LEGISLATIVE COUNCIL

Wednesday 26 November 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:03 and read prayers.

OLSON, MR J.W.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:04): I move:

That the Legislative Council expresses its deep regret at the recent death of Mr John William Olson, former member of the House of Assembly, and places on record its appreciation of his distinguished and meritorious public service, and that as a mark of respect to his memory the sitting of the council be suspended until the ringing of the bells.

I was saddened to learn of the death of John William Olson, better known as Jack Olson, who died on 13 November 2008, aged 92. Jack served as the member for Semaphore from June 1973 until 1979, under the premiership of Don Dunstan and then Des Corcoran. He was also a longstanding member of the trade union movement in South Australia, and he served his nation with bravery and distinction during World War II.

Jack Olson is remembered as a hardworking and devoted local member, who represented the interests of the people of Semaphore, an area where he was born, raised and lived virtually all of his adult life with diligence and integrity.

John William Olson was born in Semaphore on 10 October 1916, during the First World War. In April 1943, at the age of 26, Jack enlisted in the Royal Australian Air Force. He was part of the RAAF's 452 Spitfire Squadron, which was the first Australian squadron to form in Britain during the Second World War. The 452 Squadron was ordered to return to Australia in 1942 to bolster our nation's air defences, and from early 1943 it was based in Darwin, where Jack Olson served as a leading aircraftman.

Following his discharge at the end of the war, Jack took on the role of union organiser with the Amalgamated Postal Workers Union, and by 1960 he was working as a full-time union official. Eventually, Jack rose to the position of APWU state secretary.

In 1973, Jack won Labor Party preselection to contest a by-election in the seat of Semaphore, following the untimely death of the former speaker of the House of Assembly, Reg Hurst. Jack won the by-election convincingly, then further increased his majority at the 1975 state election and was re-elected again in 1977. Jack was committed to the western suburbs and was passionate about the issues that were important to working people and families in his electorate.

He and his wife Pearl raised their family of four children in Semaphore, and they were involved in many aspects of the community's day-to-day life. Jack was a well-known and popular figure within his electorate because of the tireless work he undertook on behalf of his constituents.

Even though he was aged just 63 when the 1979 state election was called, Jack was unable to stand due to the fact that he would have reached retirement age before the 44th parliament had served its term. He later told family members that his one regret of political life was that he was not allowed to stand in 1979 and to fight for the right to serve a fourth term. That was at the time, of course, when there were age restrictions within the Labor Party on members of parliament. Following his retirement from parliament, Jack Olson remained an avid follower of the union movement and of politics in all its forms.

On behalf of all members on this side of the chamber, I extend my condolences to Jack's children, Marilyn, David, Robert and Philip, his four grandchildren, and all of his family and many friends.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (11:07): I rise on behalf of the opposition to support the condolence motion and to express our regret at the passing of John William Olson, former member for Semaphore. As the leader of the government said, he was known as Jack Olson. He was born on 10 October 1916. He worked as a postal worker and, before that, a motor body builder. He served our country during the Second World War as part of 452 Squadron in Darwin. Jack Olson and so many other people served their community and country with distinction during a time of war, and when they returned they got on with their life.

On his return from war service, Jack Olson became state secretary of the Amalgamated Postal Workers Union, an executive member of the Australian Labor Party and the United Trades and Labor Council, and also a delegate to that council. He demonstrated a strong commitment to the union movement and to improving the rights of injured workers.

In a by-election in 1973, he was elected as the member for Semaphore and represented that electorate until 1979. During his time, he was a member of the Parliamentary Committee on Land Settlement in 1974-75 (chairman in 1975), a member of the Public Accounts Committee from 1975 until 1979 and a member of the Public Works Committee in 1979.

During his time as the Labor member for Semaphore, Jack Olson was frequently confused with another John W. Olsen who, at the time, was the state president of the Liberal Party. He eventually had to ask then premier Dunstan to advise the media of the error and confusion, after receiving many out-of-hours phone calls to discuss internal Liberal Party matters. I guess that these after-hours phone calls still continue for people on both sides of politics today.

Jack Olson is survived by his children, Marilyn, David, Robert and Phillip, daughter-in-law Lorraine and grandchildren, Sean, Brooke, Purdey and Skye, and we thank them for his great service and acknowledge the contribution he made to the state, the parliament and his country.

Motion carried by members standing in their places in silence.

[Sitting suspended from 11:10 to 11:26]

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:27): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers, and question time to be taken into consideration at 2.15pm, and that Notices of Motion and Orders of the Day: Private Business be postponed and taken into consideration after Orders of the Day: Government Business Nos 1 and 2.

Motion carried.

CIVIL LIABILITY (FOOD DONORS AND DISTRIBUTORS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.D. LAWSON: I move:

Page 2, line 3—

Delete 'Food Donors and Distributors' and substitute:

Charitable Donations

This is the first of a series of amendments listed on the same amendment sheet. It was originally proposed, in the amendment of both myself and the Hon. Mr Hood, that the provision in the bill introduced by the government be removed entirely and replaced with another provision which would extend the scope of this legislation from merely food donation to include other forms of donations and services and goods which might be the subject of a charitable donation.

Amendment No. 1 is consequential on my amendment No. 3, which I will move in due course; however, I believe the committee will sufficiently understand the nature of what I am saying to make this a test clause.

Currently, the government's bill contains section 74A dealing with food donors and distributors. We support that and we do not seek to change it. However, what we seek to do is add another section, an entirely different section, which is couched in very similar terminology but which extends the scope of this legislation from mere food donations to also include the donation of other goods and services for charitable or benevolent purposes. Our clause will provide that a person incurs no civil liability for loss of life or personal property or damage to property arising from the provision of goods or services to another if, in providing the goods, the person acted without expectation of payment or other consideration and for a charitable or benevolent purpose and with the intention that the consumer of the goods or services would not have to pay for them.

The amenity does not operate if the person knew or was recklessly indifferent to the fact that when the goods left the possession or control of the person they were in a state that was likely to cause harm to a person or, in the case of services, if the person knew or was recklessly indifferent to the fact that the goods were provided in a manner likely to cause harm to a consumer of the services or to the property of the consumer.

In the second reading contribution I (and, I think, a number of other members) indicated support for the general concept of extending the same protection which is granted to the donors of food to people who provide—whether it is furniture for a benevolent purpose, whether it is clothing or whether it is volunteering to repair the playground or build a fence or a shelter at the kindergarten, etc. We believe that persons who are charitably minded and are prepared to donate their services—whether that be their physical labour or their intellectual capital—without expectation of payment or reward, for a charitable purpose, ought not be deterred from doing so by the threat of legal action.

I think it is important to say that if, however, a person donates goods knowing that they are in a state that is likely to cause harm, then they will not be entitled to the protection, where they are recklessly indifferent. For example, if somebody gives a toaster to the Scouts for their use, if they are aware that the thing is not correctly wired or they themselves have felt a slight shock, they will not be entitled to the protection because that would be a gift made in circumstances where it was likely to cause harm to a consumer.

We accept that donations of food are important but we also believe that other charitable donations are equally important. What I am seeking to do, by moving the amendment in the form that I have, is to provide a clear division within the bill. The government wants their proposal (food donors) to go through now and be introduced before Christmas. It can do that and proclaim it to come into operation straight away. We also want to have the provision about goods or services. I suspect, given the attitude that the government has expressed in a number of its discussions with members, that it has reservations about services but it is not actually prepared to rule it out—and that is fine; it does not have to proclaim it immediately and it can undertake the consultation it says it is going to undertake—that is fine. Ultimately, a two-year review will occur two years after the services provision comes into operation and, likewise, there is a two-year review after the food donors provision comes into operation. I therefore urge members to support the amendment.

The Hon. P. HOLLOWAY: The government opposes these amendments. I agree with the Hon. Robert Lawson to the extent that we should use clause 1 as the test clause in relation to his amendments. His amendments would reduce the current legal protection of the most vulnerable people in our society without any evidence that this will produce a corresponding benefit. Before doing such a thing, we should hear what the public has to say about it. We should also find out whether, in exchange for these lost protections, we will gain a large increase in donations of goods and services. At this stage, that is a mere hypothesis.

What these amendments seek to do is protect anyone who provides goods or services to another person, without expecting payment, for a charitable purpose as long as the person intends that consumer should not have to pay for those goods or services. The purported protections would extend to property damage as well as to injury or death. This proposal includes the provision of any goods—motor vehicles, power tools, furniture, building supplies, anything at all—and also any services. The proposal is that the provider of the goods and services should be liable only for reckless indifference and not for negligence.

The criticism that is easily levelled at this sort of legislation is that it creates one law for the rich and another for the poor. The food donors proposal does mean that the legal protection of consumers of donated food is less than that of consumers who pay for food. We thought long before doing this. What determined us to do it is that we have reason to think that quantities of safe food are being wasted in South Australia because potential donors fear legal liability. Food is perishable. If a restaurant or caterer prepares more food than is sold on a given day, the options are either to waste the food or to donate it.

The aim of the bill is to tilt the balance in favour of donation. We looked at the interstate experience and the substantial increase in donation of safe food that has resulted there because of similar laws. We believe that, on balance, it is worth adjusting the standard of care in this field because, since most donors will be businesses that are experienced in handling food, the risk of harm appears low, even if the standard of care is reduced. The detriment of this adjustment will be outweighed by the expected large increase in donations, so we believe.

The bill, however, proposes a two-year review to see whether we are right about that. We know that SACOSS will monitor the results of the bill with great interest. The government would be concerned, however, at the entrenchment of a lower standard of care towards the poor right across the board without at least some public consultation. For example, what about services provided by public hospitals? The provision of free medical care to the public is very likely a charitable or benevolent purpose. Does that mean the public patient should not expect the same standard of medical care as those who can pay? If the public patient is injured by medical negligence, why should the hospital not be liable?

Or consider the lawyer who does free work for refugees: why should those clients not get the same standard of professional representation as the businessman who wants to sue for defamation? What about the mechanic who, for no fee, services a vehicle used by a charity? Should he not have to take just the same care as he does for his paying customers? The only justification for creating these risks could be if we were confident that the immunity would lead professionals and traders to donate many more services, and as yet we do not have the evidence that they will.

Do we really expect that public hospitals will provide more medical services if we pass this bill, that private schools will offer more scholarships, that plumbers, carpenters, painters and builders will start setting aside more time to provide free services to the disadvantaged? Perhaps they might, but we just do not know because no work has been done to find out. Services by their very nature are unlikely to be wasted. An unfilled appointment is, for most professionals, an opportunity to catch up on other work rather than time likely to be given away or wasted.

With imperishable goods their shelf life is indefinite, and if a trader has ordered a large quantity it is a matter of waiting for the items to sell or perhaps discounting them or returning them to the supplier, depending on terms of trade. It is not a question of either give them away or throw them out as it is with food. Where then is it evidenced that donations of goods and services will increase so substantially that it is worth lowering the standard of care? How do we know that it is fear of legal liability that is the real barrier to the donation of goods? We just do not know that and, before proceeding with a measure like this, we should take the trouble to find out.

Keep in mind that many of these traders will carry insurance, which might well cover all the services they provide in the course of their business, whether or not they are paid for. In that case, all this amendment does is shift the loss caused by the trader's negligence from an insurer, who has taken a premium to assume that risk, to the charity or the poor person receiving the service. And where is the merit in that?

What will happen if this parliament passes these amendments and next year an electrician makes a careless mistake in rewiring, say, a women's shelter? Suppose that a child staying in the shelter touches a wire that has carelessly been left live and suffers permanent injury. Unless the child's guardian can prove that the electrician either knew of or was recklessly indifferent to the danger, there will be no legal recourse. The parents will bear the loss, even if the tradesman is fully insured for such risks. What will the public of South Australia think of that?

There ought to be wide consultation if the proposal is to go any further. The government has, between the houses, invited SACOSS to comment on the opposition's amendments in their earlier form, but SACOSS has declined to do so. SACOSS tells us that more investigation by its staff and consultation with its members and with the wider community sector would be required before it could form a position. That is an entirely prudent response and the council should learn from it.

As introduced, the bill deals only with donation of food. It seeks to stop the appalling waste of good food that goes on every day at the moment because donors fear legal liability. The government has reason to believe that the bill as introduced can immediately and substantially reduce that wastage. That is what we have seen happen with similar laws in Victoria. The industry tells us that it will happen here. It would be most unfortunate, especially at this season of the year and with parliament about to rise for the summer recess, if the council did not pass this bill in its present form, but that is not to say that the government would not consider extending legal protection to the donors of other things. We are certainly prepared to examine the issue.

The government proposes that the bill should now not be amended. Instead, the government offers that, if the bill is passed unamended, it will by June 2009 publish a discussion paper inviting comment from any interested person or organisation on any legislative action that could be taken to increase the donation of goods and services and the making available of

premises for charitable or benevolent purposes, without unacceptably increasing the risk to the safety of recipients.

The paper would solicit comment on the effects of such possible amendments on charities and other non-profit organisations, their donors, their insurers and the recipients of charity. The government further proposes that, after analysing and weighing all submissions received, it should publish a report by the end of October 2009, setting out its conclusions on what reforms should be made and its reasons. If the report proposes reforms, it shall also include the government's proposed timetable for reform. For the reasons I have given, the government opposes these amendments, and I ask the council to support the bill.

I think all of us would support the thinking behind the amendments, but I hope I have indicated with the examples given that there are potentially some difficulties and complexities with that course of action, and I believe that it would be far preferable if we were to adopt the course of action that we have proposed. The government accepts that it needs to look at this issue, and the ideas behind what is being put forward have merit, but we really do need to do that work before we put those ideas in legislative form. So I ask the council to support the bill in its original form and, as I said, the government undertakes to do that important work which will provide us with the background to which these sorts of issues can be addressed more comprehensively in the future.

The Hon. R.D. LAWSON: I want to respond to a couple of the points made by the minister on behalf of the government in rejecting this amendment. It is suggested, for example, and the question is posed: why should a lawyer acting for a refugee service be subjected to a lower standard of care than one who is acting for a paid client? However, this amendment does not touch that issue at all: this amendment is about exempting from liability for physical harm or damage done. That is emphasised in the first line of proposed section 74B(1), which states: 'a person incurs no physical liability for loss of life or personal injury or damage to property'. If a lawyer acting for the refugee service gave wrong advice as a result of which someone failed to obtain the opportunity to stay in Australia or did something else because it was not good legal advice, they would not be covered because this legislation is limited. It is limited to liability for loss of life or personal injury or damage to property, and I do not believe that is any consideration at all in relation to legal advice.

The minister mentioned that public hospitals providing free treatment might be exempt from liability by virtue of this and, frankly, I had not thought of that. However, public hospitals do not actually act for charitable or benevolent purposes. Public hospitals act in accordance with legislative requirements on them. Many of them provide so-called free services to people but they are actually remunerated through Medicare and other mechanisms. Whilst they might not receive any payment from the recipient, they are remunerated through the public purse for those services.

The other ground on which the minister suggests this amendment should not be supported is that there has been insufficient consultation about it. True it is that the government consulted with SACOSS in relation to the proposal originally put forward by the Young Lawyers Committee of the Law Society, but it did not consult widely in relation to the food donation bill. It is based upon some expectation that there will be greater donations from those who have food supplies. The fact is that those who have food supplies are, in the main, retailers and wholesalers of food and they are substantial donors already through Foodbank in South Australia. This legislation does not even cover Foodbank, because Foodbank's scheme of distribution is one in which, whilst the ultimate recipient may not make any payment, the charitable organisation that actually is the intermediary between Foodbank and the ultimate consumer does make a payment to Foodbank. I do not believe that there was, in fact, widespread consultation with those who are likely to give food.

The minister gives the example that a restaurant, for example, may be prepared to give away food that is no longer suitable for their particular purposes. Obviously, the protection is that the food still has to comply and be safe within the meaning of the Food Act, and that is an objective standard with which we agree. But we have certainly heard no evidence presented to the Legislative Council that the restaurateurs are saying, 'We are not giving away our food because we fear liability; and if there is a change to that we will actually go to the trouble of donating our food.' The consultation seems to have been with SACOSS and the consultation seems to have been on the issue of social justice.

The minister began his remarks by saying this would lower the standard of care to the most vulnerable groups in our community. The most vulnerable people in our community are those who are the recipients of food donations. There is no-one in a worse position than those who need charitable donations of food to enable them to live. We have already agreed that the standard of care towards those people will, in relation to the food they are supplied with, be lowered. That is at

a most basic and elemental level. We now seek by this provision to enable other charitably-minded people to make available goods and services.

Those goods would ordinarily be household goods—the sort of things that one regularly sees. Of course, many of those are actually sold through Goodwill stores and other organisations where there is some payment made for them, so they would not specifically be covered by this bill, and nor should they be. If Vinnies, the Salvation Army or Goodwill stores charge people for goods and services, well, then the people are not second-class citizens. They have paid for the goods and they are entitled to all the protections to which any purchaser of goods is entitled.

Let me get to the more practical element here. The government says that it will consult next year and ask people in the community whether this would be a good idea. We think that prima facie it is a good idea at present. We are happy to have it included in the legislation. If the government is truly concerned about it, it need not proclaim the operation of this section to come into operation until it has had an inquiry and it is satisfied. Practical experience indicates that with amendments of this kind, unless they are inserted at the time there is an opportunity to insert them—as the council now does—they will not be introduced; we will not ever see protection of this kind.

That is why I have moved the amendment in the form in which it is. It is a stand-alone amendment. It need not be brought into operation immediately. The government can have its consultation and then bring it into operation. If the government considers that, as a result of that consultation it is inappropriate, no doubt it will report to members and we will be happy to ensure that it is not brought into operation and that it is removed from the legislation.

The Hon. P. HOLLOWAY: The honourable member cited the case of lawyers, and I think we have to concede he is probably correct in that particular case. Of course, the issue of where hospitals would stand is somewhat more complex. However, in the case of mechanics and electricians, those arguments would not apply. If a mechanic for no fee services a vehicle or a car used by a charity, why should he not have to take the same care as he does for his paying customers? That is a genuine issue. There are some professions to which it may not apply because of the way in which the honourable member has worded the amendment—and I concede it is probably the case with lawyers—but for others, such as mechanics, I would suggest that the amendment would apply.

The honourable member raised the issue about consultation in relation to this matter. First, in relation to food liability the government has consulted SACOSS, Foodbank, and Restaurant and Catering SA; in other words, the key stakeholders—those who might provide the food and those who might be the principal recipients of it. In addition, I am advised that almost every other state of Australia—Victoria since 2002 and, also, Western Australia, New South Wales and the ACT—has similar legislation in relation to food donation. However, I am advised that none of them has gone further into other types of goods and services.

One could argue about the level of consultation we had in relation to food—there has been some—but at least we have experience (in the case of Victoria up to six years) on which to rely. We do not have any experience at all in terms of extending this legislation to cover services or other areas. If we are to be the first state to do it, surely we would need to put more thought and more detailed research into it before we go down that track because, as I indicated in my earlier comments, some genuine issues would arise if we were to go down that track.

The honourable member has said that the government should accept the amendment, that it should go in the bill but that we should not proclaim it. The government would say that the idea of putting something into the legislation and not proclaiming it—although it would come into effect automatically at some future date and it would mean that we would have to introduce an amendment to remove it—is very bad legislative practice. Why would we put legislation on the statute books which we would need to consider further and which may be suspect. Why would we do that? I suggest that is very bad practice.

Sometimes when we introduce bills we do have different dates for proclamation because some parts of complex legislation may depend on certain things happening, but there is always—or there should be, I would argue—the intention that eventually we will proclaim that legislation in its whole. We do not think the argument by the Hon. Robert Lawson washes. Let us do the work. If we are to be the first state in the country that does extend this, let us make sure that we properly examine it before we put it into law. Let us not say that potentially this is a good idea and that we will put it into law, then work out whether it is good or bad law before we proclaim it. I suggest that is not the best way in which this parliament should proceed.

The Hon. D.G.E. HOOD: I will not move my amendment today. I was quite keen to have the amendment carried, but, as a result of discussions with both the government and the Hon. Mr Lawson, I have decided not to move that amendment. However, in relation to the amendment that the Hon. Mr Lawson has moved, Family First is still persuaded that the amendment has merit and that it will not obstruct the passage of the bill. The government's bill specifically deals with issues surrounding food and its donation, whereas the amendment moved by the Hon. Mr Lawson—which is a hybrid amendment between his and my proposed amendment, although possibly closer to his original amendment—would not need to be proclaimed, as the Hon. Mr Lawson has mentioned. Therefore, the bill could operate unaffected.

Family First is persuaded that this amendment could become part of the bill. It would give the government time to investigate the full implications of it and proclaim it at the appropriate time—within the time frame that the government has mentioned. It is our intention to support the amendment.

The Hon. P. HOLLOWAY: It should be understood by everyone that if this amendment is passed it will come into effect automatically within two years. There will be an election in 2010, in two years. So, by the end of 2010, this will come into effect. The government has set out a time frame within which it believes we can properly examine this matter. I have mentioned that we would issue a discussion paper on it which would be published by June, and we would have a report by the end of October 2009 setting out conclusions.

Obviously, we will try to work within that sort of time frame, and then you have to consider legislation. If this comes in automatically in two years, who is to say what will happen in the interim? If these sorts of things are just lying on the statute book, they can very easily get caught up in the parliamentary timetable. All of us know how difficult it is to try to get legislation through the parliament within a particular time frame because of the backlog. I think it would be very bad practice indeed to propose legislation that will come into effect within two years without having done the necessary work to know whether or not it is desirable legislation.

Again, I make the point that all of us appreciate the motive behind the amendments. I think all of us would agree that, where people give of their services for charitable purposes, we do not want that unnecessarily caught up in legal challenge. However, there are some important conflicting legal principles here that do need significant thought.

That has happened in relation to food donation, and we have six years' interstate experience on which to judge that. However, in relation to other goods and services, we do not have that experience. We should get that information before we put into the statute book such significant legislation that could have quite perverse effects.

No-one wants to see a situation where someone who genuinely donates their goods or services is caught up in the legal system; but, at the same time, there are these important principles involving some level of protection for the recipients as well. We are looking at things like insurance of service givers and so on. There are some significants issues that really need to be thought through and understood before we go into this area. It really is an area where the path to hell might be paved with good intentions.

The Hon. M. PARNELL: In my second reading contribution, I said that I would be supporting either the Liberal or the Family First amendments, unless I had some indication that the government was going to honour the spirit of those amendments, which is to have a close look at what are the barriers to philanthropy in this state.

The words the minister has given to us today and the commitment he has made on behalf of the government to produce a discussion paper and to have an inquiry does satisfy me, and I will not be supporting the Liberal amendment. I am very concerned about what the barriers to philanthropy are, and much of the debate has been around whether these barriers are speculative or based on evidence. It seems to me that, if you take a very strict view of evidence and you pose the question 'Who has ever been sued for a donation of unsafe food?' the answer is probably no-one. However, I think there is evidence from interstate that the lack of legal protection has been a barrier to people donating food. If people say it is a barrier, it is a barrier, whether or not it has manifested itself in the court lists.

It seems to me that food can be separated from the goods and services, where I think there is much more speculation involved. I know, for example, that the Hon. Iain Evans in another place has talked about the impact on service clubs and their insurance premiums. I have not seen one jot of evidence that one service club's insurance premiums would drop by one cent by the passage of

this sort of legislation. However, if we were to find out that information, I would be much more inclined to support it. The way we find that out is by having a public inquiry, and we can pose those questions directly to the insurance industry.

The service clubs do terrific work in our society. I have spent many, many hours down at my local Lions Club helping in their second-hand shed, where goods are donated and they are then onsold at very low prices to members of the public. That situation might not be caught by the honourable member's amendment because the ultimate consumer does pay for it. However, if they were on-donated, perhaps they would be caught.

The honourable member's amendment does still have some problems in it from a strictly legal perspective. For example, it seeks to exempt from the protection of this bill someone who may be drunk. The words are:

> If the ability of the person who personally provided the goods or services was, at the relevant time, significantly impaired by a drug (including alcohol) consumed voluntarily for non-medicinal purposes.

I can understand the drunk electrician not being able to take advantage of some protective measure, but the state of intoxication of the person who donated the toaster at the time of donation I would have thought was irrelevant. Their state of mind in relation to the safety of the toaster, which may have been formed while they were completely sober, is a far more relevant consideration. The honourable member might say, 'Well, that's picked up by using the words 'at the relevant time', but 'at the relevant time' is not defined. So, I just give that as an example to say that, however well intentioned these amendments are, I think there are legal consequences that have not necessarily been thought out.

The other point I would make in relation to the Liberal amendment is the suggestion that we can pass it now and see later whether it is needed. I am always open to advice from longstanding members. The Hon. Robert Lawson warns, I guess, that, if we do not pass it now, we will not ever see it—that, once this matter is off the *Notice Paper* today, whatever the inquiry is, we have lost our opportunity to get legal amendment. My position is that I have a reasonable memory, and I do prescribe to that theory that every dog is entitled to one free bite.

I have never before taken the approach of not supporting amendments because the government has promised an inquiry. It has promised one here, and I will watch that it delivers on that promise; if it does not, if it fudges on it and takes our votes here for granted, I have five or so years to harbour that in the back of my mind. If I am ever put in the position again where I am offered the choice of passing a government bill unamended or having a more thorough inquiry, I will think twice about supporting the government.

However, for now, I have not been disappointed in these circumstances before, so I am entitled to take the government at its word that we will have an inquiry. If it turns out that legal liability is a genuine barrier to people in South Australia donating goods and services or providing premises, let us deal with that in a legislative way. As I said, at this stage, I am not prepared to accept this amendment on the basis that we should pass it now and see later whether it is needed.

I urge all honourable members to accept the government's offer. Let us get the food donation principles through now and, within 12 months, we will have the government's response to whether there are other legal barriers to philanthropy we should deal with through legislation.

The Hon. R.D. LAWSON: I am sorry to hear that the honourable member will not be supporting our amendments. I think that a number of the points he made about the proposed amendments do not bear much scrutiny. For example, he objected to the inclusion of an exclusion for those who make a donation but were impaired at the relevant time by a drug, including alcohol, consumed voluntarily for non-medicinal purposes.

This terminology was in our earlier amendment, and I think it was also included in the Hon. Mr Hood's amendment. We think it is perfectly reasonable that a person is not entitled to the benefit of this exemption if, at the time they changed the pensioner's light or fuse, they were—

The Hon. M. Parnell interjecting:

The Hon. R.D. LAWSON: No; this is in the case of services. If they were inebriated at the time, they should not be entitled to claim that they ought not be held responsible for what they have done.

The minister suggested that dodgy mechanics and electricians may gain the benefit of this provision. I argue that, if an electrician fixes a fuse or a mechanic seeks to change the brake linings

for the pensioner next door, in circumstances where the work is unsafely performed that would be a case of services provided where the person knew or was recklessly indifferent because a higher standard ought to be expected from a mechanic, who has a greater state of knowledge.

If the elderly pensioner next door, who is a retired mechanic or an amateur mechanic, says to the lady next door, 'I'll help you with your car,' if he does the best he can and believes that it is correct, if he is not recklessly indifferent and not drunk at the time he performs the service, he ought not be subjected to legal action.

The Hon. Mr Parnell says that he is not aware of any evidence to suggest that there is any increase, decrease or change in professional indemnity policies and the like for service clubs. The fact is that, if you have legislation of this kind, there is actually no need for a service club that engages in this activity to have insurance. It is not a question of increasing its premium. Presumably, if its risk is decreased, its premium will decrease.

Many very small organisations and individuals consider that it is not appropriate or cannot afford to have insurance. Because they cannot afford it, they say, 'I won't do anything.' If they do not have to have insurance, it is more likely that in the ordinary course they will donate their goods and services.

The Hon. A. BRESSINGTON: On the comments just made by the Hon. Rob Lawson about organisations not needing to have insurance if this amendment were to go through, I am a little curious as to how it would work. I come from a non-government organisation background and, if you do not have public liability insurance, and something happens to any consumer of your service, it means that the board members of the organisation need to accept personal liability for anything that happens to those consumers. That is my understanding, and I am seeking clarification on that.

If they do not have the appropriate insurance in place to operate and meet the objectives of the organisation, I understand that the responsibility automatically falls back onto each individual member of the board. There is specific insurance you take out to prevent that from happening. So, if they cannot afford public liability insurance, I imagine that they cannot afford professional indemnity assurance either.

Does this mean that, if this amendment went through, it would be acceptable for board members to take personal liability for any harm that might come to a consumer of products or services offered by that organisation? Does this amendment also mean that an organisation such as DrugBeat—which under its service agreements is required to have public liability insurance, and which uses FoodBank for some of its clients who are on very low incomes—can do away with its public liability insurance?

I think this particular amendment blurs the lines a great deal regarding what is and what is not required of organisations in order to be adequately insured against anything that could happen to their staff, their boards of management, or the consumers of the goods and services offered, and I seek clarification from the minister whether that would be the case. If he is not an insurance expert he could take that matter on notice.

The Hon. P. HOLLOWAY: It is really the Hon. Robert Lawson's amendment, but I think he was suggesting that because this act gives some measure of immunity you therefore do not need to take out insurance. I make the point that it has to be litigated before one knows what the law actually means anyway, so why would you take the risk? If you were a board member, would it be prudent to let go your insurance on the chance that you may be protected under this legislation? As well as considering the needs of the board members, what about the needs of someone who may be a genuine victim? Under the legislation they would potentially have no recourse. That is the other side of the coin.

I think the honourable member just makes the point that there are some important issues bound up in this. With food it is relatively simple and we have had experience elsewhere in dealing with it, but in other areas of services there are some complexities that need thinking through. The principle is simple: that people who give services in a genuine way should not be held liable for it, but translating it and allowing that simple principle to deal with all the legal cases becomes a much more complicated exercise. That is why we need to do that work.

The Hon. R.D. LAWSON: Perhaps I should respond to the honourable member's question about insurance. I would not want any of my remarks to suggest that any charitable organisation ought do away with insurance because, in relation to food, the government's proposal will provide

that they incur no civil liability; or, in the case of our amendment, that in relation to goods and services they will incur no civil liability. As the minister correctly says, one does not necessarily know whether one qualifies.

However, in the ordinary expectation of things, the premiums charged by insurers to charitable organisations should be reduced in consequence of the amendments, both the government's and our own. Obviously, if insurance premiums are reduced it makes it easier for charitable organisations to carry on their functions without having to pay excessive premiums. The point I was really making relates both to the government's proposal as well as to our own.

The committee divided on the amendment:

AYES (10)

Brokenshire, R.L.	Darley, J.A.	Dawkins, J.S.L.
Hood, D.G.E.	Lawson, R.D. (teller)	Lensink, J.M.A.
Ridgway, D.W.	Schaefer, C.V.	Stephens, T.J.
Wade, S.G.		

NOES (9)

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

PAIRS (2)

Lucas, R.I.	Wortley, R.P.

Majority of 1 for the ayes.

Amendment thus carried; clause as amended passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. R.D. LAWSON: I move:

Page 2, line 13 [inserted heading to Division 11A]—

Delete the heading and substitute:

Division 11A—Charitable donations

This amendment is consequential upon the previous amendment and debate.

The Hon. P. HOLLOWAY: Obviously, we are disappointed this will go in because, basically, it ends the bill, but we will not waste any further time on it.

Amendment carried.

The Hon. R.D. LAWSON: I move:

Page 3, after line 10—

After inserted section 74A insert:

74B—Provision of other goods and services for charitable or benevolent purpose

(1) A person incurs no civil liability for loss of life or personal injury or damage to property arising from the provision of goods or services to another if, in providing the goods or services, the person acted—

(a) without expectation of payment or other consideration; and

(b) for a charitable or benevolent purpose; and

(c) with the intention that the consumer of the goods or services would not have to pay for them.

(2) The immunity extends to the agents and employees of the person providing the goods or services.

(3) However, the immunity does not operate in the following cases:

(a) in the case of goods—if the person knew or was recklessly indifferent to the fact that when the goods left the possession or control of the person they were in a state likely to cause harm to a consumer of the goods or to the property of a consumer of the goods;

(b) in the case of services—if the person knew or was recklessly indifferent to the fact that the services were provided in a manner likely to cause harm to a consumer of the services or to the property of a consumer of the services;

(c) in respect of a liability that falls within the ambit of a scheme of compulsory third-party motor vehicle insurance;

(d) if the ability of the person who personally provided the goods or services was, at the relevant time, significantly impaired by a drug (including alcohol) consumed voluntarily for non-medicinal purposes.

(4) The Minister must, as soon as practicable after the second anniversary of the commencement of this section—

(a) cause a report to be prepared on the operation of this section; and

(b) cause a copy of the report to be laid before each House of Parliament.

(5) This section does not apply to the donation or distribution of food (see section 74A).

(6) In this section—

goods means substances or articles.

This amendment is consequential upon previous amendments and the debate we have just had.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments.

Bill read a third time and passed.

STATUTES AMENDMENT (BULK GOODS) BILL

Adjourned debate on second reading.

(Continued from 25 November 2008. Page 819.)

The Hon. C.V. SCHAEFER (12:27): The Liberal Party will be supporting this bill and, as a result, I will not be proceeding with the private member's bill that I put on motion on this matter. About a month ago, when I was driving back from Eyre Peninsula and listening to the *Country Hour* (which I consider to be relatively compulsory), I was surprised, to say the least, to hear Jamie Smith, the Chair of the South Australian Farmers Federation Grains Council, say that this legislation had been introduced and that minister McEwen was doing his best to get it through for this harvest, when no such legislation was before either house, nor had it been discussed in any great detail with any member of the Liberal Party.

I spent some time trying to trace just where it was and became so frustrated that I gave notice that I would be introducing this amending legislation. That seems to have had the desired effect and, indeed, the Attorney-General (whose purview this comes under, not the Minister for Primary Industries) has introduced this bill. The Minister for Agriculture did, indeed, then take the lead role in another place.

In my view, even though the government has been particularly tardy in putting forward this legislation, I am pleased to support it at this time. This bill provides some protection for those who have goods stored in bulk. It does not provide the protection that some of my colleagues in another place and, indeed, some farmers, appear to think it provides.

It does not give the seller of, in this case, grapes or in fact any bulk goods the status of a secured creditor, and at this stage that is quite wise because an unintended consequence of doing that could mean that the private purchasers of grain in particular, or any purchasers of grain, may find themselves unable to secure credit and therefore unable to purchase the bulk goods or grain. To make every seller of grain a secured creditor would have the reverse effect of that which people would like and think that it has.

This bill seeks to protect those who have goods stored in bulk. Its purpose is two-fold: it protects those who deposit goods and are at risk and protects the seller who has deposited grain but has not been paid for it. This problem, as has been mentioned in another place, was highlighted in New South Wales in 2005 when a silo operator became insolvent and the creditors were not prepared to release the grain to the original growers as it was considered to be a saleable asset of the insolvent silo operator as opposed to being the property of those who had placed that grain in the silo. This is particularly relevant at a time when on-farm storage and warehousing is becoming a much more frequently used method of marketing or stalling marketing by farmers.

Since the deregulation of the grain market, farmers have been required to use much more flexible methods in their marketing. Many are finding that warehousing grain for a number of months allows them to control when they sell their grain and at what price and to assist them with their cash flow (although, as an aside, rain would assist them with their cash flow considerably more than any marketing).

There is a proliferation, as anyone who drives into the country would know, of on-farm storage. Private operators are warehousing grain outside the two majors, that is, ABB and to a limited degree AWB. ABB has a monopoly on storage handling and shipping of grain out of this state, but others are using their facilities on farm and in other places to warehouse grain not only for themselves but for third parties. This legislation will protect those people until their property is paid for. The difficulty with this as opposed to an individually owned piece of property is that, when the grain, grapes or any bulk goods are deposited, the legal argument has been that it is impossible to disseminate which grain belongs to, for instance, me and which belongs to Mr Gazzola. This would now allow us both to take back the tonnage of grain we had deposited, assuming that because it is bulk deposited it is of similar, if not the same, value and quality. Essentially this allows those who have deposited the goods in bulk to be owners in common.

It is a mirror of the New South Wales legislation, which in turn is a mirror of some UK legislation of a number of years ago. I note that it is not retrospective, hence the urgency that this piece of legislation passes both houses this week. I also note that it does not go as far as some growers would like and does not do what some growers have the belief it does. The South Australian Farmers Federation, in comments to the minister back in September 2008, said:

> While the proposed amendments are supported, SAFF would like the changes to go further, with retention of title clauses added as in the NACMA terms and conditions—

NACMA stands for National Agricultural Commodities Marketing Association, and it is an organisation run by the majority of the private traders as opposed to the two major traders that were formerly grower owned, that is, the Australian Barley Board and the Australian Wheat Board. NACMA is a voluntary organisation of the other private traders. The SAFF submission to the government continues:

> ...SAFF would like the changes to go further, with the retention of title clauses added, as in the NACMA terms and conditions, so that passing of title does not happen until payment in full has been received by the seller. This needs to be for all goods and not just those in bulk.

As I have said, an even cursory referral of this matter to some of my legally trained colleagues pointed out some real difficulties with legislating in that way and, indeed, there would have been absolutely no hope of getting this legislation through this week had we gone down that path.

I have a copy of the NACMA contracts, and they do appear to be excellent contracts which could be superimposed for other bulk commodities such as wine grapes. But, as with any contract, in my view the contract needs to be between a willing seller and a willing buyer. The contracts are readily available to all people who choose to trade with members of NACMA and are countersigned by those members. So, it would seem to me that those people who wish to avail themselves of a NACMA contract will find themselves a NACMA operator, and those who wish to trade in the pools where they would not be paid in full for some 18 months can continue to do so.

I fully recognise that many, if not the majority of, farmers—grain farmers, in particular—are struggling with deregulation. I believe that, in time, they will avail themselves of the services of agents to do their marketing for them, but we do live in a deregulated economy. We do live in an era of deregulated grain marketing and, as such, I believe that the more options that can be offered to farmers the better off they will be.

There is always the concern of someone trading with an insolvent buyer. Probably no more or less than that same concern applies to someone who is having a house built or, indeed, has supplied building materials to a builder who becomes insolvent. It is a difficulty, and I had hoped

that the licensing powers of ESCOSA that were put into our barley marketing act would have provided sufficient security. That does not appear to be the case, and perhaps some time in the future that barley marketing act needs to be looked at to give ESCOSA some real teeth to determine those who have sufficient surety to trade in the grain market and those who do not. In the meantime, the Liberal Party supports this bill without amendment.

The Hon. R.D. LAWSON (12:40): I want to speak very briefly on this amendment, and I agree with the comments made by my colleague the Hon. Caroline Schaefer a moment ago. I believe this is a valuable facilitative amendment. It will enable parties to reach agreements which actually reflect their particular intentions. Presently, section 16 of the Sale of Goods Act provides an impediment which cannot easily be contracted around. That impediment is now being removed. I commend to members who are interested the paper issued by The Law Commission and The Scottish Law Commission entitled 'Sale of goods forming part of a bulk' which is referred to in the discussion paper the government introduced on this topic.

The only point that I wish to make is to reinforce one made by my colleague a moment ago. This legislation will not provide farmers with the sort of protection to which some of them think they are entitled.

The honourable member mentioned the NACMA contract for grain and oil seeds in bulk, which is entitled contract No. 2. It contains the provisions which, on their face, would appear to provide protection for farmers selling grain to members of this association who use this particular type of contract. I must say that it is a contract that favours the seller of grain. It provides a retention of title clause in clause 9, which inter alia provides:

> Until full payment is received the buyer and/or its agents and third parties hold the goods as bailees only.

The buyer here is the wheat or grain trader. It continues:

> On breach of any payment terms, the buyer on its behalf and on behalf of its agents and third parties authorises the seller [the farmer] to enter any premises and retake possession of the goods without notice to the buyer, its agents and third parties. Where the goods have been co-mingled with other goods, the buyer becomes an owner in common of the bulk goods and the undivided share of the seller shall be such share as the quantity of seller's goods bears to the quantity of the goods in the bulk. Until such time as the seller has received payment in full, any on-sale by the buyer is made as the seller's agent and the buyer holds the proceeds of any on-sale of goods as trustee for and on behalf of the seller and must account to the seller for those proceeds on demand. Where at the time of default in any payment terms to the seller the buyer has not received proceeds of any on-sale the seller is expressly authorised to receive the proceeds of the on-sale direct from the buyer's customer.

That is all well and good in theory. It provides farmers with probably as much protection as they could hope to obtain. However, this protection is by no means ironclad and, as everyone who has any knowledge of this business knows, goods are on-sold by traders. Traders may have received the proceeds from their buyer well before the time the farmer is paid. The proceeds may not be available to the farmer and may not be easily obtainable.

In commercial transactions of this kind there is no escape from the fact that people can lose money if traders go broke or get into financial difficulty. Indeed, it is those dealers who might get into financial difficulty who will create the problems in relation to this trading. I support the free trading of grain and the opening up of the market for grain. I think it is ultimately to the benefit of the whole community, including farmers and consumers, but there are inherent risks. How ever good the contract you sign, if you are dealing with people who are not credit worthy or in financial difficulty you may well suffer financial consequences, no matter how ironclad the contract you sign is.

I agree that the NACMA contract from the farmers' point of view is a good one, but it is not possible for the legislature to impose upon the market contracts of that kind. That is a matter for individual negotiation. I would be very much against insisting in a legislative way that parties adhere to a particular form of contract. I believe in freedom of contract. People ought to be able to adjust and amend contractual arrangements to meet their particular requirements. I support the passage of the bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (12:48): I understand there are a number of members who wished to speak to the bill, and I am aware that there are other members who have indicated their support for the bill. I thank the Hon. Caroline Schaefer and the Hon. Robert Lawson for their contributions, and I thank all members of the council for their indulgence in allowing this bill to be passed at such short notice. I commend the bill to the council.

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

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (12:50): Obtained leave and introduced a bill for an act to amend the Equal Opportunity Act 1984. Read a first time.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (12:50): I move:

That this bill be now read a second time.

It is with great pleasure that I introduce this bill. The Equal Opportunity Act is now more than 20 years old, and by today's standards its coverage is inadequate. The need to extend it has been apparent for years. It is more than 14 years ago that the Liberal government of the day commissioned Mr Brian Martin QC, as he then was, to review it. Mr Martin consulted extensively and made a report recommending many amendments.

The government then consulted further on the report and, more than six years later, introduced an amending bill. That bill had not, however, passed even one house of parliament when parliament was prorogued for the 2002 election. It was an election policy of the government at that election to modernise the Equal Opportunity Act to ensure comprehensive protection of South Australians against unjustified discrimination.

In pursuit of that policy, in 2003 we published a framework paper setting out proposals for reform, and in 2006 we introduced an amending bill. That bill lapsed in September 2008, and the present bill is in substitution for it. It is substantially similar, but some of the provisions that proved most controversial have been removed or reduced. Some parts of the bill are now about parity with the commonwealth. The revised bill reflects the government's response to concerns raised by the minor parties, the opposition and other interested persons, but it is nevertheless a very important enhancement to the act.

Equal opportunity law exists to allow all South Australians to take part equally in public life. Everyone should have equal opportunities in the fields of work, education, qualifications, access to goods and services, lodging, landholding and membership of associations. No-one should be excluded from taking part in society because of the prejudice of others, and no-one should be harassed or victimised in the exercise of these rights. This government is committed to these values and so proposes some important expansions of the present law.

At the same time, the government is mindful that the law must set standards that are fair and reasonable. It must avoid imposing unjustifiable hardships on anyone. It must be neutral between the parties to a complaint. It must provide proper exceptions where there is some overriding consideration, such as occupational health and safety or the protection of children. Both these points of view were expressed in the comments about the framework paper and, in framing this bill, the government has tried to find a fair balance between them. The bill proposes many changes to our present act, which will take some time to outline.

First, the bill expands the act's present protection against disability discrimination. Mr Martin recommended that our act should mirror the definition of disability in the commonwealth Disability Discrimination Act, and this bill follows that recommendation. Members will realise that the Disability Discrimination Act already applies in South Australia. South Australian employers, traders, schools and others are already obliged to avoid disability discrimination as it is defined in the act. This amendment means that there is now also a remedy in the South Australian Equal Opportunity Commission.

As a result of the amendment, there will be a remedy in our Equal Opportunity Commission for some conditions not now covered by the act. Our act will cover discrimination on the ground of mental illness, just as it has always covered physical illness. As we are all well aware, mental illness is not a sufferer's fault, it is not shameful and there is no justification for treating sufferers unfavourably, as to do so only adds to the burden on these people and their families.

The bill proposes also to cover non-symptomatic physical conditions, such as being infected with a virus. The act will therefore now protect people infected with the HIV virus, for example. A person should not be treated unfavourably because he or she is infected with a

disease, even one that is greatly feared. At the same time, this law should not hamper the actions necessary to prevent the spread of any illness. As is the case in commonwealth law, therefore, the bill creates a defence for reasonable measures to stop the spread of an infectious disease.

The bill also proposes clearly to cover learning disabilities, even where they are not traceable to intellectual disability, and this is an important addition in the context of education. The bill amends the current provisions about access for disabled people to premises. Once again, because of the Disability Discrimination Act, most South Australian offices, shops, restaurants and other premises open to the public must already be accessible to disabled people, unless to give such access would impose unjustifiable hardship.

Much has been achieved in recent years towards making such access a matter of course. Again, because the provision in this bill is similar in scope to the commonwealth provision, this amendment will not add any new burden on South Australian employers or service providers. Members will note that throughout these provisions the bill proposes to change the language of the act from 'impairment' to 'disability'. This is consistent with the language of the commonwealth.

The bill also extends the coverage of the act to carers. It is perhaps only in recent years that society has awoken to the immense contribution made by carers. There are adults who take frail elderly parents into their home and try to fit in the provision of care around the demands of work and their own children; there are husbands or wives who become the main carer for a spouse who develops a debilitating disease; there are grandparents who, at a time when they expect to be finally at leisure, find themselves caring for their grandchildren because the parents are unable to do so.

Caring responsibilities can arise for both sexes at any time of life, and many of us will, at some time, be called upon to care for someone or perhaps be in need of care ourselves. That should not change our legal right to take part in society. The bill therefore proposes that it should be unlawful to discriminate against a person on the ground of his or her caring responsibilities. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Martin report acknowledged that the Act should cover caring responsibilities. Martin proposed, however, that coverage be limited, initially, to direct discrimination. That would arise where, for instance, an employer declines to hire or to promote a person because of a caring responsibility. In practice, however, such discrimination is unlikely. The real problem is indirect discrimination, that is, the setting of unreasonable requirements that are especially difficult for people with caring responsibilities to meet. The Bill proposes to cover both direct and indirect discrimination on the ground of caring responsibilities. In this respect it will be wider than the Commonwealth law. Further, the Commonwealth law only covers discrimination that takes the form of dismissal. This Bill would cover all types of discriminatory actions.

As is usual in indirect discrimination provisions, however, the setting of a reasonable requirement will not break the law. If the requirement is reasonable, the respondent has done no wrong and the carer cannot complain. It is where the requirement is unreasonable that the complaint is well-founded and a remedy is appropriate. For this reason, the Government does not believe business has anything to fear from this amendment. The Bill does not entitle carers to special treatment. It does not mean that employers cannot require shift work or weekend work or travel away from home. It does not mean that carers must be allowed to leave work early to collect children from school or that they are entitled to take leave at school holiday times. It simply means that employers must have sensible reasons for the requirements they set. An employer can comply with this law, then, by acting reasonably.

In conjunction with the coverage of caring responsibilities, the Bill also improves protection for nursing mothers. It proposes that it should be unlawful to discriminate in the provision of education services against a breastfeeding mother. It further proposes that is be unlawful to discriminate against a person in the field of providing goods and services on the ground that he or she is associated with a child, that is breast feeding or bottle feeding an infant or accompanied by a child.

As recommended by Martin, the Bill would also extend the Act to cover discrimination against independent contractors. Changes in the workplace have meant that many people are now engaged under contracts for services rather than contracts of employment. There is no justification for discrimination against these contractors where it would be unlawful to discriminate against an employee. The Bill therefore extends the coverage of the Act so that, in hiring an independent contractor, discrimination on the grounds of sex, race, age, disability and so on will be unlawful.

The present law exempts the case where a person is employed in a private household. For instance, one can discriminate in hiring a nanny for one's children. In the Bill, this exemption is reflected in an exemption where a person is employed or engaged for purposes not connected with the employer's or principal's business. That will cover employing staff or engaging independent contractors in one's home, for example, engaging a music tutor or a babysitter, for non-business purposes. It will also cover employment or engagement outside the home, as long as it is not for a business purpose. An example might be engaging a person to teach one to play tennis. The Bill does not,

however, permit discrimination when engaging the services of contract workers through an intermediary. This is because the intermediary, as an employer or principal, may not discriminate in hiring its staff, even if they are to provide services in a person's home. Likewise, the Bill would mean that if a person runs a business from his or her home, so that he or she employs staff of the business at the home premises, there can be no discrimination in that employment.

The Bill also proposes to add to the Act new grounds of discrimination. Only one of these derives from the Martin report. This is the ground of identity of a spouse or domestic partner. The Government thinks it unfair that anyone should be treated unfavourably by others because of the identity of that person's spouse or domestic partner. For example, it would be wrong if the husband or wife of any Member here were to be refused service in a shop because the shopkeeper disliked the Member. Martin said that 'in principle, it is generally unfair to discriminate against a person because of the identity of that person's previous or current spouse'. In general, the identity of a person's spouse or domestic partner is irrelevant to that person's participation in society, for example, their suitability for a particular job or their eligibility to enter a particular course of study. There are, however, exceptions. Martin said that 'there may be circumstances, however, where that discrimination is not unreasonable because of the occupation of the spouse.' The Bill would therefore permit such discrimination where it is reasonably necessary to protect confidentiality, to avoid a conflict of interest or nepotism or for the health or safety of any person. As an example, a woman should not, in general, be treated unfavourably because she is the wife of a convicted pederast. If, however, she were to apply for approval to run family day-care in her home, the risk posed to children by the presence of the husband could be lawfully taken into account.

The Bill also proposes to cover discrimination on the ground that a person, for religious reasons, wears particular dress or adornments or presents a particular appearance. Examples include the hijab worn by Muslim women, the turban worn by Sikh men or the cross worn by some Christians. It could include any kind of dress, adornment or other features of a person's appearance that are required by or symbolic of the religion. The Bill proposes that it should be unlawful to discriminate against a person on this ground in the fields of employment and education. Exceptions are made, naturally enough, for genuine safety reasons or inability to perform the inherent requirements of the job. There is also an exception for the case where it is reasonable to ask a person to show his or her face for the purpose of identification.

This is not to introduce the ground of religious discrimination in general. The Government in 2002 consulted on this idea and learned that many South Australians strenuously oppose it. We decided not to do it. The purpose of the present amendment is simply to ensure that people who dress or present themselves in a particular way for religious reasons are not debarred from participating in school or work activities. We pride ourselves on being a multi-cultural society. We do not expect people to give up their cultural or religious identity to become South Australians.

The Bill also proposes to extend the Act to cover discrimination on the ground of past and presumed characteristics, as recommended by Martin. Wherever the Act makes it unlawful to discriminate on the ground of a characteristic that the person now has, the Bill proposes that it should also be unlawful to discriminate because the person had that characteristic in the past, or because the person is mistakenly thought to have the characteristic. Future characteristics are also covered where applicable. For example, discrimination on the ground of a disability that may exist in the future is covered, as it is in Commonwealth law.

The Bill would also extend the Act to cover discrimination against a person based on the characteristics of his or her associates. This refers to characteristics covered by the Act, such as age, disability and so on. If it is unlawful to discriminate against a person because of a disability, it should also be unlawful to discriminate against a person because that person is accompanied by, or associates with, someone who has a disability. Otherwise, the Act can be circumvented. The Act already covers such discrimination when it occurs on the ground of race, and it makes sense, as Martin argued, that it should cover other grounds.

This does not mean that *no* characteristics of an associate can be considered. There are many Acts, for example, where the character of a person's associates will be taken into account in assessing the person's suitability to hold a licence or some other privilege. These amendments do not affect such provisions. They refer to characteristics covered by the *Equal Opportunity Act*. Again, this was recommended by Martin and is, in the Government's view, only common sense.

The Bill would change the sex-discrimination provisions of the Act in three ways. First, the Bill would delete references to 'transexuality' and refer instead to 'chosen gender'. In the case of a transgender person, this refers to his or her self-identification as a member of the sex opposite to his or her biological sex. 'Chosen gender' also covers people with intersex conditions. These are medical conditions in which a person is born with a physical or chromosomal makeup that does not exactly fit either the usual male or female pattern. In that case, the person's chosen gender is his or her self-identification as a member of one or the other sex. In either case, the effect of the Bill is that a person must not be treated unfavourably in the fields to which the Act applies because of the person's gender, even if that gender might not appear to others to match the person's sex. This was thought clearer than the present Act, which speaks of 'transexuality', that is, assuming characteristics of the other sex. It also removes any doubt about whether the Act covers intersex conditions.

Second, the Bill extends the coverage of the Act to 'potential pregnancy', that is, the possibility that a woman might become pregnant. It can be argued that this is already covered because it is a characteristic of women in general, but express reference avoids doubt. The provision is similar in substance to the Commonwealth law.

Third, the Bill removes discrimination on the ground of marital status from the sex discrimination provisions and covers it later, in Part 5B, where other matters such as identity of a spouse or domestic partner and caring responsibilities are covered. In the wake of the domestic-partners' reforms, 'marital status' will now become 'marital

or domestic partnership status' and will extend to the status of living in a close personal relationship with a person of the same sex or of opposite sex.

On the topic of sexuality discrimination, I point out that the Bill would change the present law about the rights of religious institutions to discriminate on the ground of sexuality. By section 50(2), the present law provides an exemption for an institution that is run in accordance with the precepts of a religion. Such an institution can discriminate in its administration on the ground of sexuality, if the discrimination is founded on the precepts of the religion.

At present, this exemption is used chiefly by religious schools to avoid hiring homosexual staff. Indeed, the Government's consultation on the framework paper did not disclose any other use of this exemption. The wording of the exemption, however, appears broad enough to allow many other uses. For instance, it could allow a religious school to expel a homosexual student or to restrict that student's participation in school activities. A church-run hospital could use it to refuse to employ a homosexual doctor or nurse. An aged-care home associated with a church could use it to refuse places to homosexual applicants for lodging. The Government has seen no evidence that any such institutions use or wish to use the exemption in these ways. It is clearly wanted for one thing only: to stop homosexuals teaching in religious schools.

The Government gave much thought to whether such an exemption should be allowed to continue. Our law says that discrimination on the ground of sexuality is wrong. Moreover, religious schools receive public funding. An argument can be made that those who accept public funding should comply with the standards set by the public through legislation. At the same time, the Government acknowledges that independent schools make a great contribution to the education and pastoral care of South Australia's children. This contribution is possible, in part, because of the commitment of the school community to its faith. The Government accepts that some South Australians are taught by their religion, and sincerely believe, that homosexuals should not teach in schools. In general, the State ought not to interfere in the practice of religion and ought not to compel any person to act against his or her conscience. Consequently, the Bill proposes to limit this exception to the only thing for which it is known to be used. It would not be available to all institutions run on religious principles, but would be limited to schools. It would not apply to the treatment of students but only the hiring of staff. Further, the Bill proposes that these schools should publicly disclose this policy. That way, both parents and prospective staff will know where the school stands. The Bill would require the school make the policy available on request and to publish the policy on the school's website if it has one.

We are doing this out of respect for religious freedom. I wish to emphasize that the Government does not believe that homosexual people pose any greater threat to children than do heterosexual people. The threat to children comes from pederasts.

The Bill would also abolish the present exemption that allows associations (other than trade unions and employer groups) to discriminate on the ground of sexuality. Associations include charities, service clubs, sports clubs, cultural groups, environmental organizations, political parties and others. This exemption, then, has the potential to exclude homosexual people from participation in many aspects of public life. In general, there is no justification for such a rule. It is a baseless restriction on the rights of homosexual people. Some commentators, however, expressed special concern for religious associations. It was argued that these should be able to exclude people in accordance with the tenets of the religion. Accordingly, the Bill would make an exception for associations administered in accordance with the precepts of a religion.

The Bill also reduces two other current exceptions relating to sexuality. The Act at present provides, by section 33(2), that a partnership of five people, or fewer, can refuse a person partnership on the ground of sexuality. This will apply to many small firms, such as law firms or accounting practices, that trade as partnerships rather than companies. The Government sees no reason why a person, who could not be refused employment at the firm on the ground of sexuality, should be precluded from partnership on that ground.

The other example concerns lodging. The Act presently provides, by section 40(3), that a person can discriminate on the grounds of sex, sexuality, pregnancy and marital status in the provision of lodging, if it is lodging where the provider or the provider's family reside and no more than six other persons are given lodging on the premises. The Government thinks this exception too wide. Doubtless, people should be free to decide whom they will take in as guests in their own homes. It is another thing to say that they can exclude people from commercial lodging, on the ground of sex, sexuality or pregnancy. The Bill would amend this section to make clear that it is only lodging in one's own home that is intended.

The Bill makes some changes to the law about sexual harassment. First, it proposes to adopt the Commonwealth definition in section 28A of the *Sex Discrimination Act*. Comment on the framework paper suggested that it would be helpful to employers if the State and Commonwealth laws matched on this point. It is clear that they are both aimed at the same conduct. It is therefore helpful if they use the same words, so that employers do not have to try to conform to two different rules at once.

Second, the Bill extends the coverage of the Act to the various relationships listed by Martin as requiring coverage. In particular, it extends the Act to harassment of the providers of goods, services and lodging, just as it now covers harassment by those providers.

Third, the Bill changes the present rules about vicarious liability for sexual harassment. At present, although in Commonwealth law employers are vicariously liable, they are not so in State law. An employer can only be vicariously liable for damages for sexual harassment if the employer authorised, instructed or connived at the harassment. Needless to say, that almost never happens. As Martin observed, this exclusion 'cuts a huge swathe through the number of cases for which an employer could be found vicariously liable'. Martin said that it was important to provide an incentive for employers to create an environment free of sexual harassment. It may be true

to say that an employer ought not, automatically, to be held responsible for sexual harassment in which he or she had no part. It is equally true, nevertheless, that a workplace will be what the employer allows it to be. The law can reasonably expect employers to create workplaces in which men and women can work together without fear of harassment of this kind.

That is already the effect of the Commonwealth law. The *Sex Discrimination Act* applies to private-sector employers in South Australia. It creates vicarious liability for sexual harassment, subject to a defence. There is no liability if the employer shows that he or she took all reasonable steps to prevent the employee from doing the acts complained of. Martin recommended a similar approach in State law.

The Bill, therefore, creates vicarious liability unless the employer has taken reasonable steps to prevent the harassment. The employer is free to decide what those steps should be. As long as they are reasonable, there is no vicarious liability. The Bill goes further, however, and provides one certain way of establishing the defence. The employer must have in force an appropriate policy and must take reasonable steps to carry it out. That includes reasonable steps to make it known to the staff and prompt action if a complaint is made. As long as the employer does these things, vicarious liability is avoided. It may also, however, be avoided by taking other reasonable steps. Once again, this should not add appreciably to the obligations that now fall on South Australian employers under Commonwealth law.

Further, the Bill covers sexual harassment in schools. Martin thought that senior students, those aged 16 and over, should be liable for sexual harassment of their fellow-students or the staff. The Bill thus provides that a student or staff member who is sexually harassed by a student aged 16 or over can complain to the Equal Opportunity Commission. There is, however, a requirement that the student first use whatever conciliation process may be provided by the school. It may well be that the matter can be sorted out in the school without recourse to the Equal Opportunity Commission. So much the better for everyone.

If, however, the school conciliation process does not succeed, or the complainant can demonstrate to the Commissioner that the school process should not be used, a complaint can be made to the Equal Opportunity Commission. This will lead to a conciliation process run by the Commissioner and, if that fails, to the matter being heard by the Tribunal. This shows that the law regards this conduct, even by children, as serious. Sexual harassment in school can make life miserable for the victim. It can disrupt his or her studies or even force him or her out of the school. The harm it does is at least as serious in its way as some of the offending that brings young people before the Youth Court. It is not an over-reaction to take these matters to the Commission and the Tribunal. It is an appropriate response to the gravity of the behaviour.

That is not to say that the full force of the Act should be visited on children as it is on adults. Martin made clear that children, even those who may have breached the Act, need special protection. He recommended that the parties' names should be protected from publication and that the Tribunal not be able to order a child to pay monetary compensation. The Bill adopts those recommendations.

The Bill also covers harassment of teachers by students. This is treated similarly, except that there is no requirement to use the conciliation process offered by the school in that case. The school could not be neutral in a matter involving its employee.

The Bill does not go so far as to hold the school responsible for the behaviour of its students, nor does it propose a remedy against the school because sexual harassment has occurred. It does, however, require that a school adopt a policy against sexual harassment. The Commissioner for Equal Opportunity plans to work with schools to help them meet that obligation.

The present time limit of six months to lodge a complaint is extended by the Bill to 12 months. This is similar to other Australian jurisdictions and is as recommended by Martin. The Bill goes beyond what Martin recommended, however, in that it also allows extensions beyond the usual 12 month limit. The Commissioner can grant the extension. He or she must be satisfied that there is good reason why the complaint was not made in time and that an extension would be just and equitable in all the circumstances. Any prejudice to the respondent can therefore be taken into account. If an extension is refused, the Tribunal can review that decision.

The Bill also changes the role of the Commissioner in some important respects. In the interests of neutrality, Martin thought that the Commissioner's power of investigating a complaint should be limited by law. The Bill would limit this power to investigating for the purpose of deciding whether the complaint should be accepted and, if so, conciliating it. There is no need for it to be a wider investigation because, once conciliation is completed, the task of fact-finding falls to the Tribunal, not the Commissioner. Within these limits, however, the Bill would permit the Commissioner to require documents from any person, not just the respondent. After all, the complainant or a third party may hold relevant papers. The Bill would, however, protect records of counselling or therapy and also notes of a party's advocate. The privilege against self-incrimination and legal-professional privilege are also preserved. Once a document is produced, unless it is confidential, the Commissioner can, in her discretion, show it to the parties in the conciliation.

The Bill also proposes to expand the Commissioner's powers to decline a complaint. In addition to the present power to decline complaints that are frivolous, vexatious or lacking in substance, the Commissioner will also be able to decline a complaint if contact with the complainant is lost. A complaint can also be declined if the complainant ceases to pursue it. This amendment will enable the Commissioner to close the file. If, however, the complainant, within 12 months of lodgement, asks the Commissioner to reinstate the complaint, the Commissioner may do so.

Further, the Commissioner will be able to decline a complaint either because there is no reasonable prospect of an order in the complainant's favour or because the complainant has no reasonable prospect of bettering

an offer already made in conciliation. This will not prevent the complainant taking the matter to the Tribunal. That is his or her right.

The conciliation powers are elaborated to make clear that the Commissioner can conciliate without bringing the parties into direct contact, an authority that might be useful when emotions run high. The Commissioner can also, where different complaints against the one respondent raise similar questions of fact or law, arrange to conciliate them jointly. Also, the Commissioner will be able to compel the complainant, as well as the respondent, to attend conciliation.

For matters that do not resolve by conciliation, the Bill also proposes that the Commissioner should be able, with the leave of the Tribunal, to appear before the Tribunal to assist it in appropriate cases. This may assist the Tribunal, for example, where there is legal argument about the interpretation of the Act and the parties are unrepresented. It is not an authority one would expect to see used often, but there will be some cases where it is valuable.

The Bill also amends section 10 of the Act to reinforce the independence of the Commissioner. On the one hand, the Commissioner is, and should be, responsible to the Minister for the general administration of the Act and, in that sense, is under the general direction and control of the Minister. Subsection (2) is reworded, however, to make clear that this does not entitle the Minister to direct how a particular complaint is to be handled, nor to require the Commissioner to disclose information identifying a party to proceedings.

The Bill would give the Commissioner an important new authority. It proposes that the Commissioner should be able to investigate suspected unlawful conduct, even if there is no complaint. Under the Act at present, the Commissioner can start an investigation only with the approval of the Minister and a reference from the Tribunal. In practice, no such investigation has ever occurred. The Bill proposes that if the Commissioner thinks that a person may have contravened the Act, she can investigate of her own initiative. She must notify the person concerned. She is given the authority to require production of documents. The investigation can result in the Commissioner taking the matter as a complaint to the Tribunal. This power might be useful, for example, where the Commissioner detects a systemic problem that requires attention, even though no-one has complained about it. It also means that the Government's actions are more open to investigation than at present because the Minister's permission is not needed. This bolsters the independence of the Commissioner and should help to promote equal opportunity.

The Commissioner will also be able to intervene in industrial proceedings under the *Fair Work Act* with the leave of the Industrial Commission. This might occur, for instance, when an award is being set or an enterprise agreement approved. The Commissioner will be able to make submissions on the matter before the Commission from an equal-opportunity perspective. This will help to ensure that conditions of employment are not discriminatory.

There are smaller changes. Sections 12 and 101 of the Act have never been proclaimed. Martin thought they should be repealed because they would contribute to conflict in the role of the Commissioner. There was no dissent on this in submissions to the framework paper and the Bill proposes to repeal them. The Bill would also repeal sections 41 to 44, dealing with sex discrimination in superannuation. These provisions have also never been proclaimed. The regulation of superannuation, other than State superannuation, is now largely a Commonwealth matter.

A change is made to the rules about disabled persons being accompanied by guide dogs. This protection is expanded to cover any animal of a class prescribed by regulation. The review heard from Assistance Dogs Australia, a non-profit organization that trains dogs to assist people with disabilities, for example, people in wheelchairs. Having regard to this work, it seemed that the present provisions, limited to guide dogs, are too narrow.

The Bill also adopts Martin's recommendation to change the wording of section 85K, dealing with the charging of different fees to people of different ages. This provision is meant to allow concessions based on youth or age. It is not meant to allow surcharges to those groups because they have the benefit of other concessions. The provision has therefore been reworded to focus it more clearly on fee reductions to benefit particular age groups.

The Bill does not adopt the Martin recommendation to replace the Equal Opportunity Tribunal with a Division of the District Court. The Government cannot see any benefit in doing that and submissions to the review evinced general support for keeping the Tribunal.

This Bill makes important and long-overdue changes to the Act, including covering discrimination on the grounds of caring responsibilities and of mental illness which, from today's perspective, appear glaring omissions from our present law. It also adds to the Act the new grounds of association with a child and identity of a spouse or domestic partner. The Bill proposes to protect independent contractors in the same way that the Act has always protected employees. It offers an equal opportunity remedy for sexual harassment in schools. The Bill also strengthens the role of the Commissioner as a guardian of equal opportunity in our State. It removes the requirement for Ministerial approval for an investigation by the Commissioner, thereby subjecting government to the same scrutiny as everyone else.

This Bill fulfils the Government's election promise to amend this Act to give South Australians more comprehensive protection against unjustified discrimination. It does so, the Government believes, in a way that is fair to both complainants and respondents. It is not difficult for business to keep these proposed laws. What they require is that we act reasonably in the fields covered by the Act. We must disregard irrelevant personal characteristics. We must make sure our requirements are reasonable. We must take reasonable steps to prevent unlawful conduct by those under our control. No-one is asked by this Bill to accept unjustifiable hardship. No-one is expected to compromise on health or safety. No-one is required to act against conscience. Equal-Opportunity laws, of all laws, ought to be fair. The Bill seeks to enhance equality of opportunity in a way that is fair to all.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Equal Opportunity Act 1984*

4—Amendment of long title

This clause amends the long title to reflect the proposed new grounds of unlawful discrimination to be added to the Act.

5—Amendment of section 5—Interpretation

This clause defines a number of terms required as a consequence of the proposed new provisions. In particular—

assistance animal is defined to mean a dog that is an accredited guide dog, hearing dog or disability dog under the *Dog and Cat Management Act 1995* or an animal of a class prescribed by regulation;

a person has *caring responsibilities* if the person has responsibilities to care for or support a dependant child of the person or any other immediate family member who is in need of care and support. An Aboriginal or Torres Strait Islander person also has *caring responsibilities* if the person has responsibilities to care for or support any person to whom that person is held to be related according to Aboriginal kinship rules or Torres Strait Islander kinship rules;

potential pregnancy of a woman is defined to mean that the woman is likely, or is perceived as being likely, to become pregnant.

This clause also proposes removing the term *transexual* from the Act and replacing it with the concept of *chosen gender*. *Chosen gender* is defined to mean that a person is a person of a *chosen gender* if—

- the person identifies on a genuine basis as a member of the opposite sex by assuming characteristics of the opposite sex (whether by means of medical intervention, style of dressing or otherwise) or by living, or seeking to live, as a member of the opposite sex; or
- the person, being of indeterminate sex, identifies on a genuine basis as a member of a particular sex by assuming characteristics of the particular sex (whether by means of medical intervention, style of dressing or otherwise) or by living, or seeking to live, as a member of the particular sex.

Under the current Act it is unlawful to discriminate against a person on the ground of that person's physical or intellectual impairment. It is proposed to change the terminology to make it unlawful to discriminate on the ground of a person's *disability*. *Disability* is defined to mean—

- total or partial loss of the person's bodily or mental functions; or
- total or partial loss of a part of the body; or
- the presence in the body of organisms causing disease or illness; or
- the presence in the body of organisms capable of causing disease or illness; or
- the malfunction, malformation or disfigurement of a part of the person's body; or
- a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

Under the current Act it is unlawful to discriminate on the basis of *marital status*. It is proposed to widen this to include a domestic partner.

This clause also proposes widening the definition of *race* to include the past or proposed nationality of a person.

6—Amendment of section 6—Interpretative provisions

Clause 6 proposes a new subsection to section 6 to provide that if a person who is alleged to have committed a discriminatory act did so on the basis of a mistaken assumption (for example, a mistaken assumption that another person was of a particular sexuality or a particular race or a person of a chosen gender) the act will still be regarded as a discriminatory act.

7—Amendment of section 10—Administration of Act and Ministerial direction

Section 10 of the principal Act provides that the Commissioner is subject to Ministerial direction in the administration of the Act. This clause proposes a new subsection (2) to provide that the Minister must not give a direction in relation to the manner in which action should be taken on a particular complaint or seek information tending to identify a party to proceedings under the Act.

8—Amendment of section 11—Functions of Commissioner

Clause 8 reflects the proposed new grounds of unlawful discrimination to be added to the Act.

9—Amendment of section 14—Annual report by Commissioner

Clause 9 brings the date of the Commissioner's annual report into line with the *Public Sector Management Act 1995*.

10—Amendment of section 23—Conduct of proceedings

Clause 10 inserts a new subsection into section 23 to provide that the Tribunal may, when constituted only of the person presiding over the proceedings, deal with preliminary, interlocutory or procedural matters or questions of costs or questions of law.

11—Amendment of section 25—General powers of Tribunal

Clause 11 updates the penalty provision.

12—Substitution of heading to Part 3

Clause 12 reflects the proposed change of structure of the Act (see clause 13) and the addition of the ground of chosen gender.

13—Amendment of section 29—Criteria for discrimination on ground of sex, chosen gender or sexuality

Section 29 of the principal Act provides the criteria for establishing discrimination on the ground of sex, sexuality, marital status and pregnancy. Clause 13 proposes removing the grounds of marital status and pregnancy and including them as part of the new Part 5B and adds the criteria for establishing discrimination on the ground of chosen gender. Clause 13 also proposes broadening the conduct that might amount to discrimination on the ground of sex or sexuality by including the situation of a person treating another unfavourably—

- because of the sex or sexuality of a relative or associate of the other person; or
- because of the person's past sex or past sexuality.

14—Substitution of heading to Part 3 Division 2

Clause 14 reflects the proposed inclusion of independent contractors within the scope of the Act.

15—Amendment of section 31—Discrimination against agents and independent contractors

Section 31 of the principal Act provides that it is unlawful for a principal for whom work is done by agents remunerated by commission to discriminate against those agents on the grounds covered by Part 3. Clause 15 proposes extending the section to make it unlawful for a principal to discriminate on the same grounds against independent contractors engaged under a contract for services.

16—Amendment of section 32—Discrimination against contract workers

Section 32 of the principal Act makes it unlawful for a principal to enter into an arrangement with an employer of contract workers under which the employer is to discriminate against a person. The proposed amendment extends the provision to cover workers who work under a contract for services and provides for the situation where there are a number of people linking the principal and the worker. ie, a principal who engages a contractor who engages a subcontractor who employs a worker.

17—Amendment of section 33—Discrimination within partnerships

The principal Act provides that if a firm consists of less than 6 members it is not unlawful to discriminate on the ground of sexuality in determining who should be offered a position as a partner in the firm. The proposed amendment removes this exception to unlawful discrimination on the ground of sexuality.

18—Substitution of section 34

Section 34 of the principal Act provides that certain conduct that would amount to unlawful discrimination on the grounds of sex, sexuality, marital status or pregnancy in the area of employment is exempted from the provisions of the Act. As a consequence of the proposed new ground of chosen gender, the proposed new structure of the Act, and the proposed inclusion of independent contractors, these exemptions have had to be altered.

Currently, section 34 provides an exemption relating to employment in private households. The proposed expansion of the Act to include independent contractors necessitates a change to this provision to provide that it is not unlawful for a person to discriminate if the person employs another, or engages another as an independent contractor, for purposes not connected with a business carried on by the person.

This clause also proposes an expansion to the exemption in section 34 of the principal Act that provides that a person can discriminate on the ground of sex in relation to employment for which it is a genuine occupational requirement that a person be of a particular sex. The proposed clause expands this to include the grounds of chosen gender and sexuality.

This clause also proposes 2 new subsections. Proposed subsection (3) provides that it is not unlawful to discriminate on the ground of chosen gender or sexuality in relation to employment or engagement for the purposes of an educational institution if—

- the educational institution is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion; and
- the educational authority administering the institution has a written policy stating its position in relation to the matter; and
- the policy is made available on the website of the educational institution (if it has a website); and
- a copy of the policy is provided on request, free of charge—

(i) to employees and contractors and prospective employees and contractors of the authority to whom it relates or may relate; and

(ii) to students, prospective students and parents and guardians of students and prospective students of the institution; and

(iii) to other members of the public.

The proposed subsection (4) provides that it is not unlawful to discriminate on the ground of chosen gender in relation to employment or engagement if the discrimination is for the purposes of enforcing standards of appearance and dress reasonably required for the employment or engagement.

19—Amendment of section 35—Discrimination by associations

The proposed amendments to section 35 make it unlawful for an association to discriminate on the ground of sexuality and provide for single sex associations to be covered by the Act. An exemption is proposed that provides that an association that is established for persons of a particular sex, or persons of a chosen gender or persons of a particular sexuality (other than heterosexuality) will not be unlawful and, consequently, such an association may discriminate against an applicant for membership so as to exclude from membership persons other than those for whom the association is established.

20—Repeal of section 35A

Clause 20 is consequential on the proposal that it be unlawful for associations to discriminate on the ground of sexuality.

21—Amendment of section 40—Discrimination in relation to accommodation

Clause 21 proposes to alter the exemption currently in section 40 to provide that the section does not apply to discrimination in relation to the provision of accommodation if the person who provides the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

22—Amendment of section 45—Charities

Clause 22 is a consequential amendment as a result of the proposed inclusion of the ground of chosen gender and the proposed restructure of the Act.

23—Repeal of section 46

Clause 23 is a consequential amendment as a result of the proposed restructure of the Act.

24—Amendment of section 47—Measures intended to achieve equality

Section 47 provides that it is not unlawful for an act to be done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of the one sex, or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status. Clause 24 removes the reference to marital status as is required by the proposed restructuring of the Act, and extends the provision to include schemes or undertakings intended to ensure that persons of a chosen gender or persons of a particular sexuality, have equal opportunities with persons who are not persons of a chosen gender or persons of another sexuality.

25—Amendment of section 50—Religious bodies

Clause 25 proposes repealing an exemption in relation to sexuality for educational and other institutions that are administered in accordance with the precepts of a particular religion. The exemption is partially reinstated (in relation to employment in educational institutions) by proposed new section 34(3)—see clause 18.

26—Amendment of section 51—Criteria for establishing discrimination on ground of race

Section 51 of the principal Act provides the criteria for establishing discrimination on the ground of race. Clause 26 proposes broadening the type of conduct that amounts to discrimination on this ground to include the situation where a person treats another unfavourably because of the race of a relative of the other person.

27—Substitution of heading to Part 4 Division 2

Clause 27 substitutes the heading to Part 4 Division 2 to reflect the proposed inclusion of independent contractors within the scope of the Act.

28—Amendment of section 53—Discrimination against agents and independent contractors

Section 53 of the principal Act provides that it is unlawful for a principal for whom work is done by agents remunerated by commission to discriminate against those agents on the ground of race. Clause 28 proposes extending the section to make it unlawful for a principal to discriminate on the ground of race against independent contractors engaged under a contract for services.

29—Amendment of section 54—Discrimination against contract workers

Section 54 of the principal Act makes it unlawful for a principal to enter into an arrangement with an employer of contract workers under which the employer is to discriminate against a person. The proposed amendment extends the provision to cover workers who work under a contract for services and provides for the situation where there are a number of people linking the principal and the worker. ie, a principal who engages a contractor who engages a subcontractor who employs a worker.

30—Amendment of section 56—Exemptions

Section 56 of the principal Act provides an exemption relating to employment in private households. The proposed expansion of the Act to include independent contractors necessitates a change to this provision to provide that it is not unlawful for a person to discriminate if the person employs another, or engages another as an independent contractor, for purposes not connected with a business carried on by the person.

31—Amendment of section 62—Discrimination in relation to accommodation

Clause 31 proposes a new exemption in relation to the ground of race discrimination in the area of accommodation. The exemption provides that the section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

32—Amendment of heading to Part 5

Clause 32 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

33—Amendment of section 66—Criteria for establishing discrimination on ground of disability

Section 66 of the principal Act provides the criteria for establishing discrimination on the ground of disability. This clause proposes broadening the type of conduct that amounts to discrimination on this ground to include the situation where a person treats another unfavourably because of a disability that may exist in the future or because of the disability of a relative or associate of the other person.

Clause 33 also proposes broadening the type of conduct that amounts to discrimination by providing that a person may discriminate on the ground of disability if he or she—

- fails to provide a safe and proper means of access to, or use of, a place or facilities for a person who requires special means of access to, or use of, the place or facilities as a consequence of the person's disability; or
- treats another unfavourably because the other requires special means of access to, or use of, a place or facilities as a consequence of the other's disability,

to the extent that he or she is able to effect the provision of access or use.

Section 66 of the principal Act states that discrimination may occur if a person treats another unfavourably because a person possesses or is accompanied by a guide dog. Clause 33 proposes broadening this by changing the reference to guide dog to an *assistance animal*.

34—Substitution of heading to Part 5 Division 2

The substitution of the heading reflects the proposed inclusion of independent contractors within the scope of the Act.

35—Amendment of section 67—Discrimination against applicants and employees

Clause 35 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

36—Amendment of section 68—Discrimination against agents and independent contractors

Section 68 of the principal Act provides that it is unlawful for a principal for whom work is done by agents remunerated by commission to discriminate against those agents on the ground of disability. Clause 36 proposes extending the section to make it unlawful for a principal to discriminate on the ground of disability against independent contractors engaged under a contract for services.

37—Amendment of section 69—Discrimination against contract workers

Section 69 of the principal Act makes it unlawful for a principal to enter into an arrangement with an employer of contract workers under which the employer is to discriminate against a person. The proposed amendment extends the provision to cover workers who work under a contract for services and provides for the

situation where there are a number of people linking the principal and the worker. ie, a principal who engages a contractor who engages a subcontractor who employs a worker.

38—Amendment of section 70—Discrimination within partnerships

Clause 38 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

39—Amendment of section 71—Exemptions

Section 71 of the principal Act provides an exemption relating to employment in private households. The proposed expansion of the Act to include independent contractors necessitates a change to this provision to provide that it is not unlawful for a person to discriminate if the person employs another, or engages another as an independent contractor, for purposes not connected with a business carried on by the person.

40—Amendment of section 72—Discrimination by associations

Clause 40 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

41—Amendment of section 73—Discrimination by qualifying bodies

Clause 41 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

42—Amendment of section 74—Discrimination by educational authorities

Clause 42 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

43—Amendment of section 75—Discrimination by person disposing of interest in land

Clause 43 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

44—Amendment of section 76—Discrimination in provision of goods and services

Section 76 of the principal Act makes it unlawful for a person who offers or provides goods or services to which the principal Act applies to discriminate against another on the ground of disability. The proposed clause 44 provides that in relation to services comprised of access to or use of a place or facilities that members of the public are permitted to enter or use, both the owner and the occupier will be taken to provide the service.

45—Amendment of section 77—Discrimination in relation to accommodation

Clause 45 proposes a new exemption in relation to the ground of disability discrimination in the area of accommodation. The exemption provides that the section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

46—Amendment of section 78—Discrimination in relation to superannuation

Clause 46 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

47—Amendment of section 79—Exemption in relation to remuneration

Clause 47 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

48—Insertion of section 79A

Clause 48 proposes inserting a new exemption into the principal Act. The exemption provides that an act will not be regarded as discriminatory on the ground of disability in relation to infectious diseases if it is directed towards ensuring that an infectious disease is not spread and it is reasonable in all the circumstances.

49—Amendment of section 80—Exemption for charities

Clause 49 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

50—Amendment of section 81—Exemption in relation to sporting activities

Clause 50 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

51—Amendment of section 82—Exemption for projects for benefit of persons with particular disability

Clause 51 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

52—Substitution of section 84

Clause 52 proposes a new exemption as a consequence of the proposed expansion of the principal Act to make it unlawful to fail to provide a safe and proper means of access to or use of a place or facilities. The proposed exemption provides that a person does not discriminate on the ground of disability if the provision of access or use would impose unjustifiable hardship on the person. In determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including—

- the nature of the benefit or detriment likely to accrue or be suffered by the persons concerned; and
- the effect of the disability of the person concerned; and
- the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

53—Amendment of section 85—Exemption in relation to insurance

Clause 53 is consequential on the proposal to alter the terminology from discrimination on the ground of impairment to discrimination on the ground of disability.

54—Amendment of section 85A—Criteria for establishing discrimination on ground of age

Section 85A of the principal Act provides the criteria for establishing discrimination on the ground of age. Clause 54 proposes broadening the type of conduct that amounts to discrimination on this ground to include the situation where a person treats another unfavourably because of the age of a relative or associate of the other person.

55—Substitution of heading to Part 5A Division 2

The substitution of the heading reflects the proposed inclusion of independent contractors within the scope of the Act.

56—Amendment of section 85C—Discrimination against agents and independent contractors

Section 85C of the principal Act provides that it is unlawful for a principal for whom work is done by agents remunerated by commission to discriminate against those agents on the ground of age. Clause 56 proposes extending the section to make it unlawful for a principal to discriminate on the ground of age against independent contractors engaged under a contract for services.

57—Amendment of section 85D—Discrimination against contract workers

Section 85D of the principal Act makes it unlawful for a principal to enter into an arrangement with an employer of contract workers under which the employer is to discriminate against a person. The proposed amendment extends the provision to cover workers who work under a contract for services and provides for the situation where there are a number of people linking the principal and the worker. ie, a principal who engages a contractor who engages a subcontractor who employs a worker.

58—Amendment of section 85F—Exemptions

Section 85F of the principal Act provides an exemption relating to employment in private households. The proposed expansion of the Act to include independent contractors necessitates a change to this provision to provide that it is not unlawful for a person to discriminate if the person employs another, or engages another as an independent contractor, for purposes not connected with a business carried on by the person.

59—Amendment of section 85K—Discrimination in provision of goods and services

Section 85K of the principal Act provides that it is unlawful to discriminate on the ground of age in the provision of goods and services. Subsection (2) provides that it is unlawful to refuse to supply goods or perform services to another on the ground that the other person is accompanied by a child. This clause proposes relocating subsection (2) to the proposed new Part 5B under the new ground of association with a child.

60—Amendment of section 85L—Discrimination in relation to accommodation

Section 85L of the principal Act provides that it is unlawful to discriminate on the ground of age in relation to the provision of accommodation. Subsection (2) provides that it is unlawful to refuse accommodation on the ground that the other person intends to share the accommodation with a child. This clause proposes relocating subsection (2) to a new section 87A—Sharing accommodation with a child.

61—Insertion of Part 5B

Clause 61 proposes to insert a new Part 5B into the Act to prohibit discrimination on a number of grounds that have not previously been unlawful. The new proposed grounds of discrimination are the grounds of identity of a spouse or domestic partner, association with a child, caring responsibilities and religious appearance or dress. It is also proposed that the Part include within it the grounds of marital or domestic partnership status and pregnancy which were previously included in Part 3 of the Act.

Each of the proposed new grounds makes it unlawful to discriminate in particular areas. In relation to the ground of identity of a spouse or domestic partner, it will be unlawful to discriminate in the area of work, by associations or qualifying bodies, in education, in relation to land, in the provision of goods and services and in relation to accommodation.

In relation to the ground of association with a child, it will be unlawful to discriminate in the provision of goods and services.

In relation to the ground of caring responsibilities, it will be unlawful to discriminate in the area of work, by associations and qualifying bodies, in education, in relation to land, in the provision of goods and services and in relation to accommodation.

In relation to religious appearance or dress, it will be unlawful to discriminate in the areas of work and education.

The proposed new Part provides for some specific exemptions and some general exemptions in relation to charities and measures intended to achieve equality.

62—Amendment of section 87—Sexual harassment

Section 87 of the principal Act provides that sexual harassment is unlawful in certain situations. Clause 62 proposes that sexual harassment also be unlawful in the situations where—

(a) a person to whom goods, services or accommodation are being offered, supplied, performed or provided by another person subjects that other person to sexual harassment; or

(b) a member of an authority or body empowered to confer an authorisation or qualification subjects an applicant for the conferral of such an authorisation or qualification to sexual harassment; or

(c) a member of the governing body of an association subjects a member of the association, or a person applying to become a member of the association, to sexual harassment.

Clause 62 also proposes substituting the definition of conduct that amounts to sexual harassment to provide that a person sexually harasses another if—

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

63—Substitution of section 88

Section 88 of the principal Act makes it an offence to separate a person from his or her guide dog. Clause 63 proposes extending the operation of this section to include other animals prescribed by regulation. The clause also proposes 3 new sections. New section 87A is the relocation of the provision in the principal Act that makes it unlawful to refuse accommodation to a person on the ground that the other person intends to share the accommodation with a child. New section 87B makes it unlawful for an educational authority to discriminate against a student by denying or limiting access to the educational services provided by the authority on the ground that the student is breast feeding an infant or proposes to do so. New section 88A makes it unlawful for a person to be refused accommodation on the ground that the person intends to keep a therapeutic animal at that accommodation. A therapeutic animal is defined as an animal certified by a medical practitioner as being required to assist a person as a consequence of the person's disability.

64—Substitution of section 91

Section 91 of the principal Act provides for the vicarious liability of employers and principals for discriminatory or unlawful acts of agents or employees. Clause 64 removes the subsection that provides that a person is not vicariously liable for an act of sexual harassment committed by an agent or employee unless the person instructed, authorised or connived that act.

65—Substitution of heading to Part 8 Division 1

Clause 65 is a drafting amendment.

66—Amendment of section 93—Making of complaints

Clause 66 proposes to amend section 93 of the principal Act to increase the time within which a complaint must be lodged from 6 months to 12 months and provides that the Commissioner may extend the time for lodging a complaint.

67—Amendment of section 93A—Matters initiated by Commissioner

Clause 67 proposes amending section 93A of the principal Act to provide that where it appears to the Commissioner that a person may have acted in contravention of the Act, the Commissioner may investigate the matter. The Act currently provides that such matters have to be referred to the Commissioner from the Tribunal.

68—Amendment of section 94—Investigations of complaints or matters initiated by Commissioner

Clause 68 proposes amending section 94 of the principal Act to provide that in the course of an investigation by the Commissioner, the Commissioner cannot, without the consent of the person concerned, require production of records of counselling or therapy sessions or records or notes made by an advocate for the person.

69—Substitution of section 95

Clause 69 proposes substituting section 95 of the principal Act for sections 95, 95A, 95B and 95C. The proposed new section 95 deals with the conciliation of complaints lodged with the Commissioner. New section 95A sets out the circumstances in which the Commissioner may decline to recognise a complaint as one on which action

should be taken by the Commissioner. New section 95B details the situation in which the Commissioner must refer a complaint to the Tribunal for hearing and determination and new section 95C provides for the referral of matters initiated by the Commissioner to the Tribunal for hearing and determination.

70—Amendment of section 96—Power of Tribunal to make certain orders

Section 96 of the principal Act provides for the Tribunal to make certain orders. The proposed clause 70 provides that in awarding compensation the Tribunal must take into account the amount of damages or compensation awarded in other proceedings in respect of the same act, and that an award of compensation may not be made against a child.

71—Insertion of section 96A

Clause 71 proposes a new section 96A to provide that a person must not publish a report of proceedings under the Act to which a child is a party if the report identifies the child or contains information tending to identify the child.

72—Amendment of heading to Part 8 Division 2

Clause 72 is a consequential amendment.

73—Insertion of section 96B

Clause 73 proposes a new section 96B as a consequence of the new provision allowing the Commissioner to extend the time within which a person may lodge a complaint. New section 96B provides that where the Commissioner refuses an application for an extension of time, the applicant may apply to the Tribunal for a review of the decision.

74—Amendment of section 100—Proceedings under *Fair Work Act 1994*

Clause 74 proposes a new subsection to section 100 to provide that the Commissioner may, with leave of the Industrial Relations Commission of South Australia, make submissions and present evidence in proceedings before the Commission under the *Fair Work Act 1994*.

75—Amendment of section 102—Offences against Commissioner

Clause 75 updates the penalty provision.

76—Amendment of section 103—Discriminatory advertisements

Clause 76 updates the penalty provision.

77—Substitution of section 104

Clause 77 proposes a new section 104 to provide for the service of documents.

78—Amendment of section 106—Regulations

Clause 78 updates the fines that may be imposed for offences against the regulations.

Schedule 1—Further amendments of *Equal Opportunity Act 1984*

Schedule 1 makes statute law revision amendments to the principal Act.

Debate adjourned on motion of Hon. J.M.A. Lensink.

[Sitting suspended from 13:01 to 14:18]

PAPERS

The following papers were laid on the table:

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Reports 2007-08—

- Australian Energy Market Commission
- Code Registrar for the National Third Party Access Code for Natural Gas Pipeline Systems
- Defence SA
- Department of Trade and Economic Development
- Department of Treasury and Finance
- Department of Water, Land and Biodiversity Conservation
- Distribution Lessor Corporation
- Electricity Supply Industry Planning Council
- Energy Consumers' Council
- Essential Services Commission of South Australia
- Funds SA

Generation Lessor Corporation
Land Management Corporation
Motor Accident Commission
Parliamentary Superannuation Board
Police Superannuation Board
Public Trustee
RESI Corporation
Save the River Murray Fund
South Australian Asset Management Corporation
South Australian Financing Authority
South Australian Motor Sport Board
South Australian Superannuation Board
South Australian Water Corporation
State Emergency Management Committee
State Procurement Board
Stormwater Management Authority
Technical Regulator—Electricity
Technical Regulator—Gas
TRACsa Trauma and Injury Recovery
Transmission Lessor Corporation
Venture Capital Board

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

Reports 2007-08—
Child Death and Serious Injury Review Committee
Department for Families and Communities
Fisheries Council of South Australia
ForestrySA
Guardian for Children and Young People
Supported Residential Facilities Advisory Committee
The Council for the Care of Children
Veterinary Surgeons Board of South Australia

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—

Reports 2007-08—
Adelaide Convention Centre
Board of the Botanic Gardens and State Herbarium
Coast Protection Board
Department for Environment and Heritage
Department of Health
Dog and Cat management Board
General Reserves Trust
Health and Community Services Complaints Commissioner
South Australian Rail Regulation
South Australian Tourism Commission
South Eastern Water Conservation and Drainage Board
Tarcoola-Darwin Rail Regulation
Gene Technology Act 2001 (SA) Statutory Review—South Australian Government Response Document
Gene Technology Activities in 2007

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:25): I bring up the 9th report of the committee.

Report received.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:25): I bring up the report of the committee.

Report received.

MODBURY HOSPITAL ONCOLOGY SERVICE

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:25): I table a copy of a ministerial statement relating to Modbury Hospital Oncology Services made earlier today in another place by my colleague the Hon. John Hill.

SCHOOL CLOSURES/MERGERS

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:25): I table a copy of a ministerial statement relating to schools made earlier today in another place by my colleague the Hon. Jane Lomax-Smith.

SUGARLOAF PIPELINE

The PRESIDENT (14:26): The Hon. Mr Brokenshire has informed me in writing that he wishes to discuss a matter of urgency, that is, that this council:

1. acknowledges the Senate's amendment yesterday precluding the taking of any new water from the Murray-Darling Basin which, in effect, bans the proposed construction of a pipeline from the Goulburn River to Sugarloaf Reservoir, predominantly intended for metropolitan Melbourne water supply; and

2. calls upon the Premier to urgently contact the Prime Minister (Hon. Kevin Rudd MP) this afternoon requesting that the Prime Minister and his government support the said Senate amendment.

There is a requirement that more than three members must rise in their places as proof of the urgency of this matter.

Honourable members having risen:

The Hon. R.L. BROKENSHIRE (14:28): I move:

That the council at its rising adjourn until Thursday 27 November 2008 at 1pm.

I appreciate that this is an unusual gesture, but I could not overlook the urgent need for the parliament of South Australia to go in to bat for its people, and hopefully for the Premier and the state government to do the same.

As I have said, this is important and unusual. However, I advise members that it happened in this council in 2001, when the Leader of Government Business (Hon. Paul Holloway) moved a censure motion against the then treasurer. Late last night the commonwealth Senate passed an amendment by 33 votes to 20. Significantly, Senators Nick Xenophon and Sarah Hanson-Young (Greens) from South Australia, Senator Fielding (Family First) from Victoria and the federal coalition opposition were among the ayes.

The Senate amendment provided that no project that had begun, or would begin after 3 July 2008, would be permitted to be constructed by an infrastructure operator. The practical effect of this amendment, as the urgency motion states, is that it would spell the end to what is a controversial north-south pipeline—better known as the Sugarloaf pipeline—to supply water to metropolitan Melbourne via a pipeline inlet on the Goulburn River at Killingworth and an outlet at the Sugarloaf Reservoir, just west of Yarra Glen, which is part of the Melbourne metropolitan water supply system.

There has been great concern and debate about this matter in Victoria in relation to food producers. I am advised that, even in the city of Melbourne, while water restrictions and water problems have been an ongoing problem there—as they have been for Adelaide—a large number of people in Melbourne city itself are very concerned about this proposal. I must say that food producers in the Sunraysia area and other parts of Victoria—and certainly food producers to whom I have spoken along the length of the River Murray from Paringa through to the Lower Lakes—have been incredibly concerned about this proposal at a time when they are desperate for not only water for food production but also water for environmental flows.

Many of my colleagues in this council and in the other house have spoken about their concerns for the Lower Lakes. Indeed, just today the Minister for Water Security has announced

some water flow increase to save the dying Lake Bonney. At the same time, the Victorian Sugarloaf proposal is estimated to cost $2.5 billion with a running cost of $40 million per annum—$2.5 billion for the infrastructure commitment to this project and $40 million per annum to run it. The Victorian Wonthaggi desalination plant is also proposed, at a cost of $3.1 billion with a running cost of $100 million per annum.

Family First in Victoria, through Senator Steve Fielding, has offered an alternative proposal to that of putting in the pipeline from Goulburn to Melbourne. That proposal is to use water that would normally flow out to sea in Bass Strait, which is enough to supply 35 times the whole of metropolitan Melbourne's water needs and three times the total demand of all Victoria for potable water. It would have a smaller carbon footprint than a desalination plant. Senator Fielding has also proposed a 30-kilometre tunnel from the Upper Yarra Dam to Lake Eildon, which is a significant reservoir, in order to allow water back into the River Murray via the Goulburn River. It would provide an opportunity to increase water flow from that part of Victoria to the Lower Lakes.

It is worth while having this debate. I believe that federal senators were putting forward those sorts of arguments when they moved the amendment to effectively stop the Sugarloaf pipeline. The Sugarloaf pipeline has the approval of the federal Minister for the Environment, Heritage and the Arts (minister Garrett). In September minister Garrett approved the Sugarloaf pipeline from an environmental perspective, but one must wonder whether the minister had any regard to the environmental impact upon the Lower Lakes, the wetlands in Victoria and, of course, water flow through the whole of the lower River Murray system in South Australia.

The Big Brother approach of Victoria in my opinion puts at expense a lot of Australian families, arguably almost all South Australian families and certainly farming families and food producers living in the communities along the lower end of the River Murray, namely, from Paringa through to the Lower Lakes, and it also jeopardises the potential environmental recovery of the RAMSAR wetlands around Hindmarsh Island in the Lower Lakes.

What would a recurrent 75 gigalitres do if there was an alternative proposal? The argument from Premier Brumby in Victoria is that it would be water neutral, mainly because he was saying that, while 75 gigalitres would be going to Melbourne to supply householders there, with other initiatives they would be able to stop leakage, seepage and evaporation; and, with a more efficient technique, they are arguing that the water to Melbourne would possibly be neutral. Another argument is that, given that it is Australian taxpayers' money that is providing the $1 billion Victoria received through the COAG agreement, the 75 gigalitres could become part of the Living Murray water and come through to help to alleviate the desperate situation we see throughout the whole of South Australia along the River Murray, revitalise communities, revitalise and reinvigorate our economy and ensure we continue to see farming family food producers as we have known them in recent times being able to survive and prosper.

What would a recurrent 75 gigalitres do to the Living Murray? For starters, with the present state of the Lower Lakes, a recurrent 75 gigalitres would help to ensure that the RAMSAR protected wetlands would survive, and it would also be possible for Lake Bonney to get more than the 10 gigalitres that will now urgently be put back into Lake Bonney to prevent what I believe is a catastrophe happening, which has been highlighted by colleagues in this council, the Hon. Sandra Kanck for one, with the fish dying in the lake, etc. So, there are really good reasons for getting out there and fighting to stop the pipeline from Goulburn to Melbourne.

I remind colleagues that South Australia gets only 6.2 per cent of the whole Murray-Darling Basin system. This morning in public debate in the media on this, Professor Dean Jaensch highlighted the fact that there are problems with the handover bill. He confirmed what many of our colleagues raised in this council about it not having enough teeth and argued that there was not an absolute power of veto and absolute control when it came to the new independent authority. Whilst there has been some improvement with it, he stated—and I value his judgment—that the bill could have been much stronger. He also indicated, and many others have as well, that the only chance now to start to be serious about improving the river system would be for Prime Minister Rudd and his commonwealth government to support the amendment in the Senate and therefore ensure that the pipeline does not proceed. I think that is a pretty sound argument.

I want to give all my colleagues an opportunity to speak on this urgency motion, but I personally believe that this is a window of opportunity for the state government through the Premier to contact the Prime Minister this afternoon. We have seen other occasions when the Premier has got on the phone to the Prime Minister pretty quickly and advocated around certain issues, but I am told that, with the amendments, this bill will go into the House of Representatives this afternoon. If

the Prime Minister really wanted to make a difference he could support that amendment and start to improve water flow and biosecurity and everything else that all of us really want to see happen in the River Murray system. At the end of the day, it gets back to the Premier in particular, as the leader of our state, to lobby very hard for the commonwealth government through the Prime Minister's leadership to stop this pipeline from proceeding and support the amendment.

The bottom line is that it gets back to our Premier showing absolute leadership. The South Australian community is screaming out for that. There is nothing more important on the mind of South Australians at the moment than water supply and water security and sustainability. I urge all honourable members in this chamber to support this urgency motion. Again, I want to put on the public record my congratulations to Senators Bernardi, Birmingham, Fisher, Sarah Hanson-Young, Nick Xenophon, Steve Fielding, and the senators in both the National Party and the Liberal Party federally, who made up the 33 to 20 in support of this amendment.

This is a very urgent matter, and I strongly urge members to support this motion. I trust that, if it is passed, the Premier will get on the phone this afternoon and call on the Prime Minister to support the amendment and help save the River Murray and give South Australia the chance it deserves.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:41): The first comment that needs to be made in this debate is that the standing orders of the Legislative Council obviously need urgent change. Yes, urgency motions have been raised in the past by the opposition; I have done it myself when in opposition. However, to have Independent members using it I think highlights a fault in our standing orders, and I undertake—I hope with the cooperation of the opposition—to correct that. There has always been a convention that requests to move urgency motions in parliament have never been rejected when they have been moved by the opposition, with reasonable notice. But for it to be used by minor parties in this way is an abuse.

This matter is supposedly urgent, and it was the subject of a debate last night in the Senate. I think we understand why we have had such trouble getting some legislation through and getting people to turn their attention to some of the critical legislation we have in this place. What you over there have been doing is spending your time listening to the Senate and reading the Senate debates. Why don't you pay attention to the bills that are before the Legislative Council rather than worrying about what is happening in the rest of the country? If you did so, you would realise how stupid this is.

If the Hon. Robert Brokenshire got up and said, 'I'm really stupid. I've really made a huge mess here,' it would make the point much more clearly than moving this motion. Do you know, Mr President, that one of the resolutions the Senate actually passed last night stated that critical water needs 'are the needs for a minimum amount of water that can only reasonably be provided from basin water resources required to meet human drinking, sanitation and health requirements in urban and rural areas'.

When we had the debate in this chamber a few weeks ago, the Hon. Robert Brokenshire moved an amendment seeking to expand the definition of 'critical human needs' to include permanent plantations. Last night, the Senate took a completely reverse position, and the Hon. Robert Brokenshire is now trying to tell us that the Premier should ring up the Prime Minister and say, 'Support it.'

Where does the Hon. Robert Brokenshire stand on amendments like that? This one was completely in the reverse direction to the amendment he moved here only a few weeks ago, or has he forgotten that? Really, doesn't that say it all? Obviously, the honourable member either does not understand what he is doing or does not understand what other people are doing. How can you have it both ways?

Incidentally, Liberal members supported that resolution in the Senate last night. What that means now, of course, is that critical human needs now exclude the needs of industry. What the Liberal members in the Senate also did last night with their amendment was to impose restrictions by taking this action purportedly against what is happening in Victoria, which obviously has some relevance to South Australia.

If we are to start interfering with that, what is going to happen from here? Those upstream states of New South Wales and Victoria, which have far more voters than we have, will say, 'Well, if we are going to have minority senators from outside messing around in our affairs, we will start

messing around in South Australia.' Who is going to lose out of that? Who will be the big losers? We all know who the big losers will be, and it will not be Victoria and New South Wales.

I will say something in a moment about that proposal in Victoria, which is not really a matter of urgency. However, I come back to another amendment that was moved in the Senate last night, effectively enforcing restrictions on the amount of water that could be taken by population centres outside the basin: that is what they restricted in Victoria. What does that do for OneSteel and Nystar in South Australia?

A by-election in Frome is coming up soon. Just a few days ago, the Leader of the Opposition was criticising the Premier, saying that he should not be going to Port Pirie because it was all fixed, yet last night senators from this state, along with their colleagues from other states, voted effectively to restrict the water that can potentially go to OneSteel in Whyalla and to Nystar in Port Pirie.

I think that the voters of Port Pirie will hear about that and have something interesting to say about it. Yet the Hon. Robert Brokenshire says that the Premier should ring the Prime Minister and tell him to support all these amendments that were moved last night in the Senate. I am sure that our Premier will not act against the interests of the people of this state.

The tragedy of what has happened is that the old-style politics of parochialism have reverted to the River Murray. A few weeks ago, it was touch and go because the Hon. Robert Brokenshire moved his amendment, even though it was totally the reverse of one moved in the Senate last night. Fortunately, it was rejected, and it was rejected because this parliament took the position that it wanted South Australia to be part of a new movement to try to get the politics out of the River Murray.

What has happened? These minority parties that want to get a bit of political coverage are right back into it and using their numbers to try to derail it. It is a tragedy that in this country we cannot get an agreement about the River Murray. Even Europe, where 16 countries speak different languages, some of which have been fighting each other for a thousand years, can agree about the Danube, the Rhine and other major rivers. It can agree on how to manage those rivers, but for some reason it appears to escape the people of this country because we have this sort of politicking.

As I understand the project in Victoria, it was about doing what we did here some 10 years ago, that is, replacing open drains and saving a significant amount of water, some of which would indeed go to Melbourne, but a significant amount (I think it was 80 gigalitres) would go back into the river as environmental flows. That is the sort of thing the honourable member is opposing.

It was interesting that none of the Victorian Liberals in the Senate actually spoke on the bill last night. If they had all thought that what was being done by the Brumby government was so bad, you would have thought they would be up in arms, but apparently none of them found the courage to speak. Of course, some of the Liberal senators from this state supported these resolutions which, potentially, will have quite dramatic effects on parts of our state, particularly Port Pirie and Whyalla.

Those senators voted to enforce reductions in the amount of domestic and industrial water that can be taken from the Murray. It is extraordinary that South Australian Liberal senators would rather play political games than enable key industries to get the water they need to operate and employ thousands of South Australians. It will be interesting to see just how far the Senate goes.

I would have thought that the Premier of this state had far better things to do than ring the Prime Minister and get him to worry about these amendments. I suspect that, when the total nonsense of these amendments and their contradictory nature comes to light, they will collapse within the next few days—as they deserve to do.

If the amendments do not collapse and we insist on them, there is really only one outcome I can see: Victoria will withdraw from the agreement and we will be back to where we started in the 1890s. All of the momentum will have gone, and it will have been sacrificed on the altar of political expediency by a few individuals to get some political coverage. You will never get total agreement on water.

In relation to the upstream users, under section 100 of the Constitution the states have an inalienable right to the use of water for reasonable purposes, and that gives them immense strength. If we are to move towards a national system of management for the Murray, and if we are

to depoliticise it, we need to get the states to refer their powers. Because of section 100, the commonwealth cannot use its powers to force the states to do anything in relation to water.

The tragedy is that, in a most unconventional manner, the time of this parliament has been used to bring up an issue that essentially affects another state. Of course, the River Murray Basin affects us all but, if we are to have the Senate starting to dictate on such matters, as it has in relation to Victoria, inevitably it will happen here in this state.

If you want to be a centralist, if you want to get rid of the states, then I guess you would support that sort of resolution; just hand it over to the commonwealth and let a few senators who happen to have the balance of power, in combination with a desperate and directionless opposition (such as we have in Canberra at the moment), use their numbers to get all sorts of amendments and dictate what we in this state might do and dictate the future of our industries. That is unacceptable to this government, and it will treat this so-called urgency motion with the contempt it deserves.

One could say much more, but I will not take up too much time at present and will allow other members the opportunity to speak. However, I need to point out the total hypocrisy of the Hon. Robert Brokenshire in moving support for a series of amendments that are in total contradiction to what he moved here just a few weeks ago.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:52): I rise to speak to the motion on behalf of the opposition. I also indicate that, according to my colleagues behind me and from my own experience in nearly seven years here, while it does require just three people to stand in their place and support an urgency motion, the convention has been that the member has majority support to pursue that urgency motion.

I would like to put on record that when the Hon. Robert Brokenshire discussed this with me I made the offer that we, as the opposition, would be prepared to support a suspension of standing orders to allow him to move a motion without notice at the end of question time, or after matters of interest, or at some point today or tomorrow. We were happy for him to do that; he could have raised his issue and we would not have lost question time.

As we know, question time is important, and this is the second last sitting day—unless, of course, the government comes back next week to pass the very important planning amendments. The Hon. Robert Brokenshire suggested to me that he wanted to do this because it would be a wonderful opportunity for the television cameras to focus on the Legislative Council. Well, I point out that *The Advertiser* has deserted us today as a result of this.

The opposition has always been opposed to the pipeline to Melbourne; it has always opposed taking water out of the Murray-Darling Basin and sending it to Melbourne via a pipeline. It is 75 gigalitres of water that is to go to Melbourne but one can see that, over time, as Melbourne potentially grows, there would be more and more pressure on that particularly strained resource.

Even the Victorian Auditor-General, when pushed, questioned the actual water savings to be gained through putting in this pipeline, and putting channels into pipelines. What is of concern to the South Australian opposition is that, while the South Australian minister, the Hon. Karlene Maywald, also expressed concerns about those water savings, unfortunately we have seen her do very little. In fact, what we have seen is what little support she has left in her own electorate.

The Hon. J.S.L. Dawkins interjecting:

The Hon. D.W. RIDGWAY: As the Hon. John Dawkins interjects, Mr Tim Whetstone was formally preselected on the weekend to stand against the Hon. Karlene Maywald at the next election, so we will see what happens at the ballot box.

Members interjecting:

The PRESIDENT: Order! There were plenty of interjections when the minister was on his feet, so the Leader of the Opposition will have to put up with a few, too.

The Hon. D.W. RIDGWAY: Thank you, Mr President. The interjections are as urgent as always, even in an urgency motion. One of the problems is what happened behind closed doors when the deal was done with Premier Rann, minister Maywald, Prime Minister Rudd and Premier Brumby. What we know about the 75 gigalitres of water that is likely to go to Melbourne from the Goulburn River is that it is irrigation water.

What happens when it becomes metropolitan water? It becomes a different status of water: critical human need. It is interesting to note that, if the status of the water was to change, then we would be concerned. At the moment, if it is irrigation water, it is subject to restriction when under low flow and poor availability. So, you can see that, if it becomes water for critical human need, its status changes and, again, more pressure would be put on the river.

It was interesting, looking at the debate last night, that, in the second reading stage of the bill, Family First Senator Steve Fielding did not mention South Australia at all. I might add also, at this point, when the Hon. Robert Brokenshire congratulated senators from a range of parties for supporting the bill, he did miss out two very important and distinguished Liberal senators: Senator Nick Minchin and Senator Alan Ferguson. I hope that was just an omission and not a deliberate thumbing of his nose at those two gentlemen who have served our state so well.

Another issue of concern to the opposition, in particular, with the new water security arrangements is the appointment of Robyn McLeod as the South Australian Water Security Commissioner. I am not sure whether members are aware but Robyn McLeod is a failed Labor Party candidate and, I am told, a friend of the Deputy Prime Minister. She is now our Water Security Commissioner. However, what is more alarming is that she was the architect behind the Sugarloaf Hill pipeline project and, in fact, the food bowl project. Effectively, it is a bit like putting the wolf in charge of the lambs. This is someone who has significant links to the Labor Party, significant links to the project that is going to take the water to Melbourne and, yet, she is our Water Security Commissioner. I cannot believe that.

When you look at the figures for the food bowl project and the water savings from putting water into pipes and out of channels with less seepage—as I said, the Victorian Auditor-General questioned the savings that will be achieved—clearly, there will not be any. To appoint somebody who was the architect of the project in Victoria as South Australia's Water Security Commissioner (not to mention her connections to the Labor Party) raises some serious questions.

In the debate last night there was some discussion by a number of senators about weaning Adelaide off the River Murray. This opposition has always said that we should reduce our reliance on the Murray but that we should not wean ourselves off the Murray for the simple reason that, for Adelaide to get a little bit of water, there has to be an environmental flow or a dilution flow. We should always maintain some reliance, albeit small, on the River Murray so that we have the dilution flow. The moment we cut Adelaide off from the River Murray, there is no reason to send any water past, say, Tailem Bend. Therefore, you virtually confine the Lower Lakes to being a dustbowl. Clearly, that was something that I do not think the Senate, as a whole, really understood.

Of course, stormwater harvesting is something that this government has neglected. The opposition indicated support at the second reading stage of the Hon. Robert Brokenshire's small bills. If we were in government we would not be so arrogant and pigheaded about it. We would embrace what he was doing and, in fact, he would not have needed to introduce them because we would be in government and doing what we said: investing some $400 million into harvesting and storing stormwater—which we intend to put in place after 10 March 2010.

Members interjecting:

The Hon. D.W. RIDGWAY: Between $300 million and $400 million. Another point I would like to make, which I think is alarming, is that the South Australian community, through the River Murray levy, has put money into the Living Murray project to recover water in the Goulburn Valley and in the River Murray. The Living Murray project has used our taxpayers' money, so hard-working South Australians have put money into the River Murray levy, which has gone into the Living Murray project, which has gone to save water for environmental flows in the Goulburn River.

It is in the Goulburn River, and now they are talking about taking water from the River Murray. Basically, you cannot trust the Victorians; you cannot trust the Victorian government. People may scoff at that but I lived on the South Australian and Victorian border (which I have said in this place before) and I had several irrigation bores into the aquifer that traversed the Victorian and South Australian border. I had friends on the other side who did not. They went to the Victorian department and asked how to get a licence and how much they could have, and the message came back, 'Yes, you can have a licence and you can pump as much as you like because South Australia has a lot of irrigators and we are not getting our share, so you can take as much as you want.' That is the mentality we are dealing with, and we simply do not trust the government. I have had my fair share of time, and will allow others to speak.

The Hon. M. PARNELL (15:00): Communication is not necessarily a strong point among members in this place and I invite the Hon. David Ridgway, the next time he is aware that there is another way of getting this on the agenda without our sacrificing question time, perhaps to let us know.

The PRESIDENT: Order! There is some responsibility on members of this chamber, when asked to do something such as debate an urgency motion, to ask what the ramifications of that will be: whether question time will go ahead and what effect such a debate may have on that aspect, and I rely on members of this place to take it upon themselves to ask those questions.

The Hon. M. PARNELL: Thank you for your guidance, Mr President. Certainly we were taken a little by surprise. I was aware, by the time I stood up, that question time would be the sacrifice. Whether that means that this is such an abuse of process that the traditions of this parliament have been thrown out the window, I do not accept. There were probably some important press releases the government needed to read out during question time in response to questions from their own members, but this is an important issue. When we debated the River Murray bills, the Greens took the position that we would not move amendments to those bills in this place because we knew it would be given a thorough treatment in the Senate, and that is the treatment it got yesterday.

Introducing this motion calling on our Premier to urge the Prime Minister to accept the outcome of the debate in the Senate last night is an appropriate thing to do. I note that the successful amendments were joint Green and Liberal initiatives, and I also note that the Hon. Steve Fielding has come to the matter somewhat late, after most of the heavy lifting has been done, but nevertheless a good idea is deserving of support and we congratulate all those who support it. I note that the AAP Newswise this morning reported in relation to Senator Fielding:

> A federal senator who voted to block Victoria's controversial north-south water pipeline has suggested the commonwealth instead build a pipeline from Tasmania to Melbourne. Coalition and balance of power senators are calling on the federal government not to overturn an upper house move to veto Victoria's Sugarloaf pipeline project. Opposition and crossbench senators on Tuesday joined forces to change the government's Murray-Darling Basin takeover bill. They added an amendment that would block the pipeline, which would carry up to 75 billion litres out of the basin to Melbourne every year.

So, it is an important issue. In debating the River Murray legislation we talked about how to get around parochial state interests. The Victorian pipeline is a classic example of a parochial state interest.

The Hon. P. Holloway interjecting:

The Hon. M. PARNELL: The minister interjects. I do not for one minute support the Tasmanian pipeline project; we need to acknowledge the good ideas as they come forward, but some poorer ideas are not deserving of support. The Victorians claim that they will save some water, and that some will go back to the river and some to Melbourne. The Greens' response to that is to say that the investments in irrigation efficiency that the Victorians are talking about to save water is a modernisation activity that Victoria should be undertaking anyway to address its over-allocation. You do not put a spin on those efficiency measures by saying, 'Let's siphon off some water for Melbourne while we're at it.' The other reason that I support the urgency of this is that we have just today, within the last hour, had the release of the State of the Environment Report, and the headline item in that report is the parlous state of South Australia's waterways. It talks about the Coorong, the river, Lake Bonney with its dead fish and the wetlands that have been closed off due to evaporation. So, if spending one hour in our last sitting week to raise this matter of national and South Australian importance is an abuse of our process, then I think we have missed the plot.

This is an important motion. I urge all members to support it because, if we allow states such as Victoria to let their parochial interests override us, heaven help the process of the joint management of the Murray-Darling.

The Hon. SANDRA KANCK (15:05): When I was approached to support this motion, I checked the standing orders and found that we would miss out on question time, so I was a bit taken aback by the statements made at the beginning of the Hon. Paul Holloway's contribution when he said that standing orders need to be amended or changed because this has happened. The standing orders do not talk about the conventions: they only tell you the rules. If, indeed, it is the intention that it has to be a majority of people supporting the suspension of standing orders, or whatever—the introduction of a matter of urgency—then perhaps it should be amended. However, reading it does not tell us that. So I was shocked by what the Hon. Paul Holloway said, because there are six crossbenchers here and only seven government members and, maybe after the next

election, there will be even more crossbenchers than government members. So, it was quite an amazing thing for him to say.

A little over 12 months ago I attended a meeting of the Murray-Darling association in Dubbo, and that was not long after the Victorian government had announced it was going to build this pipeline. The irrigators from the Goulburn River valley were absolutely ropable. They were angry that water that they believed ought to be left in the system one way or another was going to be sent to Melbourne.

An honourable member interjecting:

The Hon. SANDRA KANCK: It may well be good for irrigation. We have heard arguments in recent times that Adelaide is located in the wrong place in relation to water. Had it been located right on the banks of the River Murray, I do not think we would be using any less with the population that we have. The only advantage would be that we would not be using the electricity to pump the water. So I think that sort of argument is a bit of a furphy.

The Hon. David Ridgway talked about the debate in the Senate last night when comments were made about Adelaide needing to wean itself off the Murray. I used to hold that view, but I take a contrary view now because I do not think any other state or region would care as much for this river as do South Australians, and weaning us off the Murray is probably the wrong thing if we want the natural environment along the Murray to survive in any way, shape or form.

So, it is disturbing on the one hand to hear people saying that we in South Australia should be weaned off the Murray and then hearing the arguments that this pipeline must be constructed and water taken down to people in Melbourne. I heard on the radio this morning Premier Brumby saying that if this pipeline is not constructed the people of Melbourne will be running out of water in 10 years. Well, there is a cheaper solution—and a less technological one—and it is called limiting your population, and it applies to Melbourne just as much as it applies to Adelaide. Quite simply, we have more population here in South Australia than our water supplies can support, and it looks like the same thing is happening in Melbourne. So let us go to a simpler and much less expensive solution.

I also want to record that the Natural Resources Committee of parliament earlier this year visited a number of communities and spoke to irrigators along the Murray and its tributaries. Unfortunately, my notes are at home so I cannot say this with absolute certainty, but I think it was in Shepparton that the irrigators told us that they were responsible, effectively, for this pipeline plan. They went to the government and said, 'If you can give us some money to upgrade our irrigation system, we will be able to save you X megalitres of water and, in exchange for that, the water that is freed up will be able to be used for the people of Melbourne'.

That was during the time of the Bracks government. From that perspective it would appear—and I have not been able to verify this from my memory or to check with anyone else about how accurate it is—that the water savings in that area would then go to Melbourne. If it is true, then this pipeline is water neutral. However, I am concerned that we could see greater offtake of water sent down to Melbourne in the longer term than what was originally proposed. We also have to take into account climate change. We know that as a result of climate change we will get less rainfall, and with less rainfall there is at least a 30 per cent reduction in run-off. I do not believe that that has been taken into account in determining that water will be able to be taken from the Goulburn River and sent to Melbourne. I suspect—and, again, I have not had the time to check out all the technicalities—that the figures about the amount of water available are based on current flows and storage rather than what might be the case in 10 or 20 years.

I might not necessarily agree with all that has happened in the Senate and I might not necessarily agree with everything that the Hon. Robert Brokenshire has said, but this is a critical issue. It has been worthy of the discussion. It would have been unfortunate if there had been a mechanism to shut down this particular discussion. Recently, we passed legislation to hand in our powers over the River Murray. Although I think that South Australia got dudded in the COAG deal and that Victoria is very much the winner, I certainly would not want to see the agreement—how ever limited it is—fall on its face. I do not believe, however, that discussing this matter this afternoon will result in that happening.

The Hon. D.G.E. HOOD (15:12): I indicate my wholehearted support for the motion and I endorse the comments of my colleague, the Hon. Mr Brokenshire. My comments will be fairly brief but, before I turn to the motion itself, I want to address some of the comments made by the Leader of the Government. I understand that it is convention that the opposition, in general, would raise

urgency motions in this council. I think when our standing orders were compiled many years ago that was entirely appropriate. It was entirely appropriate because there were no crossbench or Independent members at the time. However, things have changed. The reality is that there are six members in this council who are either members of minor parties or Independents—which is over one-quarter of the representation of this chamber. I disagree with the suggestion that one-quarter of the chamber should not be able to do something like what is being done today on a rare and exceptional basis.

The Hon. A. Bressington interjecting:

The Hon. D.G.E. HOOD: Well, the two Independents, the Hons John Darley and Ann Bressington.

The Hon. I.K. Hunter interjecting:

The Hon. D.G.E. HOOD: Well, that is another issue. Nonetheless, members understand the point I am making. The truth is that we have six members who represent over one-quarter of the chamber and, whilst I agree that urgency motions should be moved with due thought and appropriately, the reality is that six members have a voice, as well, and they should have a right to use it. If one tracks a graph of the representation in this place, one sees that in the very early days the two major parties occupied all the seats in this chamber. These days it is vastly different from that situation, and that needs to be acknowledged. Certainly, I indicate that, if there was any move to amend standing orders to the effect indicated by the Leader of the Government, Family First would strongly oppose the move. In relation to the actual motion itself, I want to be clear about what the motion says. It states:

> That this council:
>
> 1. acknowledges the Senate's amendment yesterday precluding the taking of any new water from the Murray-Darling Basin which, in effect, bans the proposed construction of a pipeline from the Goulburn River to Sugarloaf Reservoir, predominantly intended for metropolitan Melbourne water supply;

How can anyone disagree with that aspect of the motion? It is just a statement of fact. The motion continues:

> 2. calls upon the Premier to urgently contact the Prime Minister (Hon. Kevin Rudd MP) this afternoon requesting that the Prime Minister and his government support the said Senate amendment.

Members may have different views on that; that is fine. That is why we have an urgency motion and that is why there is an opportunity for debate. Family First strongly supports the idea of the Premier contacting the Prime Minister and fighting for South Australia's water, urging the case and putting the case forward that, if the Victorian government does allow the building of this pipeline, every year it will suck from the River Murray some 75 gigalitres that otherwise would flow down the Murray. How can that be in the interests of South Australians? It is absolutely not in the interests of South Australians. As Premier of this state it is incumbent on him, I believe, to go in to bat for us and to try to prevent that. It is the interests of this state to prevent that.

Furthermore, when one considers the arrangements that were reached at the COAG agreement, Victoria received an extra $1 billion to shore up its signing on to the agreement in the final instance. What is it doing with that $1 billion? I will tell you what it is not doing: it is not building a desalination plant or doing anything other than seeking to get more water from the already crippled river system. How is that in South Australia's interests? That water flows down to South Australia; we need that water. I think it is incumbent upon this chamber—and our Premier, as the motion provides—to fight tooth and nail to stop that water being pulled out of the river.

This river is in desperate trouble. We are seeing a circumstance where the river will be changed forever, and we cannot sit by and let that happen. If the River Murray does not require an urgency motion, given the events of the past few years and indeed last night, then I do not know what does. I support the motion.

The Hon. A. BRESSINGTON (15:17): I will be very brief, as well. I would like to say to members of this council and yourself, Mr President, that we live in the driest state on the driest continent, and it has been foreseen for decades that there would be a 1 in 100-year drought and that we would face a water shortage in this state. I remember reading through *Hansard* going back to the 1990s where stormwater harvesting was on the agenda back then. We know that the Salisbury council out north started that initiative some 25 years ago off its own bat and has

received very little financial or any other support from either major party in this place to expand that project—

The Hon. S.G. Wade: It got a lot of money from the federal government.

The Hon. A. BRESSINGTON: I said from this chamber and from this state government—and I think that shows that we in this state have had a very shortsighted approach to the long-term future of this state.

I was surprised to hear this morning that this pipeline will now put Victoria on the map for withdrawing water from the Murray while we in South Australia are weaning ourselves off it. I heard the Minister for Water Security, the Hon. Karlene Maywald, on the radio yesterday saying what a wonderful effort South Australians have made to follow water restrictions and save water; and we've got the results, and rah, rah: aren't we great? At the end of the day the saving of all that water has come down to the deprivation of the rights of the people of this state to flush their toilet and to be able to keep their gardens alive.

I know that sounds menial to some, but I have got aged pensioners in my street who have lived in those homes for 40 years, and now their life is their garden. It is their pride and joy, and they have invested time, money and a lot of emotion in those places, which are their palaces. On the purse strings of an aged pension they have very little else to look forward to than the spring and summer months when they can get out and tend their garden. Now I see an 80 year old lady over the road carrying buckets of water to water the trees on the footpath and the plants in her garden. She is not doing that because she has to but because she is trying to be a conscientious water user.

What has this government done to assist the citizens of this state and to ensure that our water is secure and that we are guaranteed a water supply? On the radio this morning, I heard that people from Skye are not even connected to mains water and rely on rainwater. What has been done in the past 10, 20 or 30 years to prepare for this period of time?

I have just one more point before I conclude. I am not claiming to be an expert on this issue. I have probably come into this water debate behind the eight ball compared with the Hon. Robert Brokenshire, the Leader of the Government and the Leader of the Opposition and others in this place. However, I make the point that, if our water and our food bowl are not secure, where are we as a state? We know what Mr Brumby, the Premier of Victoria, thinks of South Australia. He thinks we are a backwater—and we are being treated like a backwater.

From where I sit in this place, I see a Premier who is not prepared to go into bat for this state on the water issue. Sure, we will build a desalination plant. We have heard Professor Mike Young tell us that the price of our water is going to have to increase. How do people on low incomes—on pensions or whatever—reconcile their measly pension? Does that mean that, if they cannot afford water, they go without?

What is the solution to this? We are not hearing solutions put up by this government. We are hearing desal plant, but what else? What are we doing to save the Murray? Absolutely nothing. What are we doing to save the Lower Lakes? Nothing, or very little; the absolute minimum. We knew this was coming. Both major parties knew this was coming, and they have sat on their hands for decades and allowed our River Murray to get to the stage where it is taking its last desperate breath for survival.

So, yes, this motion has been put forward by the crossbenches, because it is time this parliament actually stood up for the people of this state and gave them a voice and expressed their concerns and got it on the public record that there are some people in this place who are prepared to maybe break the rules to get this stuff on the record to let the people out there know that we are truly concerned for their wellbeing—not for the politics behind this, and not for the agenda of each of the states behind this but for the citizens of this state.

The Hon. R.P. WORTLEY (15:23): I rise to speak about what I consider—

Members interjecting:

The Hon. R.P. WORTLEY: I have sat here and listened to all the arguments without saying a word, so at least have the decency to allow me to speak now. Let me make it clear: what your federal counterparts did last night is going to come back and bite you all on the backside; there are no arguments about that.

You wait until every industrial user in this state finally finds out that you supported an amendment that took them out of the definition of 'critical human needs'. You wait for the phone calls. What are you going to do when the wineries, OneSteel and GMH suddenly find out that they have been taken out of the definition of 'critical human needs'?

The Hon. R.L. Brokenshire interjecting:

The Hon. R.P. WORTLEY: That is what the amendment does. Secondly, it seems to me from the contribution made by the Hon. Ann Bressington that the crossbenches have taken control of the issue and that they are going to do something. This resolution means jack shit. Even *The Advertiser* could not be bothered to listen to the rabble.

The Hon. A. BRESSINGTON: On a point of order, Mr President. The honourable member is using unparliamentary language in this place.

The PRESIDENT: Order! I do not think the President heard any unparliamentary language.

The Hon. R.P. WORTLEY: What these amendments have done is not only remove every industrial user from the definition of 'critical human need' but they have also put at threat the whole notion of state and federal cooperation. This action has now put at risk the referral of powers to the commonwealth. It amazes me that there seems to be such a nasty streak in some people who are worried about the Victorians. Of course, the Victorians have been very neglectful.

The Hon. A. Bressington interjecting:

The Hon. R.P. WORTLEY: No; what you are doing is not going to help South Australia. All my life as a union official, people would come to me and complain about what one person was getting and what another person was getting. I always said to them, 'Pull your head in, Charlie, because you are better served worrying about yourself and not worrying about what he is getting.' This is the problem—the nastiness and the bitchiness of, 'Oh, no. Victoria is getting this!' Wake up to yourselves and worry about what we are doing and not about what Victoria is doing. I find this worrying about Victoria disgraceful.

I am worried about this state, and I know that the bill that was debauched yesterday would have handed the powers to the federal government so that things could be done. What has now been done by the actions of the Greens, some of the Independents and the Liberals? Nick Xenophon is much smarter than most of you in this place and was far too smart to support the removal of the industrial users. He said:

> I indicate for the record that I have been convinced by the minister in relation to the argument with respect to critical human needs, and I am concerned that the definition proposed by the coalition is unnecessarily prescriptive and may have some unintended consequences. So, for these reasons, I cannot support the amendment.

We all have a lot of regard for Nick Xenophon. He understood—

Members interjecting:

The PRESIDENT: Order!

The Hon. A. Bressington: You are a liar and a hypocrite!

The Hon. R.P. WORTLEY: That is so powerful, Mr President!

The PRESIDENT: Order! The Hon. Mr Hunter has a point of order.

The Hon. I.K. HUNTER: I certainly do—unparliamentary language from the Hon. Ms Bressington. I ask that you, Mr President, ask her to withdraw.

The Hon. A. BRESSINGTON: I withdraw that.

The PRESIDENT: I would hope so. It was very un-Australian.

The Hon. R.P. WORTLEY: There will be an election in Frome very shortly. I know that this has breathed new life into our campaign because, once the people of Port Pirie understand some of the amendments, they will be absolutely appalled. Where you thought that the Country Health Care Plan had breathed life for you into the country areas and into Frome, it will all be unwound now because you are supporting them purely for political reasons and not for the best interests of South Australia. For purely political reasons, you have supported amendments that will have devastating consequences for this state.

The Hon. P. Holloway: Do you think the member for Gray would support that?

The Hon. R.P. WORTLEY: That would be quite interesting because, as I said, it puts a whole new meaning into the campaigns for Gray and Frome. The problems regarding water in this state will only be fixed up at the national level. Because of the very nature of the states, where they look after each other, they will not fix up this problem. I say to the crossbenchers: far from taking the issue into your hands to fix up the problem, you have made it worse.

The PRESIDENT: After such a colourful contribution, I call on the business of the day.

MATTERS OF INTEREST

SPINAL CORD INJURIES

The Hon. J.M. GAZZOLA (15:30): As you are aware, Mr President, we and our partners, along with other Labor state and federal politicians, attended the Australian Workers Union 2008 delegates dinner. In what is always an interesting and pleasant evening—

The Hon. R.I. LUCAS: I rise on a point of order. Is this a five-minute matter of interest?

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): It is.

The Hon. R.I. LUCAS: Then the clock ought to be on. The member should start again; we would not want him to have an unfair advantage over anyone else.

The ACTING PRESIDENT: We will start the clock. The honourable member might like to start his contribution again so that we can all hear it.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. J.M. GAZZOLA: Labor state and federal politicians attended the Australian Workers Union 2008 delegates dinner. In what is always an interesting and pleasant evening, this year's event noted the attendance of Jim Doyle, a sprightly individual in his nineties who, with 75 years' membership, is the oldest living member of the AWU. I congratulate Jim on his accomplishment, for he is truly a living legend of the AWU and of Australia's industrial history.

Another person of industry and accomplishment at the function was Neil Sasche, founder of the Neil Sasche Foundation for spinal cord injury in 1995. I point out that the AWU and its current secretary Mr Wayne Hanson, as well as our current President, a former secretary, have been solid supporters of the Neil Sasche Foundation since its inception. I understand that the evening raised in excess of $15,000 for the foundation.

It is the story of Neil Sasche and his foundation that I want to bring to this council's attention; however, first, I need to point out the enormity of the problem facing the sufferers and the nation. In Australia right now there are approximately 9,000 people living with a spinal cord injury, and that number is on a steady upward incline. Unlike most medical conditions, where the number of sufferers stays steady or decreases as medical advancements are made, the number of people living with spinal cord injuries increases each year in Australia alone by about 400. This increase is largely due to two factors: there is currently no cure for spinal cord injury; and there is no significant difference in life expectancy between a person with a spinal cord injury and a healthy person.

Spinal cord injuries can occur anywhere and at any time, but more often than not they occur in a motor vehicle crash or at work. In the 2003-04 financial year, 50 per cent of the new cases of traumatic spinal cord injuries recorded were through work-related injuries. With only 40 per cent of these employees returning to paid employment, spinal cord injury has a significant impact on Australia's workforce. Not only is spinal cord injury costly to the workforce, it is at great cost to victims, their families and communities, and of course the government.

A spinal cord injury costs in time, money and the victim's quality of life. It takes 2½ hours for the sufferer to be prepared for the day and to be put into bed, a routine that requires the assistance of carers and family members every day. According to the Australian Institute of Health and Welfare, the care and equipment costs for each person with a spinal cord injury after hospitalisation are $284,000 per ventilator dependent tetraplegic individual per year, or $197,000 per non-ventilator dependent tetraplegic individual per year. These extraordinary figures allow for attendant care and equipment only, and do not include medical or ancillary treatment. If these were included the cost would likely be far greater. Nationally, half a billion dollars is spent overall on people with a spinal cord injury—again, not including medical and hospital bills and ancillary care.

What is the Neil Sasche story? Not content to just accept a wheelchair-bound fate, Neil worked as a fundraiser for Bedford industries, but then, realising that little work or research was being undertaken for spinal cord sufferers, he started the foundation. Since that time the foundation has raised and spent $1.5 million on research in South Australia. However, Australia is falling behind in the area of medical research, with the result that the necessary expertise is moving to other countries. Currently, the foundation is supporting research by Adelaide University with the goal of raising a further $5 million to establish a research centre at the university to focus on spinal cord injuries.

I point out that, given that the cost of current assistance to 9,000 sufferers is around a conservative half a billion dollars, $5 million is certainly a paltry sum to bring life and hope to these people. In closing, the federal government has just announced a $7.5 million grant for a research centre for prostate cancer, and it should be congratulated for that injection of funds for research. The state government has announced, through Health SA, a $5 million funding grant for further research into stroke, heart and blood vessel diseases and also deserves congratulations. The sheer cost of spinal injuries to the country and the rightful concern with quality of life suggest that it is due time for further support and help.

ADELAIDE UNITED FOOTBALL CLUB

The Hon. T.J. STEPHENS (15:35): I rise to speak about the magnificent achievements of the Adelaide United Football Club. As honourable members may be aware, Adelaide United made the Asian Football Confederation Champions League final. It was the most significant achievement in the club's short history and, indeed, was the biggest game that any club side in Australia has ever played. Out of the 46 nations in the Asian Football Confederation, Adelaide had proven itself as one of the best teams and took on Japan's mighty Gamba Osaka Football Club over two legs to decide who would be champions of Asia.

As we all know, the millionaires of Gamba were, regrettably, far too strong. On behalf of all members of this place and, indeed, all South Australians, I congratulate Aurelio Vidmar, coach of Adelaide United, the captain, Travis Dodd, and the whole squad of players for making the people of Adelaide and South Australia so very proud in 2008. The support staff and everyone involved at the club, as well as all season ticketholders, members and supporters, must also be congratulated for their efforts in getting the team into the final.

Throughout both the group stages and the knockout stages of the Champions League, Adelaide United was the surprise packet of Asia. It declared that its mission was to shock Asia and defeated more fancied opponents in every game. This achievement is even more impressive when you consider the amount of travelling the club has done whilst also maintaining top spot in the A league for the earlier part of the season.

The only sour note was that more people were not able to witness this historic match in Adelaide because our city does not have a stadium befitting such a massive game. The groundswell of support for building a multipurpose stadium in the CBD, namely at the railyards site at City West, is reaching fever pitch. As members of parliament, we are elected to serve the people and act on the will of the people, and there is no doubt that the vast majority of South Australians are in favour of an inner-city stadium capable of hosting football matches such as the Asian Champions League final, AFL football and international rugby union fixtures, as well as concerts and the like.

The city deserves a world-class sporting venue and, if Adelaide is to play a part in future World Cup bids, building a new inner-city stadium that meets FIFA requirements is a must. Sporting infrastructure in South Australia is rundown and outdated. Investment in a new stadium in the city is not just an investment in sport but, rather, it would help revitalise the City of Adelaide overall and the City West precinct specifically. There would also be enormous flow-on economic benefits with people visiting the city's vibrant bars and restaurants both before and after sporting fixtures and concerts. The ease of travelling to an inner-city stadium via public transport is also a compelling argument as to why such a venue makes perfect sense for Adelaide. One of the main criticisms of AAMI Stadium is the difficulty in getting to and from the venue, whereas the city is the transport hub, making it much more hassle-free for people to attend sporting matches and concerts.

This is not a party political issue. However, the Rann government has turned it into one by not acting in accordance with the will of the people. Action on a new stadium must occur in the spirit of bipartisanship. It is a visionary idea that has a great deal of support among South

Australians, especially younger South Australians who will benefit most from a new stadium in years to come, and it is an idea that the Liberal Party remains committed to.

Again, I congratulate Adelaide United on such an amazing achievement. It has made us all very proud and has played a huge role in growing the game here in Australia. Some of the TV audiences for the Asian games were just phenomenal and were a fantastic advertisement for South Australia. Tomorrow evening the Lord Mayor of Adelaide is hosting a civic reception at the town hall to acknowledge the endeavours and achievements of Adelaide United in 2008. This is thoroughly deserved and I look forward to attending as opposition sports spokesperson.

However, 2008 is far from over for Adelaide United. With the club sitting in second position we have every confidence that it can win an A league grand final this season and also have success in next month's FIFA Club World Cup. To everyone at Adelaide United, we are all right behind you and incredibly proud of you.

SOUTH EAST ROAD SAFETY STRATEGY

The Hon. B.V. FINNIGAN (15:39): I rise today to speak about the South East Road Safety Strategy which the state government has adopted in partnership with the South East Local Government Association (SELGA). The South-East road safety strategy is the state's first in regional South Australia. For over a year the state government has worked with SELGA to develop the strategy and ensure that its goals best meet the needs of people in the South-East. As part of the development process, five public fora were held where members of the public, council, government agencies and private organisations could have input into the strategy. This strategy is based on four key elements: safer roads, safer users, safer speeds and safer vehicles.

The South-East road safety strategy is backed up by funding commitments from the state government to the South-East to improve the road network and increase safety, investing over $30 million in the road network in the South-East in the past three years, including $3.2 million on black spot programs, $4.7 million on shoulder sealing and over $6 million on road maintenance. We have invested in infrastructure works with three new overtaking lanes currently under construction on the Princes and Riddoch Highways. While I find it frustrating to go through those roadworks at very slow speed, they are great projects and I will be pleased to see them open soon.

The government has allocated in excess of $14 million in the 2007-08 financial year for the road network in the South-East. Projects include shoulder sealing, guard fencing, audio tactile line marking and maintenance. An amount of $70,000 has been provided over three years to SELGA for projects that support priority actions in the strategy, and $30,000 has been provided for a community arts project, which is a partnership between local government, Country Arts SA, community road safety groups, schools and interested community members. The project enables secondary school students to work with a professional artist to produce a series of short films that deal with their experience of trauma associated with the death and serious injury resulting from road crashes.

Very importantly, community engagement is at the forefront of the government's work in the South-East in this area. Two community road safety groups have recently been established at Robe and Kingston, and a road safety coordinating committee has been formed, with membership from each of the community road safety groups and the South-East Local Government Association.

School programs, in particular Safe Routes to School and Bike Ed, are being delivered in the Tatiara and the Naracoorte-Lucindale district council areas. Bike Ed is also being delivered to five schools in the Mount Gambier area. Road safety remains a priority for the government in the South-East area and investment in works and the roll-out of programs will continue as we strive to make our roads safer and reduce the number of crashes and their harmful effects in our community.

Members would be well aware of the terrible impact that road crashes have on country communities. It is something that affects everybody, particularly in the country, and it is important that we work in a bipartisan way to reduce the incidence of road trauma, including our road safety strategies. I commend and congratulate all who have put together the South-East road safety strategy, particularly representatives from the South-East Local Government Association and those involved in local government in the South-East. In particular I commend and extend thanks to the community road safety groups for the excellent work they do in the South-East in developing and implementing this strategy to try to reduce the incidence of serious road crashes.

APY LANDS

The Hon. R.D. LAWSON (15:44): I wish to speak in relation to misgivings I have about developments on the Anangu Pitjantjatjara Yankunytjatjara lands. Before doing so, I associate myself with comments the Hon. John Gazzola made in his contribution today about Neil Sasche and his foundation and join with the honourable member in commending Neil for his exceptional efforts in support of research into spinal injury. He is an inspirational figure and all South Australians, and indeed all Australians, should be proud of his work and seek to support it.

The misgivings I have about developments on the Anangu Pitjantjatjara Yankunytjatjara lands arise from two separate but related circumstances. First, on the lands there appears to be a contest involving the duly elected Anangu Pitjantjatjara Yankunytjatjara Executive Board. It is a board which has operated in difficult circumstances and which faces considerable challenges and requires support, but it is the board elected by the people on the lands. It is the board which, under the historic Pitjantjatjara Land Rights Act enacted by the Tonkin Liberal government in 1981, is charged with certain responsibilities in relation to the lands. It is an important board.

There is another Aboriginal organisation, somewhat confusingly called AP Services, which operates out of Alice Springs and is closely associated with Mr Gary Lewis, and it has been using the funds that it derives from the lands in a way that seeks to advance its prospects. The fact is that AP Services does have a contractual obligation to supply certain services on the lands. For example, it has to undertake housing repairs and maintenance and other important functions. It is not providing those. It has, in my view, lost its way under its current management. It has paid almost $1 million to non-Anangu consultants, and has really achieved very little. However, this organisation seems to be favoured by the government.

The government commissioned, as it was required to do, a review into the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act and, in particular, the amendments which we passed in 2005. Those amendments made a number of changes. They were hotly opposed by a number of people but the government finally passed them with opposition support.

What has happened is that a review has been commissioned and the review appears to have gone outside the terms of its reference. As I read it and its recommendations, as tabled here on 30 October, it seems to be suggesting that the important statutory role of the APY executive board will be undermined and the responsibilities, powers and funds will be handed over to AP Services.

It is interesting to note that Mr Gary Lewis was a member of the review panel. Mr Lewis was also largely the cause of the 1985 amendments, because he had been elected as a member of the APY executive at an earlier time and refused to stand down, and as a result of that the government had to take decisive action and introduce legislation.

Now it appears that APY, the executive, is to be undermined by the government and the activities of AP Services are to be preferred. It is a most disturbing development and one that I hope my party will resist when we reach a position on it.

Time expired.

IN 2 LIFE

The Hon. D.G.E. HOOD (15:48): I rise to make some brief comments on a fairly personal matter, not regarding myself but someone I know quite well who has asked me to make this contribution today, and I am happy to do so. It is a person whom some members may know, a gentleman by the name of Darryn Keneally, who runs a fairly well-known charity, a not-for-profit organisation in South Australia called In 2 Life.

Darryn did not find life easy and, from an early age, left home to avoid the consequences of being angry and essentially out of control. I might add that everything I am saying at the moment has been vetted by Mr Keneally and he is in agreement with it and happy for me to proceed on that basis.

Darryn lived in over 35 different places between the ages of 15 and 18 years. During this time he became involved in very serious hard drug use—and even drug trafficking, in fact. During this period he also committed an armed robbery. At 19 years of age he had had guns pulled on him (I understand on more than one occasion) and had been seriously involved in both crime and intravenous drug use. As a result of his drug use, he contracted hepatitis C, which he carried for 20

years. He has been cured of this disease—or as cured as I understand that one can be of hepatitis C—through the wonderful work of the Royal Adelaide Hospital and, in particular, Dr David Shaw.

Then someone approached him which changed his life. Darryn went on to embrace Christianity and its teachings as the foundation for his life. Consequently, as a result of that new direction and foundation in his life, he completely stopped taking drugs over a period of time. He completely disassociated himself with unhealthy relationships and those who were influencing his behaviour. Over time he has managed to rehabilitate himself. Darryn was aware that not only did he have to take responsibility for the consequences of his previous lifestyle choices but also confess the armed robbery to a lawyer and police of his own free will. He was remanded on his own recognizance, with a surety of $10,000. Darryn went to the Supreme Court of South Australia where the judge at the time commented that he was imprisoning people for periods of seven years for offences similar to that which he had committed. Nevertheless, Darryn had begun the process of reflection and change—which was recognised by the judge. He was placed on a two-year suspended sentence. At that stage it had been some time since Darryn had done anything wrong.

He then established a charity called In 2 Life. It is an independent, non-profit organisation founded in 2001 by Darryn. It operates an early intervention, mentoring and life skills program for troubled and vulnerable young people aged 12 to 16 who are experiencing significant difficulties at home and school or in their life in general. In 2 Life established the RUSH mentoring program, which is now also in schools in Victoria and New South Wales and which provides a vital school-based mentoring program to assist young people overcome personal crises and other negative life experiences.

The RUSH mentoring program is a catalyst to mobilise youth workers to make a valuable contribution to the community through mentoring struggling young people. The mentors are professionally trained and accredited, have ongoing supervision and debriefing support, and operate on campus during both school hours and out-of-school hours. They assist struggling young people with significant behavioural issues in order to build resilience and life skills, find a more positive future, and build stronger relationships at home and school and in their community.

In 2 Life's passionate mission is to provide a nurturing community where young people are safe from abuse, harm and suicide; a community in which they can have opportunities and support in order to reach their full potential, where they can feel they are no longer forgotten or undermined and where they are given a sense of their own importance and the power to change their circumstances. Young people in the mentoring programs are able to improve their behaviour and academic performance because someone believes in them. This means that they are able to believe in themselves and realise that change is possible and, indeed, they are worth while as human beings. This has a flow-on effect, whereby they have a positive impact on their peers, families, schools and communities. Mr Keneally's embracing Christianity has had a profoundly positive impact on his own life and that of many others through his charity In 2 Life.

Time expired.

GOVERNMENT CONTRACTS, PROBITY

The Hon. R.I. LUCAS (15:53): I rise to speak about probity, or lack of probity, in relation to significant government contracts. In the past two to three weeks I have asked a series of questions, first of the Hon. Mr Holloway and then the Hon. Ms Gago, relating to probity as it concerns the massive $1.4 billion desalination project. In summary, the Hon. Mr Holloway said that there are very strict probity guidelines which relate to PPP projects. He then highlighted that they also apply to big projects such as the $1.4 billion desalination project. In particular, he indicated that no minister should meet with any potential bidder or adviser to a bidder in connection with a PPP-related issue or a significant government contract, nor discuss the project directly or indirectly with any bidder or adviser to a bidder. There is a range of other strict probity guidelines that he said the Crown Solicitor has outlined to all ministers, because ministers are making the final decisions in relation to the government desalination project.

I will cut a long story short. On 22 September Premier Rann announced three successful short-listed bidders for the big desalination project. One of those was Addwater, which comprised two companies, namely, Veolia Water and John Holland. As I indicated to the council yesterday, on 29 August—about a month before cabinet made this decision—minister Gago attended as the featured guest at a major fundraising lunch, organised by Labor's fundraising arm, South Australian Progressive Business, which charged attendees $1,500 a person and raised a significant amount of money for the Labor Party. The host of that function was a company associated with the Veolia

group of companies, which was in fact Veolia Environmental Services; and Veolia Water was one of the successful short-listed bidders for the desalinisation project.

When I asked the minister questions in relation to probity, the minister, in the arrogant fashion that, sadly, is customary not only from the minister but also from the whole of the government from the Premier down, said, 'The answer to the question is that I am not in breach of those guidelines.' So, what the minister is in fact saying to this parliament is that the probity guidelines that relate to a major contract like this allow any minister of the government—in particular, minister Gago in this case—during the period when people are bidding for a major contract to go to those companies or companies associated with those companies, raising tens of thousands of dollars—in fact, there is no limit—from those companies whilst minister Gago and her colleagues are waiting to make a decision as to whether or not those companies will be successful in being short-listed for a $1.4 billion project.

That to me is an extraordinary proposition to be putting, as minister Gago has put in this council on behalf of all her colleagues: that the Rann government's probity guidelines allow her, during a process when they are short-listing tenderers for a $1.4 billion project, to in essence go from company to company with the fundraising arm of the Labor Party attending functions as a featured guest or otherwise and raising large amounts of money from those companies whilst they await a decision by minister Gago and her colleagues in the cabinet, in this case just under four weeks after that function.

That is just a disgraceful set of ethics, in my view, for a government and minister in relation to a major contract. Imagine you are a company or tenderer and are approached by minister Gago or Mr Bolkus, her factional colleague, who heads up South Australian Progressive Business, and they say, 'We would like you to conduct a major fundraising function for us, and it just so happens it will be in the period just prior to when the government will make a decision on whether or not you are short-listed as a bidder for a $1.4 billion contract.' What do you do as a company when you are bidding for a contract like that and someone comes through your door? That is the sort of position that minister Gago is saying is acceptable within the probity guidelines of this government. Frankly, if that is the case, not only should she resign but also the Premier should resign if that is the sort of probity that relates to these issues.

Mr President, you ruled me out of order yesterday, but I put the question again to the minister in relation to this contribution: did she advise the probity auditor of that contract that she would be involved in a function raising funds from a company associated with one of the short-listed bidders; yes or no?

DRUG POLICY

The Hon. A. BRESSINGTON (15:58): I rise to clear up a few issues that have been lingering for some time, and I table some documents from the Swedish Institute with statistics on the Swedish drug policy, two letters from the AMA regarding its position on pill testing and also a list of organisations that are supportive of random school drug testing in the United States. I take this opportunity to clear up for any members in here who have any doubt about my qualifications in the drug and alcohol sector that I have had 14 years of continual training and study in that field, ranging from management training right down to training in early childhood development, trauma and abuse and a number of therapies such as acceptance commitment therapy and the emotional freedom technique used in the treatment of addiction.

Over time, some reference has been made in this place by the Hon. Sandra Kanck that it was great that I had a close, personal relationship with some of our clients. I just make the point that I have never had a close, personal relationship with any client. Any relationship I have ever had with a client has always been on a strictly professional basis, and it has been on an effective, practical, professional basis.

I would also like to make the point that, over a period of time, some reference has also been made to the fact that I am an emotive parent, living out my life in grief over the loss of my daughter. I would just like to let members in this place know that I went through my grief process. I did it with professional help and assistance, and it was a healthy process. I do not walk around with any kind of baggage on my back because of the loss of my daughter, and I certainly do not let that loss, tragic as it was, drive my emotional bus through life.

I have many things in my life to be grateful for. I have four healthy children, my youngest being six years old. I have a happy marriage and relationship. I have a good life, and I have an opportunity now to extend my life experiences as a member of parliament representing the

interests of those I am here to serve, including drug addicts who want to stop using drugs; parents who want to support their children to stop using drugs; and also grandparents who want to support their children—grandparents who are now raising their grandchildren because of drug-affected behaviour.

I did not really want this matters of interest debate to be all about me. I do not imagine that many people are as interested in me as I am, and I accept that. However, there are a few things I need to set straight. I also want to make sure that members in this place know that when I introduce legislation in this place it is always based on sound research. I always present sound and credible research in my contributions to the debates on those topics. I do not feel there is a conspiracy against me. I understand that there are always differing points of view and that a healthy democratic process allows those points of view to be expressed. It does not mean that I have to agree with them, but that is the way this place runs, and I respect that immensely.

What I do want to say is that I am concerned that there are critics who distort Sweden's comprehensive drug death data and portray it as only encompassing overdose deaths. In actual fact, Swedish statistics include any early death or unexpected death. Where drugs are detected in a body post mortem, it is classed as a drug-related death. So, deaths that are quoted for Sweden as overdose deaths are not necessarily accurate, and Sweden does have the best record for a low level of drug deaths.

Time expired.

MEMBER'S REMARKS

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:04): I seek leave to make a personal explanation.

Leave granted.

The Hon. G.E. GAGO: I want to address the claims made in this place by the Hon. Rob Lucas both today and yesterday that I attended a lunch on 29 August that was sponsored by a company that may have been a tenderer for the desalination proposal.

I want it firmly placed on the record that I did not attend the lunch I was claimed to have attended. Not only did I not attend that lunch on 29 August but to the very best of my knowledge I have not attended any lunch with that particular tenderer or any other tenderer I am aware of for the desal project. Parliamentary privilege is indeed a wonderful thing, but you can see when it has been abused, as it has been by the Hon. Robert Lucas.

The Hon. S.G. WADE: On a point of order—

The Hon. P. Holloway interjecting:

The Hon. S.G. WADE: You are the one who rants on about the standing orders of the council. The President has the call, surely.

The PRESIDENT: Order! What is your point of order?

The Hon. S.G. WADE: My point of order is that, in raising a point of order in relation to where she has been misled, the minister can only address where she has been misled.

The Hon. G.E. Gago: That is outrageous!

The PRESIDENT: Obviously, the minister is defending what she says is an untrue statement.

The Hon. G.E. GAGO: Thank you for your protection, sir. As I said, I clearly want to put on the record that the Hon. Rob Lucas's claims were complete wrong and completely inaccurate. He is out of touch and has got it wrong yet again. What a loser!

The Hon. J.S.L. DAWKINS: On a point of order, Mr President, the minister is clearly debating the issue. Personal explanations are simply what they are said to be: personal explanations. They are not for debate.

The PRESIDENT: The minister will have other opportunities to put more on the record if she so chooses.

The Hon. G.E. GAGO: Thank you, Mr President. I was distracted momentarily. As I have said, I want to make sure that the record is straight. I did not attend that lunch on 29 August. To the best of my knowledge, I have not attended any lunch with that particular sponsor or any other sponsor of the desal—

The Hon. J.S.L. Dawkins interjecting:

The Hon. G.E. GAGO: No; you should listen. I repeated exactly what I said earlier. They are deaf as well as dumb! Because of the incorrect claims made by the Hon. Rob Lucas, who has obviously got the wrong end of the stick, with information that is clearly inaccurate, I place on the record that he needs to get his facts right before he comes in here and shoots his mouth off. I have adhered to the probity guidelines in the past, and I continue to adhere to them.

CITIZEN'S RIGHT OF REPLY

The PRESIDENT (16:08): I have to advise that I have received a letter from Dr David Caldicott, requesting a right of reply in accordance with the sessional standing order passed by this council on 11 September 2008.

In his letter of 23 November 2008, Dr Caldicott considers that the Hon. Ann Bressington has 'impugned' his reputation in matters raised in debate on the Controlled Substances (Palliative Use of Cannabis) Amendment Bill on 13 November 2008.

Following the procedures set out in the sessional standing order, I have given consideration to this matter and believe that it complies with the requirements of the sessional standing order. Therefore, I grant the request and direct that Dr Caldicott's reply be incorporated in *Hansard*, as follows:

Re: Comments made by Ms Bressington in the Legislative Council, on November 13th 2008, in which I am explicitly named.

Further to Ms Anne Bressington's address to the South Australian Legislative Council on the 13th of November 2008, I am writing to express my concerns regarding her further use of parliamentary privilege to impugn my reputation, and also raise the possibility that she may have knowingly mislead the Chamber.

I am an advanced trainee in emergency medicine, with an interest in acute overdose from recreational drugs, and I have only ever represented myself as such. To suggest that I am not recognised by the Australian Medical Association as an addiction specialist is as valid a comment as saying that I am not recognised by NASA as a rocket scientist. Her suggestion implies that I have *mislead* the public about my qualifications, which is offensive. The deliberate impression that I am at odds with Australian Medical Association is simply incorrect. For example, as a consequence of the representations that my research group made to their Federal Public Health committee, they currently support a medically supervised, ethically approved trial of pill-testing at raves to reduce the harms associated with ecstasy consumption.

I write this letter having just returned from Sydney as an invited speaker at the National Drug Trends 2008 (NTD2008) conference, hosted by the National Drug and Alcohol Research Council. I was asked to speak at this conference at the Club Health 2008 Conference in Spain, where I was an invited plenary speaker. These are academic gatherings to which I have been invited because of my publication record and academic credentials.

I was asked to speak at NTD2008 about the work that I have done at the Royal Adelaide Hospital, monitoring harm from illicit drugs in the emergency department. This is generally not considered to be the realm of addiction medicine, but emergency medicine, as those familiar with the field would know. Our research at the RAH (the TRAUMATOX and D2EWS projects) has attracted, in total, over a million dollars of funding support from both state and federal sources, This weekend, I have been asked to contribute to reviews of the American Drug Abuse Warning Network (DAWN), and a program for the United Nations on the monitoring of hospital attendances for illicit drug related problems in the Third World. I am a modest man by nature, and am happiest when debating science and medicine with my academic colleagues, but I am happy to forward you a copy of my CV for your perusal.

Although I have never called myself a drug 'expert' as such, others have. They include the NSW Coroner, who called upon me last year to give 'expert' testimony in the inquiry into the death of Ms Diane Brimble.

In summary, there are many aspects to drugs research that are conducted by those other than 'addiction specialists', a fact which Ms Bressington may not be aware of.

Ms Bressington alleges that 6 people turned up to Ms Kanck's briefing. That is untrue; there were certainly more than that, including the Hon. Vicki Chapman, who can confirm this. Ms Bressington alleges that the briefing consisted of only showing a film. That is also untrue. Had Ms Kanck not introduced her briefing by saying that there was going to be a discussion and seminar after the film, Ms Bressington might have been excused not knowing about it, but she was there at the start, and left early. Had she stayed longer than 20 minutes, she would have had the opportunity to raise some of her objections to my presentation and position in person, rather than using parliamentary privilege to disseminate her own peculiarly immoderate interpretation of scientific and medical fact. I have offered her, on multiple occasions, the opportunity to publicly discuss her understanding of the issues that supposedly form the bedrock of her parliamentary career, but these have been declined in favour of reading from her notes in the Legislative Council.

She has implied that my dismissal of school-drug testing is merely a personal opinion. It is not. I happen to agree with the considered opinion of the American Academy of Paediatrics, The National Education Association, The American Public Health Association, The National Association of Social Workers and The National Council on Alcoholism and Drug Dependence, who in an unprecedented joint position document have stated that '*Our experience, and a broad body of relevant research, convinces us that a policy of [random student drug testing] cannot work in the way it is hoped to and will, for many adolescents, interfere with more sound prevention and treatment processes.'* There was not one recognised expert in South Australia from DASSA, the State's peak body, who agreed with her bill, and yet she continues to portray herself as misunderstood by a cabal of conspirators.

This is not the first time that she has used parliamentary privilege to attack me. She has deliberately misquoted statistics that I have used—and are a matter of public record—to falsely promote Sweden as role model for Australian drug policy. Sweden has one of the highest death rates from illicit drug overdose in Europe, at 28.4 per million in 1997, and climbing. It has one of the highest rates of hepatitis C in Europe and in the 20-39 year old age group, drug overdose accounts for 10 per cent of all deaths, as many as those by traffic accidents. Prof. Reto Scholl, the Chief of Aarau Hospital in Sweden, has publicly asserted that the figures quoted on drug use by Swedish officials represent state *expectations,* and not document facts: 'there are no data upholding the contention that a permissive drug policy would increase the number of users.'

To date, all of her most vitriolic attacks have occurred under parliamentary privilege. I do not believe that this is either brave or fearless, but instead intellectual cowardice, and I note that I am not the only person to have been targeted by this member, in this manner.

I am not hurt personally by these attacks, because they are made on a background of personal and tragic loss. In my profession, we learn to make allowances for certain otherwise unacceptable forms of behaviour because of the circumstances in which they originate. It is also for these reasons that I have not generally attacked Ms Bressington in the manner in which she has attacked me; I believe that it would be unfair and one-sided, and I would loathe to be perceived as someone who would take pleasure in humiliating one less capable of defending themselves. This does not excuse her sustained behaviour, over a period of years, and no amount of personal tragedy can permit those with an influence over legislation to so grossly misrepresent science and medicine, albeit in good faith, to pursue her own personal goals.

I am very happy for history to be the judge of our relative positions, but I cannot in good faith allow her charges to go unanswered. At the very least, it may give the impression that nothing in what she says bears correction, which is far from true, and at worst may encourage her to further use parliamentary privilege to insult those less thick-skinned, and more vulnerable than myself.

As a doctor, I have responsibilities as to how I behave and represent my patients. I believe that our elected representatives should conduct themselves with a similar *gravitas*. Parliamentary privilege should not be used as a free kick. I believe that Ms Bressington has over-stepped her tenuous mandate, and holds the Legislative Council in contempt when she misleads it or uses it to pursue her own vendettas.

I would be delighted to meet with you and explain my position in greater detail, and would ask you to take steps to ensure that a modicum of scientific honesty be maintained in a chamber for which I generally have great respect.

Sincerely

Dr David Caldicott

STATE OF OUR ENVIRONMENT REPORT

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:09): I table a copy of a ministerial statement relating to the State of the Environment Report made earlier today in another place by the Hon. J. Weatherill.

STATUTES AMENDMENT AND REPEAL (FAIR TRADING) BILL

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:10): Obtained leave and introduced a bill for an act to amend the Building Work Contractors Act 1995, the Civil Liability Act 1936, the Conveyancers Act 1994, the Fair Trading Act 1987, the Land Agents Act 1994, the Plumbers, Gas Fitters and Electricians Act 1995, the Second-hand Vehicle Dealers Act 1995, the Security and Investigation Agents Act 1995 and the Travel Agents Act 1986; and to repeal the Consumer Transactions Act 1972 and the Recreational Services (Limitation of Liability) Act 2002. Read a first time.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:11): I move:

That this bill be now read a second time.

It is government policy to promote recreation and sporting activities in this state in a way that protects the interests of both consumers and service providers. The Statutes Amendment and Repeal (Fair Trading) Bill 2008 is a reflection of that policy.

Members will recall that in the early part of this decade many community and sporting organisations found it increasingly difficult to obtain affordable public liability insurance. The government responded, along with other states and territories, by reforming the law of tort. The Recreational Services (Limitation of Liability) Act was one plank in the government's reforms that catered specifically for providers of sporting and other recreational services.

After nearly five years, the experience of recreation providers is that safety codes take a lot of time to develop and are difficult to draft. The government has listened to those concerns. The Statutes Amendment and Repeal (Fair Trading) Bill 2008 will repeal the Recreational Services (Limitation of Liability) Act and replace it with a scheme that does not require service providers to develop and register safety codes. This will not excuse service providers from having to put safety measures in place to protect consumers. Under the bill, recreation providers carrying on business will be required to supply services with due care and skill and will not be able to escape liability for reckless conduct.

In addition to reforms to assist recreation providers, the provisions of the Consumer Transactions Act will be updated in line with commonwealth provisions and brought into South Australia's primary consumer protection legislation, the Fair Trading Act. The bill will also extend and strengthen the powers of the Commissioner for Consumer Affairs. I would like to make it clear that the purpose of introducing the bill now is to allow recreation providers and members of the public to review the bill and provide feedback before debate resumes next year. I will consider any feedback and make amendments if needed. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Recreational Services (Limitation of Liability) Act 2002* was introduced to allow recreation providers to modify their duty of care to consumers without compromising safety standards. It was intended that the Act would make it easier for service providers to meet their obligations and make public liability insurance more accessible and affordable. The Act was developed in consultation with sporting and recreation groups and came into operation on 1 July 2003.

There have been concerns from recreation providers that the current law does not adequately support the industry. The main concern of service providers is that it is difficult, costly and time consuming to develop and register a safety code. The Bill addresses these concerns by repealing the *Recreational Services (Limitation of Liability) Act*.

Recreation providers, like other service providers, will be subject to the implied warranty provisions of the *Fair Trading Act.* New section 74H establishes a warranty that services will be rendered with due care and skill. Moreover, any materials supplied in connection with services will be reasonably fit for the purpose for which they are supplied.

This warranty will only be implied into *contracts* for the supply of services in the *course of a business.* The meaning of the term business is wide, and is defined to include not-for-profit groups. The proposed statutory warranties will therefore apply to sporting clubs and associations that charge membership fees and which have systems and procedures in place for the repetitive provision of services to members. The Government does not intend to apply the reforms to one-off and other services that are not supplied in the course of a business.

In response to the concerns of those in the recreation industry, the Bill provides for recreation providers to modify, exclude or restrict the warranty implied into contracts under section 74H of the *Fair Trading Act.* There are, however, some restrictions.

First and foremost service providers will not be able to modify, exclude or restrict their liability under section 74H for significant injuries that result from reckless conduct. Reckless conduct is defined to mean *conduct where the service provider is aware, or should reasonably be aware, of a significant risk that his or her conduct could result in injury to another, and engages in that conduct despite the risk and without justification.*

A person who pays for a horse-riding lesson, for example, may fall from a horse that is startled by a snake. If the recreation provider knows that snakes frequent the area, is aware that a snake was in the general vicinity on the day, and allows grass to grow to waist height, the conduct of the service provider may well be described as reckless.

Another restriction on the use of waivers under section 74I relates to the age and capacity of the consumer. Under the Bill minors who consume recreational services supplied in the course of a business will receive the protection of the statutory warranty that requires services to be rendered with due care and skill. Neither the child, nor a person who acquires services on behalf of the child, can waive that warranty or indemnify the service provider for a breach of that warranty.

Waivers must also contain prescribed particulars, be in the prescribed form and be agreed to by the consumer in the prescribed manner to be effective. The intention of the Government is that waivers will have to be physically signed in order to be effective. To cater for situations where this is simply not practical, alternative arrangements may be prescribed.

These restrictions on the modification, exclusion or restriction of liability will help consumers who sustain serious injury as the result of reckless conduct.

Nevertheless, the Bill provides important benefits for recreation providers. So long as providers are not reckless, they will be able to exclude liability for personal injury that would otherwise flow from a breach of the statutory warranty in section 74H. Recreation providers will also be able to exclude liability under section 74H for minor injuries such as scratches and bruises (as opposed to significant injuries such as a broken arms or fractured wrists). The repeal of the *Recreational Services (Limitation of Liability) Act* will also benefit recreation providers by removing restrictions on the modification or exclusion of common-law duties of care.

There has been some confusion about whether people who provide access to their land will be subject to the statutory warranty in section 74H and will have the ability to modify, exclude or restrict that warranty. If a person provides access to their land for dirt-bike riding, for example, is that a service that will be affected by the reforms?

If there is a fee for entering the land, charged in the course of a business, the statutory warranty in section 74H will generally apply. Whether or not that warranty can be waived will then depend on the purpose for which the consumer entered the land. If the consumer entered the land for the purpose of engaging in a recreational activity, the warranty implied under section 74H may be waived (subject to restrictions on the modification or exclusion of liability). If the consumer does not intend to engage in a recreational activity, the warranty cannot be waived.

Repeal of Consumer Transactions Act 1972 and insertion of updated warranties and conditions in the Fair Trading Act

The *Consumer Transactions Act* sets out certain conditions and warranties that are implied into certain consumer contracts. In summary, these conditions and warranties imply into certain consumer contracts that goods correspond with their description, that goods are of merchantable quality, that goods are fit for purpose, that services will be rendered with due care and skill and that material supplied in connection with the services will be fit for purpose.

Although the *Consumer Transactions Act* broke new ground when it was first enacted, these warranties and conditions are more limited in scope than the implied conditions and warranties contained in the more modern Commonwealth *Trade Practices Act.* Accordingly, it is proposed to repeal the *Consumer Transactions Act* and to include in the *Fair Trading Act* updated warranties and conditions which will bring South Australia's legislation into line with the Commonwealth *Trade Practices Act.* Several other jurisdictions have already made similar changes to their fair trading legislation. Importantly, the implied warranty to provide services with due care and skill will now apply to a much wider range of services. This is because the definition of 'services' will be modelled on the broad definition in the *Trade Practices Act* and will no longer be restricted to the categories set out in the *Consumer Transactions Act* and regulations.

In addition, several provisions of the *Consumer Transactions Act* which do not relate to implied warranties and conditions will be transferred across to the *Fair Trading Act*. The main provision states that the dimensions of the print type in a contract for the supply of goods or services to a consumer in the course of a business may be prescribed by regulation. The purpose is to ensure that such contracts are clear and legible.

Enforcement powers of the Commissioner for Consumer Affairs

The *Fair Trading Act* review discussion paper released for public consultation in April 2008 proposed a wide range of options for increasing the power of the Commissioner for Consumer Affairs to enforce the provisions of the *Fair Trading Act* and related licensing Acts. The submissions received have been carefully reviewed and considered and the Bill reflects the outcome of this process.

The Commissioner will have the power to require traders to attend conciliation of a consumer/trader dispute enforced by a monetary penalty (to be expiable where the value of the goods or services in dispute is $1,000 or less). While there is no obligation on the parties to reach an agreement, if the parties do reach a conciliated agreement, that agreement is enforceable in the Magistrates Court by the parties or the Commissioner.

It should be noted that the term *conciliation* has not been limited by definition and has a broad meaning. For example, conciliation may include circumstances where the conciliator speaks separately to the parties in dispute, or where the conciliator brings the parties together by telephone or other electronic means rather than in a face-to-face meeting.

The Commissioner will have the power to seek positive assurances from traders to engage in particular conduct and not only assurances to refrain from certain conduct as is the case now (for example a trader may be asked to undertake a particular training course).

The narrow definition of *document* has been removed so that the broader definition of *document* in the *Acts Interpretation Act 1915* which includes electronic records will apply throughout the Act.

The powers of authorised officers to obtain information will be increased by allowing officers to retain and copy documents which have been produced under section 77 (in addition to the current power to retain and copy documents which have been seized under section 78). Authorised officers will also have the power to compel

persons to attend a meeting to answer questions and produce documents (in addition to the current power to compel persons to answer questions and produce documents).

The powers of authorised officers to enter and inspect premises will be expanded to enable an officer to enter and inspect vehicles and vessels. Authorised officers will also be able to give directions reasonably required in connection with the exercise of their powers under the Act and failure to comply with such directions without reasonable excuse will be an offence.

The current offence of providing false information has been extended to include circumstances where misleading information is knowingly provided and a new offence has been created making it an offence to threaten, intimidate or coerce a potential witness.

The Commissioner will have the power to suspend the licence of certain licensed traders for up to six months if the Commissioner is of the opinion that:

- there are reasonable grounds to believe that the trader has engaged or is engaged in conduct that constitutes grounds for disciplinary action;
- it is likely that the trader will continue to engage in that conduct;
- there is a danger that consumers may suffer significant harm, or significant loss or damage, as a result of that conduct unless action is taken urgently.

The Commissioner's power to suspend will apply to building work contractors under the *Building Work Contractors Act 1995*, contractors licensed under the *Plumbers, Gas Fitters and Electricians Act 1995*, licensed dealers under the *Second-hand Vehicle Dealers Act 1995* and licensed travel agents under the *Travel Agents Act 1986*.

The Commissioner will have the power to note on the existing licence register certain events (for example that the licence holder is insolvent or has been disqualified in another State or Territory). Currently, when these events occur the Commissioner is entitled to take disciplinary action to remove the person's licence but this cannot be noted on the licence register until the disciplinary proceedings are complete. This amendment will enable consumers to find out this information easily as soon as possible and not have to search the Commonwealth registers for this information, or wait until the disciplinary proceedings are complete.

Under the current section 67 of the *Fair Trading Act*, it is necessary to prove intention on the part of a trader not to supply goods or services in order to prove breach of that provision. Even though traders' failure to supply is a common source of consumer complaints, it is difficult to prove breach of this provision due to the requirement to prove 'intent'. The Bill removes the requirement for intent, consistent with a similar provision in the Victorian legislation. Standard defences will still be available to traders.

The Bill provides for the doubling of the existing penalties for offences under the *Fair Trading Act* (other than the offences in Part 10 which mirror the consumer protection provisions of the Commonwealth Trade Practices Act). This is slightly greater than the increase required to account for inflation since the penalties were set in 1987. In addition, the Bill makes certain offences relating to door-to-door trading and failing to state the cash price of goods subject to expiation fees.

I commend the bill to members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides for commencement of the measure on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Building Work Contractors Act 1995*

4—Amendment of section 9—Entitlement to be licensed

This clause updates section 9 of the *Building Work Contractors Act 1995* by substituting the correct reference to insolvent persons.

5—Insertion of Part 3A

This clause inserts a new Part into the *Building Work Contractors Act 1995*.

Section 19A in Part 3A gives the Commissioner the power to suspend the licence of a building work contractor if the Commissioner is of the opinion that—

- there are reasonable grounds to believe that the contractor has engaged in conduct that constitutes grounds for disciplinary action; and

- it is likely that the contractor will continue to engage in that conduct; and
- there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the contractor's conduct unless action is taken urgently.

The Commissioner is required to serve a notice of the suspension on the licence holder or registered person. The Commissioner may not suspend the licence for a period of more than 6 months.

A contractor whose licence is suspended is required to surrender the licence to the Commissioner within seven days of being notified of the suspension.

If, during the period of the suspension, the Commissioner becomes satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner is required to terminate the suspension without delay. The section also gives a person whose licence has been suspended a right of appeal to the Administrative and Disciplinary Division of the District Court. The Court is required hear and determine the appeal as expeditiously as possible.

6—Amendment of section 46—Registers

Section 46 as amended by this clause will authorise the Commissioner to include on the register of persons licensed or registered under the Act a note of the occurrence of any of the following events in relation to a person licensed as a building work contractor or director of a body corporate that is licensed as a building work contractor:

- the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of South Australia, the Commonwealth, another State or a Territory of the Commonwealth;
- the person becomes an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth;
- a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—

  when the body corporate was being so wound up; or

  - within the period of 12 months preceding the commencement of the winding up;

  the person, being a body corporate, is being wound up or is under official management or in receivership.

Part 3—Amendment of *Civil Liability Act 1936*

7—Amendment of section 38—No duty to warn of obvious risk

This amendment removes a reference to the *Recreational Services (Limitation of Liability) Act 2002*, which is to be repealed.

Part 4—Amendment of *Conveyancers Act 1994*

8—Amendment of section 7—Entitlement to be registered

This clause updates section 7 of the *Conveyancers Act 1994* by substituting the correct reference to insolvency.

9—Amendment of section 54—Register of conveyancers

Section 54 as amended by this clause will authorise the Commissioner to include on the register of persons registered under the Act a note of the occurrence of any of the following events in relation to a registered person or a director of a body corporate that is a registered person:

- the person is convicted of an offence of dishonesty;
- the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of South Australia, the Commonwealth, another State or a Territory of the Commonwealth;
- the person becomes an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth;
- a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—

  when the body corporate was being so wound up; or

  - within the period of 6 months preceding the commencement of the winding up;

  the person, being a company, is being wound up or is under official management or in receivership.

Part 5—Amendment of *Fair Trading Act 1987*

10—Amendment of section 3—Interpretation

The purpose of the amendment made by this clause to the definition of *consumer* is to establish that for the purposes of Part 10 Division 2A of the *Fair Trading Act*, the term includes persons acting in the course of a business or in the course of setting up a business. Division 2A is to be inserted by clause 35.

When reference is made in the Act to the *Magistrates Court*, the reference is to the Civil (Consumer and Business) Division of that Court.

This clause also deletes subsection (4) of section 3. The subsection is redundant because section 4AA of the *Acts Interpretation Act 1915* provides that if an Act defines a word or phrase, other parts of speech and grammatical forms of the word or phrase have corresponding meanings.

11—Amendment of section 8—Functions of Commissioner

Subsection (2) of section 8 of the Act provides that the Commissioner must not attempt to resolve a dispute by conciliation except in certain specified circumstances. The subsection is deleted by this clause but is to be reproduced in new section 8A, which deals with conciliation.

12—Insertion of section 8A

One of the Commissioner's functions under section 8 is to attempt to resolve disputes between consumers and traders by conciliation. New section 8A deals with various matters connected with this function. Consistently with repealed section 8(2), subsection (1) of section 8A provides that the Commissioner must not attempt to resolve a dispute between a consumer and a trader by conciliation except at the request, or with the consent, of the consumer, or at the request of a court, board or tribunal in which proceedings have been taken in relation to the dispute.

The Commissioner may call a conciliation conference. A conciliation conference may be voluntary or compulsory. If the Commissioner is requested to resolve a dispute by conciliation and the consumer fails to attend a conference called for that purpose, the Commissioner may refuse to take further action in relation to the dispute. A trader who fails to attend a compulsory conciliation conference is guilty of an offence. A conference may be conducted by telephone or other electronic means.

If the parties to a dispute reach an agreement as a result of conciliation, and the agreement is recorded in a signed instrument, a copy of the agreement is to be given to each party. If a party to the agreement fails to carry out his or her obligations under the agreement, the Commissioner or the other party may apply to the Magistrates Court for an order enforcing the terms of the agreement.

13—Amendment of section 11—Secrecy

The maximum penalty for an offence against section 11 is currently a fine of $10,000. This clause amends the section by increasing the maximum to $20,000.

14—Amendment of section 15—Prohibition of certain contractual terms

The maximum penalty for an offence against section 15 is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000.

15—Amendment of section 17—Requirements in relation to prescribed contracts

The maximum penalty for an offence against section 17(2) is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000. An expiation fee of $500 is also inserted.

16—Amendment of section 18—Acceptance of consideration etc

The maximum penalty for an offence against section 18(1) is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000. An expiation fee of $500 is also inserted.

17—Amendment of section 19—Prohibition hours

The maximum penalty for an offence against section 19 is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000. An expiation fee of $500 is also inserted.

18—Amendment of section 20—Duties of dealers

The maximum penalty for an offence against section 20(1) or (2) is currently a fine of $5,000. This clause amends the section by increasing the maximum penalty to $10,000.

19—Amendment of section 21—Harassment or coercion

The maximum penalty for an offence against section 21(1) or (2) is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000.

20—Amendment of section 24—Restitution

The maximum penalty for an offence against section 24(7) is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000.

21—Amendment of section 27—Prohibition of certain actions

The maximum penalty for an offence against section 27(1) or (5) is currently a fine of $5,000. This clause amends the section by increasing each maximum penalty to $10,000.

22—Amendment of section 28—Prohibition of mock auctions

The maximum penalty for an offence against section 28(1) is currently a fine of $2,500. This clause amends the section by increasing the maximum to $5,000.

23—Amendment of section 36—Offences

The maximum penalty under section 36 is currently a fine of $5,000. This clause amends the section by increasing the maximum penalty to $10,000.

24—Amendment of section 37—Powers of District Court

The maximum penalty for an offence against section 37(4) is currently a fine of $5,000 or imprisonment for two years. This clause amends the section by increasing the maximum fine to $10,000.

25—Amendment of section 38—Limited offers and failing to supply as demanded

The maximum penalty for an offence against section 38(1) or (2) is currently a fine of $2,500. This clause amends the section by increasing the maximum to $5,000.

26—Amendment of section 40—Price tickets

The maximum penalty for an offence against section 40 is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000. An expiation fee of $315 is also inserted.

27—Amendment of section 41—Approval of consumer affairs authority not to be implied

The maximum penalty for an offence against section 41 is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000.

28—Amendment of section 42—Substantiation of claims

The maximum penalty for an offence against section 42(2) is currently a fine of $5,000. This clause amends the section by increasing the maximum penalty to $10,000.

29—Amendment of section 43—Unlawful actions and representations

The maximum penalty for an offence against section 43(1) or (2) is currently a fine of $2,500. This clause amends the section by increasing the maximum in each case to $5,000. Under section 43(2), the maximum penalty includes imprisonment for six months.

30—Amendment of section 43A—Prohibition on trading or carrying on business as Starr-Bowkett society

The maximum penalty for an offence against section 43A(1) is currently a fine of $5,000. This clause amends the section by increasing the maximum to $10,000.

31—Amendment of section 45B—Offences

The maximum penalty under section 45B is currently a fine of $5,000. This clause amends the section by increasing the maximum penalty to $10,000.

32—Amendment of section 46—Interpretation

Section 46 of the Act provides definitions that apply for the purposes of Part 10. This clause amends section 46 by deleting the definition of *document* so that the definition contained in the *Acts Interpretation Act 1915* applies for the purposes of the Part. The definition of *goods* is amended to make it clear that the definition includes water, sewerage and telecommunications as well as any component part of, or accessory to, goods. The definition of *services* is amended so that the term includes a contract for or in relation to the provision of gas or electricity or the provision of any other form of energy.

33—Amendment of section 55—Application

This clause makes a consequential amendment to section 55 by adding a reference to new Division 2A.

34—Substitution of section 67

This clause recasts section 67. Under the new section, it is an offence for a person to, in trade or commerce, accept payment or other consideration for the supply of goods or services if the person does not supply all the goods or services within the period specified by the person or within a reasonable time, or if the person supplies goods or services that are materially different from the goods or services to which the agreement to supply is related.

35—Insertion of Part 10 Division 2A

This clause inserts a new Division into Part 10. Part 10 consists of provisions related to trade practices. The new Division is primarily concerned with implying conditions and warranties into contracts for the supply of goods and services.

Division 2A—Conditions and warranties in consumer transactions

74A—Interpretation and application

This section includes interpretation and application provisions relevant only to Division 2A.

A reference in Division 2A to the quality of goods includes a reference to the state or condition of the goods. A reference to negotiations in relation to a contract for the supply by a person of goods to a consumer is a reference to negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person in respect of which the consumer was induced to enter into the contract or that otherwise promoted the transaction to which the contract relates.

Goods are of *merchantable quality* if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price and all other relevant circumstances.

Division 2A does not apply to contracts made before the commencement of the Division.

The section makes it clear that Division 2A does not affect the operation of the *Sale of Goods Act 1895*, or of any other Act or law in relation to contracts for the supply of goods or services, except to the extent of inconsistency with the provisions of the *Sale of Goods Act 1895*, or the other Act or law.

74B—Application of provisions not to be excluded or modified

Under this section, a term of a contract is void if it purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying—

- the application of any or all of the provisions of Division 2A; or
- the exercise of a right conferred by a provision of Division 2A; or
- liability of a person for breach of a condition or warranty implied by a provision of Division 2A.

The section operates subject to section 74I.

74C—Penalties for including void provisions

If a contract for the supply of goods or services to a consumer contains a provision that is void under section 74B, the supplier of the goods or services is guilty of an offence.

74D—Implied undertakings as to title, encumbrances and quiet possession

This section implies the following warranties and conditions into contracts for the supply of goods:

- a condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, that in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;
- a warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made;
- in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer—a warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.

74E—Supply by description

This section provides that in every contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a person in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description.

74F—Implied undertakings as to quality or fitness

Under this section, if a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality. However, there is no such condition by virtue of section 74F—

- as regards defects specifically drawn to the consumer's attention before the contract is made; or
- if the consumer examines the goods before the contract is made—as regards defects that the examination ought to have revealed.

If the supplier of goods to a consumer (otherwise than by way of sale by auction) has been made aware by the consumer of any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied are reasonably fit for that purpose.

74G—Supply by sample

If there is a term in a contract for the supply by a person in the course of a business of goods to a consumer to the effect that the goods are supplied by reference to a sample, there is implied under section 74G a condition that the bulk will correspond with the sample in quality. There is also an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample and a condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample. The section does not apply in relation to supply by way of sale by auction or sale by competitive tender.

74H—Warranties in relation to the supply of services

This section provides that every contract for the supply by a person in the course of a business of services to a consumer includes an implied warranty that the services will be rendered with due care and

skill and that any materials supplied in connection with the services will be reasonably fit for the purpose for which they are supplied.

Section 74H also provides that if a person supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the person any particular purpose for which the services are required or the result that the consumer desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result. This provision does not apply if the circumstances show that the consumer does not rely on the skill and judgment of the person or that it is unreasonable for the consumer to rely on the skill and judgment of the person.

The section does not apply to a contract providing for the carrying out of domestic building work within the meaning of the *Building Work Contractors Act 1995*.

74I—Liability relating to provision of recreational services may be limited

Section 74I provides that a term of a contract for the supply of recreational services may exclude, restrict or modify a warranty implied in the contract by section 74H or a substantially similar provision of an Act of the Commonwealth. (Section 74 of the *Trade Practices Act 1974* is an example of a substantially similar provision.)

This provision operates subject to the following requirements being met:

- the exclusion, restriction or modification contained in the term is limited to excluding, restricting or modifying the liability of the supplier for any personal injury suffered by the consumer or some other person for whom or on whose behalf the consumer is acquiring the services (ie, a *third party consumer*);
- the consumer and any third party consumer are of full age and legal capacity;
- the term contains the prescribed particulars and is in the prescribed form;
- the term was brought to the attention of the consumer prior to the supply of the services;
- the consumer has agreed to the term in the prescribed manner.

The provision does not operate to exclude, restrict or modify the liability of the supplier for damages for any significant personal injury suffered by the consumer or a third party consumer if it is established that the reckless conduct of the supplier caused the injury. Subsection (6) makes it clear that a person causes personal injury if the person's conduct causes or contributes to the injury.

Under subsection (4), a term of a contract that purports to indemnify a person who supplies recreational services in relation to any liability that may not be excluded, restricted or modified under the section is void. This provision does not apply in relation to a contract of insurance.

A person's conduct is reckless if the person engages in the conduct even though the person is aware, or should reasonably have been aware, of a significant risk that his or her conduct could result in injury to another.

Personal injury is defined to include mental or nervous shock and death.

Recreational services are services that consist of participation in—

- a sporting activity or a similar leisure-time pursuit; or
- any other activity that—
  - involves a significant degree of physical exertion or physical risk; or
  - is undertaken for the purposes of recreation, enjoyment or leisure.

Significant means not nominal, trivial or minor.

74J—Representations etc

If a statement or representation is made by an employee or a person acting on behalf of a supplier of goods or services, and the goods or services are or become subject to a contract for the supply of those goods or services, the statement will be taken to be a statement or representation made by the supplier.

74K—Rescission of contract

Under this section, a consumer is entitled to rescind a contract for the supply of goods if there is a breach of a condition implied in the contract by a provision of Division 2A. The consumer is entitled to rescind the contract by—

- serving on the supplier a notice in writing signed by the consumer giving particulars of the breach; or

- returning the goods to the supplier and giving to the supplier, either orally or in writing, particulars of the breach.

For a purported rescission to have effect, the notice must be served, or the goods returned, within a reasonable time after the consumer has had a reasonable opportunity of inspecting the goods. Also, a purported rescission does not have effect in the case of a rescission effected by service of a notice if, after the delivery of the goods to the consumer but before the notice is served—

- the goods were disposed of by the consumer, were lost, or were destroyed otherwise than by reason of a defect in the goods; or
- the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable; or
- the goods were damaged by abnormal use.

A purported rescission effected by a return of goods is of no effect if, while the goods were in the possession of the consumer, the consumer caused the goods to become unmerchantable or failed to take reasonable steps to prevent the goods from becoming unmerchantable, or the goods were damaged by abnormal use.

If a contract for the supply of goods has been rescinded in accordance with this section, and the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to, the supplier, the property in the goods re-vests in the supplier on the service of the notice or the return of the goods. The consumer is entitled to recover from the supplier, as a debt, the amount or value of any consideration paid or provided by the consumer for the goods.

74L—Powers of Magistrates Court in event of rescission

If a dispute arises in respect of the rescission of a contract, the Magistrates Court can, on the application of the consumer, make orders—

- to give effect to, or to enforce, rights or liabilities consequent on the rescission arising under Division 2A; or
- to restore the parties as nearly as practicable to their respective positions prior to the formation of the contract (subject to such rights or liabilities).

74M—Nature of writing

If a provision of a written contract for the supply of goods and services is in handwriting that is not clear and legible, or is printed in type that does not comply with the regulations, the provision is not enforceable against the consumer by the supplier.

74N—Relief against civil consequences of non-compliance with Division

Under this section, if a person has made, or stands to make, a loss because of contravention of or non-compliance with a provision of Division 2A, the person can apply to the Magistrates Court for relief against the consequences of the contravention or non-compliance. If the Court is satisfied that the contravention or failure to comply with Division 2A does not, in the circumstances, warrant the consequences prescribed by the Division, it can grant relief against those consequences.

In determining whether it should make an order, and in determining the terms on which relief is to be granted, the Court is required to have regard to—

- the gravity of the contravention or non-compliance; and
- the conduct of the applicant in relation to the transaction to which the application relates; and
- any prejudice that may result from the making of the order.

36—Amendment of section 77—Obtaining information

This clause amends section 77, which deals with the powers of authorised officers to obtain information. Under the section as amended, an authorised officer may, for the purpose of requiring a person to answer a question or produce a book or document, require the person to attend at a specified time or place. The requirement must be made by written notice served on the person.

Under subsection (2), it is an offence for a person to—

- refuse or fail to comply with a reasonable requirement under the section; or
- without reasonable excuse, to refuse or fail to attend at a time and place specified in a notice (or some other time and place allowed by an authorised officer); or
- to knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an answer given or information provided under the section.

The maximum penalty is a fine of $20,000.

An authorised officer may require that the answer to a question be verified by statutory declaration or given under oath.

37—Amendment of section 78—Entry and inspection

Under section 78, authorised officers are given certain powers of entry and inspection. This clause amends the section to give authorised officers powers to enter and search vehicles and to give directions that are reasonably required in connection with the exercise of a power conferred by section 78(1) or otherwise in connection with the administration, operation or enforcement of the Act.

If a person fails to comply with a direction, and the person does not have a reasonable excuse for the failure, he or she is guilty of an offence. The maximum penalty is a fine of $20,000.

38—Insertion of section 78A

This clause inserts a new section. Section 78A applies to any book or document produced to, or taken by, an authorised officer. A book or document to which the section applies may be retained for the purpose of enabling the book or document to be inspected and for enabling copies of, or extracts or notes from, the book or document to be made or taken by or on behalf of the Commissioner. A book or document required by the Commissioner for the purpose of legal proceedings may be retained until the proceedings are finally determined.

39—Amendment of section 79—Assurances

Under section 79 as amended by this clause, the Commissioner will be authorised to accept an assurance given by a trader or a person who is a director of a body corporate that is a trader. The assurance must be in connection with a matter in relation to which the Commissioner has a power or function.

An assurance must be in writing and may be withdrawn or varied with the consent of the Commissioner.

40—Amendment of section 81—Offence

Under section 81, it is an offence for a person who has given an assurance accepted by the Commissioner to act contrary to the assurance The maximum penalty for the offence is currently a fine of $5,000. This clause amends the section by increasing the maximum fine to $10,000.

41—Amendment of section 82—Enforcement orders

The amendment made by this clause is consequential on amendments made to section 79 and, in particular, the fact that under that section as amended the Commissioner will be able to accept assurances from directors of body corporates as well as traders.

42—Amendment of section 93—Hindering an authorised officer

The maximum penalty for the offence of hindering an authorised officer is currently a fine of $2,500. This clause amends section 93 by increasing the maximum to $5,000.

43—Insertion of section 93A

This clause inserts a new section. Proposed section 93A makes it an offence for a person to persuade another person, or to attempt to persuade another person, by threat or intimidation—

- to fail to co-operate with an authorised officer in the performance or exercise of powers or functions; or
- to fail to provide information or give evidence to an authorised officer as authorised or required; or
- to provide information or give evidence that is false or misleading in a material particular, or to provide information or give evidence in a manner that will make the information or evidence false or misleading in a material particular, to an authorised officer.

44—Amendment of section 94—Impersonating a police officer

The amendment made by this clause increases the maximum penalty for impersonating an authorised officer from $2,500 to $5,000.

45—Amendment of section 97—Regulations

Under section 97, regulations under the Act may impose penalties not exceeding $1,250 for contravention of, or failure to comply with, a regulation. Under the section as amended by this clause, the maximum penalty will be $2,500.

The section as amended will also allow for the making of regulations that make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply.

Part 6—Amendment of *Land Agents Act 1994*

46—Amendment of section 8—Entitlement to be registered as agent

This clause updates section 8 of the *Land Agents Act 1994* by substituting the correct reference to insolvency.

47—Amendment of section 52—Register

Section 52 of the *Land Agents Act 1994* as amended by this clause will authorise the Commissioner to include on the register of persons registered under the Act a note of the occurrence of any of the following events in relation to a licensed or registered person or a director of a body corporate that is a registered person:

- the person is convicted of an offence of dishonesty;
- the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of South Australia, the Commonwealth, another State or a Territory of the Commonwealth;
- the person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
- a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—
  - when the body corporate was being so wound up; or
  - within the period of 12 months preceding the commencement of the winding up;
- the person, being a body corporate, is being wound up or is under official management or in receivership.

Part 7—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

48—Amendment of section 9—Entitlement to be licensed

This clause updates section 9 of the *Plumbers, Gas Fitters and Electricians Act 1995* by substituting the correct reference to insolvent persons.

49—Insertion of Part 3A

This clause inserts a new Part into the *Plumbers, Gas Fitters and Electricians Act 1995*.

Section 18A in Part 3A gives the Commissioner the power to suspend the licence of a contractor if the Commissioner is of the opinion that—

- there are reasonable grounds to believe that the contractor has engaged in conduct that constitutes grounds for disciplinary action; and
- it is likely that the contractor will continue to engage in that conduct; and
- there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the contractor's conduct unless action is taken urgently.

The Commissioner is required to serve a notice of the suspension on the contractor. The Commissioner may not suspend the licence for a period of more than 6 months.

A contractor whose licence is suspended is required to surrender the licence to the Commissioner within seven days of being notified of the suspension.

If, during the period of the suspension, the Commissioner becomes satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner is required to terminate the suspension without delay. The section also gives a person whose licence has been suspended a right of appeal to the Administrative and Disciplinary Division of the District Court. The Court is required to hear and determine the appeal as expeditiously as possible.

50—Amendment of section 30—Registers

Section 30 of the *Plumbers, Gas Fitters and Electricians Act 1995* as amended by this clause will authorise the Commissioner to include on the register of persons licensed under the Act a note of the occurrence of any of the following events in relation to a licensed person or a director of a body corporate that is a licensed person:

- the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
- the person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
- a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—
  - when the body corporate was being so wound up; or
  - within the period of 12 months preceding the commencement of the winding up;
- the person, being a body corporate, is being wound up or is under official management or in receivership.

Part 8—Amendment of *Second-hand Vehicle Dealers Act 1995*

51—Amendment of section 9—Entitlement to be licensed

This clause updates section 9 of the *Second-hand Vehicle Dealers Act 1995* by substituting the correct reference to insolvent persons.

52—Insertion of Part 4A

This clause inserts a new Part into the *Second-hand Vehicles Dealers Act 1995*.

Section 25A in Part 4A gives the Commissioner the power to suspend the licence of a dealer if the Commissioner is of the opinion that—

- there are reasonable grounds to believe that the dealer has engaged in conduct that constitutes grounds for disciplinary action; and
- it is likely that the dealer will continue to engage in that conduct; and
- there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the dealer's conduct unless action is taken urgently.

The Commissioner is required to serve a notice of the suspension on the dealer. The Commissioner may not suspend the licence for a period of more than 6 months.

An agent whose licence is suspended is required to surrender the licence to the Commissioner within seven days of being notified of the suspension.

If, during the period of the suspension, the Commissioner becomes satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner is required to terminate the suspension without delay. The section also gives a person whose licence has been suspended a right of appeal to the Administrative and Disciplinary Division of the District Court. The Court is required to hear and determine the appeal as expeditiously as possible.

53—Amendment of section 39—Register of dealers and premises

Section 39 of the *Second-hand Vehicles Dealers Act 1995* as amended by this clause will authorise the Commissioner to include on the register of persons licensed under the Act a note of the occurrence of any of the following events in relation to a licensed person or a director of a body corporate that is a licensed person:

- the person is convicted of an offence of dishonesty;
- the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
- the person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
- a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—
  - when the body corporate was being so wound up; or
  - within the period of 12 months preceding the commencement of the winding up;
- the person, being a body corporate, is being wound up or is under official management or in receivership.

Part 9—Amendment of *Security and Investigation Agents Act 1995*

54—Amendment of section 9—Entitlement to be licensed

This clause updates section 9 of the *Security and Investigation Agents Act 1995* by substituting the correct reference to insolvent persons.

55—Amendment of section 34—Register of licensed agents

Section 34 of the *Security and Investigation Agents Act 1995* as amended by this clause will authorise the Commissioner to include on the register of persons licensed under the Act a note of the occurrence of any of the following events in relation to a licensed person or a director of a body corporate that is a licensed person:

- the person is convicted of an offence of a class specified by regulation for the purposes of section 9(1)(b) of the Act in relation to the functions authorised by his or her licence;
- the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
- in the case of a person whose licence is not subject to an employee condition or who is a director of a body corporate that is licensed as an agent—a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—
  - when the body corporate was being so wound up; or
  - within the period of 6 months preceding the commencement of the winding up;
- in the case of a person whose licence is not subject to an employee condition—the person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
- the person, being a body corporate, is being wound up or is under official management or in receivership.

Part 10—Amendment of *Travel Agents Act 1986*

56—Insertion of Part 2 Division 1A

This clause inserts a new Division into the Part 2 of the *Travel Agents Act 1986*.

Section 14A in Division 1A gives the Commissioner the power to suspend the licence of a travel agent if the Commissioner is of the opinion that—

- there are reasonable grounds to believe that the agent has engaged in conduct that constitutes grounds for disciplinary action; and
- it is likely that the agent will continue to engage in that conduct; and
- there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the agent's conduct unless action is taken urgently.

The Commissioner is required to serve a notice of the suspension on the agent. The Commissioner may not suspend the licence for a period of more than 6 months.

An agent whose licence is suspended is required to surrender the licence to the Commissioner within seven days of being notified of the suspension.

If, during the period of the suspension, the Commissioner becomes satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner is required to terminate the suspension without delay. The section also gives a person whose licence has been suspended a right of appeal to the Administrative and Disciplinary Division of the District Court. The Court is required to hear and determine the appeal as expeditiously as possible.

57—Amendment of section 30—Registers

Under section 30 of the *Travel Agents Act 1986* as amended by this clause, if a travel agent's licence is suspended, or a travel agent, or a director of a body corporate that is licensed as a travel agent, is suspended or disqualified under a corresponding law from holding a licence under the corresponding law or being involved in the direction, management or conduct of the business of a travel agent, the Commissioner may record a note of the suspension or disqualification on the register of persons licensed under the Act.

Part 11—Repeal of *Consumer Transactions Act 1972*

58—Repeal of *Consumer Transactions Act 1972*

This clause repeals the *Consumer Transactions Act 1972*.

Part 12—Repeal of *Recreational Services (Limitation of Liability) Act 2002*

59—Repeal of *Recreational Services (Limitation of Liability) Act 2002*

This clause repeals the *Recreational Services (Limitation of Liability) Act 2002*.

Debate adjourned on motion of Hon. S.G. Wade.

ARCHITECTURAL PRACTICE BILL

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:14): Obtained leave and introduced a bill for an act to provide for the registration of architects and architectural businesses; to regulate architectural practice for the purpose of maintaining high standards of competence and conduct by registered architects and registered architectural businesses; to repeal the Architects Act 1939; and for other purposes. Read a first time.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:15): I move:

That this bill be now read a second time.

The Architectural Practice Bill repeats the old Architects Act and replaces it with up-to-date legislation to govern the activities of the architectural profession in line with contemporary consumer protection legislation such as, for example, the Medical Practice Act 2004.

The Architects Act dates from 1939 and an overhaul is long overdue. I understand that the State Review Panel commenced reviewing the act some 10 years ago. The primary motivation for a revamp of this legislation is the need to meet the competition policy agreement between the commonwealth and state governments to remove anti-competitive provisions in the legislation.

The bill achieves this by removing ownership restrictions on companies and partnerships providing architectural services; removing restrictions limiting remuneration for architects; removing restrictions on advertising by architects; and removing restrictions on companies practising in partnership. The current act governs the registration of companies of architects. It contains restrictions on the purpose, ownership and control of architectural firms. The act limits the extent to which architectural firms can establish themselves as multidisciplinary practices.

The bill replaces the existing restrictions with a requirement that, if the body corporate is to be registered as an architectural business and the governing body consists of an even number of

members, at least half of the members must be registered architects. If the governing body has an odd number of members, a majority of the members must be registered architects. In the case of a partnership seeking registration as an architectural business, if the partnership consists of an even number of partners, at least half of the partners must be registered architects. In the case of a partnership with an odd number of partners, a majority of the partners must be registered architects.

The State Review Panel reported that the current code of professional conduct endorsed by the Architects Board under the current by-laws places restrictions on the work an architect can do for free, to demonstrate their skills to a client, and on the form and amount of remuneration for architectural services. These provisions restrict competitive conduct among architects and between architects and non-architects. The State Review Panel concluded that these restrictions were not justified by any public benefits they may achieve. The bill does not include such restrictions on remuneration for architects.

Advertising restrictions have traditionally been associated with notions of professionalism and the current act specifies the form of advertising an architect can undertake. The bill does not include these restrictions. The State Review Panel considered that sufficient protection for consumers exists under the state Fair Trading Act 1987 and the commonwealth Trade Practices Act 1974 in relation to misleading or false advertising, without imposing further restrictions under the architects legislation. The current act prohibits companies registered as architects from practising in partnership with any other person. The bill does not include this restriction. The State Review Panel recommended that membership of the Architects Board include a consumer representative, as the role of the board is to protect public interest rather than the interests of the architectural profession.

Clause 5 (1)(b)(iv) of the bill introduces a requirement that one member of the board be a person who is not eligible for appointment under the preceding provision of subclause (1)—that is, is not a registered architect, a lawyer, or a person with qualifications or experience specified in paragraph (b)(ii) or (b)(iii). The bill also introduces a requirement that the board have a member who is a lawyer, another member with qualifications or experience in accounting, business or finance, and a person with qualifications or experience in urban or regional planning or building surveying or construction, or with knowledge of or experience in the building and construction industry, to give the board wider experiential representation than under the current act.

Under the existing act a person aggrieved by a decision of the board can appeal to the Supreme Court. While this provision is an important safeguard, it can be expensive to take matters to the Supreme Court and such an appeal right increases the workload of that court. To implement the State Review Panel's recommendation, the bill provides a right of appeal to the Administrative and Disciplinary Division of the District Court rather than the Supreme Court. This will reduce litigation costs for both appellants and the board. The bill provides modern legislation for the 21st century using gender neutral language and requirements for gender balance on the board. I commend the bill to the council and seek leave to have the explanation of clauses incorporated into *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause provides definitions of words and expressions used in the measure and contains provisions to assist interpretation.

Part 2—Architectural Practice Board of South Australia

Division 1—Establishment of Board

4—Establishment of Board

This clause establishes the Architectural Practice Board of South Australia.

Division 2—Board's membership

5—Composition of Board

This clause provides that the Board consists of 7 members appointed by the Governor. 3 must be registered architects chosen at an election. 4 must be persons nominated by the Minister. Of these 1 must be a lawyer and 2 other persons must have qualifications, experience or knowledge in specified fields. 1 must be a person who is not otherwise eligible for membership of the Board. The clause requires at least 1 member to be a woman and 1 to be a man, and provides for the appointment of deputies.

6—Elections and casual vacancies

This clause provides for elections to choose registered architects for appointment to the Board to be conducted in accordance with principles of proportional representation and sets out rules for filling casual vacancies in the membership of the Board.

7—Terms and conditions of membership

This clause provides for members of the Board to be appointed for terms not exceeding 3 years, limits membership of the Board to consecutive terms totalling 9 years, sets out the grounds on which a member may be removed from office and the circumstances in which the office of a member becomes vacant. The clause allows former members to continue to act as members to continue and complete disciplinary proceedings after their terms expire or they resign from the Board.

8—Presiding member

This clause requires the Minister to appoint a registered architect member of the Board as its presiding member.

9—Vacancies or defects in appointment of members

This clause ensures that a vacancy in the membership of the Board or a defect in the appointment of a member does not render an act or proceeding of the Board invalid.

10—Remuneration

This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

11—Registrar of Board

This clause provides for the appointment of a Registrar of the Board on terms and conditions determined by the Board.

12—Other staff of Board

This clause provides for the Board to have other staff as it thinks necessary to properly perform its functions and states that an employee of the Board is not a Public Service employee. The Board and a Minister may make an arrangement under which the Board can make use of the services or staff of an administrative unit of the Public Service.

Division 4—General functions and powers

13—Functions of Board

This clause sets out of the functions of the Board and requires the Board to perform its functions with a view to achieving and maintaining high professional standards both of competence and conduct by registered architects and registered architectural businesses.

14—Committees

This clause empowers the Board to establish committees to advise the Board or Registrar or to carry out functions on behalf of the Board.

15—Delegations

This clause empowers the Board to delegate its functions or powers.

Division 5—Board's procedures

16—Board's procedures

This clause prescribes the quorum for meetings of the Boards and makes other provisions relating to procedures to be followed at meetings.

17—Conflict of interest etc under Public Sector Management Act

This clause provides that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* just because the member has an interest in the matter that is shared in common with registered architects or registered architectural businesses generally or a substantial section of registered architects or registered architectural businesses in South Australia.

18—Powers of Board in relation to witnesses etc

This clause empowers the Board to compel the attendance of witnesses and the production of documents for the purposes of proceedings before the Board.

19—Principles governing hearings

This clause provides that in proceedings before the Board, the Board is not bound by the rules of evidence and may inform itself as it thinks fit. The Board must act according to equity, good conscience and the substantial merits of the case, with regard to technicalities and legal forms. It must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

20—Representation at proceedings before Board

This clause entitles a party to proceedings before the Board to be represented at the hearing of the proceedings.

21—Costs

This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs awarded by the Board.

Division 6—Accounts, audit and annual report

22—Accounts and audit

This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

23—Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration and practice

Division 1—Registers

24—Register of architects

This clause requires the Registrar to keep a register of architects and specifies the information to be included on the register. It requires a registered architect to notify the Registrar of changes in particulars relating to the architect. A maximum penalty of $250 is fixed for non-compliance. The offence is expiable and an expiation fee of $80 is fixed.

25—Register of architectural businesses

This clause requires the Registrar to keep a register of architectural businesses and specifies the information to be included on the register. It requires an architecture business to notify the Registrar of changes in particulars relating to the business. A maximum penalty of $250 is fixed for non-compliance. The offence is expiable and an expiation fee of $80 is fixed.

26—Register of removals

This clause requires the Registrar to keep a register of persons, bodies and partnerships that have been removed from the register of architects or register of architectural businesses and have not had their registration reinstated. It specifies the information to be included on the register.

27—General provisions relating to registers

This clause requires the Registrar to correct errors in the registers and requires the registers to be made available to the public at the office of the Registrar and on the Internet.

Division 2—Registration of architects

28—Registration of natural persons as architects

This clause provides for the registration of natural persons on the register of architects. It provides for full and limited registration.

29—Application for registration

This clause deals with applications for registration. It empowers the Registrar to grant provisional registration if it appears likely that the Board will grant an application for registration.

30—Removal from register

This clause requires the Registrar to remove a person from the register of architects on application by the person or in certain specified circumstances (such as the death of the person or suspension or cancellation of the person's registration).

31—Reinstatement on register

This clause enables a person to be reinstated on the register of architects.

32—Fees and returns

This clause requires registered architects to pay an annual fee and furnish the Board with an annual return. It empowers the Board to remove a person from the register of architects if there is a failure to pay the annual fee or furnish the annual return.

Division 3—Registration of architectural businesses

33—Registration of bodies corporate and partnerships as architectural businesses

This clause provides for the registration of bodies corporate and partnerships on the register of architectural businesses.

34—Application for registration

This clause deals with applications for registration.

35—Removal from register

This clause requires the Registrar to remove a body corporate or partnership from the register of architectural businesses on application by the business or in certain specified circumstances (such as cessation of the business or suspension or cancellation of the businesses registration).

36—Reinstatement on register

This clause enables a body corporate or partnership to be reinstated on the register of architectural businesses.

37—Fees and returns

This clause requires a registered architectural business to pay an annual fee and furnish the Board with an annual return. It empowers the Board to remove a body corporate or partnership from the register of architectural businesses if there is a failure to pay the annual fee or furnish the annual return.

Division 4—Restrictions relating to provision of architectural services

38—Illegal holding out as architect

This clause prohibits a person, body corporate or partnership that is not registered under the measure from holding out or being held out as an architect or partnership or firm of architects. The maximum penalty is $50,000 or imprisonment for 6 months.

39—Illegal holding out concerning limitations or conditions

This clause prohibits a person whose registration as an architect is limited or subject to conditions from holding out or being held out as having registration that is not limited or subject to conditions. The maximum penalty is $50,000 or imprisonment for 6 months.

40—Use of certain titles or descriptions prohibited

This clause prohibits the use of prescribed words and expressions (such as 'architect') and their derivatives from being used to describe a person, body corporate or partnership, or services they provide, if the person, body corporate or partnership is not registered.

41—Exceptions for certain titles and descriptions

This clause makes a number of exceptions to clauses 38 to 40 to enable certain titles and descriptions to be used by unregistered persons.

Part 4—Investigations and proceedings

Division 1—Preliminary

42—Interpretation

This clause enables disciplinary proceedings to be brought against natural persons, bodies corporate and partnerships that were registered at the relevant time but are no longer registered.

43—Cause for disciplinary action

This clause specifies the grounds that constitute proper cause for disciplinary action against a registered architect or architectural business.

Division 2—Investigations

44—Powers of inspectors

This clause sets out the powers of inspectors to investigate when there are reasonable grounds for suspecting that there is proper cause for disciplinary action or that a person has committed an offence against the measure.

45—Offence to hinder, etc inspector

This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the

person's knowledge, information or belief, or falsely represent that the person is an inspector. The maximum penalty is $10,000.

Division 3—Proceedings before Board

46—Obligation to report unprofessional conduct of architect

This clause requires a person who provides services through the instrumentality of a registered architect to report to the Board if of the opinion that the architect has engaged in unprofessional conduct. The maximum penalty for non-compliance is $10,000. The Board must cause a report to be investigated.

47—Inquiries by Board as to matters constituting grounds for disciplinary action

This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious.

If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person or order the person to pay a fine of up to $10,000. If the person is a registered architect, the Board may impose conditions on the person's right to provide services as an architect, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered.

In the case of a registered architectural business, the Board may suspend the registration of the body corporate or partnership for a period not exceeding 1 year, cancel the registration or disqualify the body corporate or partnership from being registered.

If a fine imposed by the Board is not paid, the Board may remove the person, body corporate or partnership from the relevant register.

48—Constitution of Board for purpose of proceedings

This clause sets out how the Board is to be constituted for the purpose of hearing and determining disciplinary proceedings.

49—Provisions as to proceedings before Board

This clause deals with the conduct of disciplinary proceedings by the Board.

Part 5—Appeals

50—Right of appeal to District Court

This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.

51—Operation of order may be suspended

This clause empowers the Board or the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.

52—Variation or revocation of conditions imposed by Court

This clause empowers the District Court, on application by a registered architect, to vary or revoke a condition imposed by the Court on his or her registration.

Part 6—Miscellaneous

53—Variation or revocation of conditions imposed by Board

This clause empowers the Board, on application by a registered architect, to vary or revoke a condition imposed by the Board on his or her registration.

54—Offence to contravene conditions of registration

This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75,000 or imprisonment for 6 months.

55—Improper directions to architect

This clause makes it an offence for a person who provides services through the instrumentality of a registered architect to direct or pressure the architect to engage in unprofessional conduct. The maximum penalty is $75,000.

56—Procurement of registration by fraud

This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for himself or herself or another person) and fixes a maximum penalty of $20,000 or imprisonment for 6 months.

57—Statutory declarations

This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.

58—False or misleading statement

This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $20,000.

59—Registered architects to be indemnified against loss

This clause prohibits registered architects from providing services as such unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in connection with the provision of services as a registered architect. It fixes a maximum penalty of $10,000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.

60—Information relating to claim against architect to be provided

This clause requires a person against whom a claim is made for alleged negligence committed by a registered architect in the course of providing services as a registered architect to provide the Board with prescribed information relating to the claim. The clause fixes a maximum penalty of $10,000 for non-compliance.

61—Victimisation

This clause prohibits a person from victimising another person (the victim) on the ground, or substantially on the ground, that the victim has disclosed or intends to disclose information, or has made or intends to make an allegation, that has given rise or could give rise to proceedings against the person under this measure. Victimisation is the causing of detriment including injury, damage or loss, intimidation or harassment, threats of reprisals, or discrimination, disadvantage or adverse treatment in relation to the victim's employment or business. An act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.

62—Self-incrimination

This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment. However, the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence relating to the provision of false or misleading information.

63—Punishment of conduct that constitutes an offence

This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.

64—Vicarious liability for offences

This clause provides that if a body corporate is guilty of an offence against this measure, each person who is a member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

65—Application of fines

This clause provides that fines imposed for offences against the measure must be paid to the Board.

66—Ministerial review of decisions relating to courses

This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.

67—Confidentiality

This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure or the repealed Act (the *Architects Act 1939*) to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide psychological services, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10,000 is fixed for a contravention of the clause.

68—Service

This clause sets out the methods by which notices and other documents may be served.

69—Evidentiary provision

This clause provides evidentiary aids for the purposes of proceedings for offences and for disciplinary proceedings.

70—Regulations

This clause empowers the Governor to make regulations.

Schedule 1—Repeal and transitional provisions

This Schedule repeals the *Architects Act 1939* and makes transitional provisions with respect to the Board and registrations.

Debate adjourned on motion of Hon. S.G. Wade.

CHILD SEX OFFENDERS REGISTRATION (REGISTRATION OF INTERNET ACTIVITIES) AMENDMENT BILL

The Hon. R.D. LAWSON (16:20): I move:

That the bill be restored to the *Notice Paper* as a lapsed bill pursuant to section 57 of the Constitution Act 1934.

Motion carried.

SELECT COMMITTEE ON IMPACT OF PEAK OIL ON SOUTH AUSTRALIA

The Hon. SANDRA KANCK (16:22): I move:

That the report be noted.

This is a very important report about an issue that will have severe impacts on our state when it ultimately hits. This is not a question of if but when, and the when could be within just a few years. What is peak oil? One of the easiest descriptions comes from one of the written submissions we received from Dr James Barson of the Australian Association for the Study of Peak Oil and Gas, as follows:

> Some time in the very near future half of the estimated two trillion barrels of oil originally on the planet will have been extracted. When this happens, the world's production of oil will have reached an all-time peak. We will be pumping oil out at the maximum possible rate. From that point production will begin an accelerating decline, with less oil available every year. The second half of the earth's available oil will be harder to find, extract and refine because all the easy oil will be exploited first. Global use of oil continues to accelerate. Half of all the oil ever consumed on the planet has been consumed since 1983. Peak oil is not about how much oil is left in reserves; it is about the rate at which oil can be produced, that is, how many barrels per day. It is not the size of the tank that matters, it is the size of the tap.

Peak oil is an issue that has not yet made its way into the public consciousness in the way that climate change has, yet its ramifications will be immense. Queensland has led the way in Australia in recognising the problem. Ideally, the actions taken to deal with this problem should be taken at the federal level because peak oil will require a coordinated national approach.

When Darwin was bombed by the Japanese we did not rely on the Northern Territory government to sort out a response. It was a national emergency and it required an urgent national response. Peak oil is an impending catastrophe that far exceeds the successful bombing missions of the Japanese in the Northern Territory. It is more like the equivalent of a sophisticated and sustained nuclear missile strike, but unfortunately it does not have an instantaneous and visible impact with a crater to show for it.

Yet, it has been creeping up on us from the moment that human beings began extracting oil from the ground. Action is imperative now, so that transition to a lower energy economy can be accomplished before the situation hits crisis proportions. Spending money on mass transit systems, on rail freight systems and on alternatives to oil-based agricultural fertilisers and developing alternative energy sources that are truly environmentally sustainable needs to be happening now.

As peak oil impacts, the money coming into state coffers through taxation will reduce because the whole of the economy will slow down, so the moment to act is now when the economy is still relatively strong. Waiting to take action will exacerbate the pain. The planning ought to have been in place five years ago so that the infrastructure could be being built now.

Without action at the federal level the state, however, must show leadership. This was put quite succinctly in one of the submissions we received from Sophia McRae who belongs to the group, Beyond Oil South Australia. She said in her written submission:

> Government leadership is an essential part of the process. The need for leadership is urgent. I am looking to the state government to have the courage to honestly address the issue of peak oil and its impacts publicly. I will do as much as I can on a personal and community level, but I cannot make the broad regulatory and legislative changes that the state and federal government must make to increase our resilience and change our consumption patterns on a broad level. The first step is for the government to publicly acknowledge the problem of peak oil, presumably after receiving the recommendations of the select committee.

As the committee heard, we must anticipate price increases in all commodities because of either increasing transport costs in shifting goods from source to their markets and/or the shortages of petrochemicals needed in the production of many consumables.

Our primary recommendation is that an energy transition group be established within the Department of the Premier and Cabinet to ensure that all aspects of energy policy are managed in an integrated and informed manner. The group would be tasked with analysing and assessing all government legislation and policy in light of the impacts of peak oil.

So there needs to be action at the top. The committee recognises that that is where leadership has to come and it is why we have recommended that this new body be located in the Department of the Premier and Cabinet. We made 25 recommendations, and there are a number of subsets to recommendation 1, so effectively there are 28 recommendations. I will not address all of them, but I will address some that I think are very significant.

The issue of transport fuel poverty was one of the terms of reference. If you are someone on the economic margins in society you are more likely to be pushed out to the geographical margins in our city. That means that you will be pushed to an area where there is no public transport. So, if you are already on the economic margins, having to rely on your own car at a time when peak oil starts to hit, this means that the government may well be facing increasing costs in supporting these people.

The committee heard that social dislocation will result for those who live on the edge of the metropolitan area or in the regions, particularly for those who are car dependent. This links into the issue of urban sprawl. Our cities and our urban sprawl are predicated on a false but unstated, and therefore never explored, belief that the supply of oil is inexhaustible. We have received a submission from Kirsty Kelly, the State Manager of the Planning Institute of Australia, South Australian Division. She says:

> PIA supports integrated land use and transport planning, which acknowledges that transport and development are not two separate things but two facets of the same challenge, that is, transport is land use planning.
>
> Fundamentally, PIA supports an integrated planning and decision making framework where land use planning processes fully account for the transport implications and requirements of our towns, cities and regions.
>
> PIA supports transport planning and decision making that has due regard to the land use and development implications of these activities. PIA supports an integrated planning and decision making framework that considers cost effective and efficient and sustainable movement of people and freight, and a focus to reduce car dependency and subsequent emissions.

The Conservation Council addressed the issue of urban sprawl in its submission and said that we need to go back to having a moratorium on our urban sprawl and enforce the urban growth boundary. In fact, it went further and said that not only should we reinforce that but also in fact we should go through the process of acquiring land—that is, the government—and wind back the urban growth boundary so that it is actually smaller. The committee recommended in response to what we heard on this particular term of reference that the integrity of the urban growth boundary be strongly supported.

In relation to that issue of transport fuel poverty, public transport becomes an essential part of the solution. In full or in part, the committee has made eight recommendations about public transport. Recommendation 12 states:

> The committee recommend that the State Strategic Plan be amended to significantly upgrade targets for public transport use.

Recommendation 15 states:

> The committee recommend that state government apply for funds from the Building Australia Fund to invest further in public transport infrastructure.

Recommendation 16 states:

...that there be greater public consultation in identifying areas where future tram, train and bus routes have potential to increase public transport patronage.

This is not all of them but they are the significant ones. Recommendation 19 states:

...that all significant extensions to urban areas be supported by a railway, tramway or alternate mass system.

I think recommendation 16 is interesting, because we saw the fuss that was made over the extension of the tram line here to North Terrace, and part of the fuss occurred because the public was not involved and was not consulted. We now have a peculiar situation where the government has decided that the tram line will be extended to the Adelaide Entertainment Centre and we will have three choices of public transport for the people who live in Bowden and Brompton—they will be able to get there by bus, train or tram. Yet there are other areas in need such as Magill Road. The Magill Road traders are saying, 'We would like to have the tram come out there.' So we do need to have that consultation so that we get public transport infrastructure in the right place.

Health was something that came up under 'Any other related matter', and we received a surprising amount of evidence on this, although we have not made a specific recommendation. I want to turn to the comments made by Dr James Barson, who I referred to at the beginning of my comments. He is the Convenor of the Health Sector Working Group of ASPO Australia. He makes some very telling points. He is an anaesthetist in rural Victoria, so he is talking at least partly from his own on-the-ground experience. He says:

South Australia's health care system is critically dependent on oil and its products. Almost every aspect of health care delivery uses oil in one form or another. The dependence is so extreme that the entire system will come under severe stress once peak oil occurs and petroleum products become increasingly scarce and expensive.

Our current model of health care assumes unlimited mobility of staff, patients and their families and stable costs for delivering goods to and removing waste from health facilities. It is in this area of declining affordable, convenient and timely mobility that peak oil will have its biggest impact on health service delivery in South Australia.

He says:

The South Australian health care system needs a comprehensive oil vulnerability analysis as soon as possible to provide the information on which to develop migration strategies.

I think he may have meant mitigation strategies, but he is suggesting that the health care system alone needs its own strategy. He goes on to say:

We have to address the prospects for health care in a totally new and uncertain period. So when we try to start by addressing the issue of how much plastic we use and discard, for example, it is not a contrived or frivolous point. The time when we will not have access to affordable disposable plastic is not far in the future. Given the total absence of any plan to find an alternative, which will take years to develop, it might as well be tomorrow.

He then goes on to talk about how most of our health systems work on what is called a 'just-in-time logistical chain' of getting goods to our hospitals and health services. He says:

We will need to consider warehousing spare critical components, drugs and equipment, and moving to reusable vs. disposable equipment.

He says:

Hard-nosed decisions will have to be made, such as: who gets what, where, when, how, from whom and at whose expense?

He refers to a recent points system that has been established to determine access to renal dialysis in New Zealand. In fact, I observed that in Oregon in the US. They went through a process of public consultation about 10 or 12 years ago and, as a consequence, they listed a series of medical procedures that are no longer available within the public health system, so they have already gone through that process of prioritising which procedures will be available and which will not. We in South Australia will have to confront this some time in the very near future. I continue with what Dr Barson had to say:

The current obsession with disposable everything is unsustainable. The vanishingly small risk of contracting CJD, for example, which has been overblown by companies keen to sell single use equipment, will have to be balanced by the real risk of non treatment when the single use gear ceases to be affordable or available and the reusable equivalent doesn't exist.

We will need to reverse what has been for years an increasing trend to centralise services which has been driven by:

- The cost of resources, the need to minimise duplication and to extract maximum use from equipment and institutions with huge capital and operating costs.
- Medico-legal pressure to have as many services as possible provided in centres of excellence with expertise in uncommon conditions
- Shortages of qualified staff.

Then he makes the point that I think our Minister for Health must take on board. He said:

> These economic arguments to centralise complex services are understandable but these arguments will cease to be as valid when private car transport declines...
>
> As private car ownership declines, particularly for the disadvantaged, GPs in regional/urban fringe areas will have to change their role. Local GP services with capacity for definitive local treatment will be needed around the clock when people in outlying suburbs and towns do not have the option of just hopping in the car and going to hospital. Rather than travel to hospital out of hours for a primary diagnosis, patients will increasingly have to be seen by their local doctor either for definitive treatment on the spot or to determine if the difficult and increasingly expensive journey to hospital is really required.

He then talks about triage services in our health services and the need to rely, for instance, on real-time video conferencing. An enormous amount will have to occur in order for our health services to be able to adapt to peak oil.

It was quite scary to hear some of the evidence that we were given in relation to primary industries. The committee heard alarming information about the impact of peak oil, which has been made worse by another phenomenon, namely, peak phosphate, with 75 per cent of the world's phosphate already used up and phosphate prices increasing by 700 per cent in the past 1½ years. This in turn forces greater reliance on the petrochemical-based fertilisers and, ultimately, this will result in reduced agricultural production throughout the world.

We heard about the need to turn to the artificial fertilisers that are able to be manufactured by natural gas but, because at present we are promoting it as an alternative to petrol in our cars, natural gas will be used up at an increasingly faster rate, and the estimate at which we reach peak natural gas is probably around 2020—which is only 12 years away. Farmers will not be able to rely on that artificial form of fertiliser when we are putting so much more pressure on natural gas.

Many of the chemical inputs for farms are based on raw ingredients which are mostly imported these days. Oil supply reduction has already added cost to those imported ingredients. The committee was told, for example, of the use of glycosphate, which is a major component in what is known as Roundup. We were told, for instance, that it comes mostly from China. It is imported into Western Australia where it is manufactured into a form for farmers to use; then we have it on the road or in some cases (if we are lucky) in the rail system to take it to other states. It means that there is a freight cost to the glycosphate.

SAFF told us that in the past 12 months the price of Roundup increased from about $6 a litre to about $19 a litre. They also said that during that time the cost of fertiliser had risen from about $600 a tonne. There will be enormous implications for agriculture in the future as a consequence of peak oil. Again, the government does not appear to recognise or understand this. The reality is that the age of cheap oil has ended and, in that process, so has the age of cheap food.

The reference on mining did not produce a huge number of submissions, but what came out was extremely interesting. In the report we have a slide which gives a picture of the use of fuel consumption and which is from the website of Westport Innovations Incorporated. An average family car uses 2,500 litres per year, a dump truck 27,000 litres per year, an ordinary bus 43,000 litres per year and a semi-trailer 80,000 litres per year. Then we come to the mining industry.

One of the large trucks that removes huge amounts of iron ore in Western Australia or shifts coal around at Leigh Creek uses 1.5 million litres per year. Members should consider how that will impact when we have peak oil. The Queensland Vulnerability to Rising Oil Prices Task Force report of April 2007 indicates that a Caterpillar 777D, capable of hauling 95 tonnes at any one time, consumes 77 litres of diesel per hour—which is an extraordinary amount. When the government is talking up mining, it needs to recognise that it will not be as easy as that when so much of the mining will require oil or diesel.

The Australian Conservation Foundation recently estimated that, as far as the Olympic Dam expansion is concerned (this is with the big open cut), 350 metres of overburden will need to

be excavated before the ore body is reached, with 1 million tonnes of earth and rock to be moved each day for four years. So, you have to try to guess what that will mean in terms of the amount of diesel that will be used.

The Hon. Mark Parnell gave evidence to the committee, along with his intern from last year (Woodlands), and they had done an estimate on what this might mean. Their estimate was that it would mean that an additional 1.65 million tonnes of diesel consumption per year would be added to Australia's imports. I think that, having listened to the way they reached that conclusion, they may in fact have underestimated. They suggest that this will add 9 per cent to Australia's total diesel usage, or an additional 20 per cent on top of diesel imports. I do believe that is understating it—and this is only for the Roxby Downs expansion.

We need to consider also that most of the mining is in remote regions, and the mining personnel and their families will be heavily dependent on oil to get the staples to them for housing and food so they can live on those sites, plus the enormous amount of fuel that will be used not just in removing the overburden at Roxby downs but also in milling and processing.

We have accordingly made recommendation 22, where the committee recommends that the state government acknowledge in its economic forecasts the significant and very real limitations that peak oil represents to the state's mining industry. In fact, we made two recommendations about the State's Strategic Plan needing to be altered, and the first is the need to recognise peak oil and the need for adaptive strategies.

Movement of freight is a particularly important issue for our farmers, and it is known that, from an energy efficiency perspective, movement by rail is more effective than by road. There are rail lines in South Australia that could be reopened following some upgrading, and we also know that some rail lines exist in a vacuum, and there needs to be an effort made to link them into the main line. Recommendation 21 is that the state government pursue with the federal government the upgrading of regional freight lines, including the linking of lines into the national freight network.

We had a reference on fuel storage capability and fuel supply disruption. It is interesting that, some short time ago in Britain, Lord Cameron of Dillington stated that Britons were just nine meals away from anarchy, should oil supplies in Britain suddenly cut out. He figured that, by the end of three days of the oil cutting out when food was no longer being delivered to supermarkets, just like the aftermath of Hurricane Katrina in New Orleans, in order to feed their families people would begin stealing and looting. South Australia does not have that same sort of dependency on imported fuel (yet) as Britain does now, but the advent of peak oil will bring us closer to that.

Mr Barry Goldstein from PIRSA quoted the federal energy minister Martin Ferguson:

> We've got to find another Bass Strait-sized oil province because if we don't, by 2015 we will go from importing about 20% of our needs in the 1990s to importing 80% of all our oil and related product needs, effectively contributing to a $27 billion/year trade deficit.

I do not think the evidence is there that such a field will be discovered. I suspect, therefore, in line with what Martin Ferguson has said, that by 1025, which I remind honourable members is only seven years away—we in South Australia will be massively reliant on imported oil.

Even under existing conditions, all it would take is a strike of transport workers for South Australia to be on its knees in a matter of days but, in the future when 80 per cent of our oil is imported, we will become even more vulnerable. For rural areas in particular this could result in enormous problems, with primary producers unable to harvest, and we need to ensure that we have oil available in our country areas so that there is, in a sense, a buffer out in the regions that will at least allow farmers to farm their crops.

With that in mind, recommendation 23 is that the state government ensure backup supply of fuel for the state by ensuring that bulk fuel storage be maintained at Port Lincoln, considering the reopening of the Port Pirie site and investigating the provision of storage in association with the upgrade at Thevenard and the proposed port at Cape Hardy.

Alternative fuels was another reference. We have made no particular recommendation on it, but since the beginning of this year there has been a greater consciousness worldwide about an increasing shortage of food. The United Nations agencies, including the World Health Organisation, have stated that part of the reason is that the developed world is asking for corn in particular to be grown to produce ethanol so that we in the developed nations can continue to run our cars.

It seems to me that this is a continuum: in the twentieth century we asked the developing world (before we knew better) to stop growing crops for themselves and grow tobacco, which

produced more money for those people, again, for the benefit of people in countries such as ours, and now it is being done in relation to corn.

I recognise that the project that is now under way at Flinders University, in conjunction with SARDI, is looking at algae-based ethanol production, and I think that has a greater feasibility. However, I think that even Dr Steven Clarke, who is instrumental in that project, was guarded in his comment about how much we can depend on the manufacture of ethanol as an alternative.

I turn now to the population reference. Given the existing policies of both the Labor and Liberal parties, which is to increase the state's population, members will not be surprised to know that I could not get support from the other two members of the committee to have a recommendation included that the state government alter its population targets in the State Strategic Plan.

Nevertheless, among the submissions we received, there was one from Mr Roland Earl, who used figures provided to the Senate committee by a former Iranian oil minister. On the basis of those figures, he deduced that by 2020 'Australia will need to devote all its oil production to food production and distribution', which is a pretty frightening statement. Into the bargain, we are going to have to use imported oil to have that happen. I remind members, too, that, because it is post peak oil, that peak oil is also going to be very costly. Quite obviously, this impact could be somewhat reduced in South Australia provided that we were able to reduce some of the population impacts. Another of the submissions we received was from Dr Andrew Melville-Smith. He says:

> The population of South Australia has exploded from 600,000 to 1.5 million over the last 60 years and we have a Premier who would like to add another 500,000 without giving us one good reason. (Apart from a few people are going to make more money). We are now in a state of over population, such that we cannot sustain this level of population for the next 1,000 years.
>
> We should be looking at ways of reducing our population through birth control and immigration control. We should be doing this for our children and grandchildren to come. Our present policy is to push the costs of our decision onto our children, rather than bear some of it now and create a better future for the next generation. Every extra human body in South Australia is a disaster for our water supplies and oil security. It is time we came to terms with this.

As a consequence of not being able to get support for a recommendation, I do have a dissenting recommendation that I have had incorporated in the report.

I want to end, of course, by thanking the other two members of the committee, the Hon. Michelle Lensink and the Hon. Russell Wortley. It was a committee of three, and I can advise the chamber that this is a very effective way to have a committee. With a committee of three the quorum was three, and it meant that there had to be a commitment from members to progress the committee, and we did so in very timely fashion, in a matter of seven months.

I also thank our secretary, Mr Guy Dickson, and our researcher, Mr Tyson Retz. Tyson is new to this game, so to speak. He was an intern last year for the member for Bright, Chloe Fox, as part of the parliamentary intern scheme. A friend of Tyson alerted me to the report he had written, and I asked whether she would get him to send it to me. I looked at it, and I was utterly impressed. When it came time for the committee to choose a researcher, I provided that intern's report to the members of the committee, and we agreed that it would be worth while approaching him. He has done an excellent job in bringing all of the submissions and evidence together, remembering that this is only his first year out of university. If others want him as a researcher for other committees or select committees in the future, I would be only too pleased to recommend him.

One thing about a select committee report compared with a standing committee report is that there is no requirement for any feedback from government. However, because this is such a crucial issue, I will be writing to the Premier and providing him with a full copy of this report, stressing what a critical issue it is, and I will be asking for a serious response from him in regard to it. I may not be here by the time that response is given, but I am sure that this particular issue of peak oil will be something that my successor will be taking up with gusto next year.

Debate adjourned on motion of Hon. J.M. Gazzola.

SELECT COMMITTEE ON THE ATKINSON/ASHBOURNE/CLARKE AFFAIR

The Hon. R.D. LAWSON (16:59): I move:

> That this council notes the evidence and documents tabled in relation to the select committee and expresses its concerns with the actions of the Premier, the Attorney-General, members of their staff and other members of the Rann government in connection with the affair.

The select committee was established by resolution of the Legislative Council on 7 July 2005. After the 2006 election, the select committee was revived. That revival occurred on 7 June 2006, when the President laid on the table the evidence given to the select committee at that date. When the second session of the 51st parliament was prorogued on 14 August this year, the select committee was not subsequently reappointed, and we accept the decision of the council in relation to that matter.

On the *Notice Paper*, Orders of the Day: Private Business No. 15 is a motion moved by me for the tabling of the balance of the material collected by the select committee. I am gratified by expressions of support from members of the council that they will be supporting that motion. However, the essence of what I wish to say in relation to the motion presently before the council—namely, that we express concern at the actions of the Premier and others in relation to this affair—relies upon the evidence that you, Mr President, laid on the table on 7 June 2006.

Some members were not present at the time this affair arose, and I think it is worth placing on the record what was actually encompassed in the Atkinson /Ashbourne/Clarke affair, that is, the circumstances and events surrounding the discontinuance in 2002 by former Labor deputy leader, Ralph Clarke, of his defamation action against Attorney-General Atkinson. Clarke claims that Premier Rann's then senior adviser, Randall Ashbourne, acting on behalf of the Hon. Mr Atkinson, offered him appointments to two government boards if he (Clarke) discontinued the action. Clarke honoured his part of the bargain and discontinued the action, but supervening events deprived him of his promised reward.

Although Ashbourne was ultimately acquitted on a charge of abuse of public office and was summarily dismissed by Premier Rann, serious questions about this affair have remained unanswered. I interpose that the select committee, which was appointed on 7 July 2005, was established because the government did not honour its promise to establish an independent and open judicial inquiry into the affair. In July 2005, the government introduced a bill, entitled the Special Commission of Inquiry (Powers and Immunities) Bill, but the terms of reference proposed by the government were not acceptable to the Legislative Council. They were too narrow and envisaged a closed behind-doors inquiry.

Members ought be reminded of the chronology of events that led to this affair. Although its principal events occurred in 2002-03, it is necessary to refer to a course of events that began as early as 1997. In that year, Ralph Clarke (then ALP member for Ross Smith) was charged with three counts of assault of his domestic partner, Edith Pringle. The Premier (then leader of the opposition) suggested to Ms Pringle that she should drop the charges, and the Hon. Mr Atkinson (then shadow attorney-general) also spoke to Pringle about withdrawing the charges.

In February 1999, charges against Clarke came on for hearing in court. Pringle gave evidence, but the then DPP, Paul Rofe QC, entered a nolle prosequi. At that stage, Clarke had not given evidence. Later, in April 2000, shortly after he had lost ALP endorsement for his seat (now renamed Enfield), Clarke spoke on air on Father John Fleming's program on Radio FIVEaa. Mr Atkinson also spoke. Mr Atkinson said that the result of the Clarke-Pringle trial was unsatisfactory and that the Labor Party needed a not guilty verdict.

Clarke considered that Atkinson's statements were defamatory of him, and in October 2000 Clarke instituted an action for defamation against Atkinson in the District Court. Atkinson filed a defence and counterclaim alleging that Clarke had defamed him on the same radio program. The action progressed very slowly. There were various interlocutory applications during 2001 and 2002. Members will recall that, in March 2002, there was a state election. After that election, Randall Ashbourne was appointed Premier Rann's senior adviser.

The chronology then moves to October 2002. On 28 October, about three weeks before the defamation action was due to begin, Ralph Clarke met Ashbourne and had a discussion with him. The discussion centred on Clarke's intentions in relation to the defamation action. A short time later (again prior to the trial date), there was a second meeting between Clarke and Ashbourne. During this second meeting, Ashbourne offered Clarke two positions on government boards if he would discontinue these actions.

Shortly after the second meeting, there was a third meeting. At this meeting, and in a later telephone conversation, Ashbourne confirmed that Clarke would be appointed to two government boards if he discontinued his defamation action. I am here dealing with the chronology of events, and I later propose to examine the evidence you tabled, Mr President, which related to that. On 16 November 2002, the defamation action was in fact discontinued by Clarke. There was no public

announcement of the settlement. On the following Monday, 19 November, Ashbourne attended a regular meeting of ministerial advisers. Also in attendance was Cressida Wall, who was the chief of staff to the Deputy Premier and Treasurer (Hon. Kevin Foley). Ashbourne reported that the Clarke/Atkinson action had been settled.

The following day, Ashbourne asked Wall to find board positions for Clarke because he would drop the lawsuit against Atkinson. She reported this conversation to Foley who, in her presence, telephoned Ashbourne and said, 'What the hell have you done?' Foley immediately spoke to Premier Rann, who convened a meeting that included Foley, Atkinson and senior members of the Premier's staff, including Ashbourne. Later, on 20 November, the Premier requested Warren McCann, Chief Executive of the Department of the Premier and Cabinet, to conduct an investigation into the matter. The Premier clearly understood the seriousness of the situation.

McCann interviewed Ashbourne and he sought legal advice from a Victorian solicitor who, in turn, sought advice from a member of the Victorian bar. On 2 December, McCann presented a three-page report to the Premier. He concluded that there were no reasonable grounds for believing that the conduct of either Ashbourne or Atkinson was improper. He also said that Ashbourne's actions may have been inappropriate, and he was given a letter of reprimand and a warning by the Premier. No public announcement was made by the Premier or any person concerning the extraordinary events that I have just outlined. The matters were not reported to the police. Crown Law advice was not sought.

The first public hint of the matter surfaced on 25 June when, during question time in parliament, the member for Bragg asked Deputy Premier Foley whether he had asked the Premier or anyone on the Premier's staff to instigate an inquiry into the actions of the Attorney-General. The Deputy Premier said that he would take the question on notice and, thereafter, a slow series of revelations emerged. In the subsequent days in parliament, ministerial statements were made.

On the weekend of 28/29 June, the government for the first time consulted the Crown Solicitor, who advised that the information should be referred to the Anti-Corruption Branch of the police. The following day, the Attorney-General was stood down as Attorney-General and the Leader of the Government here became the Acting Attorney-General.

On 8 August 2003, the Acting DPP, Wendy Abraham QC, announced that Ashbourne would be charged with the offence of abuse of public office. She said: 'There is insufficient evidence to charge anyone else in respect of the matter.' Ashbourne was charged and the Premier sacked him. The Hon. Mr Atkinson was reinstated as Attorney-General.

In February 2004, Ashbourne entered a plea of not guilty. On 6 June in that year a magistrate ruled that there was sufficient evidence for Ashbourne to be put on trial on a charge of abuse of public office, and on 13 July Ashbourne was formally arraigned in the District Court. In June 2005, Ashbourne's trial was conducted and he was acquitted on 17 June. On 7 July, the Legislative Council appointed this committee, the government having decided not to proceed with its bill to establish an inquiry.

Finally in this chronological sequence, I mention the fact that, on 8 December 2005, the government finalised an agreement whereby it agreed to pay Ashbourne at least $443,500 plus legal costs of $17,000, and Ashbourne agreed to release the government from liability in relation to the termination of his employment.

The McCann inquiry was established, as I mentioned, on 20 November 2002, within four days of the discontinuance by Mr Clarke of his defamation action. Premier Rann appointed Warren McCann, Chief Executive of his own department, to conduct the inquiry. McCann interviewed Randall Ashbourne, who made certain admissions about his dealings with Atkinson. McCann also interviewed the Hon. Mr Atkinson but he did not interview or attempt to interview Ralph Clarke.

Ashbourne admitted to McCann that he had discussed with Atkinson the issue of possible board appointments for Ralph Clarke. This admission was inconsistent with the stance of the Hon. Mr Atkinson. He said that 'the first I knew of the idea of a board or committee position for Ralph Clarke' was at a meeting in the Premier's office on 20 November. This conflict of evidence was never referred to in the McCann inquiry or the subsequent report, let alone resolved. It will be apparent that the evidence given by the Crown Solicitor, Mike Walter QC, to the select committee was overly polite when he described the McCann inquiry as 'an inept investigation'.

The bungled McCann inquiry had a very serious subsequent effect. At a preliminary stage of Ashbourne's subsequent trial—the so-called voir dire—the court was required to rule whether Ashbourne's record of interview with McCann could be presented in evidence. In the voir dire, Ashbourne, in the absence of the jury, confirmed on oath that the record of interview was accurate. However, the court ruled that the record of interview could not be presented as evidence because McCann had failed to warn Ashbourne that he was not legally obliged to answer any questions.

The forensic effect of McCann's bungle was crucial. When Ashbourne came to give evidence in the presence of the jury he was able to change his position without fear of contradiction. He was able to tell the jury that he had never had a discussion with either Clarke or Atkinson about board positions being offered to Clarke. This was crucial, and a letter dated 25 September 2005 from the Office of the Director of Public Prosecutions to the select committee was tabled. It shows that the forensic effect was such that Ashbourne was able, without fear of contradiction, to change his evidence.

The deficiencies in the McCann inquiry and report were not confined to the blunder to which I just referred. McCann accepted Attorney-General Atkinson's bland assertions that the question of board positions for Clarke was never canvassed. He did not even contact Clarke, let alone ask him for his version of the events; nor did McCann interview Atkinson's adviser George Karzis. If he had done so, McCann would have had an entirely different picture from that presented by Atkinson.

The finding by the McCann inquiry that there were 'no reasonable grounds' for believing that the conduct of either Atkinson or Ashbourne was improper or breached relevant codes of conduct is not credible. Those findings were based upon evidence that was incomplete and that was not properly tested. The evidence collected by the select committee, including the crucial testimony of Ralph Clarke, shows that the actions of both Atkinson and Ashbourne were highly improper.

The McCann inquiry was itself flawed in that it did not thoroughly examine or test the evidence it gathered, and failed to interview all relevant witnesses or gather all relevant material. McCann obtained legal advice from Melbourne solicitors Deacons. That advice highlighted the inadequacy of the evidence collected by McCann and included the following, under the heading 'Outstanding issues':

> The investigation has been conducted with urgency and expedition. A much more thorough (and time-consuming) investigation would no doubt resolve some outstanding issues which emerge from a reading of the material. For example, there is a difference between the evidence given by the Attorney-General and that of Ashbourne on the extent to which the Attorney-General knew that Clarke wanted or expected or should have a government appointment…

I emphasise that here, at a very early stage and whilst Mr McCann was investigating the matter, the lawyers from whom he obtained advice—lawyers in Melbourne as I mentioned, not in Adelaide—said that there was a difference between the evidence given by the Attorney and that given by Ashbourne on the extent to which the Attorney-General knew that Clarke wanted or expected board appointments.

That is a matter that ought to have been resolved, ought to have been cleared up, but despite those serious uncertainties McCann concluded that further investigation should not occur because it would be 'expensive and unwarranted'. That conclusion was flawed and wrong. It presumed—wrongly, as it later emerged—that further inquiries would prove fruitless. Moreover, McCann's refusal to conduct further investigations on the grounds that it would be expensive was wrong in principle and inconsistent with the most elementary principles of good public administration.

The select committee heard evidence from the Crown Solicitor that the police investigation was seriously compromised by the delay of seven months between the time the McCann inquiry began and when the matters were finally reported to the Anti-Corruption Branch.

One of the important issues that had to be considered by the select committee—which, for the first time, was able to gather all the evidence; evidence which has been tabled, as I mentioned—was whether or not Attorney-General Atkinson's denial about discussions of board positions should be accepted. In relation to that matter, the select committee was able to see:

- the statements made by Randall Ashbourne—the initial statements given to McCann, the subsequent statements given at his own trial, and the differences between the same;

- the evidence presented by Ralph Clarke;
- the evidence presented by the former ministerial adviser to the Attorney-General, George Karzis; and
- the evidence presented by Cressida Wall, in the form of notes and evidence at the trial (as I mentioned, she was chief of staff to Deputy Premier Foley).

Former Labor senator Chris Schacht gave evidence, as did former Labor member Murray DeLaine, and evidence was received by the select committee and tabled from Gary Lockwood, a former staff member of Robin Geraghty MP and also of Frances Bedford MP, and from Edith Pringle, whose name I have mentioned earlier in the chronological sequence. The evidence given by Ms Pringle was particularly interesting, and was closely examined by the select committee.

The Hon. R.P. Wortley interjecting:

The Hon. R.D. LAWSON: I hear the Hon. Russell Wortley bleating a little at the moment. There was a time when he was chair of this select committee, and a draft report was presented. It did not appear to rely upon the research material that had been prepared by the independent research officer (who had prepared a very thorough and comprehensive summary of the evidence); it appeared to make a number of outrageous political conclusions entirely unsupported by the evidence. Amazingly, that report was leaked to *The Advertiser*.

The Hon. B.V. Finnigan interjecting:

The Hon. R.D. LAWSON: Not surprising. *The Advertiser* published a report stating 'Minister clear in Atkinson case'. That purported report was absolute nonsense but the fact is that the honourable member opposite leaked it to the media, thought he would obtain a politically satisfactory headline, and put out in the community conclusions that were absolutely false and unsupportable. It was a laughable exercise by the honourable member.

Members interjecting:

The PRESIDENT: Order! I remind honourable members that that report has not been tabled in the chamber and its contents should not, therefore, be discussed.

The Hon. R.D. LAWSON: I am only referring to the report that *The Advertiser* was given by sources unknown.

Members interjecting:

The PRESIDENT: Order! That report has not been tabled in the chamber and, therefore, its contents should not be discussed.

The Hon. R.D. LAWSON: Its contents are not worth discussing; they are absolute nonsense.

Members interjecting:

The PRESIDENT: Order! The honourable member should move back to the evidence that has been tabled.

The Hon. R.D. LAWSON: The evidence which has been tabled, and much of which has not been reported upon—and certainly not misreported upon—shows, first, that the claim made by Attorney-General Atkinson that he was not aware that Ralph Clarke was offered government board positions in connection with the finalisation of the defamation case is not credible. The Attorney-General's claim is directly contradicted by his own staff and is inconsistent with the evidence of numerous witnesses.

Secondly, Premier Rann severely compromised the criminal proceedings against Ashbourne. The Premier and other ministers acted improperly by not promptly reporting matters to the police and by ordering an in-house inquiry into allegations that Ashbourne and Atkinson had abused their public office. Thirdly, and importantly, the McCann inquiry was so grossly bungled that the jury in Ashbourne's case was prevented from hearing the full facts of the matter. Moreover, the seven-month—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: Moreover, the seven-month delay between the time the Premier became aware of the issues and the time when they were reported to SAPOL's Anti-corruption Branch jeopardised and compromised both the police investigation and the subsequent trial. The evidence that has been tabled by you, Mr President, clearly demonstrates the urgent need for an independent commission against corruption in this state.

Three members of the committee who heard the evidence and were members of the committee throughout its time have agreed upon a statement, which I have in front of me. It expresses the conclusions we have reached and also outlines the—

Members interjecting:

The Hon. R.D. LAWSON: I table the statement that has been agreed upon by three members: namely, myself, the Hon. Rob Lucas and the Hon. Sandra Kanck. The reason I do that is simply to avoid the necessity of reading out at length all of the evidence, which is comprehensive.

The Hon. B.V. Finnigan interjecting:

The Hon. R.D. LAWSON: I am glad to hear that the Hon. Bernie Finnigan will facilitate the expedition of this matter by the tabling of the report. I table the statement. It is not a report; it is a statement of the three members.

I urge members to study the statement in close detail. I think when they do they will agree with the conclusion reached in relation to ministers as follows: in relation to the conduct of Attorney-General Atkinson, it is such that (a) he impliedly authorised Ashbourne's offer; he denied that he was aware that Ashbourne had offered board positions on his behalf; in adopting the attitude that Ashbourne could do as he liked, as long as it did not involve himself, Atkinson's conduct was reprehensible, if not criminally aiding and abetting the commission of a serious criminal offence; it was in clear breach of clause 2.4 of the Ministerial Code of Conduct, which requires ministers to act with appropriate standards of honesty; it was inconsistent with proper standards of honesty and integrity, quite apart from the Ministerial Code of Conduct, and it really rendered him unfit to hold the office of Attorney-General.

The Hon. B.V. Finnigan interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: The conduct of Premier Rann, in appointing his chief executive—

The Hon. B.V. Finnigan interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: —of not reporting forthwith issues—

Members interjecting:

The Hon. R.D. LAWSON: —forthwith to the ACB, and not reporting to parliament or to the public the fact that the incident itself occurred; nor reporting to parliament the fact that McCann had been inquired into—I think members will agree—was improper in that he placed his personal and political interests ahead of the requirements of openness and accountability and was also contrary to clause 2.4 of the Ministerial Code of Conduct.

The conduct of Ashbourne in offering to secure Clarke's appointment to government boards in exchange for Clarke's discontinuance of his defamation action against Atkinson was highly improper and reprehensible.

The conduct of Deputy Premier Foley on 20 November 2006, when he first learnt from Cressida Wall that Ashbourne had agreed to arrange for Clarke's appointment to two government boards, was understandable. He expressed outrage and immediately reported the matter to the Premier. He then attended the meeting at the Premier's office, where he questioned Ashbourne and told the Attorney-General that he should step down. All of that was reasonable. However, the Deputy Premier's subsequent actions were unsatisfactory in that he agreed with the Premier and others that the issue should not be reported to the police. He agreed to the establishment of the secret in-house McCann inquiry, and participated in the cover up of the affair by not revealing details of it until forced to do so in parliament some seven months later. The conduct of others is referred to in the statement that has been tabled. I commend the statement to members and look forward to their contribution to the debate.

The Hon. SANDRA KANCK (17:31): I supported the setting up of this committee back in 2005.

The Hon. B.V. Finnigan: It was a long time ago.

The Hon. SANDRA KANCK: It was a long time ago, most definitely. I did so because I believed there had been some process issues, one might call them, associated with the way the government had handled this issue right from the moment it became apparent to the Treasurer and the Premier. I believed that it was important to have this committee so that we could come up with some findings and recommendations so the same mistakes would not be made by either this or a future government. From that perspective I am pleased that the committee has come up with these recommendations, but it is really interesting to look at all this evidence calmly here in 2008 and join the dots.

I thought that some of the most interesting evidence we heard came from Edith Pringle. The statement that was tabled a short time ago has a section on this, 1.5. It will take a little while before everybody gets to see it, so I will outline what it says. It recognises that, when she came before the committee to give evidence, one of the things Ms Pringle told us was, 'I know Michael Atkinson quite well'. We heard a little of the history and much of it is on the public record in media reports from the time about domestic violence charges made against Ralph Clarke, and those domestic violence charges were a precursor to the litigation that ultimately led to these events and the trial against Randall Ashbourne. Pringle told the committee:

> When the issue of criminal action was first raised, Mike Rann had put me under considerable pressure to assist in the withdrawal of the charges, and Michael Atkinson supported that process.

I am not a member of the legal profession, but I wonder whether or not that is a really kosher thing to do. She said she had been contacted by Michael Atkinson, our Attorney-General, to give evidence in the case against Clarke, and she had told him, basically, that if she was subpoenaed she would have to give evidence. Interestingly, in the nature of the evidence she gave to the committee, the very clear message was that she had a very close relationship with Michael Atkinson. As she said, she knew Michael Atkinson quite well. She told us that he had given her the number of his direct line in his ministerial office. She said:

> I spoke to Michael Atkinson on this number on 15 November 2002. I inquired about when I would be required to testify. Michael informed me that the case was not going ahead as a deal had been done. I recall that Michael seemed proud of the fact that he did not 'have to pay Ralph Clarke one penny'.

Members will note the familiarity in that she does not refer to him as 'the Attorney-General' or even 'Michael Atkinson' but as 'Michael'. She goes on to say:

> I asked Michael Atkinson about the nature of the deal and he told me that it involved board positions for Ralph. When I asked him—

The Hon. B.V. Finnigan interjecting:

Members interjecting:

The ACTING PRESIDENT (Hon. I. Hunter): The honourable member will ignore interjections from both sides.

The Hon. SANDRA KANCK: She continued:

> When I asked him which boards were involved, he said that WorkCover would probably be one. I expressed my disapproval to Michael in fairly robust terms and his response to me was that it was out of his hands. He said the instruction to settle had come from higher up.

When she was asked about that, she responded by saying, 'The impression that I was left with was that this had come as a directive from the Premier at arm's length'. That understanding is consistent with what her adversary, Ralph Clarke, also told the committee. He told the committee that he believed that Randall Ashbourne was acting as an emissary. When one considers that Edith Pringle—

The Hon. R.P. WORTLEY: On a point of order, sir, what we are hearing here—

The Hon. S.G. Wade: What standing order?

The Hon. R.P. WORTLEY: Let me state my point of order. We are hearing versions from people who had an axe to grind and came under parliamentary privilege and gave evidence. It is one of the most gross attacks on natural rights.

Members interjecting:

The ACTING PRESIDENT: Neither members interjecting are in the chair at the moment. The chair will hear the point of order.

The Hon. R.P. WORTLEY: The three amigos! My point of order is that they have had 14 months to discuss this evidence—

The Hon. S.G. WADE: On a point of order—

The ACTING PRESIDENT: Sit down.

The Hon. R.P. WORTLEY: They did not have the guts to turn up and are about to use parliamentary privilege—

The ACTING PRESIDENT: There is no point of order.

The Hon. SANDRA KANCK: As this motion is, I believe (unless someone has changed it), noting the evidence and documents tabled in relation to the select committee on the Atkinson/Ashbourne/Clarke affair, I am talking about some of that evidence. As I say, Edith Pringle, who I am talking about, and Ralph Clarke, were hardly friends by this time. As we know, there was legal action and all sorts of toing and froing, yet these two people, who do not even talk to each other, came to a similar conclusion. Ms Pringle also provided to the committee photocopies of her phone records so that we could see the evidence that she had directly dialled the particular number that gave her access to the Attorney-General.

I agree with the comment that was made to the committee, and which the Hon. Robert Lawson has already placed on record, that the McCann inquiry was inept, and there is no doubt that, if that had been done more effectively, the outcome of the court case against Randall Ashbourne might well have been different. I happen to like Randall Ashbourne but, nevertheless, those are the realities of the system.

As I said at the beginning, I am pleased that we have come out with at least one particular recommendation, because later this evening I hope to be putting my bill for an independent commission against crime and corruption to a vote. The first recommendation of the small group of three of us from that committee is that an independent commission against corruption be established in South Australia. Recommendation 4 is that the Ministerial Code of Conduct be amended to include a further reminder that the Premier and all ministers should duly report to the Anti-Corruption Branch any conduct which might arguably be deemed to involve corruption.

Recommendation 5 states that a specific code of conduct for ministerial advisers and political staff be promulgated. Recommendation 6 is that section 5 of the Whistleblowers Protection Act be amended to require explicitly that, where a minister becomes aware of information relating to fraud or corruption, the minister is required to pass the information to the Anti-Corruption Branch of the police force or to an independent anti-corruption commission, if one is in existence. For me, those four recommendations—Nos 1, 4, 5 and 6—vindicate the setting up of this committee in the first instance.

The Hon. B.V. FINNIGAN (17:40): I had not intended to speak today to this motion, but this extraordinary abuse of parliamentary privilege cannot go unchallenged. We have the three amigos opposite—the three who hear all evil, speak all evil and see all evil. That is all they have. They come in here and use the conventions of this place to abuse parliamentary privilege and put out a statement which is, in effect, a minority report that they have had years to produce and did not do so, because they were either too lazy, too incompetent or not committed to it. So they never produced a minority report.

They would not turn up for meetings and they would not put forward their report, and they come in here and use the conventions of this place to obtain leave to table documents, which is given quite liberally. Unlike other houses of parliament, we like to be cooperative and we allow people to table documents. They have abused that by putting forward a document that is clearly their version of a minority report that they were too lazy or too incompetent to produce in the years in which this committee ran. They could not put forward a report then. No—they had to come in today and seek leave to table a statement.

If they are so confident about their statement and the actions of the Attorney-General, why do they not walk outside and give a press conference, free from the protection of parliamentary privilege? If they are so confident about the conduct of the Premier, the Attorney-General and Mr Ashbourne, let them walk out there. Let us see the Hon. Sandra Kanck put her pension on the

line by walking out there and defaming officers and ministers of the Crown. We will not see that. Instead, we see this abuse of parliamentary privilege which enables the tabling of this absurd statement which has not been provided to members—this absurd statement which is, undoubtedly, their version of a minority report because they were too lazy and incompetent to get around to producing one.

What do we have here? We have, again, the collection of absurd hearsay and tittle-tattle that we have had throughout this saga. We have former members of the DLP talking about what happened in the 1950s, and that constitutes evidence. We have what Edith Pringle claims to have heard, and that she had access to Michael Atkinson's direct line. That constitutes the great indictment of the Attorney-General and the government of this state, because someone had access to his telephone. Someone was able to telephone the Attorney-General. Arrest the man! Someone was able to telephone him! That constitutes the evidence that they are putting against the Attorney-General of this state.

It is the collection of hearsay and absurd bits and pieces from enemies and people who have an axe to grind that they have continually used this committee for. They have slung around the mud—that is all they are good at doing, particularly the Hon. Mr Lucas. We know he is an expert at slinging mud all over the place. It does not matter whether it is correct. He has already been humiliated today by the fact that he has been throwing around accusations that have no basis in fact.

What we have seen here is a gross abuse of parliamentary privilege and parliamentary procedure. The opposition has brought this council into disrepute even by the fact that it set up this committee, and then it has gone through the charade of hearing all this evidence, which is basically just throwing around mud on the back of recollections and hearsay.

They have added to that charade today by abusing the conventions of this council to table this statement—which is clearly the minority report. They had years to produce it, yet they were too lazy and too incompetent and did not get around to it. They moved a motion in the last sitting week to table all these documents. Now we have a new motion today to note the documents and to condemn the Premier and others. For two weeks the most important thing the alternative government of this state has to put before the people of South Australia and to talk about concerns events that happened years ago.

The events have been investigated by solicitors, Warren McCann and the Anti-Corruption Branch. They have been the subject of a criminal trial. These matters have been agitated and regurgitated for years and, still today, they are the most important thing facing the opposition. Forget about water and the global financial crisis: the big thing facing the opposition in this state is the Ashbourne/Atkinson/Clarke affair—something that has been discussed for years.

Here they are, yet again. It is their most pressing priority. They have wasted well over an hour of parliamentary time talking about events which happened years ago and which have been in the public domain for years. They have made a disgrace of this parliament and called into disrepute the Legislative Council. They have the gall to wonder why the government seeks to abolish the Legislative Council. They have turned the Legislative Council into a laughing stock. They have humiliated the chamber by abusing its processes and abusing privilege.

I make the challenge: if they are so confident about the conduct of the Attorney-General and his staff and Mr Ashbourne, let them stand on the steps of Parliament House, removed from the sinecure of parliamentary privilege, and let us see them put their houses and pensions on the line. But we will not see them do that. Instead, they come in here and abuse the conventions of this place and abuse the facility of parliamentary privilege to make this Legislative Council a laughing stock.

The PRESIDENT: The Hon. Mr Wortley.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY (17:47): It is like the laughing clowns at a circus. I had the misfortune of being made chairman of this committee. It was the first committee to which I was appointed when I was elected to parliament. I believed that select committees would pursue truth and justice. I was quite naive, because I found out in a short time that it was one of the most partisan committees this parliament has ever seen. I also believed that the Democrats stood for something; that they had a bit of the high moral ground. I found very quickly that they were

prepared to get in the gutter with the worst of them in order to complete their political goals. This is one reason why they have been wiped out. The public has wiped them from the political domain, because they speak one thing and do another. They have no principles. The way in which they behaved with the Liberals on this select committee was nothing less than disgraceful.

I also point out that when the select committee was seeking evidence—at that time we did not believe that we had heard all the evidence—I was threatened with being kicked off as chair if I did not hand up a report. I always thought that one would listen to all the evidence and then do a draft report. The Hon. Ms Kanck threatened me at the meeting and said that, if I did not have a report within a month—it could have been week, I am not sure—they would use their numbers to kick me off as chair of the committee. I handed up a report, which was quite damning of the behaviour of those opposite.

The Hon. Sandra Kanck was outside the court in front of television cameras calling for a royal commission into Randall Ashbourne. That almost caused a mistrial. Secondly, there was the behaviour of the Hon. Mr Lucas. The vast majority of the witnesses had an axe to grind. They used parliamentary privilege to attack the Hon. Mr Atkinson. I would think that, during a select committee hearing, if a witness is giving evidence regarding a minister, members should allow the witness to speak of their own volition. It was proven during the committee hearing that the Hon. Mr Lucas—who thinks it is a joke—actually coached the witness before she appeared before the committee. Mr President, I understand you were a member of the committee at the time; in fact, you asked the question.

A lot of the evidence that was given to this committee was tainted. People had an axe to grind. People were caught out lying. It was all in an effort to pursue the head of the Attorney-General. The courts found Randall Ashbourne innocent. The case was thrown out in record time. The processes through which it went were given the thumbs up by a number of eminent people—but that was not enough for the opposition. With the Hon. Sandra Kanck, the opposition wanted a political scalp and they were prepared to do whatever it took to achieve it.

I gave a report in July 2007. I tried on numerous occasions to get members together to talk about the report. Some 14 months went by and I could not get them to meet to discuss the report. They have never explained themselves. They have never had the decency to explain why they would not meet in those 14 months. If we had met, we could have gone through the evidence and discussed the report. They could have presented their report to this council and our job would have been done, but that was not to be. They have handed up a statement with recommendations. None of it has been debated by committee members. Members opposite have used parliamentary privilege. The obvious outcome for which they are hoping is a muddying of the waters around the Premier and the Attorney-General.

I find it a disgraceful abuse of the processes of a select committee. I think this council should condemn the way in which members opposite have handled this matter. It reeks of incompetence and political partisanship. All the evidence that was taken before the last election was done to death in the press. The election produced two fewer members of the Liberal Party in this chamber. The electorate just wiped them out and basically condemned the Democrats to political oblivion at the next election.

The public really did not have any interest in this after that. I have not had at any stage one person from the media phone me as the chairman to ask when the report would be handed down, because there has just not been the interest. It is obvious—

The Hon. J.S.L. Dawkins interjecting:

The Hon. R.P. WORTLEY: I wish you would sit down before you fall down, John. You are starting to embarrass me.

The Hon. J.S.L. Dawkins interjecting:

The Hon. R.P. WORTLEY: You are too red in the face. Just sit down before you fall down, mate. Just have a bit of pride in yourself. Hopefully, the public will treat the statement they have handed down with the absolute contempt it deserves. It deserves to have no credibility whatsoever. It has been a gutless and spineless way—

The Hon. J.S.L. Dawkins interjecting:

The Hon. R.P. WORTLEY: Don't take a breathalyser test on the way home, John, because I would be embarrassed for you, mate—on the front page of the newspaper. You are an

absolute goose. How about letting me finish my contribution, and we can all sit down and get on with some real business that affects the people of South Australia.

In conclusion, what a gutless way of ending a select committee. Hopefully, the public will treat the so-called statement with the contempt it deserves.

Debate adjourned on motion of Hon. J.M. Gazzola.

[Sitting suspended from 17:55 to 19:50]

ENVIRONMENT PROTECTION (PULP MILLS) AMENDMENT BILL

The Hon. M. PARNELL (19:50): Obtained leave and introduced a bill for an act to amend the Environment Protection Act 1993. Read a first time.

The Hon. M. PARNELL (19:50): I move:

That this bill be now read a second time.

This bill is a very simple measure aimed at protecting South Australia's largest freshwater lake from industrial pollution. Lake Bonney in the South-East is a coastal lake about 10 kilometres south of Millicent. At over 23 kilometres long it is one of Australia's largest freshwater lakes. The lake, like most of the South-East region, has been extensively altered since European settlement, particularly by the effects of drainage schemes and agricultural development schemes. For over 60 years large volumes of waste water from pulp and paper mills have adversely affected the health of the lake. Recent technological upgrades and modifications to the mills have significantly improved the quality of wastewater discharge into the lake. Monitoring by the Environment Protection Authority has revealed that the lake water quality has improved in recent years but there is still a long way to go.

A number of years ago the EPA produced a report entitled, 'Lake Bonney: past, present and possible future'. I want to quote a couple of paragraphs from that report, because it refers to the industrial pollution that my bill seeks to address. The report states:

> In 1942, the first pulp and paper mill at Snuggery started to send large quantities of solid and dissolved waste into the lake. The 'Cellulose' and 'Apcel' pulp and paper mills near Millicent were established under state government Indenture Acts, at a time when the government of the day promoted this development to economically use the forest resources in the region. Importantly, the indentures allowed the mills to discharge waste water into drains that flow into Lake Bonney SE, as the government accepted legal responsibility for the waste mill effluent being released into the environment. Kimberly-Clark Australia, current owner of the Millicent and Tantanoola mills, has indemnity for the paper mill at Millicent to discharge into Lake Bonney SE until 2014.

This issue came onto the public agenda recently, although I recall that when I first came to South Australia in the late 1980s it was certainly on the agenda of conservation groups. It has come back onto the agenda most recently through some of the advocacy of the Nature Conservation Society of South Australia. On 29 October this year the Nature Conservation Society issued a media release, which states:

> Lake Bonney is one of Australia's largest coastal lakes, located approximately 10 kilometres south of Millicent in the South-East of South Australia. This lake also represents one of the Australia's worst cases of long-term pollution due to decades of human misuse.
>
> 'The state of this lake is a symptom of the government's long-term neglect of the environment in South Australia', said Georgina Mollison, Scientific Officer for the Nature Conservation Society of SA.
>
> For decades agricultural run-off, treated sewage and contaminated industrial waste have decimated the ecosystems of this lake, with the practice still being condoned by the government through an indenture agreement with pulp mill giant, Kimberly-Clark. This agreement will allow the company to use the lake as a dumping ground until 2014. The society hopes that the confronting pictures of Lake Bonney presented in Channel 9's *A Current Affair* will prompt the public to push for a full-scale clean-up of the lake, including a review of the current indenture agreement.
>
> This lake is becoming increasingly important as a drought refuge for the animals of the region due to the ongoing and rapid destruction and loss of natural habitats in the South-East. This lake can and must be saved, but it will require the state government to make a stand against this type of pollution in South Australia while also providing significant funding for a full-scale clean-up and restoration of the lake.

As an environmental lawyer, back in 1992 and 1993 I was involved in the introduction of the Environment Protection Act into South Australia in my capacity as campaign coordinator for the Australian Conservation Foundation. That act included some very curious provisions, which did not mean a whole lot to me at the time, but their importance is increasingly apparent.

What the Environment Protection Act said was that some older acts—namely, one from 1958 and one from 1964—prevailed over the 1993 Environment Protection Act. The 1964 act is entitled the Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964. I will read section 6 of that act, because that is the section that overrides our current Environment Protection Act. The section reads:

> The Company or any other person or authority shall not be liable in any way for discharging effluent from the mill into a drain in accordance with the Indenture or for the flow of such effluent from any one drain directly or indirectly into any other drain or into Lake Bonney or the sea or for any consequences of such discharge or flow or for discharging smoke, dust or gas from the mill into the atmosphere or for creating noise or odours or for any alleged consequences of such discharge, flow or creation if such discharge flow or creation or such consequences is or are reasonably necessary for the efficient operation of the works of the Company and not due to negligence on the part of the Company, its servants or agents.

The things that members should take from that are that, first of all, the standard of parliamentary drafting has improved a great deal. I do not think there is a comma in that whole sentence. But the crux of it is that the company can pollute as much as it wants and will not be liable for any of the results.

It seems to me that that provision is simply not good enough when we have this large lake continuing to be polluted and the indenture having another six years yet to run. So, the effect of my bill is very simple: it amends the Environment Protection Act, it amends that section of the act that exempts these pulp mills from the operations of South Australia's general pollution laws, and it brings the pulp mills back into the fold. It requires them to comply with the same pollution laws as every other industrial operation in the state. I commend the bill to the council.

Debate adjourned on motion of Hon. B.V. Finnigan.

WATER RESTRICTIONS

The Hon. M. PARNELL (19:58): I move:

That this council—

1. Notes—

   (a) the increasing frustration of South Australians with the inequity of household water restrictions that limit outside use, whilst allowing unlimited use within the home;

   (b) the significant potential for abuse of water restriction rules and the reliance of householders dobbing in their neighbours as an enforcement strategy;

   (c) the increasing need to reduce water demand in the face of the declining health of the River Murray which supplies up to 90 per cent of Adelaide's potable water during dry years; and

   (d) that those with access to the quaternary aquifer that underlies the Adelaide Plains are able to extract unlimited amounts of water for domestic use; and

2. Calls on the government to—

   (a) replace the water restriction regime with a household allocation based on occupancy and quarterly meter readings to allow citizens to choose where and how they use their water;

   (b) prescribe the quaternary aquifer beneath Adelaide and include domestic bore extraction within the household allocation, whilst continuing to exclude water sourced from rainwater tanks to encourage the uptake of domestic rainwater collection systems; and

   (c) change the water pricing structure by increasing the volumetric costs and reducing other charges to provide more incentive for water users to reduce their demand.

This is an important issue, and it deals with how we as a state—and, in particular, in Adelaide—are managing to reduce our water consumption and, in particular, the role of water restrictions, domestic rainwater tanks and bore water.

I think it is well and truly time for us to have a thorough debate around water security for Adelaide and, in particular, the role of water restrictions. I do not believe that the government is doing anywhere near enough. I think it is taking easy and lazy options that sell this state short and, in many ways, treat South Australian citizens as children who cannot be trusted to make responsible decisions in relation to water.

The government is talking about doubling the size of the desalination plant proposed for Port Stanvac, but it is not exploring other options that we know are cheaper and faster and better for the environment in providing water security for Adelaide.

I acknowledge that in many ways this motion is similar to some things the Liberal Party has been saying in recent times, which says to me that it is talking to the same experts I am. I appreciate its support for a more thorough debate, especially in relation to water restrictions and how we reduce demand.

Members might recall that recently I published a report entitled 'Report on sustainable water options for Adelaide.' It was commissioned by me and authored by Richard Clark and Jake Bugden, and it is available on my website. The report rates all the different water supply options on a sustainability scale. I asked the consultants to look at environment costs, social costs and benefits, and economic costs and benefits, and I asked them to weight the different water options. The report showed that the best bang for our buck was demand management and, in fact, reducing demand for water as an alternative to increasing supply, which was a far more cost efficient and environmentally friendly method of providing water security.

When we talk about water security, we are not talking about small change, because the authors' report estimates that the savings could be as high as 64 gigalitres in the context of Adelaide. Members should compare that figure (64 gigalitres) with the 50 gigalitres that is proposed for the desalination plant. With the release of today's State of the Environment Report, they should also bear in mind that we are using only 3½ gigalitres of stormwater in Adelaide.

Clearly, we are on the cusp of a long hot summer. We know that the River Murray is under increasing stress and that, in hot and dry periods, such as we are in at the moment, Adelaide is up to 90 per cent dependent on the River Murray. We are enormously dependent on that fragile and increasingly less reliable source of water. The government's Water Proofing Adelaide Strategy, whilst only a few years old, is already hopelessly inadequate. Members may have followed the commentary today on the release of the State of the Environment Report, and I think it is very clear to many in the community that the government is not doing enough.

Members of the public are increasingly frustrated with the current regime of water restrictions. The approach I propose involves a greater element of goodwill than is currently apparent in the government's measures. I am looking for a more genuine partnership between the government, SA Water and the community. The current system of simply providing restrictions relies on neighbours dobbing in neighbours for compliance.

The restrictions are bewildering, and people are confused about the hours and days they are allowed to water. They are not flexible, and they are often not sensible. For example, if it is raining on their day, many people are out there watering nevertheless because they know that they will not get another chance and that perhaps the rain will stop or it will not rain enough. So it does lead to perverse outcomes. The system of water restrictions is also unfair in that a person may not want to use a lot of water inside their home but may want to use water outside; however, the system is not flexible enough to allow them to choose.

In a nutshell, there is no personal responsibility or ownership of a person's water demand, and we are using a very crude measure of restrictions. The question we have to ask ourselves is: why should SA Water or the government be the ones who decide a household's water use priorities? One outcome of the current system is that it gives rise to some pretty bizarre behaviour, such as the phenomenon of phantom washing as described by Lainie Anderson in the *Sunday Mail*. She talked about people running empty washing machines just so that they could use the outflow, the greywater (even though it is pretty well pristine tap water), on their garden as a way of avoiding water restrictions. On Monday 24 November, an article in *The Advertiser* stated:

> Homeowners who refuse to abide by water restrictions have led to a surge in the number of fines issued by SA Water. While SA Water says more residents are heeding restrictions, the number of fines has increased by 700 per cent from last year. More than 2,300 households this year have also been sent reminder notices—warning them that they have been reported by a member of the public for flouting regulations. The statistics have raised concerns householders are deliberately ignoring restrictions to keep gardens alive.
>
> Figures obtained by *The Advertiser* show 126 households have been fined so far this year compared to 16 in the same period in 2007. SA Water says that 180 staff have been handing out on-the-spot $315 fines since last October, after witnessing residents breaking the rules. A reminder notice—which does not incur a fine—is issued to householders who are dobbed in by the public for their first breach. A warning can also be issued if SA Water staff see evidence of a breach but cannot prove it. While the number of fines has increased seven-fold, the total number of reminder notices, warnings and fines has decreased.

Clearly, the current arrangements are leading to an enforcement problem, where the authorities are issuing notices and warnings and neighbours are dobbing in neighbours who are doing the wrong thing. More interestingly, *The Advertiser* editorialised on the same day (24 November) as follows:

There should be no sympathy for those who break the law, but the present restrictions do highlight the need for a significant rethink of how they operate. It is absurd that householders cannot spend more than three hours a week watering their gardens, but can go inside and stand under their showers for the same time and not incur any penalties.

It is becoming increasingly obvious that as the dry spell drags on with no relief in sight, more people are likely to disobey the rules to keep houses from cracking and trees and shrubs alive. It has been proposed water restrictions should be based on the total amount of water used and people should have a choice in how they use that water—and once the quota is reached, a much tougher pricing structure should come into force. People should be given the choice of how they use their water, and draconian restrictions in the 'one-size-fits-all' category clearly are not the answer.

I think *The Advertiser* is on the money there. What we need to do is come up with a regime that does treat people fairly but allows them to take responsibility for their own water use, and does not have us becoming a complete nanny state.

Another issue raised in my motion and in the water report to which I referred earlier is the use of ground water in Adelaide—in particular, what is called the quaternary aquifer that underlies much of Adelaide. The authors of the 'Sustainable water options for Adelaide' report had the following to say:

As a general principle long-term ground water extraction rates should not exceed the long-term aquifer recharge rates. While recharge rates rise partly to compensate for rises in extraction rates, continued high extraction rates raise the risk of drawing high saline water into the existing usable aquifer zones. While the lower tertiary aquifers are now under prescription, thus limiting the total extraction from them, unconstrained extraction from the upper quaternary aquifer will continue unregulated.

An average of 18 gigalitres per annum rising to 24 gigalitres per annum was withdrawn over the decade 1990-2000 via about 1,200 private irrigation bores over the Northern Adelaide Plains. A similar rate of withdrawal had been in existence for many years previously and is still continuing despite estimates that these rates are many times in excess of the natural recharge rates.

The Greens do not think it is appropriate for those who can afford it to simply drill down and tap into a common resource, thereby allowing them to keep their garden thriving. This water resource is valuable, and in our view it should be left as an emergency source in case we reach a crisis over the next year or so.

Therefore, I believe it is appropriate that bore use for household gardens should be included in any water restriction or water allocation regime. I note that when members of the Environment, Resources and Development Committee discussed this matter with Western Australian water authorities we were told that Western Australia did include backyard irrigation bores as part of its water restriction regime.

If we do not tackle this issue we run the risk of dividing Adelaide between the haves and the have nots. There will be green, leafy eastern suburbs with water and the rest of the city parched and without. The most important thing is that this is an emergency supply that will not be there in an emergency if we continue with unrestricted use.

The report also talked about rainwater and recommended that rainwater should remain out of any water allocation or water restriction regime. We do want to encourage people to take responsibility for collecting the water that falls on their properties and, therefore, that water should remain unregulated. To look at a better and fairer method of allocating water, we can look elsewhere to see the example of other states. The ones that have been talked about the most in the last week have been the newly announced Victorian target—their so-called Target 155—which refers to 155 litres of water per person per day; and Queensland Target 140 which, again, is 140 litres per person per day. The authors of my water report recommended that 140 litres of water per person per day was completely feasible as a target for South Australia.

Between 2005 and 2007, in South-East Queensland, under the Target 140 program, residents managed to reduce their per capita water use from 300 litres per person per day down to 129 litres per person per day. That is a remarkable success rate. An allocation of 140 litres per person per day might not sound a lot but, when you analyse necessary water use, you will find that it is quite a generous allocation. It enables you to run a dishwasher, to run a washing machine, to have a shower, to flush the toilet half a dozen times a day; plus, it is enough water to keep 42 square metres of premium lawn alive—if that is what you choose to do with your 140 litres. So there is more than enough water for inside the home, and sufficient water for outside, as well. Of course, with bigger households, the allocation is bigger.

I note here that the water security minister has been asked by the media and others why we do not go down this path. The response is that it is too hard. I say that it is not too hard. SA Water has 1,500 employees and there is a large recurrent and capital budget with huge amounts being siphoned from SA Water into state revenue—we can do it. This is how the Greens say how our proposal would work: households will initially be given a water allocation based on an assumed number of residents, with households able to apply for higher volumes for larger household sizes, for example.

In Queensland a four-person household was assumed and they were only contacted by the authorities if they exceeded a 200 litres per person per day level. If a family had more than an average number of people then, of course, they should be able to apply to get a higher allocation. The proposal involves meters being read quarterly and the allocation being averaged over the year which, of course, would probably result in greater use in summer and less in winter.

However, key to such a scheme would be a major water literacy campaign. That would be necessary to inform residents about how to keep track of their water use—how to read their meters, for a start. We would probably need, over time, to replace meters with ones that are more user-friendly. The water literacy campaign would provide for considerable help to be given to households to help them keep within their allocation.

We certainly need more information on our water bills so that we can compare how we are travelling as against, for example, the neighbourhood or the city as a whole. At present, we really do not have any way of judging our performance against our neighbours or the rest of the city. Such a program must be supported by a well-funded and comprehensive residential water efficiency upgrade program. In terms of such a program, people always talk about the expense but, given that we are about to spend over $1 billion on a desalination plant, if that amount of money was allocated to such a program, it is about $2,500 per household. So, there are considerable amounts of money that could be used for this sort of program, and that would help people with water efficient appliances and rainwater tanks far more than the fairly miserly incentives currently available. The way the Greens see this program working is that, if households consistently go over their allocation, water advisers could be sent to the home to check for and fix leaks, for example, to implement water efficiency improvements and help householders reduce their water consumption.

We do not support sending in police officers but prefer to send in plumbers. However, for those who continue to deliberately flout the system—people who refuse to fix leaks or modify their behaviour—it may be appropriate for there to be consequences. In Queensland, for example, they have a stepped scheme where they go through different processes. First, the home owners are notified through the normal billing process and are sent an information package and, secondly, they can be notified again and asked to explain why their water use is so high. A water adviser is sent out to check for and fix any leaks, implement any water efficiency improvements and provide help to reduce water consumption and, lastly, if the deliberate flouting continues, there can be financial penalties, which include a stepped price increase. Flow restrictors have been installed, and there is a possibility in Queensland for totally banning outside water use. Whilst that sounds draconian for the tiny minority of deliberate flouters, the experience of the Queensland scheme overwhelmingly has been that it is a success.

The final part of my motion talks about shifting away from static or property-based charges to volumetric charges. That is an issue close to the heart of the Hon. John Darley, who has raised that issue many times before. Presently, with water priced at about $1 a tonne, there is little incentive to reduce consumption. Certainly, the new stepped tariffs are a little higher, but the increases are most heavily weighted towards the lowest water users compared with the higher water users. This effectively disadvantages more efficient water users.

Pricing for commercial users also needs to be addressed. Based on an average residential consumption per household in the metropolitan area of about 246 kilolitres, the direct unit charged for water supply would be only $203 per annum. However, the overall cost of water is much greater than the unit charge. There are annual fixed supply charges for water supply of $160 and sewer at $1.42 per $1,000 property value. Based on a median house price of $420,000, the fixed charges total $756, which is almost four times the variable cost. A 50 per cent reduction in household water use was targeted in Queensland and, if it was done here, the average householder's water bill would reduce by only 10 per cent. Again, this provides little incentive for householders to reduce use and would likely soon reduce the momentum of any demand management plan. Redressing the balance between fixed and variable charges is urgently required.

In conclusion, it is possible to come up with a better system. Many of the same arguments used against a water allocation system are the same arguments that could be used against the system we have currently. The benefits of a shift are worth exploring. It may be that we do not introduce such a measure holus-bolus but trial it in a number of suburbs. The critical point is that we need to give control back to citizens and give them ownership over the task of reducing their water consumption.

In Queensland they have regularly been doing better than the target the government set. Behaviour change theory suggests that we need to bring down these matters to an individual level in order to make it as easy as possible for people to make the right choices. We can put trust in the community. Most people want to do the right thing and, if we make it easier for people to save water, the results will follow. I commend the motion to the chamber.

Debate adjourned on motion of Hon. J.M. Gazzola.

NATURAL RESOURCES COMMITTEE: UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT ACT

The Hon. R.P. WORTLEY (20:20): I move:

That the 25th report of the committee, on the Upper South-East Dryland Salinity and Flood Management Act, be noted.

The Natural Resources Committee has, since December 2006, been responsible for the oversight of the Upper South-East Dryland Salinity and Flood Management Act 2002. This report relates to committee responsibilities under the act and issues drawn to its attention—in March, October and November 2008 at public hearings, at a site visit in July 2008 and in written submissions from the public.

As members would no doubt be aware, at the time of settlement the South-East region of our state was a very wet place. Early explorers and surveyors who travelled through the region (including South Australia's Surveyor-General George Goyder) described a highly dynamic and complex natural surface water system of hydrology—a region where half of the land's surface was subject to regular inundation, often for months at a time. People more recently have referred to it as the 'Kakadu of the South' and 'a wetland paradise'.

Unfortunately, while a wetland paradise is appreciated by modern day ecotourists, it was incompatible with 20th century dryland farming practices, and land-holders wishing to make productive use of their land saw little choice but to drain large tracts, beginning in the 1930s until the present day. This has resulted in a situation where today we have just 0.6 per cent of the original Upper South-East wetlands left in good condition. The few remaining habitats are critical high value refuges for the region's often endangered birds, fish, frogs and other aquatic wildlife, so we need to ensure they are protected.

The USE program has overseen the construction of a $49 million network of deep groundwater and shallow surface water drains in the Upper South-East region to address salinity and flooding impacts identified in the much wetter 1990s so as to improve agricultural productivity. If the success of this program is measured by the performance of deep drains in lowering water tables, then it has been a success. Unfortunately, however, deep drains have had other less desirable impacts apparently unforeseen in the original EIS, including the drying out of wetlands and the decimation of resident freshwater species.

Significant impacts from drainage have not been restricted to the 20th century. For example, committee members heard that between 2005 and 2007 the Department for Environment and Heritage has observed and recorded the rapid decline and probable local extinction of two species of freshwater fish—the freshwater blackfish and the yarra pygmy perch—in Henry Creek in the Upper South-East as a direct consequence of the Upper South-East program construction of the Kercoonda drain.

The Upper South-East program, as planned in the 1990s, is nearly finished. Only one of the proposed deep drains remains outstanding, the Bald Hill Drain. In addition, the recently developed $14 million Restoring Environmental Flows (Reflows) project, developed in part to reinvigorate some of the wetlands subject to the impact of the Upper South-East program drainage and also to make better use of some of the fresh water currently draining into the sea via Drain M, is proposed to be built concurrently.

The committee is strongly supportive of the Reflows concept, which it heard in average rainfall years stands to benefit a number of the Upper South-East wetlands by diverting drainage water inland, and in extreme rainfall years some flows are even predicted to reach the Coorong. However, members remain concerned about some aspects of the Bald Hill Drain proposal.

In the course of this inquiry the Natural Resources Committee heard a range of personal and professional opinions from local Upper South-East land-holders and government officers relating to the many aspects of the Upper South-East program. Some of the evidence and opinions expressed were complex and contradictory, making it difficult for the committee to separate fact from fiction. For example, on the matter of the likely impacts of Bald Hill Deep Drain on the neighbouring West Avenue wetlands, which is the home of the nationally vulnerable southern bell frog, the committee heard three distinctly different positions—namely, that (a) there will be zero impact, (b) there will be a significant impact, and (c) the impacts are as yet unquantified and consequently unknown.

The committee also found that the former chief executive of the Department of Water, Land and Biodiversity Conservation had undertaken to personally censor critics of the Upper South-East Program, a practice the committee considered unnecessary and heavy-handed. On a positive note, the committee notes the recent change of the CE—

Members interjecting:

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

The Hon. R.P. WORTLEY: —at the DWLBC and looks forward to an improved relationship with the department under the leadership of the new CE, Mr Scott Ashby.

The Upper South-East Program officers predicted that the new Bald Hill 'smart' drains would pass 100 cent of the surface water flow to neighbouring wetlands via specially engineered crossovers and that these would result in losses of surface water 'so small that they cannot be measured'. The committee considered it premature to be making such predictions considering that final specifications for drain design and an environmental impact assessment of the proposed drain are both outstanding.

From the conflicting evidence and published research the committee has seen to this point, members remain unconvinced that the Bald Hill Drain could be guaranteed to maintain surface water flows currently enjoyed by West Avenue watercourse and wetlands. That said, current flows are insufficient to support the entire system in the medium to long term and, if nothing is done, the future looks bleak for the wetlands, which is why Reflows is strongly supported.

Members were pleased to hear that an independent environmental impact assessment of the Bald Hill Drain and Reflows proposal was agreed to by the Upper South-East Program Board at its 17 October 2008 meeting. The committee has deferred making a recommendation on Bald Hill Drain pending receipt of this environmental impact assessment.

Providing this independent impact study is thorough and rigorous, the committee will make a recommendation after considering the report. Until this impact assessment document is completed and considered, it is the committee's recommendation that no further steps should be taken toward the construction of Bald Hill Drain or Reflows.

The inquiry generated a great deal of public interest. We received more than 25 submissions and took evidence from more than 25 witnesses. I thank all those who took the time to prepare submissions, appeared before us to give evidence, or met with us on our site visit to the Upper South-East.

I also acknowledge the contribution of fellow members of the committee, Mr John Rau MP, Presiding Member; the Hon. Graham Gunn MP; the Hon. Sandra Kanck MLC; the Hon. Stephanie Key MP; the Hon. Caroline Schaefer MLC; and the Hon. Lea Stevens MP for their contribution to this inquiry.

Although the committee's report includes an alternative recommendation from the Hon. Sandra Kanck MLC, I commend all members for the cooperative spirit in which this inquiry was conducted. Finally, I thank members of the parliamentary staff for their assistance throughout this inquiry. I commend the report to the council.

The Hon. SANDRA KANCK (20:28): It is extraordinarily sad to consider that the South-East in general, and the Upper South-East is part of that, was comparable in extent to the Kakadu wetlands in the Northern Territory before white man came along. Only 0.6 per cent of it remains,

and drain construction, particularly this last one (the West Avenue watercourse) has the potential to further damage one of the few remaining wetlands.

Central to this inquiry has been the issue of whether or not the committee should accept or oppose the development of the final deep drain—and 'deep' is the critical issue here. It is known interchangeably as the West Avenue Drain or the Bald Hill Drain, and it is part of what we have called the USE (Upper South-East Drainage Scheme). I will probably on occasion refer to it as USE or USEDS (Upper South-East Dryland Salinity Program), and occasionally when I am talking about the people, I call it the useless program.

What little that is left undamaged in the program ought to be preserved, and I think the committee had an opportunity to recommend to the minister that this final drain ought not to go ahead.

Unfortunately, despite the strength of the evidence, the committee has chosen not to recommend this way, so I have had a dissenting statement incorporated in the report. In it, I have recommended that the West Avenue drain not be constructed. I know that there is a small group of landholders who argue that, as they have paid their levies, they are entitled to have a drain but my dissenting statement addresses that issue by also recommending that, in association with discontinuance of construction, the landholders in this subregion who have paid their levies have them all refunded.

The committee was presented with evidence that no wetland in the USE scheme is in a better condition than it was prior to the construction of drains, although the scheme managers argued that the Morella Basin had benefited—in which case, if they are correct, then it is the sole beneficiary. However, even this claim is debatable given that the current salinity level in the Morella Basin is 27,000 ECs—a fact the scheme managers failed to disclose when they appeared before the committee and when I asked them to give me examples of a wetland that had been improved as a consequence of the scheme.

I see this as being typical of the lying by omission that this committee came to expect from the project managers and agents of DWLBC. To put it in perspective, 27,000 ECs is more than half the salt level of the sea and, to put it further into perspective, the salinity disposal basins in the Riverland that are designed to collect salty water have a salinity level that is approximately one-third of sea salinity, so we are talking about a wetland that now has water in it that is of a higher salinity level than disposal basins in the Riverland that are deliberately designed to collect saline water.

When you think that the water in the Morella Basin ought to be fresh, one would hardly claim this to be a positive outcome, yet that is what these people from DWLBC told the committee just a few weeks ago. The scheme managers have an extraordinarily poor environmental record. On their watch, the yarra pygmy perch has disappeared at Henry Creek. In the past two years it has become extinct. That is hardly a proud record, and these are the people we are now going to trust apparently to build another drain.

Waiting for the results of some sort of impact assessment as the Natural Resources Committee intends now to do is a pointless exercise. The evidence is there now about the impact of earlier drains on the natural environment. To trust these scheme managers to have another go would be foolish in the extreme. They have presented many examples of behaviour which show they are not to be trusted.

In that regard, this report has once again revealed a rogue element in the Department of Water, Land and Biodiversity Conservation. The Natural Resources Committee uncovered this form of behaviour with our Deep Creek inquiry where we found what we can best describe as an uncooperative department which seemed more intent on destroying the environment than supporting it, when conserving the natural environment is in fact its charter. These were different public servants this time but from the same department and it seems to me that they have been infected by the same virus.

During the course of this inquiry the committee found difficulty in getting hold of reports, just as with the Deep Creek inquiry but, fortunately, with the advent of a new minister and a new chief executive of the department, the 30 reports we had sought five months earlier were able to be found in a very timely fashion and forwarded to the committee. But without that intervention we would probably still be waiting.

We had drawn to our attention the doctoring of minutes from the Environmental Management Advisory Group (EMAG), which has been obviously set up to advise the people who run this program. We had evidence given to us from a member of DEH in the South-East, Mark Bachmann, in an email that he sent to them in 2006 in which he said:

> I would like to draw particular attention to the fact that previous advice provided by EMAG to the board has been modified...The actual nature of the modifications concerns me less than the fact that a paper endorsed by our Committee has been 'doctored' after it was signed off and submitted to the Program Board's December meeting. The date on the version provided to us this week still reads as per the original paper...Nov 8th.

Another local landholder, James Darling, in his submission to the committee, asked:

> Obviously a number of crucial questions arise about the circumstances in which changes to a document such as this could occur. What other documents have been given similar treatment, over what time period, and by whom? What does behaviour like this say about the overall governance of the project? How can anyone trust the claims, assertions, statistics and general information provided by the USE project when behaviour like this takes place? How can anyone, the minister included, trust the decisions of the program board in the light of behaviour like this? The unauthorised altering of the official work of an independent advisory group calls into question the integrity of governance of the USE project.

I echo those questions. They may have been rhetorical on the part of James Darling, but they are questions that really need to be asked. Unless they can be asked, you cannot trust the people who administer this project. I will just talk about the particular set of minutes that Mark Bachmann was referring to. I will read bits of the original and then bits of the 'remodelled' minutes. When I asked the people from DWLBC, who were attending the committee a couple of weeks ago, they became very offended when I used the term 'doctored'; so, we are now using the term 'remodelled'. The minutes state:

> a. Deep drainage on the eastern side of the flat no longer proposed at Winpinmerit Section alignment.

This next word is very important—

> b. Shallow drainage in the western/central part of the flat immediately adjacent to the edge of approximately 4,000 hectares of floodplain vegetation, much of which is protected under the Heritage Agreements...

When I read you the doctored minutes, you will find that b. has been completely removed. The original minutes of EMAG go on to state:

> c. The proposed engineering of drains such that:
>
> i. saline groundwater is kept separate from fresh surface flows, recognising that deep drains elsewhere have been unable to deliver the quality or quantity of water required by the wetlands.
>
> ii. weirs could be used to reduce the proportion of surface flows lost.

This is how all of that then reappeared in the doctored minutes. I am not afraid to call them doctored. They state instead:

> Deep drainage—

there is no mention of shallow drainage now—

> on the eastern side of the flat and along the proposed Winpinmerit Section alignment. Deep drain to be constructed with containment banks on both sides of the drain and pipe crossover points to prevent surface water from entering ground water drains. Ground water drain also has weirs to prevent the drain being effective in winter/spring to ensure surface flows can be generated from the flat. In this way the ground water drain is a 'part-time' drain acting only in summer/autumn months when evaporation exceeds precipitation.

For those who are either reading this or listening to it, you will note that the last sentence I read was nowhere in the first lot of minutes that the EMAG people gave to the project managers. If that is not doctoring, what is?

The committee has, unfortunately, drawn back from criticism of the USE program managers on the basis that there is a new minister and a new chief executive. Its view is that the new minister and chief executive should be given an opportunity to bring this culture under control. As a consequence, there are no findings in this report in regard to this behaviour.

I have a different view on this. We need to highlight it and bring it to the attention of the parliament and the minister every time it happens. If we do not; if we just leave it on the basis that someone might accidentally stumble across that if they read all of this report, then that sort of behaviour can only continue.

One of the landholders in the Upper South-East who has already had a deep drain imposed on his property, Mr Frank Burden, in recent correspondence to the committee had this to say in regard to evidence given by the program managers:

> Witnesses who confidently claim that science and analysis demonstrates that the proposed Bald Hill Drain will not impact on local surface water flows to wetlands stretch credibility to the limit.
>
> Either groundwater drains are effective at lowering watertables, in which case surface water availability will be compromised or groundwater drains are ineffective and thus cannot be justified.

I think that simple analysis says it all. I am deeply concerned that this assessment that is to be undertaken by DWLBC will not be independent and that, when the committee receives that information next year, it will bend to their will. However, apart from that one major difference, I am supportive of the report. It has been watered down in places where I would much rather it had not been, but I do tend to be a lone voice on this issue.

This is the last time that I will be able to speak to a report of the Natural Resources Committee and, even though I have been disappointed in some aspects of the report, I commend the members of the committee for their willingness to at least keep asking questions.

The Natural Resources Committee has become a highly efficient committee due, in no small part, to the efforts of the committee secretary, Mr Knut Cudarans, and the research officer, Patrick Dupont. I thank them and all the members of the committee. I have very much enjoyed working with them. I hope that the person whom my party chooses to replace me will find this committee equally as satisfying as I have and will also pursue the injustices that have occurred in association with this project with the same passion that I have.

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

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

The Hon. B.V. FINNIGAN (20:42) (on behalf of the Hon. I.K. Hunter): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

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

The Hon. B.V. FINNIGAN (20:42): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

SELECT COMMITTEE ON FAMILIES SA

The Hon. C.V. SCHAEFER (20:43): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

SELECT COMMITTEE ON SA WATER

The Hon. M. PARNELL (20:43): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

SELECT COMMITTEE ON PROPOSED SALE AND REDEVELOPMENT OF THE GLENSIDE HOSPITAL SITE

The Hon. J.S.L. DAWKINS (20:43): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

SELECT COMMITTEE ON STAFFING, RESOURCING AND EFFICIENCY OF SOUTH AUSTRALIA POLICE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (20:44): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (20:44): I move:

That the time for bringing up the committee's report be extended until Wednesday 17 June 2009.

Motion carried.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (VOLUNTARY EUTHANASIA) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November 2008. Page 639.)

The Hon. SANDRA KANCK (20:45): I am delighted that, in this my final week of parliamentary sittings (well, I think it might be), I have an opportunity again to address the issue of voluntary euthanasia. I begin my comments by addressing those members who are convinced that they will never, ever desire to access voluntary euthanasia under any circumstances, and I ask them a question: does your personal conviction that you will not need it—or do not want it—give you the right to impose that view on others? Should your Christian belief system be imposed on the small number of people who might, under certain circumstances, want to end their lives using legal voluntary euthanasia?

I respect your right not to access it. I will not impose it on you, so why then do you not have the mutual respect of others who might need it in the future? In terms of my understanding of the Christian religion, a religion that purportedly places a high value on love (and I think that, from my upbringing, St Paul said that the greatest of these is love), a compassionate response to people with unremitting suffering ought to be forthcoming. The God I was brought up to believe in would not have wanted to see people facing suffering that cannot be alleviated. Some people in our churches and some of our politicians speak of a right to life, but a majority of parliamentarians and a minority of moralists who support them are insisting on an obligation for people to continue living, insisting on an obligation for some to die in pain and insisting on an obligation for some to die without dignity.

I ask those members who are considering voting against this bill: when did a right to life become an obligation to continue living under any circumstances? If we are religious we should use the beliefs to inform our decisions along with science and evidence, but we should not let religion make the decision for us. Having twice introduced my Dignity in Dying Bill (a bill for a referendum on voluntary euthanasia and a motion in support of voluntary euthanasia) and supported Anne Levy's Voluntary Euthanasia Bill (and produced dissenting recommendations about that bill when it was referred to the Social Development Committee), I am sure that most members in this place are aware that I am passionate about legal voluntary euthanasia.

It is 13 years since the first voluntary euthanasia legislation was introduced in South Australia by John Quirke. I had expected that it might take 10 years to get something passed, so I am very disappointed that no progress has been made and that yet another bill is necessary. After all, it took only 10 years of motions and bills for women to get the right to vote in the late 19th century in South Australia. When I moved a motion about voluntary euthanasia and suicide two years ago, there was much controversy, but I quote a letter to the daily newspaper supporting my action, as follows:

> As a health carer it has become clear to me that, after all of the technological interventions required to assess and reach the diagnosis, it is the person left with the multiple organ system failure who is left to decide when to let go and whether or not their bank balance is enough to pay for another day.

Some will tell you that pain can be alleviated (at least in most cases) and, therefore, voluntary euthanasia is not needed. But it is not pain that is the issue for most people seeking voluntary euthanasia, although it might be a component. The multiple organ system failure quoted above is an example. Palliative Care Australia's policy statement states:

> Palliative Care Australia:
>
> - Acknowledges that while pain and other symptoms can be helped, complete relief of suffering is not always possible, even with optimal palliative care.

- Recognises and respects the fact that some people rationally and consistently request deliberate ending of life.

Unfortunately, Palliative Care Australia offers no solution to that, just a recognition that palliative care will not always be able to reduce the suffering.

Around the world, support for voluntary euthanasia is gathering strength, the most recent success occurring just three weeks ago with a majority vote for Washington's 'Initiative 1,000'. That will be physician-assisted suicide, similar to the law in Oregon which has been in place since (I think) about 1995. The Netherlands, Switzerland and Belgium have legal voluntary euthanasia and there are degrees of it in other parts of the world. In Germany, assisted suicide is not a crime, although it cannot involve a doctor.

Despite being a devout Roman Catholic society, the High Court of the Republic of Colombia declared assisted voluntary euthanasia to be legal as far back as 1997, although the parliament has not progressed guidelines that would be required for its implementation. In Uruguay, the criminal code allows judges to forego punishment for mercy killing under certain conditions; and in Norway and Denmark, extenuating circumstances may result in charges of assisted voluntary euthanasia or physician-assisted suicide being withdrawn or dismissed by the courts.

In South Australia, the act which this bill is amending, does allow disconnection from a life support system. The Consent to Medical Treatment and Palliative Care Act also allows doctors to provide terminal sedation (as it is known in the trade). This means that a doctor can up the medication to alleviate the patient's discomfort, even though it might mean the earlier death of the patient, and provided there is no stated aim of bringing about an earlier death, the doctor is protected from any legal action. That has now been in place for 13 years and it has provided a degree of comfort to many sufferers and their families, and I have not ever heard a single complaint about its operation.

It is not voluntary euthanasia, however, and its value to suffering people is dependent on their affliction. If you have lung cancer and you have been hooked up to some technology to allow you to keep breathing, you can be asked to be disconnected from that machine, but if you had the bad luck, for instance, to develop ovarian or testicular cancer, you would not be on any life support system and therefore could not be disconnected from it. If you have intense pain, you can keep asking for the morphine levels to be upped until it ultimately kills you, but if the pain you experience is manageable or you have none at all, then that way out is banned for you.

In its current form, the consent act serves a purpose but it is limited. Inserting provisions similar to my dignity in dying bill in this act is a good way to go. I see this bill as being a great deal better than the one which has been introduced into the House of Assembly by the Hon. Bob Such which has extremely limited application. Under the objects of his bill, it states:

> (a) to give a limited number of competent adults who are in the terminal phase of a terminal illness and who are suffering unbearable pain the right to make informed choices about the time and manner of their death;

I ask: what about the person who has oedema and has fluid running out of their skin and basically cannot leave their house because of it? What about the person who is vomiting up their own faeces and whose vomiting cannot be controlled? There are numerous awful examples like this and such people would not be able to end their lives in a slightly dignified way under the Hon. Bob Such's bill. As I say, it really has extremely limited application.

With regard to this bill, I think that the provision that the Hon. Mark Parnell has put regarding advance request is a little tough. He is requiring anyone who has an advance request under his legislation to renew that request every five years. I think that is way too short a time line. We can get a driver's licence that lasts for 10 years, and you can do a hell of a lot more damage with a driver's licence in 10 years than you can having a written advance request sitting in your bedside drawer.

Previously I had a directive under the Natural Death Act, which I signed almost 20 years ago, and only a few months ago did I replace that with a medical power of attorney, and I see no good reason why that earlier directive should not have remained in force until I tore it up. I do think that this is a bit unreasonable, and I suggest that other members might consider amending the bill to extend the time of applicability to at least 10 years.

The Hon. Mark Parnell referred in his explanation to opinion polls showing that 81 per cent of South Australians support voluntary euthanasia, but it is actually better than that. The particular Newspoll (the most recent one published in early 2006) showed 81 per cent support in the metropolitan area and 84 per cent in the non-metropolitan area, so I would take a guess that it probably means about 82 per cent.

The next of those Newspolls will be due for publication at the beginning of 2011. They became so predictable that they started conducting them once every year, then they went to every two years, and now they have gone to every five years because, each year, the level of support goes up and up and it is, as I say, very predictable.

In regard to those polls—and I am pre-empting anyone here who wants to try this trick—I have frequently heard opponents of voluntary euthanasia claim that, of course people will answer yes if they are asked whether they support voluntary euthanasia, because they think that they are being asked whether patients should be able to be disconnect from a life support system. The people who tell that story should know better, because the actual question that is asked—and it has been asked in every poll that has been conducted by Newspoll for the past 20 years—is:

> If a hopelessly ill patient, experiencing unrelievable suffering, with absolutely no chance of recovering, asks for a lethal dose so as not to wake again, should a doctor be allowed to give a lethal dose or not?

So, although I will not be here when the Hon. Mark Parnell will ask for this to be a vote, I do caution people not to try that one on.

Returning to the bill itself, I was a little surprised and, I have to say, a little offended by the Hon. Mark Parnell's comments that, while the other VE bills that have been introduced in this parliament have focused upon the protection of doctors, his is focused upon the person suffering. I invite him to have a look at my dignity in dying bill, because I assure him that it really was about the suffering person. Admittedly it did have 14 hoops to jump through in order for the person to access voluntary euthanasia but, given that the opponents of voluntary euthanasia usually proclaim that there are not enough safeguards, I found it necessary to make it just that bit more difficult for the patient—

The Hon. J.S.L. Dawkins: I thought it was more than 14.

The Hon. SANDRA KANCK: No; 14 was the number of hoops, yes. I had that many hoops in order to appease the doubters. From my cursory glance at this new bill, I think that the Hon. Mark Parnell has put in a similar number of hoops. He will find that, despite that, there are some in this chamber who will still say that there are not enough, that the bill is not tight enough, that it is not stringent enough. One can put so many hoops into legislation such as this that the person will die in the process of trying to get through them all, but I think one has to strike a balance and I thought that 14 hoops were enough. Despite that one criticism of the Hon. Mark Parnell, I take the opportunity to commend him for introducing this bill, and I hope that there will be enough members with common sense, compassion and courage to support him when he takes it to that vote.

Debate adjourned on motion of Hon. J. Gazzola.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Hon. M. PARNELL (20:59): I move:

1. That 10 December 2008 is the 60th anniversary of the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights;

2. That 9 December 2008 is the 60th anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide;

3. Recognises that the realisation of the rights in the declaration is a responsibility of all, including those in this parliament;

4. Pays tribute to those Australians who played leading roles in the development and adoption of these important instruments of international law and who, since then, have contributed to their implementation;

5. Recalls that the adoption of the declaration and the convention were a response to the suffering of those who had experienced human rights violations, especially the 'barbarous acts' perpetrated during World War II;

6. Recognises, with regret and disappointment, that in the intervening 60 years, violations of human rights, including acts of genocide, have continued to occur around the world;

7. Affirms that 'the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want [is] the highest aspiration of the common people';

8. Declares its own 'faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women';

9. Commits itself to the principles contained in the Universal Declaration of Human Rights as 'a common standard of achievement for all peoples and all nations' and to their promotion throughout South Australia.

This motion notes that 10 December 2008 is the 60th anniversary of the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights. As members will know, the Universal Declaration of Human Rights is the basic international pronouncement of the inalienable and inviolable rights of all members of the human family. The declaration was proclaimed in a resolution of the United Nations General Assembly on 10 December 1948 as the 'common standard of achievement for all peoples and all nations' in respect for human rights. It lists numerous rights: civil, political, economic, social and cultural, to which people everywhere are entitled.

Originally, the universal declaration was conceived as a statement of objectives to be achieved by governments and, as such, was not part of binding international law. However, the fact that it has been accepted by so many states has given it considerable moral weight. Its provisions have been cited as the justification for numerous United Nations actions and have inspired or been used in many international conventions.

The celebrations for the 60th anniversary of the Universal Declaration of Human Rights is being coordinated by a range of non profit community groups. I will quickly go through the list, because they should be commended for bringing this important date to our attention: the Human Rights Council of Australia, A Just Australia, Amnesty International Australia, the Australian Lawyers for Human Rights, Brotherhood of St Laurence, Diplomacy Training Program, the Edmund Rice Centre, Get-Up, Human Rights Law Resource Centre, Oxfam Australia, Public Interest Advocacy Centre, Rights Australia and World Vision.

I note that, whilst we are celebrating the 60th anniversary, back in 1988 the 40th anniversary was also celebrated around Australia, including in South Australia. The anniversary on 10 December has included the High Commissioner for Human Rights calling on all states to undertake their own programs of activities to mark this anniversary. I note that the current Rudd Labor government has taken the anniversary seriously and has initiated a number of human rights reforms.

Nevertheless, there are other reforms that are still needed. There are still international treaties and protocols that we have not ratified. During the Howard government years, Australia, which had traditionally been a leader in human rights, was moved into an oppositional role in relation to most of the major human rights institutions and initiatives. The result of this was that our international allies, our traditional allies, were at first confused by Australia's response and later they were alienated, because they were accustomed to a strong Australian commitment to an international human rights system and they could not understand what the Howard government was up to.

I do not want to speak at great length on this anniversary. The motion pretty much speaks for itself, but I do want to quote a few words from our current federal Attorney-General Robert McClelland, who in a speech on 7 August at the Human Rights Law Resource Centre entitled, 'Strengthening Human Rights and the Rule of Law', said the following:

> It is timely, sixty years on, to draw inspiration from the declaration as we review our guiding principles for human rights in Australia and as we work to take our commitment to the next level…as federal Attorney-General, I consider the primacy of the law, informed by human rights, as fundamental to Australia's democracy. Most of us have grown up in Australia, or chosen to live here, knowing that our democracy is strong. But democracy is more than placing voting papers in a ballot box. True democracy must be underpinned by a respect for human rights. The way we govern ourselves and conduct our affairs as a democratic nation hasn't happened by chance—we need to continually work at it to keep the rule of law in good order and to ensure social inclusion.

I know that when issues like this are put on the *Notice Paper* of a state parliament members often think, 'Well, what has this got to do with South Australia?' My motion includes the comment that as a state government we should commit ourselves to the principles contained in the Universal Declaration of Human Rights, and as a parliament we should promote it throughout South Australia.

I note that it might not be a legal obligation on the part of our decision makers, be they ministers or bureaucrats, to comply with international treaties. In fact, we are the only state in Australia that has a special law that says our ministers and public servants do not have to follow international treaties.

That is an act of this parliament that I sought to remove some years ago and I will, no doubt, bring that measure back again. I think that it is an embarrassment. I think that, as a state, we can commit ourselves to the furtherance of human rights, and getting that particular law—the Administrative Decisions (Effective International Instruments) Act—off our statute books would be a very good start. I commend the motion to the council.

The Hon. SANDRA KANCK (21:05): I have enthusiastically seconded this motion because I am delighted to support it. I am going to focus on point 9 of the motion. In 2005, I introduced into this parliament South Australia's first ever human rights bill. I did so in the absence of any initiative at the federal level and following the successful passage of a bill in the ACT parliament. Last year, Victoria also successfully passed legislation. In both cases, the world as we know it has not fallen apart, as some of those opposing such legislation would have us believe.

However, when my bill was considered in the committee stage 15 months after I had introduced it, to their shame, both the Labor and Liberal parties in this place at this time voted every clause of the bill down so that we were left with only the title. I think that was absolutely shameful and, in time, I think historians will look at that action and condemn those MPs who were involved.

The principles in the UN Declaration of Human Rights—some of which are quoted in this motion—are self-evident, yet Australia is now the only western democracy without a Bill of Rights. Australia is a signatory to the UN Covenant on Civil and Political Rights. Despite this, in recent years, we have seen a reduction of human rights in Australia. This has ranged from the incarceration of asylum seekers to the passage of terrorism legislation at both state and federal level.

It was three years ago that this chamber passed anti-terrorism laws that enabled suspects to be held for 14 days without charge, and control orders that restricted freedom of movement were enacted to prevent attacks on the scale of the Twin Towers bombing by a terrorist mastermind such as bin Laden. These laws were rushed through with opposition only from the Democrats. A majority of members in this chamber opposed a motion to protect the human rights of David Hicks, thereby thumbing their noses at Articles 8, 9, 10 and 14 of the Universal Declaration of Human Rights. These articles concern the right to an effective remedy for acts violating a person's fundamental rights: arbitrary arrest, detention and exile; a fair and public hearing by an impartial tribunal of any criminal charges against a person; and the right to seek asylum in another country.

Having concluded that the parliament will not defend human rights, the government has clearly decided to go for broke in its pursuit of the law and order vote. The Serious and Organised Crime Act was passed earlier this year. This enables a person to be sent to gaol for who they know, not what they do, and on the basis of secret evidence. In doing so, it violates a number of Articles of the Declaration of Human Rights, including freedom of association and freedom of assembly in Article 20; conviction on the basis of secret evidence in Article 11(2); and the presumption of innocence in Article 11(1).

The Criminal Assets Confiscation Act passed by the parliament last year violates Article 11(2), which concerns the presumption of innocence and a public trial, and Article 27(2), which concerns the protection of material and moral interests arising from scientific, literary or artistic productions.

Only yesterday, we passed legislation to give police the power to bar people from licensed premises, and I supported that part of the bill; but part of it will give police the power to use criminal intelligence, or secret evidence, to bar a person possibly from every licensed premises throughout the state. That measure also violates Articles relating to the presumption of innocence and public trials. It has been pointed out that the concept of criminal intelligence is already in the Liquor Licensing Act—and that is true. It was introduced in 2005. It is arguably another child of the fear of terrorism and, unfortunately, yesterday we had the opportunity to address that matter and we failed to do so in this place.

When the anti-terror laws were first passed the Democrats warned that we were on a slippery slope. In light of the legislation that has been passed in the past three years we have been proven right. In the space of a few short years we have turned the legislative tools designed to fight

terrorism into tools to fight common criminals in nightclubs. I remind members that the human rights in this charter were not developed by idealistic dreamers in a trendy inner-city cafe. They were the bitter lessons of history, and recent experience for the drafters of these rights. Some of the drafters of the rights would have studied the lessons of the English, French and American revolutions, but others would have had vivid and recent memories of the gas ovens of Auschwitz, the bloody town square massacres of the Spanish Civil War and Stalin's show trials of the 1930s.

Many in our society now argue that the threat of bikies and terrorists means that we can no longer be precious about established rights, but these rights were drafted by people who dug children's bodies out of mass graves, saw horrendous torture and lived through bombing raids that turned cities into rubble. The drafters of these Articles knew a lot more about terror than we do—and, hopefully, than we ever will do. These rights are a precious gift from an amazing group of people who 60 years ago saw great suffering and concluded that the idea of having human rights could help to protect future generations from ever having to experience the same as they had.

I find it strange that we celebrate our military history as a fight for freedom and democracy but then we trash the very gifts presented to us by the people who fought in these wars. These rights, so hard won, should not be thrown away so easily, as this parliament has continued to do over the past four or five years. If we are going to violate these rights in the name of ordinary policing, on what grounds can we ever lecture countries—which are often struggling with real threats to their security—on how they should treat dissidents and political opponents?

I make an observation now about how this paranoiac obsession with crime is changing our culture. Not long ago the police would need a very good reason to accost a person going about their daily business. There was a presumption of freedom. Now you can be scanned at the airport, sniffed in Rundle Mall, fingerprinted in a nightclub and have your car stopped and searched. The government says that if you have nothing to hide you have nothing to fear—which means that we are all under suspicion and all under surveillance. In fact, the balance has now changed. We now have an institutionalised culture of suspicion.

Violent crime is a serious problem, but we must put the threat we face into context. The authors of these human rights Articles we are discussing turned the terror of war and genocide into an instrument of hope. They were a generation of moral and intellectual giants. Our generation, faced with much smaller threats, is retreating from the idea of human rights. History will judge most members of this parliament to be a bunch of moral pygmies. I hope, therefore, that in the not-too-distant future members of this parliament will—as clause 9 in this motion states—commit themselves to the principles contained in the Universal Declaration of Human Rights; that would be a truly wonderful thing for South Australia.

Debate adjourned on motion of Hon. J.M. Gazzola.

COPPER COAST DISTRICT COUNCIL

Adjourned debate on motion of Hon. S.M. Kanck:

That this council—

1. Notes the serious and continuing allegations about the District Council of the Copper Coast in relation to the fairness and transparency of the process for the sale of council land in Owen Terrace, Wallaroo;

2. Further notes the limitations of the inquiry being conducted by the Office for State/Local Government Relations, in particular the fact that it is dependent on information provided by the District Council of the Copper Coast; and

3. Therefore refers the matter of the process used by the District Council of the Copper Coast in divesting itself of council land in Owen Terrace, Wallaroo, to the Ombudsman, under section 14 of the Ombudsman's Act, with particular reference to—

   (a) whether all parties expressing an interest in the purchase of council land on Owen Terrace received equal and fair consideration;

   (b) whether information provided by the council to account for its decisions was fair, accurate and consistent;

   (c) whether any councillors that voted on decisions of council related to this matter had an actual or potential conflict of interest and, if they had, whether this was declared;

   (d) whether the decision of the council on the divestment of council land complied with the council's stated specifications and objectives for the divestment of the land on Owen Terrace; and

(e) any other matter about the administration of the District Council of the Copper Coast identified in this inquiry that, in the opinion of the Ombudsman, is important to bring to the attention of the government and the parliament.

(Continued from 12 November 2008. Page 644.)

The Hon. R.P. WORTLEY (21:14): I rise to oppose this motion. As honourable members would be aware, minister Gago has informed the council that she has received complaints in relation to the District Council of the Copper Coast and that those complaints are being examined, and she has updated the council on the progress of such matters. The minister has made it clear that she intends to follow the proper and appropriate processes of inquiry in dealing with the complaints received. It is imperative that such processes be able to follow their due course.

Upon receipt of a complaint in June this year in relation to the process undertaken by the District Council of the Copper Coast to sell land located at Owen Terrace, Wallaroo, to Leasecorp for development of the Wallaroo town centre (which includes Woolworths), the minister sought advice from the Crown Solicitor's Office on the matter. Since that time, the Crown Solicitor's Office has been examining the matter and gathering relevant information. On the basis of advice from the Crown Solicitor's Office, the minister has written to the council on a number of occasions requesting certain information, and the council has always provided such information promptly.

Recently, the Crown Solicitor's Office recommended that the Government Investigations Unit be instructed to obtain further necessary information. Accordingly, a representative of the Government Investigations Unit recently visited the council to conduct further inquiries. The government investigator will provide a report on the matter to the Crown Solicitor who will, in turn, provide advice to the minister.

It should be recognised that the resources of the Office for State/Local Government Relations, the Crown Solicitor's Office and the Government Investigations Unit are being utilised to examine the very matter that the Hon. Sandra Kanck wishes to refer to the Ombudsman. These resources have been engaged in dealing with the matter for some time, and a parallel inquiry by the Ombudsman risks the duplication of work already being done.

At this point in the process, it is important to enable the Crown Solicitor's Office to complete its preliminary inquiries into this matter and to provide the minister with advice before making a decision on whether other avenues are warranted. Advice from the Crown Solicitor's Office is crucial before determining whether initiating a formal investigation, pursuant to section 272 of the Local Government Act 1999, is warranted or appropriate.

An investigator appointed by the Minister for State/Local Government Relations under that section, for the purposes of this investigation, has the power to require answers to questions, the power to require the production of books, papers or relevant records for examination and the power to retain those records. A person who refuses or fails to comply with such requirements is guilty of an offence, with a maximum penalty of $10,000. For these reasons, the government opposes the motion of the Hon. Sandra Kanck.

Whilst I appreciate her efforts in placing this important issue before the council, I believe that the current direction of inquiry is appropriate and that it should be allowed to run its course in the interests of fairness to the complainants, who require a proper response, and the officers charged with looking into these matters, and that they should be permitted the opportunity to provide well considered advice.

The Hon. S.G. WADE (21:18): I rise to speak to this motion on behalf of the Liberal members of the council. The Liberal Party will not be supporting the motion. However, we are not dismissive of the concerns raised. We share the Hon. Sandra Kanck's determination to ensure that the concerns raised are appropriately addressed. However, we differ on the appropriate process to that end.

The District Council of the Copper Coast, which encompasses a region including Wallaroo, Kadina and Moonta, is experiencing significant growth and development. A series of concerns and allegations have been raised against the council in relation to activities such as The Dunes development, the proposed community wastewater scheme, planning controls and governance issues. A matter involving The Dunes development is the subject of an investigation by the Anti-Corruption Branch. I stress that this motion does not relate to any of these matters directly, but they are part of the context.

The local council has been working for the redevelopment of the Wallaroo town centre and has decided to support a $30 million proposal by Leasecorp, which involves the sale of council-owned land. A number of concerns have been raised in relation to the project.

In response to those concerns, on 11 November 2008, the day before the Hon. Sandra Kanck moved her motion, the Minister for State/Local Government Relations made a ministerial statement to this council in which she announced, first, that following an Office for State/Local Government Relations examination of the redevelopment she had sought the advice of the Crown Solicitor's Office, and the Crown Solicitor's Office had instructed the Government Investigations Unit to acquire information. The minister advised that a formal investigation under section 272 of the Local Government Act 1999 had not been commenced at that time.

The minister advised the Legislative Council that, secondly, the District Council of the Copper Coast had agreed to a ministerial request to undertake an independent due diligence and governance audit to assess the council's statutory compliance with the Local Government Act and other relevant legislation. The council has engaged Wallmans Lawyers for this task. The council was to undertake an intensive community consultation engagement workshop for its elected members and senior staff. I understand that that was planned to take place today; in fact, I imagine it is happening as we speak.

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: The minister confirms that it is, so I wish them well. On the following day, 12 November 2008, Ms Kanck moved the motion we are debating today. It proposes an Ombudsman's inquiry as an alternative to the preliminary inquiry which the minister has launched and which could, in turn, lead to a full ministerial investigation.

The Liberal Party will not support the motion. We do not support a parliamentary reference to the Ombudsman at this stage. The concerns raised in the motion are already under investigation by the government, and we consider that the approach it has taken is an appropriate response. We accept that it is not the only response available, but it is appropriate in the circumstances, and we await the outcome of those processes before we consider what other action may be appropriate.

In relation to the prospect of an Ombudsman's inquiry, I stress that a parliamentary reference is not the key to accessing the Ombudsman for those who have concerns. I understand that the Ombudsman has already received complaints from individuals relating to the redevelopment. Whilst it is reported that some are not sufficiently affected by the redevelopment to invoke the jurisdiction of the Ombudsman, we understand that there are such individuals and that they could act to seek the Ombudsman's involvement without a parliamentary reference. However, I say to the government that this motion puts it on notice.

If inquiries and investigations are not credible and reliable, the opposition may be more favourably disposed to motions proposing alternative action in the future. In fact, I must admit that I am more favourably disposed than I was yesterday morning, when the parliamentary Liberal Party decided not to support the Hon . Sandra Kanck's motion, because later that day, in response to a question without notice on the Copper Coast from the Hon. Sandra Kanck, the Minister for State/Local Government Relations could not resist a characteristic Labor verbal barrage of the Hon. Sandra Kanck. However, amongst the spray, she clouded the situation and, I believe, damaged the credibility of the process. Referring to what she calls the 'second set of information' from the council, the minister advised:

> That information is now back in my office and being looked at by crown solicitors. I have not received any further advice as to whether the information received to date would constitute a good reason to proceed with the formal investigation.

What is the minister saying? Is she saying that the information has been received by the Government Investigations Unit; if so, why did she call it 'my office'? This is an investigative unit in another minister's department which is meant to be independent of ministerial officers. Is the investigations unit collecting information not for her but for the Crown Solicitor's Office as part of its process to prepare advice for the minister? I urge the minister to be clear and consistent in providing information on the process. It is vital that these inquiries are credible and above board. I also indicate that the opposition expects full disclosure of the outcomes of the investigation.

On a related matter, I also indicate that the opposition is of the view that it is a bit rich for the government to criticise the Copper Coast council for a lack of expertise in consultation. Let me use as an example the government's treatment of the Rural City of Murray Bridge. The new prison

was announced in September 2006. It came as a complete surprise to the local council, which had been told by the government that it would be informed before any announcement was made.

In fact, at a meeting with council in June 2006, the CEO of the Department for Correctional Services, Peter Severin, informed council that there were no plans for any site in South Australia at the time. In fact, he undertook to engage the council if and when Murray Bridge became an option for the new location. Within months, without any further advice to the council, the government announced the prison as the new site.

The council has repeatedly expressed its frustration at the need to deal with so many different ministers for various aspects of the development. The government has proved unable effectively to coordinate its work with the council. The council has suggested that coordination and cooperation would be facilitated by the council's having an observer present at the government's cross-agency steering committee meetings. This request has been refused.

Recently, the Mayor of the city happened to be in the gallery in the other place on the very day the Treasurer announced a major delay in the project; it was news to him. Again, the council was not advised. The opposition notes that the Copper Coast council has agreed to the minister's request to see how it could effectively engage with its community. I suggest the government takes a good hard look at itself; I would not be surprised if the Rann Labor government's shortcomings in relation to consultation and community engagement far exceeded that of the District Council of the Copper Coast.

The opposition awaits the outcomes of the government's consideration of the concerns in relation to the Wallaroo town centre development. In the meantime, it will not support this motion.

The Hon. M. PARNELL (21:26): I attended the public meeting at Wallaroo some months back, where several hundred residents gathered to express their concerns about the process that the council had gone through in relation to the town centre development—and it is that redevelopment that is the subject of the Hon. Sandra Kanck's motion.

On that occasion I was trying to judge not just the mood of the meeting but also the motivation of the people there; I was trying to work out whether they were several hundred people who were simply misguided loyalists of a local supermarket that had provided the sausages for generations of sausage sizzles and that had supported the community in lots of ways. Was this just a fan club for a local supermarket or did these people have genuine questions and concerns about the conduct of their council in the awarding of certain development rights to another consortium of would-be developers?

The impression I formed was that they were reasonable people asking reasonable questions who were not getting answers. The whole deal had a bit of a smell about it. I do not use the word 'corruption', but others were saying that it was a corrupt process. I went along playing a straight bat and with an open mind, trying to work out whether everything was above board, and it appeared to me that the questions they were raising were legitimate.

It was not my first visit to that area. I had been there before and had discussed issues, the same issues that the Hon. Sandra Kanck raised in her speech introducing the motion—things like the dunes development, the council's approach in relation to the proposed small desalination plant that was to provide golf course water, and a range of other issues as well. It seemed to me that it was more than coincidence that this particular council had issues in its governance arrangements and performance and, in particular, its consultation processes with local residents.

The question then arises: are the measures that have been put in place sufficient to get to the bottom of all these concerns? Certainly, there are matters involving the police, but they form no part of the honourable member's motion. We have also had the minister talking about the workshops for elected members and staff being conducted as we speak; that is a good initiative, but I do not think it is the answer to the questions raised in the honourable member's motion. We also had the independent inquiry being conducted by Wallmans Lawyers in relation to due diligence questions; but, again, I do not see that as the answer because my understanding is that that inquiry will simply look at what the council says it does and will not necessarily explore the views of those on the other side of various disputes and how they say the council has operated.

For me, the next question is whether or not the type of inquiry that the honourable member is proposing will get to the bottom of it. I accept what the Hon. Stephen Wade says, that you do not need a parliamentary referral for the Ombudsman to look at something. However, it seems to me that, in the pecking order of demands on the Ombudsman's time, a request from the parliament

certainly ranks much higher than sundry pieces of correspondence from disgruntled residents which may fall on deaf ears in the Ombudsman's office. I have no information one way or the other as to how the Ombudsman has viewed any request that might have been made.

Certainly, if this parliament were to ask the Ombudsman to look at it, then the Ombudsman would look at it. I think that is an appropriate outcome. I should also say that I have not weighed into the merits of the development—whether one development proposal is better than another. I do not think that this inquiry will look into the merits either. It is not an inquiry about whether Woolworths or Foodland should be the preferred developer. It has nothing to do with whether or not the bowling club should move to a new location. It is simply about whether the processes that have been followed are fair, transparent and lawful.

This is clearly an issue that has divided the community. When the honourable member introduced this motion, one of the three reasons she gave as to why we should support it was that it will enable people to resolve the issue and move on. The honourable member said that it is in the interests of all concerned to resolve this matter so, ultimately, we can move on. I think that is important because, otherwise, we will end up with a repeat of the most remarkable rally that I have ever seen on the steps of Parliament House, where part of the steps close to the House of Assembly entrance were occupied by a couple of dozen people who had bussed down from Wallaroo, representing the bowling club and, I think, a few other sports clubs, who were in favour of the decision the council had made and, on the other side of the steps of Parliament House, again, a couple of dozen people taking a contrary view. There was another solitary protester standing in the middle on a completely unrelated issue.

The local member from another place was looking at constituents on either end of the steps taking a contrary view and wondering where he should stand. I think he spent time talking to the sole protester in the middle on an unrelated issue—I should not say that because the honourable member spent time with both lots of his constituents, as a local member should.

This has clearly divided the community and they do need a circuit-breaker mechanism. The minister has put in place a number of mechanisms that may go part way to resolving it but I think if we want a conclusive outcome then an inquiry by the Ombudsman will help people get some closure and it will determine whether proper processes have been followed and, hopefully, we can put this to bed and move on. It is not that I am reluctant to go back to the Copper Coast; it is a very beautiful part of South Australia and I found the people very hospitable on the several trips that have taken there, and I look forward to meeting them again. However, I would rather it not be to pursue this issue because I think, through supporting this motion, we can help put this issue to bed.

The Hon. SANDRA KANCK (21:33): I am disappointed to hear that this is not going to pass. I think it is important to place on the record that the department's preliminary inquiry is very limited. It is talking only to councillors and council staff and, even then, it is on a voluntary basis. It is where councillors put up their hand to say, 'Yes, I want to talk to these people from the minister's department.' It is also limited because it is not talking to the residents. I therefore think that the opposition's trust in the departmental process may be a little misguided. The Hon. Stephen Wade made the comment that he expects openness and transparency from the government and that the minister will provide all the results from her preliminary inquiry. However, we have not been given a guarantee that that will happen.

I am going to divide on this because I think it is important that the people of Wallaroo see how the members in this chamber line up on this issue. So many of them are saying, 'We must push ahead with this; it is the only way to resolve it.' I will be talking to whoever replaces me next year to encourage them to continue pursuing the matter.

The council divided on the motion:

AYES (6)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Hood, D.G.E.	Kanck, S.M. (teller)	Parnell, M.

NOES (12)

Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Schaefer, C.V.

NOES (12)

Wade, S.G. Wortley, R.P. (teller) Zollo, C.

Majority of six for the noes.

Motion thus negatived.

PRIMARY INDUSTRIES AND RESOURCES SA

Adjourned debate on motion of Hon. A. M. Bressington:

1. That a select committee of the Legislative Council be appointed to inquire into and report upon the conduct of PIRSA in relation to issues that are affecting the livelihoods of those involved in the fishing industry and, in particular—

   (a) (i) the licence fee structure;

   (ii) cost recovery process; and

   (iii) access to right of appeal process.

   (b) The scientific data provided to PIRSA to determine allocations to ensure resource sustainability for the 2008-09 pipi quota for the Lower Lakes and Coorong cockle harvesters;

   (c) The validity and accuracy of catch and effort data and the impact that has on scientific stock assessment to guarantee resource allocation; and

   (d) The rationale of determining allocation for season quota 2008-09 and the impact that has had on individual licence holders and multiple licence holders.

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

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

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

(Continued from 12 November 2008. Page 652.)

The Hon. SANDRA KANCK (21:40): I support this motion. I supported the motion of the Hon. Caroline Schaefer in the previous session in regard to the pipi quotas for the cocklers at Goolwa. At that time I think the chamber heard a lot of examples of what one might class as dubious rationale for having reached the conclusions that resulted in those regulations. Some of it seemed to be extremely arbitrary.

Since that time, we have had the issue raised of the mud cockles at Coffin Bay. Similarly, it seems to me that rules are being made on the run and information that people are seeking is not being made available to them. In some ways it reminds me a little of the problems that the Natural Resources Committee has been having with DWLBC. Maybe I should not be surprised, because I know a lot of people in DWLBC have come from PIRSA and maybe that is where they learnt their tricks.

I think a select committee of this nature would get to the bottom of these processes so that, hopefully, we can stop whatever it is that is happening. I am not sure whether it is stupidity, conspiracy or just plain good old-fashioned obfuscation, but it is very difficult to get to the bottom of what has been happening in relation to both sets of regulations. I think this particular select committee would serve an extremely useful purpose because we are going to see more of this as we find that our marine resources dwindle. In almost every area you look you will find that various fish, crustaceans and so on are reducing because we have over-exploited them. The problem we have seen with two sets of cockles I think is only the beginning of the problems that are going to be dealt with in the future, and we have to ensure that the processes that lead to these regulations are clear, open, transparent and accountable. That is the reason I support the motion to set up the select committee.

The Hon. J.A. DARLEY (21:43): I indicate that I seek to amend this motion as follows. I move:

Leave out all words after 'I. That' and insert—

the Legislative Review Committee inquire into and report upon the conduct of PIRSA in relation to issues that are affecting the livelihoods of those involved in the fishing of mud cockles in the marine scalefish fishery and the Lakes and Coorong pipi fishery and, in particular—

(a) (i) the licence fee structure;

(ii) cost recovery process for fishers; and

(iii) access to right of appeal process.

(b) The scientific data provided to PIRSA to determine allocations to ensure resource sustainability for the 2008-09 quotas for mud cockles in the marine scalefish fishery and the Lakes and Coorong pipi fishery;

(c) The validity and accuracy of catch and effort data and the impact that that has on scientific stock assessment to guarantee resource allocation;

(d) The rationale of determining allocation for season quota 2008-09 and the impact that has had on individual licence holders and multiple licence holders; and

(e) Any other relevant matter.

I will speak briefly to my amendment. I am seeking to amend the Hon. Ann Bressington's motion in two ways. The first is to have the Legislative Review Committee conduct the inquiry rather than to establish a select committee. I think it appropriate for the Legislative Review Committee to hold this inquiry, as it is familiar with the regulations that have come before it regarding the Coorong pipi quota and the mud cockle quota. Rather than establish another select committee, which would have to start from scratch, I think it makes more sense to refer it to a standing committee which already has some understanding of the issues involved.

The second part of the amendment seeks to limit the ambit of the inquiry specifically to the fishing of mud cockles in the Marine Scalefish Fishery and those involved in the Lakes and Coorong Pipi Fishery. I understand the Hon. Ann Bressington's original motion was targeted at concerns raised by those involved in the Coorong Pipi Fishery. I am of the view that any inquiry into PIRSA's processes and procedures should include the mud cockle fishery on the West Coast and Coffin Bay, as well as the Coorong.

My office has been contacted by several mud cocklers from Port Lincoln, and they have raised similar concerns to those raised by their Coorong counterparts about the allocation of quota and the matters taken into account when determining this allocation, as well as the whole consultation process. It seems that the same issues of concern have been raised by both groups, and any inquiry should address and be limited to both of these groups. I urge honourable members to support my amendment.

The Hon. M. PARNELL (21:47): When the issue of the pipi quota came before us as a regulation that we were asked to disallow, I spent some time talking to the officers of Primary Industries. I received a lot of correspondence from different cockle fishers on both sides of the debate, and I came to the conclusion that when moving to a quota-based fishery there were going to be winners and losers; it was a question of swings and roundabouts. As far as I could see, the process was probably about as fair as it could be, given that the size of the pie that had to be shared around was smaller. That was the conclusion I came to in relation to disallowing the regulations, and I voted to not disallow the regulations.

In terms of the motion before us, we have the original motion and we have a proposed amendment. In terms of the original motion, I was not inclined to support a select committee but, now that we have the amendment before us to send it to the Legislative Review Committee, I have a more open mind. However, we still have not heard from either the government or the opposition as to their views on which of those two methods they are going to support.

As I have said, my view was that the allocation process looked fair, but clearly there are a number of people who do not think it is fair, and I guess that view has manifested itself in this motion, which is saying that we need someone else to have a look at it. I do not think a select committee is the way to go. I am open to the idea of the Legislative Review Committee, but I am keen to hear the rest of the debate.

The Hon. C.V. SCHAEFER (21:49): My information to do with this amendment has been somewhat confused. I certainly support an inquiry into the methods used for the allocation of both cockle fisheries within South Australia. As I have said on several occasions, the argument is not

whether or not we have a sustainable fishery, but it is about what is fair and how the methods of allocating licences for this fishery have been arrived at.

I am assured that this matter has been considered by my joint party. I was not there at the time, so I am left somewhat red-faced with this. However, it appears that my party has agreed to this inquiry. The only anomaly appears to be some confusion as to whether it has been agreed that this inquiry goes to the Legislative Review Committee or whether it goes to a select committee. My understanding is that my party has agreed for it to go to the Legislative Review Committee which, I have to say, is a revelation to me. Therefore, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

SELECT COMMITTEE ON THE ATKINSON/ASHBOURNE/CLARKE AFFAIR

Adjourned debate on motion of Hon. R.D. Lawson:

That the minutes of evidence, documents and submissions presented to the select committee be tabled forthwith.

(Continued from 12 November 2008. Page 653.)

The Hon. R.D. LAWSON (21:51): This motion seeks to have tabled the balance of the material that was collected by the select committee into the Atkinson/Ashbourne/Clarke affair. Much of the material has already been tendered; in fact, it was tabled by the President. I seek the support of members of the council at the completion of this happy chapter in the history of the Legislative Council.

The Hon. SANDRA KANCK (21:54): I support the motion. I believe that most of the evidence at least was heard very publicly back in 2005 and, to some extent, the tabling of it is simply a process. I do not expect that anything new will be made public as a consequence of this tabling. I spoke earlier today and referred to some of the evidence that was taken, and I think that this is now a logical conclusion.

The Hon. M. PARNELL (21:54): When the matter was brought before us a month or so ago as to whether to keep this select committee going, I said at the time that I was happy for it to continue until today but no longer. As it turned out, the committee's life was not continued until today. Nevertheless, it is consistent with the approach I took back then, given that we are on the last private members' day of the year, that we finalise this matter by having the remainder of evidence, documents and submissions tabled and forming part of the record of this place. So, I am supporting the motion.

The Hon. R.P. WORTLEY (21:55): The government will not be opposing this motion, but I want to say that, if the non-government members of the committee had acted in a responsible way during the select committee, we would have tabled a report. There would have been two reports, of course, a majority and minority, and all the information would have been there for the public anyway. But, they chose not to debate the evidence on a committee level. They preferred to use a sneaky, underhanded way of tabling a statement with a number of recommendations. That is their choice. Most members here understand that the way the non-government members behaved on this committee was absolutely deplorable and an abuse of the select committee process.

We believe that information and evidence should be open to the public domain. The only report the committee had was the one I handed down—the draft report—under sufferance from the threat of being kicked off as chairperson. But it is only right that the evidence is released. I will emphasise one more time that the select committee process does actually perform a very useful function in a democratic society, and the way that process was abused, and the way non-government members conducted themselves during the process, is an indictment on those members.

The Hon. B.V. FINNIGAN: I move:

That the debate be now adjourned.

The council divided on the motion:

AYES (5)

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

NOES (12)

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

PAIRS (4)

Hunter, I.K.	Stephens, T.J.
Holloway, P.	Lensink, J.M.A.

Majority of 7 for the noes.

Motion thus negatived.

The Hon. R.D. LAWSON (22:03): I thank members for their contributions. I particularly thank the Hon. Russell Wortley for his expressions of support for the motion. I remind the chamber that last week an email was sent around asking for a vote and, as a result of the discussion among members, it was resolved that that vote would be deferred until today. I urge members to support the motion.

Motion carried.

The PRESIDENT (22:04): In accordance with the resolution, I lay on the table the minutes of evidence, documents and submissions presented to the Select Committee on the Atkinson/Ashbourne/Clarke Affair.

LOCAL GOVERNMENT LAND

Order of the Day, Private Business No. 16: Hon. J.M. Gazzola to move:

That the Corporation of Walkerville by-law No.2 concerning local government land, made on 7 July 2008 and laid on the table of this council on 22 July 2208, be disallowed.

The Hon. J.M. GAZZOLA (22:04): I move:

That this order of the day be discharged.

Motion carried.

ROADS

Order of the Day, Private Business No. 17: Hon. J.M. Gazzola to move:

That the Corporation of Walkerville by-law No.3 concerning roads, made on 7 July 2008 and laid on the table of this council on 22 July 2208, be disallowed.

The Hon. J.M. GAZZOLA (22:05): I move:

That this order of the day be discharged.

Motion carried.

DISABILITY SERVICES

Adjourned debate on motion of Hon. S.G. Wade:

That this council notes the failure of the government's reorganisation of disability services and policy to improve services for South Australians with a disability.

(Continued from 12 November 2008. Page 672.)

The Hon. J.A. DARLEY (22:06): I rise to support the motion of the Hon. Stephen Wade, and I applaud him for moving this measure. I acknowledge the honourable member's history as a past board member of the then Julia Farr Services and his ongoing involvement with disability issues. I refer to the Hon. Mr Wade's description of the relationship between Disability SA and its approval process for new programs, and I am very alarmed if the description of Disability SA's approving only new programs if they save money is correct. This is just the sort of short-sighted thinking that will result in further increased costs later on. The time for reform, particularly in relation to the provision of financial support for carers, is now.

The plight facing people with a disability and their carers is similar to that experienced by grandparents who find themselves being the full-time carers of their grandchildren and are trying to secure an allowance to assist them in this regard. These grandparents provide a service which would otherwise fall to the government, thus saving thousands, if not millions, of dollars in reducing the burden on the foster care system, not to mention the associated costs to government departments to facilitate the care.

It just does not make sense that the government refuses to consider a small payment to assist those willing to care for family members, with savings that just cannot be quantified both financially and in terms of the quality of care and safety felt by a child being cared for by another family member. In most cases, people with a disability would rather be cared for at home by their family members; and, indeed, their condition may well be improved by having a supportive and stable environment instead of being on their own.

My staff have informed me that in 2006 staff and family members of residents of the Julia Farr Centre (or Highgate Park, as it is now called) contacted my predecessor, the Hon. Nick Xenophon, expressing their very grave concerns that if changes targeted at saving government resources were implemented they had the potential to—and in some cases did—put residents and staff at risk. The distinct needs of particular groups within the disability sector need to be addressed and considered. The government's move towards this blanket way of dealing with people and carers needs to be nipped in the bud, both at a policy level and at a funding level. I commend the Hon. Stephen Wade for raising such an important issue, and I support the motion.

The Hon. M. PARNELL (22:10): The Greens support this motion and I congratulate the Hon. Stephen Wade for bringing it to our attention. When this first appeared on the *Notice Paper*, I wrote to a number of individuals and groups who I knew would have a perspective on the way in which disability services were being provided in this state, and I just want to recount to members some of the responses I received. One response which I received was from the Physical Disability Council of South Australia, and I am indebted to Ray Scott, the president of that organisation, for the quite lengthy submission that he made. It is not my intention to read out every point that he makes, but I could probably summarise them into a number of themes.

The first theme he raises is that his organisation sees the personnel in the disability bureaucracy as being comprised of people who do not have sufficient experience working in and understanding disability and the impact of disability on individuals and their families. According to the Physical Disability Council of South Australia, that lack of experience and understanding does impact on their ability to serve this sector of the community. The Physical Disability Council complains about the adequacy of in-home services. They say that the waiting lists are too long and they can recount many stories of people who will tell about unmet needs for additional support services and who are unable to access the community or employment opportunities and recreational activities.

In relation to equipment, the Physical Disability Council complains that the lists are growing longer and longer, and that people who are in need of equipment are not being provided with the same range of choices as they have in the past and they tend to be offered what bureaucrats think are best for them. A range of other criticisms are made in relation to the lack of transparency in the way the system operates and a complaint that the goalposts keep changing, especially with service users not knowing what the current rules are. The council complains of a lack of genuine consultation with people with disabilities about the services that impact on their lives. Really, the list goes on and on, and the effect of it is to support the motion that the honourable member has put forward.

However, rather than just give a list of complaints, the Physical Disability Council also provides some suggestions that they believe would help the situation. The first improvement they recommend is that key decision makers at the executive, management and planning level within the disability sector must have experience and knowledge from within Disability Services to fully understand the impact of disability on people's lives, their connectivity to work, community and leisure. Importantly, these personnel need to have a very defined understanding of the impact on individuals living with disability when changes to policy (or the lack of it), programs, services and funding levels occur.

They also recommend that, in the area of equipment, personal support equipment must have an injection of ongoing funding from Treasury. They want the equipment list to be transparent and they want a showroom with the full range of equipment options to be made available to people whose disability requires equipment for mobility, personal care and safety to help them make well

informed choices that meet their particular needs. People who need scooters, wheelchairs, hoists, walking frames or shower equipment should be able to have choices over the equipment which they will then need to use probably for five or 10 years. I am appreciative of Ray Scott's writing to me and encouraging me to support this motion.

One letter that I received tells a fairly sorry tale of a young woman who has tried to be as independent as she could from an early age, yet with a degenerative illness she finds that she is more and more dependent on disability services. This young woman was diagnosed at a very early age with a physical disability, but she managed to live as normal a life as she could into her teenage years and was even able to buy a house, pay a mortgage and hold down a full-time job. However, eventually her condition got the better of her and she now spends all of her time dealing with medical professionals. She has 20 prescriptions that cost much more than any of the government concessions that she is entitled to, and she says that she has 'spent thousands of dollars on equipment, such as crutches, frames, hoists and endless other items'. The part of her letter that I will read onto the record talks about her dealings with Disability SA, as follows:

> I have now had dealings with Disability SA over a number of years and have endless problems trying to secure the most basic of services. Despite not being able to walk at all, relying on an electric wheelchair, being in severe pain, living alone and having no family assistance, for the last few years I have not even been allocated a particular case worker, which I believe is supposed to be the usual practice. Countless phone calls have gone by without reply. In the last couple of years I have had seven operations and even all this did not guarantee some useful help. Earlier this year, after returning from hospital, I could not secure help even to have a shower for six weeks. I could not explain the indignity and embarrassment that was involved in being very ill and having to unsuccessfully beg for this sort of help. I, and I am sure others in my situation, would simply purchase their own assistance to avoid having to deal with this government department, if this was financially an option.
>
> Over the past few years the electric wheelchair has broken down several times and there has been no help from a repair service, or temporary replacement chair, whilst the chair is unusable. This makes me feel intensely vulnerable all the time, whether the chair is working or not. One worries about the possibility of it breaking down. When the chair has broken down…I have called the 'supposed' after-hours service, which is not a 24-hour service, and all that is done is that the call is logged and someone may get back to you in the next few days. What do you do in the meantime? This is outrageous! Several times I have been left languishing for days on my bed or lounge without being able to move at all. This has created great amounts of anxiety and places me at great risk. When I was alone, I could not move to get medication, eat or drink, use the bathroom, etc. The last time I spent all night alone, the only way I could go to the toilet was because I had been vomiting and happened to have a bucket next to me. How is it that our society tolerates this cruelty and negligence of the most vulnerable people and yet other people are on the front pages of the newspapers feeling outraged if the trams break down, or there's a wait for an hour or two? My problems unfortunately aren't a rarity. I've heard endless similar stories and I don't understand why. Why do I and people like me deserve this sort of treatment?
>
> The answers are simple. There must be a 24-hour service to people. In the case of wheelchairs, I need to be able to have a spare chair delivered ASAP. The emergency service does not fix things beyond blowing up a flat tyre. It is also wrong to tell people that a repair service exists, when it does not. People would not tolerate the RAA taking days to respond to callers and yet we are expected to do just that.
>
> It should also be remembered that these people are often very ill, facing complex medical problems and have few funds or resources to advocate for themselves, unlike many other groups. For this reason they are easily ignored and forgotten. Please don't continue to do this. People need fair income, appropriate equipment, housing (none available even to me with my severe disability), affordable medications, transport, etc.

I am grateful to the Hon. Stephen Wade for putting this onto the agenda and encouraging me to write to people, so that we can get stories such as this from our constituents and put them onto the record, to show that we do need to do much better in relation to disability support services.

The final matter I put onto the record is another piece of correspondence; this time from the mother of an intellectually disabled young woman who has been fighting a battle with the bureaucracy to try to allow her daughter to continue her education. According to this mother, the government's attitude is that educating this young woman would be a waste. The sheltered workshop approach is the approach that they think is appropriate and, as a result, this young woman's desire to learn has been thwarted.

I might mention very quickly as an aside—I do not think I have mentioned this before—that one of the very many jobs that I have had over the years was in London as a carer to a man with cerebral palsy who, to all intents and purposes, was completely incapable of doing anything. He had very little physical movement, he could not speak, and it amazed me that he had a Masters degree in international relations.

He eventually managed to convince someone, I do not know how, that he had intellectual potential and, once they got onto communication techniques involving nose pointing and blackboards, and unicorns strapped to his head pointing to a vertically placed keyboard, we found

out that he was an incredibly intelligent man but trapped in an entirely non-functioning body. Maybe this young woman has some potential that is not being able to be realised because her mother has been unable to keep her within the education system.

With those few anecdotes the Greens are very pleased to support the motion, and we hope that it will urge the government to put more resources into this most important sector.

The Hon. R.L. BROKENSHIRE (22:21): Thank you for your indulgence, sir. I apologise for not being on the list; we intended to be. Family First strongly supports the motion of the Hon. Stephen Wade, namely, that this council notes the failure of the government's reorganisation of disability services and policy to improve services for South Australians with a disability. I will be brief, because there will be lots of times in the future where Family First will be putting policy forward to support and improve disability services in South Australia, but it is very important that we briefly speak to this motion.

First of all, this is one of the core policies and values of Family First, that is, equity and justice for all sectors of South Australian society and, clearly, when it comes to disability services that is a very important area. In the House of Assembly I dealt with many constituents who had situations in their families where they had a family member with a disability, and sometimes a very severe disability. That goes right back to the days just after the State Bank and, believe you me, there were incredible struggles in trying to provide services and policy direction back then.

As I said at a meeting tonight, what disappoints me is that over the past six years in particular, and for probably two or three years before that but particularly in the past six years, we have seen such revenue flow into the state like we have not seen in modern times if, in fact, at all. Right now, as we head towards the end of the year and 2009, we should be standing up here congratulating the government on the service delivery improvement and the proactive policy development for assisting families and individuals with disabilities.

We should be here congratulating the government; that is what the motion should be, but indeed that is not what the motion is, nor should it be, because there is little, if any, to congratulate this government on. I am concerned, at a time when social dividends should have been reigning supreme, for proper social inclusion. It is one thing to have a Social Inclusion Board and people heading that up who can run in and out of cabinet and have more say than a cabinet minister, but actual delivery of on-the-ground services is another, and we have not seen that social dividend at all.

Now we face uncertain times, and it worries me immensely that these people have not had a proper social dividend. Let us remember that it is not very long ago that a minister in another place was advocating $2.50 a week rent for a piece of vital equipment for one of these people. That is outrageous.

The Hon. R.I. Lucas: Name him.

The Hon. R.L. BROKENSHIRE: The Hon. Jay Weatherill was advocating that. It was only when the Premier had to jump in because of the political fallout that, within 24 hours, it was turned around. Clearly, the department put that paper up to the minister and the minister, one way or another, signed off. That is how it worked. That is measly, it is out of touch and it is certainly not in the best interests of the disability sector.

I look forward next year to working with a great deal of endeavour to argue for a better go for the disability services sector before the next budget, and I will have a lot more to say then. The important thing in speaking up and supporting this motion tonight is that it actually puts the government on notice. It also puts the opposition on notice because, at the moment, I have had to have a go at the government more because it is out there delivering. The opposition and the government are the two that have direct opportunity to the chequebook. I want to see policy and direction from both major parties next year—

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. Carmel Zollo interjecting:

The Hon. R.L. BROKENSHIRE: I tried as much as I could to get the chequebook from the honourable treasurer of the day. The fact of the matter is that, next year, policy and direction has to come from both the major parties, and Family First—and I am sure other crossbench colleagues—will really be starting to put the pressure on them. Having said that, at the moment, the government

of the day is a Labor government, and I want to see a much better commitment and focus on delivering proper services when it comes to the disability services sector.

They are doing their level best. They do not ask for a lot. The dollar value that carers and parents put into their loved ones—young children in particular—and the years of pain and suffering are enormous. They wear out. I can give you an example of a family that I have had a lot to do with. They have to lift this beautiful lad in and out of the bath, feed him and do everything for him. By the time they are in their middle years, they are worn out. They need support and they need decent services and, at the moment I am afraid to say, they are not being delivered. Obviously the buck stops with the government, so I support this motion.

The Hon. R.P. WORTLEY (22:27): I welcome the mover's concern for the disability sector and acknowledge his long involvement with the issue. It is more with sadness that I rise to set the mover straight on some of the facts. It would have been better, given the mover's avowed interest in the sector, if he had noted the sorry state that the disability services were in when we came into government, and the positive steps that this government has taken to address the needs we inherited. Perhaps then he can offer his support to work with the government to make the system even better, because there is still a lot of work to do.

The Hon. Mr Wade cannot resist playing politics with a sector that really should be quarantined from such behaviour. Let me skip past the pettiness of the motion and place on record some of the positive changes that this government has introduced, working hand-in-hand with community organisations and Disability SA.

An honourable member: Make sure Mr Brokenshire is listening.

The Hon. R.P. WORTLEY: And I hope Mr Brokenshire is listening as well. I must say that I am staggered at the praise heaped on the minister from the crossbench. You only have to look at what we inherited with the disability sector—

An honourable member: From his government.

The Hon. R.P. WORTLEY: From his government. You would be absolutely appalled and, actually, you should be ashamed of yourself. Much-needed reform to the disability sector introduced by this government resulting in the formation of Disability SA has resulted in consistency and equity of service through a single set of operating policies and procedures. The new system delivers a single system of government, providing disability services that are easy for individuals and families to understand and obtain assistance from.

Disability SA was formed on 1 July 2006 following the dissolution of the boards of the Intellectual Disability Services Council and the Independent Living Centre. The board of Julia Farr Services, incorporating Brain Injury Options Coordination and APN Options Coordination, was dissolved effectively—

Members interjecting:

The Hon. R.P. WORTLEY: Mr Acting President, I sat here and listened to all the tripe from some of the crossbenchers, so I think I should have the right to speak in silence. Prior to the formation of Disability SA, the former health units operated independently—

Members interjecting:

The Hon. R.P. WORTLEY: Do you want to hear all the good news or do you want to preach Armageddon? After the disgraceful position in which you and your government left them, you do not want to listen to the good news stories; that's the problem. You want to politicise it. Instead of trying to help them, you want to make political gains. So just sit there and listen to the good news stories that have happened. One thing we all acknowledge is that there is still a lot more to do. There is still a lot to be done which you fail to recognise.

Prior to the formation of Disability SA, the former health units operated independently with different sets of policies and procedures, resulting in different outcomes for clients. Since the formation of Disability SA these policies and procedures are being amalgamated into a single set of operating policies and procedures, resulting in significant improvements to client and carer outcomes. In Disability SA's first year of operation (2006-07) the service provision increased by 9.6 per cent compared with the previous year under the former arrangements, and this trend has continued.

The management of funding budgets has changed, and the devolution has enabled greater control around decision-making and funding allocations, which allows regional managers unprecedented flexibility and delegation in response to client needs. Staff have noted a growing improvement as a result of the reforms and now feel that the internal silos have been removed, making it easier to work with clients with dual or multiple diagnoses.

Prior to the reform, rather than having a single point of access, there were three separate intake systems, each with its own eligibility criteria. As part of the reform, a single entry process has been established for Disability SA services, which includes a call centre for inquiries and referrals. If a person contacts Disability SA with a need that can be addressed by the provision of information or brief assistance, this is provided immediately without the person having to be placed on a waiting list or meeting any eligibility criteria. If the presenting issue requires more than brief assistance, intake and eligibility assessments are undertaken.

Eligibility is now determined more on the basis of a person's functioning and fewer people have fallen through the service gaps. Processes have been established to ensure a rapid response to people in urgent situations. Recent feedback from the health sector—a major referral source—indicates that the new intake system is simpler and more responsive.

Prior to the formation of Disability SA and the accommodation placement panel, there were multiple lists, contact points and criteria for assessing supported accommodation. This did not always result in the person with the highest need receiving the next available vacancy. In addition, agencies at times could be tardy in notification of their vacancies. Examples of the benefits of the new arrangements are:

- People with multiple sclerosis living in regional towns can be accommodated in local supported accommodation services that were previously made available only to people with an intellectual disability, regardless of the urgency of the situation. This means they can remain living near their family and in a familiar community.
- Prior to the formation of Disability SA, clients with Asperberger Syndrome were able to access only limited case management and brokerage services. The formation of Disability SA has allowed this client group access to a full range of services offered by Disability SA.

Within the Department for Families and Communities the creation of Disability SA has enabled opportunities for service innovation and collaboration that were far more difficult in the past. For example, Housing SA and Families SA have collaborated with Disability SA on many occasions to provide supported accommodation arrangements for disabled people and their families.

The establishment of Disability SA has led to an expansion of supported accommodation services for Aboriginal people with disabilities and clients with complex needs. A new exceptional needs service draws on the advice of key Aboriginal community members in order to ensure that services are culturally appropriate. Some of the new initiatives on which Disability SA is currently working include:

- The Bedford 'Homes for 100' Project, an initiative in which the state government has matched a $5 million commitment from the Bedford Foundation to develop 100 community-based living spaces. Seven dwellings were made available in 2007-08, and the first group of nine clients have already moved into these accommodation options. A further 11 homes are projected to be available by 30 June 2009.
- The Companion Card scheme was developed through a partnership between the state government and National Disability Services SA. A total of $0.28 million was invested in developing the scheme, and it was launched on 3 December 2007. A further recurrent commitment of $0.1 million has also been committed for the maintenance of the scheme. Currently, 1,157 cards have been issued and 28 organisations (equating to 54 venues) are affiliated with the program.

With respect to Disability SA's Day Options programs, the state government invests about $1 million in new funding each year to guarantee new school leavers who, as a consequence of their disability, are unable to access further education or employment and wish to attend a meaningful day activity with a development focus. Around 50 to 60 clients have a placement made available each year, which is delivered through about 20 non-government organisations.

Some $1 million recurrent funding for autism spectrum disorder was allocated in 2007-08 for the development of specialised early intervention programs. Additional funds were allocated to

Autism SA to expand its early intervention group sessions and, in particular, to ensure that all families with a child under six years old with ASD have intensive support from a family worker. Further funds have been invested with Adelaide University for research into this area.

Disability SA has increased services to families with children up to eight years of age with autism by empowering six senior developmental programmers located in regional areas. An additional two full-time staff have also been employed in the metropolitan area.

The state government has continued to provide substantial equipment funding to address client needs in this area. Some $5.7 million was provided to the non-government organisation sector in the 2007-08 budget, which is expected to provide over 1,450 additional pieces of equipment. Over the past six years, the Rann government has spent an unprecedented $38.2 million on equipment for people with disabilities, including one-off payments.

To develop the Regency Park Centre, which includes adding a Novita hydrotherapy pool, the 2008-09 budget allocated a further $2 million. This centre provides a service to about 200 students. Minda Project 105 is a partnership between the state government and Minda Inc. and is expected to deliver 105 community accommodation places and address clients on the urgent accommodation waiting list and progress the program of deinstitutionalisation for Minda campus accommodation. The state government committed $15.65 million to this project.

The new recurrent funding for psychiatric disability programs, amounting to $5.25 million in 2007-08, has been committed to a range of programs and supports for clients with psychiatric disability and homelessness issues. As at September 2008, 181 clients were receiving services through this funding, which is delivered through a range of non-government organisations.

Disability SA undertook the task of developing a seamless and accessible information service based on a 'just ask once' philosophy. With the help of our non-government information partners, a 1300 number was established where people are able to access a call centre equipped to provide information to relevant government and non-government organisations. In addition, a new website has been developed within the departmental website with links to our non-government partners and other government agencies. An email service is also available for people requesting information to be mailed out or to contact subject experts in particular areas.

The re-establishment of the Ministerial Advisory Council, chaired by Dr Lorna Hallahan, and the Disability Advisory Network of South Australia, chaired by Dr David Haslam, provide a direct voice on the needs and aspirations of people who live with a disability. These examples note that the progress so far is positively encouraging. The government is under no illusion that there is still much more work to be done to ensure that South Australians with disabilities have a decent life and can realise their dreams and fully participate in the community.

The Rann government has a strong commitment to improving the lives of people with disabilities. We have taken major steps forward for South Australia's disability system to help not only people with disabilities but also their families and carers, and we will continue to do so. Rather than suggesting failure on the part of this government, this chamber should be acknowledging the many good initiatives and improvements and the commitment of this government to those with disabilities. It is regrettable that those opposite choose to play political games, as they serve no-one, other than the egos of those opposite. The government is unable to support such political game playing.

The Hon. S.G. WADE (22:39): In summing up the debate on this motion, I am acutely aware of three facts. First, given that this is the last sitting day of the year for the consideration of private members' business and, in particular, the last opportunity for the Hon. Sandra Kanck to progress her private member's business, and that the hour is already late, it is necessary for me to be brief, or at least briefer than the topic deserves. Secondly, I have had from a number of members indications of support and assurances that they do not feel the need to be further persuaded. I thank them for that.

In particular, I thank those honourable members who contributed to the debate: Hon. Ann Bressington, Hon. John Darley, Hon. Mark Parnell, Hon. Robert Brokenshire and Hon. Russell Wortley. In passing, on her last sitting Wednesday, I acknowledge that the Hon. Sandra Kanck and her former Australian Democrat colleague Kate Reynolds have been strong voices for people with a disability in this state. Those members and most members who contributed tonight have maintained a strong tradition in this council of standing up on statewide issues such as disability services.

Thirdly, I made the judgment that I would best serve the people who have raised issues with me, and pursue the range of issues more forcibly and strategically, by making an omnibus contribution late in the evening. Accordingly, while I do not propose to engage in a point-by-point rebuttal of minister Rankine's response to an identical motion moved by the member for Heysen in another place, I will merely rebut one assertion to highlight how unreliable I see the minister's comments as a whole. On 16 October, when referring to me, the minister said in the other place:

> …banging on in the media and putting out a whole range of things that are simply factually incorrect. In a media release dated 25 September he asserted that 'Disability SA is haemorrhaging staff'.'

The minister then quoted me as saying:

> There are consistent reports of an exodus of experienced and skilled professionals from Disability SA, leaving fewer people in a position to train those who remain.

The minister commented:

> My understanding is that we currently have a full-time equivalent vacancy of 3.7 people in occupational therapy and physical therapy.

That sounds like spin to me. The minister limits her remarks to OT and physical therapy, and she quotes the FTE vacancy rate and not the turnover rate, which was the focus of my concern. As evidence for my position, I invite members to look for themselves. If tonight they go to the vacancy page on the DFC website and the vacancies for Disability SA and Domiciliary Care SA, they will see at least 25 positions vacant, with applications due to close in the next two weeks. That level of vacancy suggests that there are at least 600 vacancies a year—not the image of an idyllic settled village the minister wants to assert.

As I said, I do not propose to go through a point-by-point rebuttal of the minister's rhetorical speech. Instead, I take this opportunity to share with the council some observations I have made since I moved this motion some eight weeks ago. As I move around the state, I am reminded yet again of tragic examples of the lack of services to meet the need in housing, personal care and transport inaccessibility as three simple examples.

One disability sector leader recently told me about cases of which they were aware, where one person was hospitalised for 700 days because no suitable accommodation option was available and of another who was hospitalised for two years before a placement was made. I am advised that Disability SA workers are telling some clients that they will need to wait for two or up to five years for an electric wheelchair or gopher.

The government is in denial. In the face of persistent and alarming reports of service problems, the minister continues to deny that there is a problem, and we heard another example today in the Hon. Russell Wortley's contribution. For example, in the *Messenger* newspaper of 16 October, disability minister Jennifer Rankine said that there was no evidence that waiting times had increased under Domiciliary Care SA.

The government controls the information. If the minister asserts that the constant flow of anecdotes and case studies do not accord with the reality of the situation, she should not just claim that there is no evidence; she should adduce the evidence and demonstrate what she asserts by putting out the evidence to support the fact that there is no waiting list. To tell dozens of people who dare to put their stories into the public domain that those stories are not evidence is to insult and diminish them. When it comes to transparency, the minister lacks credibility.

In late October disability advocate Dr Paul Collier highlighted that the South Australian government has not delivered on an election promise to table annual reports on the performance of disability services. In response, the Minister for Disability, Jennifer Rankine, admitted that an audit had been done but that she would not release it. On one hand there is no evidence, and when there is some evidence do not expect the government to release it. The government is wilfully blind.

In discussions since the motion, I have been overwhelmed by the feedback on the speech I made in moving the motion. People consistently said that it reflected their experience. I can only recall a couple of people outside government who asserted that disability services were getting better under these reforms, and one of those was a government contractor. So, if there is no net improvement in services, as I assert, why are there not more voices being raised? To me that demonstrates vulnerability; when I posed that question to people they consistently said that they felt vulnerable. As evidence I cite the Julia Farr Association's report on its 2007 Loop conference, which says:

> Across all venues of the 2007 Loop conference, participants report that they don't speak up because of a fear that they will be punished in some way. This includes fears that there would be a loss of service, or the person would be labelled as a complainer and not receive agency cooperation, and even be more socially excluded.

It continues:

> Despite what is known about the wrongs of discrimination and marginalisation, it appears that participants' comments that our disability support systems are perpetuating those wrongs…by creating a climate where people fear to raise their voice.

I experienced this first-hand when working on this motion and afterwards. A number of people contacted me to tell their story, but did not want to be named for fear that action would be taken against them. The Messenger newspapers were moved by the plight of people with a disability and published a series of three articles highlighting issues with equipment, transport and accessibility.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. S.G. WADE: Time and again people would raise their concerns but would not want to talk to the Messenger for fear of retribution by this government.

Members interjecting:

The ACTING PRESIDENT: Order! Interjections are out of order on both sides of the council.

The Hon. S.G. WADE: This is not Soviet Russia. People are not criminals because they speak up when their entitlements are not met. This government needs a revolution—a revolution in its attitude to promote a culture of respect for people with disability.

I was similarly disturbed to hear organisations and leaders claim that they also felt unable to speak out for fear of loss of funding or due to contractual restrictions on their ability to speak out. The sector is acutely aware of this government's bullying of legacy organisations in the restructuring and defunding of advocacy organisations. It will be a stark test of the new federal Labor government as to whether it will allow the state Labor government to be the only state in the nation which fails to fund information and advocacy services in breach of the commonwealth and state disability agreement.

This government's failure to deliver adequate services is leading to a crisis of confidence in public sector delivery of disability services. This is feeding two trends which I suggest are countervailing. First, people are demanding control over their care and the resources that fund it. A number of people already have some level of control, but there is increasing demand for more control and a growing movement to promote individualised funding. The government wants it to be known that it is open to implementing individualised funding, but I have my doubts. It is now 10 months since the government floated that it might be interested, but still there is no action.

To the extent the government is acting, it is actually acting contrary to the principles of individualised funding and self-determination. For example, in mid-2008 Minister Weatherill positively highlighted the opportunity for individualised funding to be applied to the provision of disability equipment, but since then we have seen a series of decisions that are actually counter to self-determination in relation to the provision of equipment. First, people were deprived of their choice of repairer, and we now see that the government is running a tendering process which will limit the choice of equipment. It is like the Model T Ford—you can buy any scooter you like as long as it is black.

Secondly, there are persistent rumours about the government undertaking a pilot of individualised funding. In my view, a pilot would not be a sign of action but a cover for inaction. It would be like saying we need to pilot a motor car. Individualised funding has been operating since the 1970s in Canada and, in the United States there are at least 31 states operating it. There are individualised funding initiatives in Australia, Wales, the Netherlands, Austria, Germany and England. The concept has been proven: we do not need a pilot. If the government is sincere in its commitment it should begin rolling it out, choose the most relevant model available and evolve it for South Australian services in implementation.

The other crisis of confidence in the public sector is that people are turning to non-government organisations to guarantee their care, to insulate them from the vagaries of government. These services tend to be funded by block grants from government. They may not be government services but the buying decisions are made by bureaucrats, not by individuals. The

fundamental problem is that Labor governments see themselves as mere custodians of the eternal wisdom of the bureaucracy: bureaucracy knows best. In fact, the minister's comments and response to the identical motion in the other place reflect that attitude. The minister, in referring to the reforms under Disability SA, stated:

> The management of funding budgets has changed and that means that there is much more local control about decision making and funding allocation. It has allowed regional managers unprecedented flexibility and delegation in response to client needs.

For the minister, local control does not mean control by consumers, it means transferring control from one bureaucrat to another. I can assure the minister that there is no magic in a bureaucrat sharing the same postcode as the client. I suggest that the minister needs to get out more.

I would also like to take the opportunity to address some of the personal remarks that the Hon. Russell Wortley chose to direct to me. I remind members of my contribution on Wednesday 24 September when moving this motion. I said that I was going to calmly state the facts. At the risk of understating them I was determined that what I had to say would not be dismissed as rhetoric. I went on to say that the challenge of supporting South Australians with a disability pre-dates this government, but this government has to take responsibility for what has occurred on its watch. This motion focuses on the failure of the government's disability reforms. Later in the speech I said:

> To sum up, one respected disability leader told me that we had gone back 40 years over the last 10.

If the Hon. Russell Wortley would care to listen, or perhaps read the *Hansard* at his leisure, he might reflect on those last words:

> ...one respected disability leader told me that we had gone back 40 years over the last 10.

Indeed, the Liberal Party does need to take responsibility for its contribution to meeting the needs of people with disability, and I am more than happy to reflect soberly about both the successes and the failures. However, what that last quote tells me is that over the last 10 years of the Liberal government (the years of the nineties) we were making progress. What has happened in the past few years is that we are going backwards. We will take responsibility for the nineties if only Labor will take responsibility for the 2000s.

In conclusion, I thank the hundreds of people with a disability, and those who support them, who have taken the opportunity to contact me and other honourable members, to tell their stories and share their concerns. I assure the disability sector that, particularly over the next 16 months leading up to the next election, we will continue to maintain a dialogue with them and try to deliver a practical, positive future for disability services in South Australia.

Motion carried.

[Sitting suspended from 22:54 to 23:15]

NATURAL RESOURCES COMMITTEE: DEEP CREEK

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

That the report of the Natural Resources Committee on Deep Creek Revisited: A Search for Straight Answers be noted—

To which the Hon. S.M. Kanck has moved after the words 'be noted' to insert the words 'and this council condemns those officers of the Department of Water, Land and Biodiversity Conservation who either misled the committee and therefore the parliament, or who failed to provide requested information to the committee'.

(Continued from 12 November 2008. Page 678.)

Amendment negatived; motion carried.

INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.

(Continued from 15 October 2008. Page 331.)

The Hon. B.V. FINNIGAN (23:15): The government opposes this bill. I draw members' attention to the contribution I made on 21 November 2007 in this place, in which I spoke in some detail about the reasons why the government opposes the establishment of an ICAC. In that contribution I spoke about the current system and methods we have for investigating allegations of

corruption, including the anti-corruption branch of the South Australia Police, an Ombudsman with the powers of a royal commissioner, a Police Internal Investigations Branch, the Crown Solicitor's Office (which has a government investigations unit) and our whistleblower legislation and freedom of information laws.

I highlighted the role of the Auditor-General's department, and the government contends that South Australia is better served by these agencies than by an expensive ICAC being proposed by the honourable member, which would cost in the vicinity of $30 million a year. I also remind members of the comments I made in that contribution regarding an article published in *The Advertiser* by Mr Brian Carr, who was chief executive of the Liverpool council of New South Wales. Mr Carr highlighted the problems that have arisen in that state in relation to the ICAC system, particularly the way it is misused by certain people to influence the administration of local government.

The government opposes the establishment of an ICAC. We have seen today the approach that some members in this chamber take to allegations of impropriety with the discredited select committee on the Atkinson/Ashbourne/Clarke matter. There is no evidence or proof required: simply a jumble of hearsay and conjecture as far as the opposition is concerned. Yet the very members who are dedicated to this absurd method of investigating allegations of corruption and relying on hearsay and conjecture are the ones proposing an ICAC. They have shown in their approach to business in this place that thorough, thoughtful investigation, leading to a conclusion, is not their preferred method; instead they want a media flurry that comes with the sensational evidence of a select committee, and that is why they want an ICAC.

How extraordinary that the Liberal Party, whose last period of government saw ministers falling to scandal and corruption at a frequency unprecedented in our history, now seeks to present itself as the guardian of the public good. The Rann government does not suggest that impropriety and corruption have not occurred from time to time in South Australia, but members opposite have asked for details. I draw their attention to the previous Liberal administration, which saw ministers dropping like flies, including the then premier, for lying. The government contends that an ICAC is not warranted in South Australia and we do not support this legislation. There will not be an ICAC under this bill.

The Hon. R.D. LAWSON (23:19): Liberal members will support the passage of this bill. I also announce that today in another place our preferred model of an independent commission against corruption was introduced in the form of a bill presented by the shadow attorney-general, the member for Heysen, Isobel Redmond. We have come to the conclusion that an independent commission against corruption is necessary in South Australia.

The Hon. B.V. Finnigan: We can have twin ICACs: they can investigate each other.

The Hon. R.D. LAWSON: The honourable member says there will be twin ICACs. I can assure him that when the parliamentary process is completed there will be only one model which will be adopted in South Australia. However, we want to keep the debate alive as much as this government wants to close it down. It does not want to talk about an independent commission against corruption.

We heard earlier today the evidence relating to the Premier's former senior adviser Randall Ashbourne, charged with corruption in relation to an incident involving the Attorney-General. That was interesting, because the investigation had to be conducted by a parliamentary committee, which was unsatisfactory in many ways. It was quite suitable for the government, because it was able to foist off insistent cross-examination. That is something that an independent commission against corruption would have investigated. It would not have waited for seven months to report to the parliament. It would not have been—

Members interjecting:

The Hon. R.D. LAWSON: The ICAC would have operated immediately. It would not have compromised the police investigations.

The Hon. B.V. Finnigan interjecting:

The Hon. R.D. LAWSON: The honourable member suggests the Liberal Party does not have any confidence in the police. It was the Rann government that did not have any confidence in the police and did not report the matter to the police. It kept it secret. It had the Premier's own chief public servant do it, who ran off underground to Melbourne to get legal advice.

Members interjecting:

The PRESIDENT: Order! It is late at night.

The Hon. R.D. LAWSON: There was alleged police corruption and incompetence in relation to the McGee hit-run investigation, which ultimately necessitated the establishment of a separate free-standing royal commission, at vast expense. There was the 'stashed cash' affair involving the Attorney-General and the Crown Solicitor's Trust Account that had to be investigated by two parliamentary committees. If there was an independent commission against corruption that matter would have been resolved many months ago.

The former speaker (Hon. Peter Lewis), who installed the Rann Labor government in 2002, was demanding a royal commission into alleged public and judicial malfeasances. However, those issues never saw the light of day. They would have been investigated by an independent commission against corruption if there had been one. There was the long saga concerning the sexual abuse of wards of the state, and the government eventually and reluctantly had to establish the Mullighan inquiry into that, at vast public expense. These are matters that would have been investigated in the ordinary course by an independent commission against corruption, because they involve the activities by the state and state organs.

We also have seen on many occasions the Premier, ministers and Attorney-General attacking and seeking to undermine the independent Director of Public Prosecutions in this state in circumstances where he is denigrated in parliament and undermined out in the community. These are matters that ought appropriately be the subject of investigation and inquiry.

The Hon. B.V. Finnigan: Tell us all about Easling.

The Hon. R.D. LAWSON: What does that have to do with this? I am interested to hear what the member has to say about Easling. Is he going to bad-mouth him in the same way the minister downstairs has done?

The Hon. B.V. Finnigan interjecting:

The PRESIDENT: Order! Interjections are out of order, and the Hon. Mr Lawson will stop responding to them.

The Hon. R.D. LAWSON: So there have been abundant occasions which have demonstrated the need in South Australia for an independent commission against corruption. I have to say that, years ago, I was very sceptical of the need for one. However, when the Rann government came into power—

Members interjecting:

The Hon. R.D. LAWSON: So there is abundant evidence to support it. The model which the Liberal Party has today released calls for an independent anti-corruption body. It follows eight months of consultation on a model that was first released in April of this year, and our proposed preferred model is based upon the New South Wales independent commission against corruption.

The establishment of a commission in South Australia is supported by many figures—many Labor premiers. People cannot understand why in South Australia we do not have an anticorruption commission. Many say, 'What has the Labor government got to hide? Why is it scared about it?'

Members interjecting:

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

The Hon. R.D. LAWSON: In the only public interview by the former auditor-general, Ken MacPherson, after 17 years in the role, he told *The Advertiser*, as follows:

> We don't have the mechanism which will enable us to deal with the types of issues which have been identified in some other jurisdictions.

Notwithstanding the claims of Attorney-General Atkinson and the rather feeble effort made today by the Hon. Bernard Finnigan, we do not have the mechanism, according to Ken MacPherson, who is frequently relied upon by the Rann government, and it is appropriate that we have such a mechanism.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! It is very late at night, and the staff are tired. Half the members are tired, and the other half are cranky.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: And the Hon. Mr Lucas is cranky.

The Hon. R.D. LAWSON: An independent commission against corruption has the opportunity, for example, to investigate the appointment of retired officers after the expiration of their term in a government position. The structure of an independent commission against corruption which we in the Liberal Party prefer will ensure that corruption is combated and the integrity of the South Australian public sector is upheld and improved.

We envision that the commission will be responsible to parliament, be subject to audit by the Auditor-General and have the oversight of an inspector. These are mechanisms still to be worked out. It will provide all of the necessary mechanisms to provide for thorough investigation. We do not propose that the commission would undertake prosecutions itself but would make recommendations to the Director of Public Prosecutions, an officer we respect and would seek to uphold.

Our mechanism will provide protections against malicious allegations, vendettas and false complaints and the like. It will incorporate the current Police Anti-corruption Branch and part of the Police Complaints Authority. As Ken MacPherson indicated, at the moment, police are left to investigate police, and that is undesirable.

We also envisage that an important role for the commission would be the promotion of an ethical climate in all public sector agencies and departments, including local government, by examining systems to minimise risks and by educating the public, as well as departmental agencies and council staff, about corruption.

I am proud to be a member of a party which is, in fact, promoting its own bill. However, we believe that it is appropriate to support the second reading of the Hon. Sandra Kanck's bill.

An honourable member interjecting:

The Hon. R.D. LAWSON: No, there will not be two ICACs. I acknowledge the fact that the Hon. Sandra Kanck has, on a number of occasions, presented similar measures, and her predecessor the Hon. Ian Gilfillan did likewise. The honourable members have had a longstanding commitment, and we are glad to see the Hon. Sandra Kanck's bill read a second time.

The Hon. R.L. BROKENSHIRE (23:30): I rise to speak on behalf of Family First to advise the council that we support the second reading of this bill. However, in saying so, we have some concerns about the modelling and we will be having a look at the modelling proposed by the opposition in another place. In principle, we endorse what the Hon. Sandra Kanck has put before the house.

Corruption is something that in many countries of the world has come to be accepted as a way of life. In trade overseas it is accepted as part of the cost of doing business. Mr President, I will put your mind at ease. I am not trying to defend corruption: I am simply putting this debate into its context. I think it foolish to think that in Australia and South Australia we are immune from corruption. There is no cultural superiority or anything of the like that makes us less likely to be corrupt nor would immigrants from other countries bring in corruption.

Unfortunately, it is part of the human condition that some people will try to get ahead in the world by dishonest means. We are naive and foolish to think that those people do not find their way into places of highest office in the land.

This bill has significant ramifications for the state and, at one level, I can understand the government's hesitation in pursuing it. However, it has to be said that an ICAC has the potential of bringing a great deal of change and healing to this state. If corruption in high office or organised crime has been so pervasive that it merits wide scale prosecutions, convictions and removal from public office, we do not know if that is the case. That is the nature of things that are deliberately kept in the dark. Light is a great antiseptic.

I accept that if this bill becomes law, the commissioner is to be in all likelihood a retired judge or a judge who retires specifically to take up the role of commissioner. I would not support a former premier, as the government has advocated tonight, no matter what political party they may

come from. I do not think that would be appropriate. However, a retired judge or a judge who retires specifically to take up the role of commissioner is the most appropriate avenue, but I think it worth considering appointing someone who has no previous significant connection with this state. This judge would then assume some very significant powers.

I think the honourable member has struck a reasonable balance here. These powers do not include the power to proceed from investigator, prosecutor, judge, jury and executioner. The significant power of the ICAC is in clause 12(1)(d)—namely, to communicate to the appropriate authorities the results of its investigations. One would assume that would lead to charges being laid but, if this bill reaches the committee stage, I will address my misgivings on how clearly we will know whether law enforcement agencies are listening to the communication the ICAC gives to them about its investigations.

We must consider the question of what corruption has alleged to have occurred or to be occurring in South Australia to justify creating an ICAC. This is a question one must answer with an element of guess work as corruption by its nature is secretive and hidden from public sight.

I acknowledge that, as minor parties, we see people who claim corruption is so widespread that they have lost interest in the majors and consider everyone else corrupt. Honourable members will probably know scenarios like this that they have had suggested to them from constituents. They might not have any real corruption to complain of but then again they might. However, the merit of having an ICAC is that the commissioner can hear them out and make a determination. If their claim is deemed frivolous or vexatious, then I suspect they will have a hard time saying that the commissioner is also corrupt.

I have a question concerning the oversight committee because I saw in *The Australian* earlier this year an article which I have kept on file with the headline 'CCC claim wins over QC'. Amanda O'Brien, a Western Australian political reporter, explains:

> Western Australia's powerful Corruption and Crime Commission has had a significant win in its damaging feud with its parliamentary overseer, Malcolm McCusker QC, over his repeated rejection and criticism of its misconduct findings. The bitter war has undermined the CCC's ongoing investigations into the influence of disgraced former premier Brian Burke over a string of politicians and bureaucrats after Mr McCusker suggested that its work was flawed.

I will not read the rest of the article, but I think the article and the situation in Western Australia demonstrate the merit in the seven-member oversight committee rather than one individual charged with oversight. Of course, two of those members are the commissioner and his or her assistant, but one would think that the remaining five would be considered to be reasonable in making a finding that the commissioner was acting unreasonably.

I turn to the question of cost, because I have heard repeatedly over the past few years that one of the primary reasons for government opposition to ICAC is cost. In fact, I can see that as the only real reason that it is opposed to ICAC. Let's have a look at the cost. The salary of the presiding officer and his or her assistants will, of course, in the case of the presiding officer, have to be something comparable to his or her salary in the judiciary. Other costs include seconding administrative staff, seconding police officers, witness protection, legal representation and legal aid.

In April this year, we know that the opposition said that its ICAC would cost around $15 million per annum and have a staff of 80, which is, from my recollection, about $10 per capita per annum for South Australia. In *The Age* newspaper of 6 April 2004—that is, almost four years ago—Colleen Lewis wrote in her editorial that the New South Wales ICAC had a staff of 112 and a budget of $16.5 million per annum, and that Queensland's Crime and Misconduct Commission had staff of 280 and a budget of $25 million. However, I note that Queensland's Crime and Misconduct Commission does some of the work that SAPOL does here now; so, one would expect the cost in Queensland to be higher.

On 25 October last year, in another place, the member for Bragg, Vickie Chapman, stated:

> ...New South Wales [Independent Commission Against Crime]...has a staff of 110 and a budget of $15.6 million [per annum, founded in 1988]. The Queensland [Crime and Misconduct Commission]...has a staff of 300 and a budget of $35 million per annum. The Western Australian Corruption and Crime Commission...has a staff of 150 and a budget of $25.5 million.

My research reveals that New South Wales budgeted $17.1 million for 2006-07 and $17.9 million for 2007-08 for its ICAC. Western Australia had about 153 staff in 2006-07, budgeted $24.1 million for 2005-06 for its ICAC, and its expected budget in the forward estimates will run to $28.6 million

by 2010-11. So, on this argument about cost, I think the opposition's cost estimate is on about the right mark. It is worth making the point that three other states have seen fit to incur the cost—three other states in Australia have actually seen fit to incur the cost, and have done so for several years in running an ICAC or its equivalent. I also note that, for several years, there has been debate in Tasmania as to whether it should have an ICAC, but as yet, the Labor government there has not seen fit to support one; however, it may in the future.

In terms of ICAC facts, in South Australia we have, among others, the following independent officers: the Auditor-General—and I put on the public record that the former auditor-general claimed in his final report that there was a lack of oversight of, say, the DPP and he said that an ICAC would fulfil that role; an Ombudsman; a SAPOL anticorruption task force; and a Health and Community Services Complaints Commissioner. Also, Monsignor Cappo is an independent commissioner, and we now have a Commissioner for Victims Rights, the Police Complaints Authority, the courts, and all the tribunals that exist.

Of course, there is the protection afforded in the Whistleblowers Act. On 27 March 2007, on FIVEaa morning radio, Police Commissioner Hyde, in addressing the question of an ICAC, suggested that upgrading the anti-corruption branch of South Australia Police might be an appropriate option and said that one would want to have good reasons for going ahead with an ICAC rather than creating a costly body to monitor something that might not actually be a problem.

Then on 31 May 2007, we heard from Labor's retiring federal member for Port Adelaide, Mr Rod Sawford, who is very highly respected by the citizens of Port Adelaide and, I note, a diligent and hard-working federal member. I am not sure why he is not still the federal member down there; I am perplexed about that. Rod Sawford, as the honourable leader said, has achieved so much and I agree with him. On FIVEaa morning radio, Mr Rod Sawford said that he believed there was merit in all states, including South Australia, having an ICAC. That is the view of the federal member for Port Adelaide, Mr Rod Sawford.

Then, Simon Slade, a highly-respected lawyer and a regular media commentator, said on a program in early August that he supported the idea of an independent commission against corruption. On 16 August 2007, on 891 Afternoons, the opposition leader said that he was not sure that the Democrat bill for an ICAC was the right solution but did not offer his thoughts on what the right solution was. However, a week later, on 23 August, the research was put together and a plan announced with an estimated budget of $15 million.

There are just another couple of examples that I want to put forward because I think it is important in this debate that they are on the public record, even though I acknowledge that it is late at night. On 23 August 2007, someone whom I very much respect, Mr Peter Alexander, who was then president of the Police Association of South Australia, said on FIVEaa morning radio that he thinks the public is not averse to there being an ICAC but wants to see the model that is being proposed. I completely agree with Mr Peter Alexander, who is a very intelligent man and also a qualified lawyer, and that is where, as I said, Family First do have some concerns with the absolutes of the modelling within the honourable member's bill.

The Local Government Association has indicated by a letter dated 21 September 2007 to the Hon. Sandra Kanck—and we have received a courtesy copy—that it considered a motion calling for the LGA to support something in the nature of an ICAC but stopped short of endorsing that or indeed this bill. However, it did undertake to investigate the matter further internally. Then, on Wednesday 12 March 2008, in the context of this year being a time, of course, when awareness of corruption in councils has reached new levels, highly-respected *Advertiser* reporter Miles Kemp said, 'The LGA wants an independent body to investigate corruption and official misconduct in councils.'

The list of examples goes on and I will not go through any more now, but there are pages more examples that I could list where people from high positions who have been involved in public life and have had a high profile for some time are advocating an ICAC or something similar.

For Family First, the fundamental point in this debate on whether we have an ICAC is that the government argues that we have enough anti-corruption measures with the anti-corruption branch of SAPOL (South Australia Police), the Ombudsman, and the like, and it argues about cost. Put simply, that is not a compelling argument to us. The functions of the anti-corruption branch can be complemented or subsumed by an ICAC. For instance, the Queensland Crime and Misconduct Commission website states:

The Queensland Police Service and the CMC work together to fight major crime, protect witnesses and strengthen integrity within the police service. This partnership began at the time of the Fitzgerald Inquiry.

Some other states have an ICAC—New South Wales, Queensland and Western Australia. It is interesting that even Hong Kong has had an ICAC since 1974. I place on record my view that there would be merit in considering a federal ICAC with referred jurisdiction from all states. I believe that we would be naive to assume that corruption does not spread across borders (certainly organised crime does) and over international borders, too. The one concern I have with creating a South Australian ICAC is the issue of jurisdictional reach. Victoria, for instance, does not yet have an ICAC.

The concerns I have raised are not sufficient for Family First to retreat from the sound principle that we must root out corruption, and it is worth the cost to try to do that. We do not necessarily like every provision of the bill but, in this case, we invite the government if it also does not like all aspects of the bill to amend it and give due consideration to amendments in another place. Irrespective of the amendments, I think this bill worthy of consideration in the other place and for members there to place their positions on record.

Not always do I agree with other members, as, indeed, do they not always agree with me. However, I believe that the honourable member has put this up with good, right and honourable intent, and I think there is a strong message from this parliament to the people of South Australia. There seems to be only one party at the moment that is clearly not interested in an ICAC, and that is the government. The crossbenches indicate support for an ICAC, as I understand it; the opposition indicates support for an ICAC; but the government is not happy about an ICAC.

At the end of the day, it is paramount for the wellbeing of South Australia's future that we ensure that there is no corruption, that there is no abuse of high office and that things work in an orderly fashion. We lead from the top and, if there is a problem, we need an absolutely unfettered and independent body that can investigate and make recommendations as to the outcomes of that investigation. Family First therefore supports the honourable member's bill with respect to the second reading.

The Hon. M. PARNELL (23:47): The Greens are happy to support the bill for an independent commission against crime and corruption, and that position is consistent with the position Greens have taken in other jurisdictions. We believe that the cost of an independent commission is well worth the money when we consider the potential that such a commission has to root out corruption and make for a more civil society. I will speak briefly to this bill. A number of members have said they are intending to support the bill at the second reading stage. My understanding was that the honourable member was going to attempt to push it all the way through, in which case I will be supporting the bill without amendment.

The two main arguments it seems to me that have been raised against an independent commission against corruption are, first, the expense, and, secondly, that we do not have corruption in South Australia; therefore, we do not need an ICAC. In relation to the expense argument, I note that the Liberal Party introduced its own model of an ICAC in the lower house today, and, as I understand it, it has an estimate of $15 million as the cost of that scheme. To put that in perspective, you could get 100 Liberal ICACs for the cost of one desalination plant. The desalination plant is now the yardstick against which all other programs will be measured. So, it is not that expensive.

Of course, the administration of justice costs money: the police, the courts, the DPP and the Ombudsman cost money. All these operations cost money, but, at the end of day, as a society, if it helps to be a more civil and democratic society, it is well worth the cost. In relation to the question of—

Members interjecting:

The Hon. M. PARNELL: I am being baited by members of the government inviting me to present the Greens' alternative budget now at 10 minutes to midnight, and I am not going to respond to that request. As tempting as it is to go through all the wasteful government programs and work out which of them we get rid of in order to fund a sensible initiative like an ICAC, I am not going to be baited.

In relation to the question about whether or not we have corruption, I attended (as other members might have) a breakfast meeting some months ago at which his honour Gerald Cripps, the Chair of the New South Wales ICAC, spoke. He pointed out that, by volume and by findings,

local government was the major target of complaints and findings in relation to corruption. All of us are well aware of the situation in New South Wales, in particular regarding Wollongong council. It was a very serious set of circumstances of corruption involving a venue known as the 'Table of Knowledge' (I think it was) outside the kebab shop where corrupt deals were done.

The Minister for Urban Development and Planning has said in this place that one of the features of our system mitigating against corruption is that the decision to approve developments is made by development assessment panels which comprise roughly half elected members and half outside people, and therefore they cannot be corrupt because only half of them are elected members. I do not accept that that model of itself is a recipe against corruption, particularly when we consider that that is only one of the types of decisions that are made in the planning system. The other types of decisions are rezoning decisions, which, overwhelmingly, are made by elected members of local councils, with the right of Planning SA through the minister (I guess) to have a veto over that.

I am sure I am not Robinson Crusoe in having a trail of people come to my office to tell me about situations which they regard as corrupt. I had one property owner who came to me and said that they had tried for years to get their property rezoned. Ultimately, after many tries, they failed. It was sold and, within months, the new owner had succeeded in getting that rezoning and elected members of the council subsequently became part of the development consortium for that land. It is not enough evidence for me to make allegations of corruption but it smells pretty bad and that is the sort of thing that an ICAC would look at.

The Hon. R.P. Wortley interjecting:

The Hon. M. PARNELL: The other thing is that, when it comes to the Labor Party—and I am indebted to the Hon. Russell Wortley's interjection because he reminds me that the unions are no longer the biggest donors to the Labor Party—the biggest donors are the development industry, and if that is not a recipe for corruption, then I do not know what is. I think that an ICAC is an important tool in our arsenal of having a civil society and having a more democratic set of institutions, but that does not mean that, just because it is called an ICAC, it has to be supported without question.

Certainly, what we do not want is unaccountable super cops. We do not want to have unaccountable bodies policed by yet more unaccountable bodies, so you do need checks and balances. I think that the honourable member's bill which we are debating now does contain those checks and balances. I have not had a chance to look at the Liberal bill. We will look at that to see whether that contains checks and balances, but the principle the Greens support is that we do need an independent commission against corruption.

In closing, I suggest that all members have another look at the excellent report produced by Dr Zoë Gill through our own parliamentary research library into corruption and integrity systems throughout Australia in which she compares the different accountability models in the different states. You can see that South Australia is one of the few places that is not heading in this direction. The report also reminds us that, as I understand it, this is the Democrats' fifth attempt to get such a bill up.

It seems to me that an independent commission against crime and corruption in this state is inevitable, whether it is this bill, whether it is the Liberal bill, or perhaps the Greens might introduce a bill at some stage in the future, but it will happen, I am sure. It is the direction in which the other states are heading and, for now, I am happy to support the model that the Hon. Sandra Kanck has put before us.

The Hon. SANDRA KANCK (23:55): I thank all honourable members for their contribution. There was really only one question that was raised, I think, and that was by the Hon. Mr Brokenshire in respect of the oversight committee. He was talking about the Western Australian situation where there has been more or less a stand-off. There are two committees that I have included in this bill. There is the operations review committee, and I cannot imagine that that would happen there because a function of the committee is to advise the committee and also to provide advice to the commissioner, where the commissioner seeks advice from that committee as to whether it should investigate or discontinue a particular complaint. I cannot imagine that that would result in a stand-off. Then we have the parliamentary joint committee and, again, I cannot imagine—in terms of the functions that are set out in the bill—that anything such as that would happen. The parliamentary committee does have an opportunity because, in clause 68(1e) it says:

To inquire into any question in connection with the commission's functions referred to it by a house of parliament and report to the house on that question.

I do not see it as being a confrontational thing between the committee and the commission, so the sort of problems that have arisen in Western Australia I do not envisage would happen with this bill.

As the Hon. Mr Parnell has observed, it is the Democrats' fifth attempt and I am hopeful that it will pass. There are different models and I do not claim that this is the perfect model. It is based on the New South Wales model with some amendments to make it more applicable to South Australia. The government has been intransigent on the question of an ICAC for quite some time, so it is not surprising to hear tonight that it will oppose it again. The government keeps telling us that you have nothing to fear if you have nothing to hide in regard to other bills, so I would like to repeat that to it.

On the question of cost, obviously there has to be a cost, but, once you set up something such as this, you begin to rationalise what you already have. The police Anti-Corruption Branch, for instance, has its limitations and, if you had an ICAC, you would look to see what role, if any, the police Anti-Corruption Branch would continue to have.

The Hon. B.V. Finnigan interjecting:

The Hon. SANDRA KANCK: The member interjects that it is about closing the ACB. You have to look and you have to rationalise your services. The reality is that the police Anti-Corruption Branch cannot compel someone to give it evidence, so in many ways it is a toothless tiger. We have the Police Complaints Authority where police investigate police, and I am sure that many members, at different times, have had complaints from their constituents who are most upset about police investigating police. We would not need the Police Complaints Authority if we had an ICAC so, again, money that keeps that operating could go into an ICAC.

We have talked today in this parliament about a number of issues that could have been investigated by an ICAC. In particular, we have the issue of the Copper Coast council. Had we had an ICAC, I think that the allegations would have gone straight to an ICAC and it would not have been part of the role of the Legislative Council, or anywhere in this parliament, to be looking at it.

There is a lot of sense in doing that, and using the New South Wales model I have incorporated those same responsibilities here as happen in New South Wales where the ICAC spends a great deal of time working with local government so it can make sure that local government not only is squeaky clean but is seen to be squeaky clean. That is a really important role.

At the moment, in relation to the Copper Coast, we have resources from the Minister for State/Local Government Relations department attempting to sort out some of what has been happening there. If we had an ICAC I think that some of these things that look a little bit dicey would have been dealt with a long time ago.

In dealing with some earlier things; for instance, the Dunes development, which the police anti-corruption branch is looking at at the moment, that would have given some signals to an ICAC to say, 'Hang about, there are some questions here about the way this council processes things. Let's sit down with you before you make another decision and work out how you are doing it wrong, and work out how you can do it so that there is the greatest amount of transparency and the greatest amount of accountability.' That is a really important role in this ICAC.

I thank members for the support that they have given. As I say, this is one model. I am not wedded to this particular one. Mine is a 2C ICAC; the bill that has been introduced by the opposition in the lower house is a 1C ICAC. These are not crucial questions. What is really important is that we have support for the whole concept of an ICAC.

Bill read a second time.

In committee.

The Hon. P. HOLLOWAY: I do not think the opportunity could be let go without saying how extraordinary it is that in the Legislative Council, the body that has prided itself on discussing legislation, should allow a bill as comprehensive as this, that a majority of members, even though supporting it, have said it is not the best model, are not going to investigate the individual clauses. I think that says something about private members' legislation and the Legislative Council. There are 40 private members' bills. If we allow this bill to go through without any sort of scrutiny at all, really, it says something about this place.

The Hon. R.D. LAWSON: As I said in my second reading contribution, the Liberal opposition in another place has this day introduced a bill very similar but in some respects different to that proposed by the honourable member. In those circumstances, given the hour, we do not propose to go through, in the committee stage of this bill, seeking to amend every clause to conform to that which the Liberal Party has adopted in another place. We do not want to be accused of adopting inconsistent positions. In those circumstances, and given the time, we cannot support the third reading of this bill.

As I indicated, we supported the second reading. We agree with the principle of it. We think it is important. We congratulate the member for bringing it forward, but we are not going to waste the time of the council in seeking to bring this bill into conformity to the one which we have proposed. So, I indicate our position on that. We will not be supporting the third reading, and we do not propose to go through it clause by clause. We do not believe that that would be a fruitful exercise.

Clauses 1 to 104 and title passed.

Bill reported without amendment.

Third reading negatived.

HEALTH CARE (COUNTRY HEALTH) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 October 2008. Page 486.)

The Hon. B.V. FINNIGAN (00:06): The government is opposed to the bill. It is not consistent with the existing powers of the Minister for Health and it will be difficult to apply. By making decisions relating to the closure of a hospital site or emergency services subject to the approval of parliament, the bill is not consistent with the minister's powers under the Health Care Act 2008. It does not deal with resolving a situation where there may be divergent views as to the closure of a site or make it obligatory to go through unnecessary processes where there is agreement on the closure of a site, including where the closure has the support of the relevant health advisory councils.

The bill would be impractical in its application, particularly in the provisions relating to the reduction in emergency services. The application of this clause would be problematic because of the difficulty in interpreting key terms such as 'emergency services', 'emergency' and 'reduced to a significant degree', and therefore when this clause would apply. The reporting requirements under proposed clause 40(d) creates an unreasonable duplication of effort for the health department given that it must produce its annual report one month after this report is due.

Reliable and meaningful reporting of health outcomes as proposed is not practical on an annual basis and is more properly the function of the Health Performance Council under the Health Care Act. The Legislative Council should note that one of the principles of the Health Care Act is focused on the planning and provision of health services in country regions and is therefore a proper subject of a report from the Health Performance Council.

The government can take steps to ensure that information about health professionals in country regions can be included in the annual report. The government will commit as a matter of policy to requiring reasonable notification of a proposal to close a hospital site and ensuring that it takes proper steps to inform those who are likely to be impacted by any proposed closure. With the advice of the Country Health SA Board, the government will develop a set of guidelines to be followed when considering the closure of a hospital site or a significant reduction in emergency services.

The government opposes the bill. It is not consistent with the current health care governance regime. As the honourable Leader of the Government suggested in relation to the previous bill, most of the private members' bills that come before this place are not well thought out. They are not well considered as potential legislation to go into the law of this state.

Members interjecting:

The Hon. B.V. FINNIGAN: I am simply stating the reality, that private members know that most of the legislation they put forward is very unlikely to make it to the statute book, so they do not exercise the necessary diligence. This bill is about getting a cheap headline. This bill is about trying to make political capital out of a situation where the opposition, and other members, consider that

there is some political expediency to be gained. This bill is not consistent with health governance arrangements. It is ill thought out and it is designed simply to make some political gain. The government opposes the bill.

The Hon. S.G. WADE (00:10): I rise to indicate the opposition's support for this bill. This bill follows on from the failed Country Health Care Plan, released and later withdrawn by the Rann government—a plan which sought to slash health services in rural and regional South Australia. The Country Health Care Plan was a colossal demonstration of how out of touch the Rann Labor government is with regional South Australia, and shows the low regard with which it is held by this government.

The Country Health Care Plan was decisively rejected by the community—not only by country communities but also by the wider South Australian public. The plan deserved to be decisively rejected. It was a plan which set out to close down country hospitals without consultation with local communities in an effort to create savings to be invested in more bureaucrats. The centrepiece of the plan was the downgrading of 43 country hospitals to mere bandaid centres and first aid posts—the most dramatic downgrading of country health services in the history of the state.

What is particularly offensive is that the government dared to promote the plan when regional South Australia is struggling to cope with the effects of the drought. The social fabric of many South Australian regional communities is under extreme pressure and this government, with its National Party and so-called Independent members within cabinet, supported the disembowelling of country health services. The Rann Labor government's lack of regard for rural and regional South Australians came as no surprise, but it was callous in its timing and delivery.

For seven years Premier Rann has sat at the top of the State Administration Centre and celebrated the fact that his kingdom stretches as far as the eye can see. It is bad luck if you are over the horizon in the northern or southern suburbs, but heaven help you if you live in regional South Australia. While Messrs Rann and Foley are more than happy to reap the financial benefits of rural industries, such as mining and farming, they are not willing to invest or take any interest in country South Australia or provide any support to one-third of South Australians who live outside metropolitan Adelaide. In fact, Mr Rann and his colleagues hold country South Australians in such contempt that, as I previously mentioned, they did not even consult with affected communities before announcing their intention to cut health services and close hospitals.

Having abolished country health boards—the voice of local communities—and having silenced the health professionals and employees, minister Hill was confident that there was no-one left to criticise his new plan; that he was free to play merry hell with country hospitals. But what a lesson he learnt! Stripped of their voice through the abolition of country health boards, the rural and regional communities, supported by their metropolitan cousins, nevertheless found a voice in community action and public protest. They sent a loud and clear message to minister Hill, the Premier and this government: we will not be silenced and we will not have our hospitals closed.

It was an impressive display of people power. The public reception was so poor that our media-focused Premier was forced to withdraw the plan, and the government is now consulting on a new plan—this time entitled 'the Country Health Care Strategy'. This leads us to this bill. In announcing the development of the Country Health Care Strategy, the Premier and the Minister for Health have said repeatedly that no country hospital would close under this government. It is a laudable commitment, but one about which I must confess I am somewhat sceptical.

The opposition supports the scepticism reflected in the bill introduced by the Hon. Robert Brokenshire. We are sceptical because, unfortunately, South Australians have consistently found that Premier Rann and his government feel no compulsion to uphold any of their commitments. I am reminded of the Treasurer's statement in 2002 when he said, 'You do not have the moral fibre to go back on your promises: I have.' That is a very telling comment, indeed.

It is this record, littered with broken promises, that is the catalyst for this bill today. Having learned the hard way that commitments from this government are not worth the paper on which they are written, the only way in which to hold the Premier and this government to account is to force them to do so through a bill.

This bill provides a series of steps which must be taken before a country hospital can be closed. These steps are reasonable and include giving notice in the press and an obligation to present a report to parliament on the planned closure of a hospital. It is a sensible proposal made necessary by a government that does not keep its word or honour its commitments.

The opposition will support this bill and welcomes the fact that Family First has introduced it. We hope that it might suggest that it has learnt a lesson about this government. I mentioned earlier that the voice of country people and their representation on matters such as the country health plan were silenced by the government's abolition of country health boards. This was a shameful act, which was supported by Family First through its support of the government's abolition of these boards. Some might be surprised to hear that today Family First is arguing for more consultation, after it supported the removal of the most effective means of consultation and communication. I choose to see it as a late but welcome realisation—perhaps a turn on the road to Damascus.

The reality is that rural and regional South Australians have only one reliable friend in this parliament. The National Party has joined the Labor cabinet and supported the country health plan. Family First supported muting the country voice. Labor manages the other parties when it suits them. The Liberal Party stands up for country South Australia consistently and forcefully.

The Hon. SANDRA KANCK (00:15): I support this amendment to the Health Care Act introduced by the Hon. Robert Brokenshire, because it will ensure that the Premier's very public guarantee to rural and regional South Australia results in the protection of country hospitals and health services. Happily, the minister's previous plan to close down or downsize most country hospitals was thwarted.

I think we need to ensure that the minister takes into account the elements that promote health and healing. There has been extensive research, for instance, about healing and how psychological stresses impair healing. Studies show that positive social interaction influences hypothalamic pituitary adrenal (HPA) activity, which promotes wound healing. So, if we force country people away from their own communities when they are trying to heal their illnesses and diseases and injuries it is clear that it will have a negative impact on them.

Rural South Australians deserve the right to readily accessible health services similar to their city counterparts. Country people have worked very hard to get the resources they need in their areas. They are fabulous at fundraising, raffles, debutante balls, and all sorts of things, to get money for their local hospitals, and they need to be included in decision making about their local hospitals.

I remind members of the government of the Generational Health Review, which was conducted a few years ago under its auspices. On page 103 it states:

> The public has a right to have a say on public health system issues and direction...The right to have a say means the provision of opportunities for involvement across the health care system at all levels. This includes opportunities for community members to be involved in the design, directions and policies of their local health services as well as the right to be involved in decision making processes at the whole-of-health-system level.

So, having mandatory disclosure of a decision to alter country health services to the local community provides for transparency. The ability to make submissions to the minister allows public input.

Further steps will need to be taken to guarantee that country members are involved in the design, directions and policies of their local health services, as these are the people who know best what is required, not city bureaucrats. The Generational Health Review states on page 5:

> Differences in household income could also be observed with the proportion of low-income families significantly higher in country South Australia than in Adelaide. NATSEM21 found that, in 1996, around 25 per cent of households in Adelaide had incomes under $15,600, compared to over 30 per cent of households in country South Australia.

This demonstrates that there is a need for more, not fewer, local health services in rural South Australia, due to the proportion of low income earners. I support this bill because, without guaranteed access to regional health care, the foundations of community in country areas will be eroded.

The Hon. M. PARNELL (00:19): The Greens will be supporting this bill, which recognises the importance of country hospitals to country people. When I saw this bill, the first thing that sprang to mind was that governments do need to go through some pain before they see sense in consulting local communities.

Clearly, the government has gone through some pain over the Country Health Care Plan, and it reminded me of the pain the Olsen Liberal government suffered when it closed Croydon Primary School nearly 10 years ago. This prompted me to pull a copy of the Education Act 1972 off

the shelf. I note that, not long after that, the Liberal government passed the Education (Government School Closures and Amalgamations) Amendment Act 1998, which contains very similar provisions to those the Hon. Robert Brokenshire is introducing with his legislation.

For example, under part 2A of the Education Act (closure or amalgamation of government schools), a process is set out for public consultation. A review committee must be established that invites submissions from representatives of the local communities likely to be affected by a decision to close or amalgamate a school with another school. Through some pain, the then government saw reason and decided to legislate for consultation over the closure of important public facilities such as schools. Country hospitals are no less important to people than their local school.

I think this measure is sensible. It provides that country hospitals cannot be closed on the sly; they have to go through a proper process of consultation and hear the views of local people. With those brief words, the Greens are happy to support the bill.

The Hon. A. BRESSINGTON (00:21): I rise to indicate my support for the second reading of the bill. Obviously, it has arisen from the government's extremely unpopular health care plan and, with that in mind, I feel compelled to first make some comments about this. Along with the majority of members in this place, I supported the government's bill in February. Although I have since changed my position, I make no apology for my original vote. My office consulted extensively on that bill and, whilst I had reservations, which I expressed very clearly in my second reading contribution, there was simply not enough negative community feedback at the time we debated the bill to convince me to vote against it.

I note that, in the initial stages of consultation after a draft bill was issued in August 2007, community leaders, hospital board members and others treated the bill with a high level of suspicion, and it certainly elicited some passionate reactions. There exists a strong sentiment of distrust in our regions over the centralisation policies of this government, and not just those in relation to health. This sentiment continues to this day and is one of which I am well aware.

However, over time, strong feelings about the government's plan seemed greatly to diminish and, by the start of this year, the vast majority of people I spoke to said pretty much the same thing—that, although they were not exactly thrilled about the bill, they had accepted it and moved on. It was then passed and all hell literally broke loose. Not even the government's $400,000 spin campaign could prevent a landslide of criticism across the state, and we can all speculate about the reasons for that.

First and foremost, I realise that our role in this place is to represent the people, and it is in the light of the public's reaction once the country plan was announced that my position changed. The message from South Australians was loud and clear: they wanted the satisfactory provision of health services in regions, and they wanted legislation that guaranteed that. In his second reading contribution, the Hon. Robert Brokenshire stated that this bill proposes to put into legislation the guarantee the Premier made in a press release to rural and regional people in South Australia, that is, that we do not see hospitals and health services further downsized or closed.

In fact, both the Premier and the health minister have stated in a number of press releases, as well as frequently in the media, that this will be the case. In particular, they have commented on 'no closures of country hospitals' and the provision of emergency services in those hospitals. Incidentally, the government has also publicly committed to proceeding with the improved infrastructure and service commitments that were outlined in its original plan, including capital infrastructure for Ceduna, Port Pirie, Berri and Whyalla.

As the Hon. Robert Brokenshire said, until something is encoded in legislation, regional and rural South Australians will not have the certainty they demand.

I really think that we in this place should listen to their concerns and provide that certainty to them. We cannot focus solely on the economic benefits of a plan: we must give equal consideration to the social costs of leaving things the way they are. Of course, the government is currently having public consultation meetings about its revised Country Health Care Plan, and the first of a series of public meetings on the country health strategy was held in Cleve on 17 November. These meetings are continuing over the next few weeks.

There is no doubt that the government's original plan was highly unpopular and a far cry from what regional South Australians expected from a country health service. The government has said that it has heard this voice, and that it requested that Country Health SA, with the support of

the country health task force, develop a strategy to address these issues. However, can we in this place afford to wait and trust this government, given its track record—not to mention its disregarding information that continues to filter down to all of us?

For all the positive press releases put out by the Premier's 'Ministry of Truth' (as I like to call it), reports have emerged that the government is trying to discourage people from attending public consultation meetings on its revised Country Health Care Plan. Last week I heard the member for Flinders say on ABC Radio that the Eyre Peninsula meetings were a farce. The member said that three of the meetings were scheduled for the middle of the day during harvest, meaning that farmers and working people could not attend. The member for Flinders said that many people were not being given the opportunity to give feedback on this critical issue. She said:

> I am quite sure the government wants to have a minimum number of people possible because I think they have their agenda and they don't really want to upset it. So instead of getting 200 or more like we did at other consultations, we'll be lucky if we get 10 or 20. It will only be the retired people who can get there to the consultation.

This was hotly disputed by Peter Blacker, chair of the Country Health Plan task force, who said that it had been scheduled in order to meet timelines.

The Hon. R.L. Brokenshire interjecting:

The Hon. A. BRESSINGTON: Exactly. The Hon. Robert Brokenshire asks whose timelines, and I would like to make that point. Quite often in this place we express concerns about the consultation processes of this government. Consultation means that you actually consult and compromise and make sure that the people you are consulting with are available for input.

An honourable member interjecting:

The Hon. A. BRESSINGTON: That's exactly right; make sure they can turn up. I am not sure whether or not that is true but, given past comments that have come to this place, it is more than likely. As members in this place will know, I am a strong critic of the way this government consults. It usually means either making no real effort to engage stakeholders or meet up with them or going into those meetings with no real intention of taking the feedback into account. Last Thursday there was also more criticism on ABC Radio that community consultation sessions were not being advertised enough. Several Jamestown residents told the meeting on Wednesday that they found out about it just hours before it began.

There are differences of opinion on this matter but, given the overwhelming public reaction to the original plan and the fact that the government has stated on its own website that hospitals and health services will not be further downsized or closed, why would we not support this bill? In his second reading speech the honourable member spoke about issues facing rural and regional South Australians—issues such as transport and the drought. He also noted that there was widespread support in metropolitan Adelaide to ensure that adequate health services were provided in country areas because many people living in Adelaide have family who live in the country. I think it is also worth noting that a lot of people, South Australians as well as those from other places, holiday in some of these regions, which is another reason we need an adequate level of services.

I will play it straight on this one. I support this bill because it may just give rural and regional South Australians some peace of mind, and it may just reverse some of the damage done. The bill is straightforward, sensible and, as I have said, highly warranted. Given the public's overwhelming negative response to the government's original plan, I think we in this place have a duty to act on their behalf and pass this legislation. It is clearly what people want, and that is who we are meant to represent. Rural and regional people play a vital role in the social and economic vibrancy of our state, and that is why they deserve our support. It is in all our interests, even those of us who live in Adelaide, that rural communities—particularly in the present climate—are given the opportunity to flourish. I congratulate the Hon. Robert Brokenshire for introducing this bill and I have appreciated hearing the contributions of other members.

The Hon. R.L. BROKENSHIRE (00:30): I will be brief but I have some summing-up remarks. First, I would like to thank all colleagues who have spoken in favour of this bill. I sincerely and genuinely appreciate their input and support. I know that country people throughout South Australia will also appreciate it.

I was incredibly disappointed by what could only be described as a pitiful debate from the government on the reasons why this bill should not be supported. The bottom line, or the truth, is that the government is incredibly embarrassed about the mess it has created in trying to work

against the best health interests of rural and regional South Australians. The Minister for Health has two lines that he has been given by the spin doctors—not the doctors who are trying to fix the health of rural and regional people, but the spin doctors in the minister's and the Premier's office. I will tell you what the first line is: 'We've got a good health system and we're making it even better.' That is the first thing you hear the Hon. John Hill talk about every time someone criticises the lack of a good health system in this state.

On the weekend we had an example of that, where specialist doctors and professors said they are in crisis when it comes to the health system and the Minister for Health simply dismissed it and made it look as if those professionals did not know what they were talking about. In this case it was said that the Queen Elizabeth Hospital is a great hospital, everything is fine, they are building more, and they are going to build the Marj and so on.

The Hon. Bernie Finnigan tried to defend the government's pathetic position in not supporting this bill. He commented on clause 40D of the Health Care (Country Health) Amendment Bill, which basically provides that the minister must, within two months—that is, 60 days; probably 62 days even—after the end of each financial year, cause a report to be prepared that sets out, in relation to that financial year, a statement about spending on expanding health services to country areas, information about the steps taken to support health professionals who provide services in country areas, and information about the number of health professionals who are estimated to work in country areas at the end of the financial year.

On top of that, it simply says that the minister must cause a copy of the report to be laid before both houses of parliament. The government is objecting to that basic transparency. It is saying that it does not have enough time to do it, for crying out loud. What does the government do? What do the ministers do if they cannot get basic material like this before the parliament? How about some transparency? Thank goodness we have the Legislative Council to put pressure on a government that clearly, from the government's response, not only does not want a Legislative Council—the Premier is going to hold a referendum to get rid of it on the second Saturday of March 2010—but it does not even want a parliament.

How dare a member of parliament from either house put up a bill that looks after people? We are supposed to live in a dictatorship now, where nobody knows anything that is good for anyone other than government. That is basically summing up what this honourable member said. 'We know nothing; the community of South Australia, rural and regional South Australians know nothing. What are they complaining about?' They are complaining because they pay taxes, they get unwell and they are very nervous and worried when they have the threat of losing their health system.

As many honourable members have said, all this bill does, in simple, legal language is ensure that the protection mechanisms that the Premier and the Minister for Health said that they would guarantee in a press release, are put into law. The simple question is: why are we putting it into law? We ask that question because we do not trust a press release. A press release will not guarantee somebody at Keith, Whyalla, Ceduna, Loxton or McLaren Vale that there will be a hospital, because that press release means diddly squat when it comes to delivery of health services. This legislation guarantees that there will be checks, balances and transparency and that a press release issued by the Premier and the Minister for Health for the purpose of spin will be put into legislation. In thanking members for supporting the bill, I ask: why are the government and the Premier not supporting this bill, when all we are doing is putting their press release into legislation?

The ACTING PRESIDENT (Hon. R.P. Wortley): I remind the honourable member that he should be wearing a tie and that it should be done up very tightly.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. B.V. FINNIGAN: I have a question of the mover. In relation to the insertion of new Division 5A, I refer to new section 40B—Closure of a country hospital site. In new subsection (2) reference is made to giving notice in accordance with the regulations: are they regulations made under some amendment proposed in this bill or regulations under the existing act?

The Hon. R.L. BROKENSHIRE: The regulations always have to come in after the bill has passed, just as the situation applies with the government where we always wait with bated breath for the regulations to come through and there is an opportunity to amend or debate those regulations.

The Hon. B.V. FINNIGAN: My question is: under what section of either your proposed amendments here or the existing act are those recommendations to be made?

The Hon. R.L. BROKENSHIRE: I understand that the regulations would be made under the particular amendments in this bill in concurrence with any relevant sections of the existing bill.

The Hon. B.V. FINNIGAN: Under new section 40B(2), when it says that the minister has to give notice to local community bodies, organisations or groups that the minister assesses as having a reasonable level of connection with the country hospital, given that members have indicated that they do not trust the minister to consult with local communities, and given that it is the minister who makes the assessment as to who should be consulted, how will they ensure that organisations, which may wish to be involved and receive this notice but have not, will have some recourse to ensure that they do receive this notice?

The Hon. R.L. BROKENSHIRE: New section 40B(3)(d) provides:

> (d) an invitation for interested persons or bodies to make representations in writing to the Minister in relation to proposed closure within a period (of at least 28 days) specified by the Minister.

It provides that the minister will have to have further consultation. There has been no real consultation at all. If the government wants to assist with fine-tuning regulations that can then go before the Legislative Review Committee, I would support that. But this legislation enshrines protection and ensures that there is proper due process with respect to a possible closure of a country hospital. It will not be a decision made by city-centric bureaucrats sitting in Hindmarsh Square in Adelaide.

The Hon. S.G. WADE: The line of questioning that the Hon. Bernard Finnigan is pursuing seems quite extraordinary. As I understand it, and perhaps the mover of the bill might clarify this if I am misunderstanding it, the intent of the member's bill is to give MLCs an opportunity to ensure that the minister's and Premier's press releases are honoured, but now we seem to have the Hon. Mr Finnigan suggesting that not only can the minister not be trusted to implement his press release but also he cannot be trusted to make regulations that are consistent with a bill that might be passed by this council, and then he cannot be trusted to observe the regulations once it is in. It is extraordinary. I think it is almost a reflection that needs a substantive motion.

The Hon. B.V. FINNIGAN: I am quite happy to speak for myself rather than have motives impugned to me by honourable members opposite. This is a bill that it is proposed will become part of the statutes of this state, and I have asked under what section of the act these regulations are to be made and I have not received a satisfactory response. Then the member indicated, given that honourable members have said they do not have trust in the government—which I, of course, do—and given that they have said they do not have trust in the government to consult, that this act provides that notice be given to local community bodies, organisations or groups, yet the mover has not been able to indicate what recourse organisations have that might be excluded by that provision. They are saying they do not trust the minister. Who assesses who should be consulted? The minister. Yet the mover has not been able to indicate where that situation would be addressed. Is he saying, despite not being able to point to where the regulations would be made, that the regulations would have to specify each and every individual body, organisation or group that would need to be consulted in every individual case?

The Hon. A. BRESSINGTON: In my limited time in here (2½ years) I have never heard anyone put up a piece of legislation and be questioned about the regulations. That is the minister's job. That is what the Legislative Review Committee is for. That is why we have disallowance motions, if we do not agree with the regulations. The honourable member says that bills put up by crossbenchers are substandard, and now he wants the honourable member to take responsibility for regulations and where they are placed as well. Give me a break!

The Hon. B.V. FINNIGAN: I am not sure where I indicated that. What I am saying is that, given that I and other honourable members are being asked to vote this bill into the law of this state, I am clarifying how the clauses would apply. The point I was making in my second reading contribution is that, if you are going to put forward bills that you expect to be made law, those bills

ought to be pretty thoroughly considered and able to operate properly. Here I am unable to find out what section of the act regulations are to be made in accordance with. It is a fairly simple matter.

The Hon. S.G. WADE: Can I assist the Hon. Bernard Finnigan by indicating that the Hon. Robert Brokenshire's bill indicates that it is an amendment to the Health Care Act 2008 and under that act in section 100 regulations can be made. It is an amendment bill. It is not supposed to have its own regulation-making power.

The Hon. B.V. FINNIGAN: I am indebted to the honourable member. That is simply what I was asking. New section 40B(8) states:

> If it is still proposed that the country hospital be closed, the closure cannot occur without the approval of both houses of parliament.

At what juncture does this provision take effect? The wording is, 'If it is still proposed that the country hospital is to be closed,' but how is that to be determined?

The Hon. R.L. BROKENSHIRE: First, I put on the public record that I am surprised that the Hon. Mr Bernard Finnigan is being so pedantic when it comes to this issue, given that he is one of the few members who has a rural and regional background. I thought the honourable member would be supporting the intent of this bill because he is a South-East lad, and he knows the importance of hospitals. The bill provides:

> If it is still proposed that the country hospital will be closed, the closure cannot occur without the approval of both houses of parliament.

So, there are quite a lot of steps to work through the procedures and processes. I might add, far more steps than was the case with the old proposal put forward by this government. The government spent $400,000 or $500,000 trying to hoodwink and manipulate country people when it came to trying to get through what was bad public policy for country people. I do not apologise for the fact that the minister will have to do some of the work on the processes. That is what ministers get paid for. That is why ministers are paid a lot more money than backbenchers, together with all the lurks and perks that go with it.

The bill then provides that, when the minister has done the work required, the minister has to then report to the parliament. Because the Westminster system is a democratic system and not an Eastern Bloc system, the bill then gives both houses of parliament the opportunity to consider and sign off on the closure, which provides an absolute check and balance. So, if something breaks down in the other steps and processes, constituents can contact both me and my colleagues in this chamber to say that there is a problem and it can then be raised. If we did more of that, there would be less heartache and problems out there in the community.

The Hon. B.V. FINNIGAN: I appreciate that members are passionate about this issue. What I am simply trying to do is to clarify the meaning of some of the clauses of the proposed bill, which I have been unable to do. I have twice attempted to do so, and there has been no satisfactory answer about how any of these things are to be defined.

With every government bill that is introduced, the most extraordinary questions are asked. We have our advisers here to answer questions. Amendments are pored over and argued over in the most excruciating detail on occasion. Because I am being asked to vote on a bill to make it law, I am asking questions such as 'What does this mean? What does that mean? How do you define that? At what point does that clause apply?' The reply has been, 'Oh, look, this is just outrageous.'

I find it extraordinary that we are being asked to vote this into law without being able to get very simple answers about what certain things mean, which takes me to proposed new section 40C—Reduction in emergency services. Can the honourable member explain how 'emergency services' is defined, also 'discontinued and reduced to a significant degree' and then 'reduced' as used later on?

The Hon. R.L. BROKENSHIRE: First of all, I have to say that I find this quite interesting. When the government puts up a bill—

The Hon. B.V. Finnigan interjecting:

The Hon. R.L. BROKENSHIRE: Well, I am answering the question. What you are doing is questioning the legal terminology used by parliamentary counsel, which has put your Premier and your Minister for Health's press release into legal terminology. As a former minister, I can tell you that ministers utilise parliamentary counsel, as well as crown law, when they are developing bills—and probably with less input than I have in the case of parliamentary counsel. They get this

material coming through, and they do not come up with this sort of questioning. In relation to reduction in emergency services, the bill provides:

> Emergency services provided at a country hospital cannot be discontinued or—

Members interjecting:

The CHAIRMAN: Order! I remind the Hon. Ms Bressington and the Hon. Mr Brokenshire that private members should be under the same scrutiny as the government when presenting a bill. If a bill is being presented by a private member, it is their responsibility to answer any queries, whether they come from government or opposition members.

The Hon. R.L. BROKENSHIRE: I am happy to have parliamentary counsel alongside me so that I can get some specific technical or legal advice to assist the member if that is what the member and the chamber would like. I suggest that we adjourn the council for 10 minutes while I bring parliamentary counsel back in and I will then ask for some specifics. I will only need the parliamentary counsel, not five other advisers.

The Hon. B.V. FINNIGAN: I am happy to assure the committee that that will not be necessary, but I certainly ask our honourable ministers to make note of the fact that, where the definitions in clauses and the application of clauses are to be questioned, if they have been drafted by parliamentary counsel, those questions are not legitimate. I think that is something you should make a note of for future committee stages. Here are three very simple examples where I have said: what does this clause mean and how is it going to work? I have not received satisfactory answers. That is the point I am making.

The Hon. S.G. WADE: I would like to comment briefly on the smoke screen that the Hon. Bernard Finnigan has tried to put up. Let us look at the government's bill, not the Hon. Mr Brokenshire's bill. In fact, let us look at the act which it is proposing to amend and which reflects directly on the issue that is being raised. I refer you to the definitions in the Health Care Act. There is a definition there of a non-emergency ambulance service. There is no attempt to define an emergency ambulance service, so presumably when the government brought its bill forward it felt that 'emergency service' was sufficiently legally defined not to require any further definition. So why should the government be able to put forward an act that reflects legally defined words when the Hon. Mr Brokenshire cannot? This is pure petulance by the government. I would like to respond—

The CHAIRMAN: Nobody said that the Hon. Mr Brokenshire cannot do what you are indicating that he is not allowed to do. The Hon. Mr Brokenshire probably does not require your assistance, although you have indicated in the previous answers to some questions that perhaps you know more about the bill than the Hon. Mr Brokenshire knows.

The Hon. S.G. WADE: I want to take the opportunity while I have the call to respond to the comments by the Hon. Mr Finnigan and the Leader of the Government in this debate tonight that it is inappropriate for this committee not to debate every clause. I remind—

The Hon. P. HOLLOWAY: I rise on a point of order, Mr Chairman. I suggest that the honourable member's comments are totally irrelevant to the debate on this clause, and I ask him to sit down. My point of order is one of relevance.

An honourable member interjecting:

The Hon. P. HOLLOWAY: I will repeat it: the honourable member's comments are totally irrelevant to the matter that is now before the committee.

The Hon. S.G. Wade interjecting:

The CHAIRMAN: Order! There has been a point of order and the Chairman will make a ruling on it. You are like a jack in the box. I do not consider your response to be relevant either to the bill or to clause 3 of the bill. If you have something relevant to tell the committee, tell us.

The Hon. S.G. WADE: I accept your ruling, Mr Chairman, but I note that other members have been able to engage in the same debate.

The Hon. R.L. BROKENSHIRE: I thank honourable members for their input but there is a step-by-step process in terms of how the reduction in emergency services would occur. I do not quite understand. I certainly understand the bill and the intent of the measure but I do not quite understand the honourable member's questioning, because the steps are laid out there. Is the honourable member not happy with the steps and, if that is a problem that stops the government

from supporting this bill as we go through committee tonight, I ask the honourable member to move amendments to that clause and to be constructive and not destructive. The steps are there but I do not understand the line of questioning.

Clause passed.

Title passed.

Bill reported without amendment.

Bill read a third time and passed.

CONTROLLED SUBSTANCES (PALLIATIVE USE OF CANNABIS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November 2008. Page 763.)

The Hon. B.V. FINNIGAN (00:56): I am aware that there are historical uses of cannabis for medical purposes and claims that cannabis is effective for the alleviation of a wide range of medical conditions.

Members interjecting:

The Hon. B.V. FINNIGAN: In response to the interjections opposite, I am quite happy to say that I have never partaken of the substance at all. It is one thing that I cannot be accused of.

In fact, the range of medical conditions for which cannabis is claimed to be effective is so wide that requests to allow therapeutic use frequently look like requests for legalisation. What is needed is a clear separation of therapeutic and social use. While the bill put forward by the Hon. Ms Kanck goes some way towards addressing this, it does not go far enough in applying the standards that are required for the licensing of any therapeutic product. Those standards include examining the research evidence of therapeutic effectiveness and determining whether there are medical conditions where the therapeutic benefits of cannabis outweigh the risks of cannabis use.

Several reviews of medicinal use of cannabis have been undertaken over the last 10 years; however, to date, this research has only determined that there is sufficient evidence of potential therapeutic benefit to justify further research being undertaken. The research evidence for therapeutic efficacy of cannabis remains limited, and claims of efficacy are often based on opinion and anecdote not controlled studies. There has also been very little research which has compared cannabis or cannabis products with the current best conventional medical therapies for particular conditions.

If the government was to support any arrangement to allow cannabis to be used for therapeutic purposes, there would need to be solid research evidence and medical opinion that shows cannabis is the most effective treatment for a particular condition and all other conventional therapies were considered unsatisfactory.

SA Health has advised that there are some conditions where it is thought cannabis may be an effective treatment, such as neurological and movement disorders, nausea associated with chemotherapy in cancer patients, and neuropathic pain. However, I again stress that there is no medical evidence to support any claims that this treatment is more effective than all other conventional therapies. The government would require advice and support from medical bodies such as the Australian Medical Association, the Royal Australasian College of Physicians and the Royal Australian College of General Practitioners before it could consider palliative use of cannabis.

The bill before us also proposes to exempt individuals holding a valid certificate from fines relating to personal use of cannabis. However, there would still be significant issues relating to obtaining supplies of cannabis that have not been addressed. The bill proposes that cultivation of cannabis for personal use and the sale of equipment for cultivation of cannabis would be exempt from fines under the certificate arrangements.

In South Australia, any cultivation or purchase of cannabis is illegal, and this bill does not seek to change this. This means that any possession of cannabis for therapeutic use could not be separated from illicit markets, which would create significant confusion over the legalities of the use and supply. Those patients charged with possession could present their case in court, but there is no defined criteria for courts to decide these cases.

I am aware that there are some therapeutic cannabis products available overseas, such as Sativex, which is an extract of cannabis that is administered as an oral spray and absorbed in the mouth. Sativex is approved in Canada and is being investigated in Europe, the United States and New Zealand for symptomatic relief of neuropathic pain in multiple sclerosis and for adjunct pain relief in patients with advanced cancer who experience moderate to severe pain. However, these products can be registered for medical use in Australia only if a pharmaceutical company applies for registration in this country. My understanding is that, so far, no company has applied.

The government is not prepared to support this bill. There is no clear definition of what medical conditions would be eligible for therapeutic use of cannabis, and there is no definitive medical research to support the use of cannabis as being more effective than other available treatments.

The Hon. J.M.A. LENSINK (01:00): This bill, which was introduced by my colleague the Hon. Sandra Kanck, proposes that fines be waived for the personal cultivation and use of marijuana for people suffering designated medical conditions on the proviso that a medical practitioner has signed a palliative cannabis certificate to indicate that that person is suffering from a specified illness or disease.

I note that the use of cannabis for medical or any other purpose is currently prohibited in all Australian states and territories. There are a number of harmful effects of cannabis use, which are becoming much better understood as the research record continues, and these include effects on memory, learning and cognitive processes, short-term cardiovascular effects, long-term risks of bronchial disease and cancers, links to psychotic conditions in vulnerable individuals, drug dependency and impacts on the immune and reproductive systems.

There have been a number of reports released on the topic of palliative cannabis use in recent years and, of the two most cited in the literature, one was produced by the US Institute of Medicine, (IOM), and another by the House of Lords Select Committee on Science and Technology (SCOST). Both of these reports found that cannabinoids, which are the reactive chemicals in cannabis, have potential for use with certain medical conditions and that there is a need for further research on the clinical uses of crude cannabis plant products and cannabinoid compounds.

One of the reports, at least, also recommended that, while the results of research are awaited, cannabis should be made available on compassionate grounds to patients with a limited range of life-threatening and chronic health conditions such as HIV-related wasting, nausea caused by chemotherapy, neurological conditions and pain which is unrelieved by conventional analgesics. There has also been a report convened by the New South Wales government in 2001 which was largely in agreement with the other research projects to which I have referred.

The most serious problems associated with the palliative use of cannabis are caused by smoking, although the impacts of smoking occur on a medium to long-term basis so that if somebody has a terminal illness, that is probably not their chief concern. Locally, at least, a report was prepared by Drug and Alcohol Services (DASSA) in 1998 which concluded that the greatest potential for medical use of cannabis is as an appetite stimulant, in management of neuropathic pain and for quick relief of nausea associated with some cancer chemotherapy treatments.

I have received correspondence from various individuals on this issue urging us to support their use of cannabis as the only means by which their symptoms can be relieved. However, I think that we do need to be led by the evidence and there clearly is not enough evidence at this stage that would ensure that the negative impacts of cannabis are not promulgated on the rest of our community, because there are very serious impacts indeed.

I am sure that I will get a reaction from the honourable mover of this bill when I state that when things are legal it sends a very clear message to the community as to its use. I would just like to back this up with an example in relation to alcohol consumption. I think young people understand very clearly that, because it is illegal to drink-drive—apart from the odd offender, who is very much in the minority—they just do not do that these days, whereas clearly a number of them drink to excess and get into other sorts of problems because there is no prevention of drinking to excess most of the time, unless it is on licensed premises where responsible alcohol service can monitor their behaviour.

We do need to be led by the medical fraternity on these issues, and the AMA in particular supports further research. However, I think that as a parliament we are unable to move on this issue until the research community has got some firmer evidence. On that basis, the Liberal Party will not be supporting this bill.

The Hon. D.G.E. HOOD (01:05): I rise briefly given the hour to indicate that Family First will not support this bill, and I am sure that comes as no surprise to members. This bill—

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

The Hon. D.G.E. HOOD: Yes, absolute shock. This bill seeks to legalise the use and cultivation of cannabis if a doctor so approves. I am certainly sympathetic to people dealing with long-term chronic pain. In fact, some members might know that I live with chronic back pain and, at times, it is very debilitating. It is something I have lived with virtually my whole life—certainly my whole adult life. It would therefore be unfair to say that I am unsympathetic to people suffering significant chronic pain. However, in the same breath I will not let my suffering be used for the legalisation of dangerous illicit drugs. In my own case I use prescribed drugs each day. I take a substantial dose these days but, by and large, they are able to treat the problem adequately, and one soldiers on.

Some terrific new drugs can be used in the place of cannabis for a number of conditions, particularly in the area of antiemetics. Some very impressive new drugs have been launched, particularly one called ondansatron, which members may have heard of and which has been a real breakthrough in the field of intractable vomiting and the like. The medical profession seems to find a way to use prescription drugs that, in many cases, are adequate—in some cases they are barely adequate but in many cases they are more than adequate.

We used to call cannabis a so-called 'party drug' or 'recreational drug'. In the 1980s South Australian cannabis legislation was relaxed on the assumption that marijuana was mostly harmless, or so many people thought; and, to some extent, other states followed our legislation. In fact, we decriminalised the cultivation of up to 10 cannabis plants for personal use—10 plants, Mr President. Now we are facing up to the consequences of that lax approach with a mental health epidemic and, indeed, in other areas.

Cannabis is not a harmless party drug; we know that now. The assumption was wrong, and it is now having a dangerous impact on our community. I wonder what sort of warning labels would be proposed should this bill pass. One warning label might be 'Use may shrink the brain'; another might be 'Product may cause serious mental health issues'; and perhaps another warning label could be 'Use may trigger psychotic episodes'. All these hypothetical warning labels are headlines that respected medical journals have actually used with respect to cannabis use. They have also been quoted in the lay press. In fact, the *Daily Mail* stated:

> Even a small amount of cannabis triggers psychotic episodes, warns doctors.

The Advertiser had the headline 'Dope risk to mental health', and a specific quote from the Channel 9 News is that 'heavy marijuana use shrinks brain parts'. Many experts are now convinced that cannabis causes not only psychotic illnesses, such as schizophrenia, but also depression and anxiety disorders, particularly when smoked by young people. A recent five-year review of the histories of mentally-ill patients in New South Wales found that four out of five had smoked marijuana regularly in adolescence. Dr Andrew Campbell of the New South Wales Mental Health Review Tribunal is on the record as saying 'the psych wards are full of these people'. Of course, he was referring to people who used cannabis when they were young.

The bill allows that, if people want to smoke cannabis, they can go to the doctor to get a 'palliative cannabis certificate', which would say that you were suffering from some condition which could be treated by smoking cannabis. If you are carrying one of these certificates, then you cannot be fined for cultivating or using the drug. Family First objects to this. A government that is serious about the health of its citizens should not be giving tacit approval to the use of a dangerous drug posing serious physical and mental health problems potentially—and cannabis fits squarely in that category.

When legislators overseas have allowed medicinal use of marijuana, the results have been less than optimal, and that is the saying the least. Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon and Washington in the US are all prime examples. In those states, cannabis addicts constantly abuse the medical use loophole. Apparently, people without genuine medical problems find it easy to get prescriptions for cannabis nonetheless, and there are doctors who are more than willing to issue these consent forms inappropriately.

Medical use provisions provide a foothold for an easy and plentiful cannabis supply to the community. Indeed, in California, drug dealers operated with impunity, opening up so-called 'legitimate' cannabis dispensaries in family neighbourhoods. The news reports talk about

'multiplying problems and thefts, landlord complaints, distribution to minors and non-patients and the public odour of marijuana', but, despite this, the authorities were not able to do anything.

I refer to a court case in the US, Gonzales v Raich. When it was handed down, this US Supreme Court decision authorised the federal government to launch a crackdown and, out of necessity, the drug enforcement agency started shutting down the cannabis suppliers. There we have a situation where in the US they have gone down that path and then retreated at a rapid rate. From the *San Francisco Chronicle*:

> Luke Scarmazzo and Richard Montes were convicted by a federal jury in Fresno on Thursday. Federal officials say that the case sends a message to marijuana growers and dealers who believe they are shielded from prosecution under the California law legalising medical marijuana use. Scarmazzo and Montes made millions by exploiting and hiding behind California's medical marijuana law.

If we pass this law, then we run exactly that same risk. It is a disaster in California and we do not need to recreate the US nightmare here. Having said that, if the Therapeutic Goods Administration suggested that there may be some value in these sorts of therapies, then, in that case, Family First would have a somewhat more open mind to these sorts of measures. At the moment, of course, they do not. For that reason, Family First will not support this bill. It poses many more risks than benefits, and for that reason we will not support the bill.

The Hon. M. PARNELL (1:13): I do not intend to speak for long as I think I am the last speaker for tonight. The Greens will be supporting this bill as it is a part of our policy platform. Our platform states that we will work towards the introduction of 'the regulated use of cannabis for specified medical purposes such as intractable pain'. Tonight I do not intend to prosecute the detailed case for this measure. I think that the Hon. Sandra Kanck has done a good job outlining the reasons why this measure is justified. There is a significant body of credible scientific evidence and strong support from organisations such as the Cancer Council of New South Wales in favour of such a compassionate response.

However, I do want to respond briefly to the comments that were made by the Hon. Ann Bressington in her second reading contribution to this bill. In her contribution she made a number of assertions that misrepresent what the Greens stand for. Only this afternoon, the Hon. Ann Bressington made a plea for mutual respect for differing points of view in the drug debate, and she reassured us that her contributions to this debate were based on sound evidence.

I certainly hope that her call for mutual respect is indeed genuine, because part of that respect is not to misrepresent those who hold different views. It was a shame that the sound evidence on which the Hon. Ann Bressington prides herself did not extend to researching the Greens' policy on drugs, because if she did, she would have discovered the following first four principles of the Greens' drugs policy, which is headed 'Drugs, substance abuse and addiction'. The No. 1 principle of the Greens' policy is: the Australian Greens do not support the legalisation of currently illegal drugs. It might be inconvenient for members who like to attack the Greens on what they think its policies are, but I cannot state it any clearer than that.

The Hon. R.I. Lucas interjecting:

The Hon. M. PARNELL: The honourable member asks: how long? I do not know the exact date, but it is at least the past couple of years. Principle No. 2: the Australian Greens believe that a harm minimisation approach is the best way to reduce the negative effects of drug use and drug rehabilitation. Principle No. 3: the Australian Greens believe that harm minimisation policies and programs are those directed towards reducing the adverse health, social and economic consequences of drug use to the individual user and the community. Principle No. 4: the Australian Greens believe that the use of illegal and legal drugs, including alcohol and tobacco, and some regulatory approaches, can have a wide range of adverse health, social and economic effects.

I put that on the record because it is inconvenient for some members who like to have a view about what they think others stand for but, if we are going to have a sensible debate on issues such as drugs, my call is for all members to actually be honest in their approach and to look at the policies and positions of parties and not to misrepresent them. What I have just outlined is the Greens' policy, it is what we believe and I do not think that it could be stated any more clearly. We do not, as the Hon. Ann Bressington falsely asserted in her second reading contribution, believe in the decriminalisation of methamphetamines and cocaine. That is not our policy.

Debate adjourned on motion of Hon. J. Gazzola.

STATUTES AMENDMENT (BETTING OPERATIONS) BILL

The House of Assembly agreed to the bill without any amendment.

STATUTES AMENDMENT (POWER TO BAR) BILL

The House of Assembly agreed to the bill without any amendment.

At 01:18 the council adjourned until Thursday 27 November 2008 at 11:00.