioner will have regard to the nature and degree of ownership and control of the businesses, the nature of the businesses, and any other relevant matters. The discretion is not available for corporation that are related bodies corporate under section 50 of the Corporations Act.

11—Insertion of Schedules 1 and 2

This clause inserts new Schedule 1, relating to motor vehicle and accommodation allowances, and new Schedule 2, relating to shares and options.

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

CONTROLLED SUBSTANCES (CONTROLLED DRUGS, PRECURSORS AND CANNABIS) AMENDMENT BILL

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

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (CLASSIFICATION PROCESS) AMENDMENT BILL

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

At 23:59 the council adjourned until Wednesday 7 May 2008 at 11:00.