HOUSE OF ASSEMBLY

Wednesday 27 November 2002

The SPEAKER (Hon. I.P. Lewis) took the chair at 2 p.m. and read prayers.

VOLUNTARY EUTHANASIA

A petition signed by 1340 residents of South Australia, requesting the house to legislate for voluntary euthanasia which will allow a willing doctor to assist a person who is hopelessly ill and suffering intolerably to die quickly and peacefully under certain guidelines, was presented by Ms Bedford.

Petition received.

AUDITOR-GENERAL'S SUPPLEMENTARY REPORT

The SPEAKER: I lay on the table the supplementary report of the Auditor-General entitled 'Agency Audit Reports'.

Ordered to be published.

RESIDENTIAL TENANCIES ACT

The Hon. M.J. ATKINSON (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.J. ATKINSON: The need for adequate housing is among the most fundamental of all human needs. Housing provides not only essential physical shelter but is an important foundation for stable family life and employment. Currently in South Australia, about 87 000 households live in dwellings that are rented privately. This represents more than 15 per cent of the state's total housing market. The current legislation governing private residential tenancies, the Residential Tenancies Act 1995, has been in force now for seven years. Only a small number of amendments have been made to the act since its introduction.

Members interjecting:

The Hon. M.J. ATKINSON: Wait for it. As part of its policy platform at the last election, the ALP promised to review aspects of residential tenancy regulation, including whether the interests of landlords and tenants in accommodation outside the mainstream residential tenancy arrangements, such as boarding and lodging houses and long-term caravan and mobile home park accommodation, should be protected by legislation.

I am therefore pleased to announce that the government is embarking on a comprehensive review of the Residential Tenancies Act 1995. To assist the review, and to promote wide consultation, a public discussion paper has been prepared. Copies of the discussion paper are available by calling the Office of Consumer and Business Affairs on 8204 9559. Copies will also be available on Thursday 28 November on the Office of Business and Consumer Affairs' web site www.ocba.sa.gov.au.

The review invites submissions on any aspect of the act of concern to any interested party. In considering submissions to the review, the government will be careful to consider the interests of both tenants and landlords. Any amendments to the act will clearly identify and draw a fair balance between the rights and obligations of the parties to residential tenancy agreements. Striking a fair balance between the rights of tenants and landlords and the private rental sector is crucial if we are to maintain and encourage investment in private rental while ensuring that South Australian tenants have appropriate tenancy conditions that reflect the fundamental importance of housing in our lives.

Mr Brindal interjecting:

The SPEAKER: Does the member for Unley imagine himself still to be a minister?

Mr Brindal: No.

The SPEAKER: Then why does the honourable member make statements to the house that are disorderly? The Minister for Environment and Conservation.

MUSIC HOUSE

The Hon. J.D. HILL (Minister for Environment and Conservation): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: Last week, I informed the house of financial difficulties at Music House Incorporated, and I undertook to keep the house informed of decisions by the Music House Board regarding its future. I received a letter last Friday, 22 November, from the Chair of Music House Incorporated who advised that the board recommended that a motion for winding up the organisation be considered, pending expert advice. This morning, the board again met and resolved that, because Music House Incorporated is or is likely to become insolvent, a voluntary administrator be appointed.

Members interjecting:

The Hon. J.D. HILL: It is true. Its insolvency is no thanks to me; that is quite correct. It is all to do with them. The administrator is Sims Lockwood. The job of the administrator is to clarify the current financial position of Music House Incorporated and what has led to this situation. The administrator will present viable options for dealing with Music House Incorporated. Regardless of what happens to this body, I am confident that the venue currently run by Music House has a viable future.

The key meeting at which these options will be presented will occur in four weeks time, probably just before Christmas. In the meantime, the administrator will be responsible for the day to day operations of Music House. I have today arranged to meet with the administrator, and I invite the shadow minister for the arts to contact my office if he would also like to be briefed by Sims Lockwood.

Once the status of the existing organisation is clear, the government will be in a position to consider new opportunities to develop the local contemporary music industry. However, I can inform the house that next February the government will convene a meeting with musicians, promoters, agents, venues and the entertainment media to map out a new framework for the development of live music in South Australia. That meeting will bring together ideas that will be fed into the Premier's Arts Summit in June next year. I can also inform the house that the Auditor-General has responded to my request that he be aware of the circumstances of Music House Incorporated, and he advises me that he sees no need for his involvement at this stage.

LEGISLATIVE REVIEW COMMITTEE

Mr HANNA (Mitchell): I bring up the 15th report of the committee.

Report received and read.

Mr HANNA: I also bring up the 16th report of the committee.

Report received.

SUB JUDICE RULE

The SPEAKER: Before calling on questions I propose to address the matter to which I said I would give consideration yesterday near the conclusion of question time. Honourable members will recall that I said I would address myself to the question of sub judice, as I detected it might arise, had a question being asked by the member for Hartley been allowed to continue, by an admission in the explanation of that question by the member that it was 'before the courts'. The restriction on debate which the house imposes on itself is to avoid substantial danger of prejudice to proceedings before a court. It is the chair's view that such a restriction is a wise one. Whilst parliament is a court, it is not designed to try matters; nor should any one court, all which are given breath and authority by acts of this court—the parliament—attempt to consider a matter already before another court. That is germane to the proceedings of courts. To the question of prejudice, it is unlikely to result from mere reference to a matter but from canvassing the issues or prejudgment of those issues in the parliament. The danger of prejudice is greater in cases where a jury is involved, or might be involved. Judges are less likely to be influenced by public or parliamentary debate.

Members interjecting:

The SPEAKER: Order! In earlier years, the tendency was to restrict debate on any matter before a court, but in more recent time the focus has been on whether there was a danger of prejudice to proceedings. The extent to which the rule is applied by other parliaments, commissions, tribunals, and so on, varies considerably. Regard should be had to the interests of persons who may be involved in court proceedings and, as I have already pointed out, to the separation of responsibilities between the parliament on the one hand and the judiciary on the other.

The rules should not be applied to a generality of cases in such a way as to inhibit members in discussing penalties for offences and the like. The chair acknowledges that. For example, discussing penalties for drug offences is not ruled out simply because some cases are before the courts. However, after due consideration and consultation, I believe it more important that the right of the house to legislate on any matter is paramount and is therefore not prevented, even if it deals expressly with current litigation. Let me draw honourable members' attention to those other chambers within our immediate vicinity and jurisdiction. In the first instance, the House of Representatives, on page 495 of the tome on its practices, states:

> The basic features of the practice of the House of Representatives are as follows:
>
> The application of the sub judice convention is subject to the discretion of the chair at all times. The chair should always have regard to the basic rights and interests of members in being able to raise and discuss matters of concern in the house. Regard needs to be had to the interests of persons who may be involved in court proceedings and to the separation of responsibilities between the parliament and the judiciary.

Examining the Senate's practices, I quote:

> . . . three important principles
>
> · there should be an assessment of whether there is a real danger of prejudice. . .
> · the danger of prejudice must be weighed against the public interest in the matters under discussion
> · the danger of prejudice is greater when a matter is actually before a magistrate or a jury.

In both those houses in our jurisdiction, their practices seem to be virtually identical to our own. In New Zealand, their practices are best summarised by the quote:

> . . . Speakers have tried to adopt a realistic and worldly attitude by not excluding all discussion on matters of public interest merely because a court is seized of the matter, while maintaining the underlying purpose of the rule to avoid any real danger of prejudice to persons before a court.

In this instance, having carefully read the proceedings of yesterday and noted the substance of the question asked by the member for Hartley, I allow the question. However, the chair says to the member for Hartley and to the chamber as a whole: in the chair's view, we should maintain our practices as they have been and, more particularly, avoid explanations which are, in fact, really debate and do nothing to clarify the meaning of the question being asked. Explanations are not and have never been intended to provide a forum for engagement in debate, and I invite ministers to do likewise in response. Accordingly, I now invite the member for Hartley to restate the question.

QUESTION TIME

LOCHIEL PARK

Mr SCALZI (Hartley): Thank you, Mr Speaker. Will the Minister for Urban Development and Planning advise the house whether the government will honour its pre-election promise to save 100 per cent of Lochiel Park for open space? With your leave, sir, and that of the house, I will seek to explain.

The SPEAKER: Leave is not granted.

The Hon. P.F. CONLON (Minister for Government Enterprises): It is well known in this house that questions on Lochiel Park have been addressed to me. I do not understand why the member for Hartley has decided that it is now someone else's responsibility. The government's position is that it is my responsibility. Let me run over the history of this again. As the member for Hartley alluded to, there is a planning application for subdivision of Lochiel Park. It was instituted under the previous government—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: It was the decision of the previous government that Lochiel Park would be subdivided for housing. Apparently, it was not something of great moment to the member for Hartley until he found himself switched from one wall to the other, so to speak. When we came to government we decided that the approach of the former government was not fair to the people. We instituted a one-year moratorium and undertook an extensive consultation program on what should occur. That is what we said we would do and that is what we have done.

The member for Hartley was one of the people who supported the idea of a moratorium and a consultation period. The thing is that the member for Hartley has had a number of views on this matter. He was part of the government that wanted to subdivide it; then he wanted a moratorium and consultation; and now he wants to do not that but, rather,

something else. The people who have concerns about the future of Lochiel Park have been better served by this government than they were in the past. That consultation process is open. A report will be considered by cabinet, and very soon we will have a conclusion of this saga.

Mr BRINDAL: I rise on a point of order, sir. I take this point of order now because I could not do so while you were giving your ruling. Standing order 129 clearly states that, when the Speaker rises during a debate, all members, including the member speaking, shall sit down and the house keep silent, and the Speaker is heard without interruption. In the course of your remarks, the Premier rose and moved about the chamber. Is this in order or is this disorderly?

The SPEAKER: I did not notice the Premier moving. Had the chair noticed the Premier moving, the chair would have drawn the Premier's attention to the standing order quoted by the member for Unley. All members need to recognise that, out of respect for the chair and not the incumbent human in it, they ought not to show disrespect to it for to do so is to show contempt for the very place to which they sought election and the orders under which it chooses to govern its own conduct.

BUDGET CUTS

The Hon. R.G. KERIN (Leader of the Opposition): In keeping with the Premier's commitment to openness and accountability, will the Premier guarantee that the budget is not heading for a blow-out in the light of the opposition's requests for details of the government's budget cuts still remaining unanswered four months after they were requested? Yesterday, in response to a government question, the Minister for Administrative Services announced details of the government's new citizens' rights to information charter. Since the election, the opposition has put in numerous FOI requests, which have gone unanswered, and countless questions taken on notice during the parliament and estimates committee still remain unanswered. In particular, the opposition asked a series of questions during estimates concerning the government's planned budget cuts for 2002-03. As yet, these questions remain unanswered. Prior to the last election campaign, the then leader of the opposition stated—

Members interjecting:

The SPEAKER: Order! The member for Wright, whom I was unable to identify earlier, should remain silent, given that the leader has been granted leave.

The Hon. R.G. KERIN: Thank you, Mr Speaker. Prior to the last election campaign, the then leader of the opposition stated:

> I will insist that we will return to the system that previously applied under Labor—that questions asked during the important estimates hearings are answered by ministers within two weeks.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY (Treasurer): It was a question about the budget, and I am the Treasurer. As I said to the house last week, that information is being prepared and compiled. It is a significant task, and we will provide that once we have completed the work that needs to be done. I restate, in answer to the leader's question—

An honourable member interjecting:

The Hon. K.O. FOLEY: No, the budget is not heading for a blow-out. Unlike the situation under the former government, unlike the incompetence of members opposite—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: —our budget is a tight fiscal document, a very carefully crafted document, that contains savings measures of approximately $970 million over four years. We had to instigate significant budgetary savings measures because members opposite had blown their budgets, year after year. Year after year they left this state a financial basketcase, and we had to introduce some of the most significant budget savings a government has ever had to introduce for many a year in South Australia. What is more, as I have advised the house, further savings will be provided for in the next budget to continue to close the gap from the mess left to us by the former government. I am confident that this government will deliver a balanced budget in both tax and accrual terms for the first time in this state's history, to the best of my knowledge—certainly in recent history. That is not something done by members opposite, the Leader of the Opposition or any of his cabinet ministers, because every year they were in government they simply could not balance their budget—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: —on both accruals and a cash measure. We will undertake tough, tight fiscal management of this state, and we will deliver to this state the financial outcomes it deserves. What I will say about FOIs is that my understanding is that this government has been complying like no other, unlike the situation involving members opposite—and the former treasurer—when in government. Indeed, the FOI request by this government when in opposition involving the electricity asset sale process is still sitting in the offices of senior Treasury officials. No doubt the former treasurer was not too keen on that information being provided. That is not what this government is about. We are complying, and we are standing back from it. At the end of the day, the former government failed to comply time and again with FOI requests. However, thankfully we had a direct pipeline to its cabinet and FOIs were not needed as much in those days.

DROUGHT

Ms BREUER (Giles): My important question is directed to the Premier. Will the drought currently facing this state and much of the rest of the nation be a key topic of discussion at next week's Council of Australian Governments (COAG) meeting?

The Hon. M.D. RANN (Premier): I thank the honourable member for her question, and it is appropriate that it comes from her given that the member for Giles represents an area that has been hard hit by the current drought. The issue of drought is clearly a major economic and social issue that confronts not only this state but the whole of the nation. In recent months, I have taken three visits to drought affected areas of the state, to the central north-east, the north-east pastoral district and to the Mallee. I saw first-hand stunted crops and paddocks of shifting sand that should have been green and lush.

I stayed with a farming family and spoke to farmers about not just the financial but the family impacts that this dreadful drought is having upon them. Even this week, in meetings with the Riverland councils in our most recent community cabinet, we learned of further effects of the drought in that region, with sand drifts making some local roads impassable.

I have been advised that as of today the current crop harvest forecast is only 4.2 million tonnes. That compares with the state's long-term 10 year average of 5.4 million tonnes and of course much better than that last year. The rain this week will have little positive impact.

I wrote to the Prime Minister earlier this month asking that drought measures be discussed at the forthcoming Council of Australian Governments meeting where the Prime Minister meets with the premiers and chief ministers. Specifically I asked the Prime Minister to place on the agenda the more immediate issue of exceptional circumstances funding, as well as the vital long-term issue of how we as a nation respond to and manage the impact of our climate. The drought again highlights that a dry continent such as Australia will need to develop better national strategies to cope with our climate and manage our water and environment. Surely these are issues that no state or territory government, let alone a national government, can ignore.

I was disappointed to receive a letter from the Prime Minister last week that indicated that he believed that drought relief should be considered, apparently not as a key agenda item but under 'Other business'. In other words, the Prime Minister is arguing that drought issues should not be on top of the agenda or even as a stand-alone item on the agenda of the Premiers' Conference. Mr Howard is actually arguing that it should be tacked on the end in 'Other business'. Given that response, I have again written to the Prime Minister, asking him to reconsider this matter.

I understand that today he is now visiting drought affected areas in another state and I welcome that. I am pleased he is now undertaking some of that first-hand experience of the effects of the drought. I can only hope that it will encourage him to reconsider the COAG agenda for next Friday and to make drought issues a key agenda item rather than being tacked on as an after thought. I am sure that in the spirit of bipartisanship the opposition leader and opposition will join me in this call, given their representation of rural and regional areas of this state that have been hit hard by the drought, because the issue of dealing with the drought should be above and beyond politics. It is about the economic well-being of the state and nation and the social well-being of our vital regions. I hope the drought will be placed firmly on the agenda of next week's COAG meeting. The drought is a national crisis that deserves and warrants national attention by the Prime Minister, all state premiers and territory chief ministers.

FREEDOM OF INFORMATION

The Hon. DEAN BROWN (Deputy Leader of the Opposition): Will the Premier advise the house why the government has not adhered to its charter of citizens rights to information in South Australia? The Labor government's pledge clearly states:

> The charter will foster confidence in government and the political process by ensuring access to documents and records held by the government of South Australia.

On 16 May this year I submitted a freedom of information request for documents relating to HomeStart loans for aged care facilities. I was advised by the freedom of information officer that a number of documents had been located in the Treasurer's office and the Department of Treasury and Finance, but that I would not receive them by the due date of 8 July. I was asked, and I agreed, not to appeal on the basis that the request was actively being dealt with. It is now drawing to the end of November, more than six months on, and I have not yet received any of the documents requested from the Treasurer.

The Hon. K.O. FOLEY (Treasurer): I take it that that is a question about an FOI request relating to my office, and I am happy to get the honourable member an answer. I will say this—

Members interjecting:

The Hon. K.O. FOLEY: No. Just be a little careful. Certainly, as FOI requests relate to my office, it is entirely up to the FOI officers in my department and the FOI officers—

Members interjecting:

The Hon. K.O. FOLEY: No, that is correct. It is not for me to interfere in FOI requests, and I will be happy to get an answer from the Department of Treasury and Finance. But surprise, surprise: I was advised by a senior officer in Treasury that an FOI request put in by the then Labor opposition to former treasurer Lucas about information relating to the sale of ETSA many, many years ago was still sitting in the offices of senior bureaucrats within the Department of Treasury and Finance—never answered. One must ask the question: what did former treasurer Lucas do with that FOI request? I think I can guess what he did. He said, 'We don't want that information in the public domain.' He, no doubt, in my view, may well have in some form—

The Hon. D.C. Kotz interjecting:

The SPEAKER: Order! The member for Newland will come to order.

The Hon. K.O. FOLEY: I do not know, but what I can say as it relates to this issue is that I am happy to get an answer, because that is a matter which is handled by the FOI officers in my department and the FOI officers in my ministerial office. As the former minister would know, the senior public servants in our offices act and conduct their affairs appropriately. I have no involvement with that, and I am happy to obtain a response.

TAFE

Ms THOMPSON (Reynell): My question is directed to the Minister for Employment, Training and Further Education. What action is being taken to improve the financial position of TAFE institutes in South Australia, and what action had TAFE institutes taken previously to address financial concerns?

The Hon. J.D. LOMAX-SMITH (Minister for Employment, Training and Further Education): I thank the honourable member for her question: I know of her keen interest in the state of the TAFE system. When Labor first came to government this year, we found the TAFE institutes' finances in total disarray. In late August I advised the house of the emerging picture and the appointment of national further education leader, Peter Kirby, to carry out a wide-ranging review, due to finish this month. It has become clear that the former Department of Education, Training and Employment ceased to monitor the overall financial position of the institutes. They were largely left to their own devices and left to manage their own budgets, with no financial performance framework and no ongoing assessment of performance.

Even the TAFE Directors' Committee raised concerns about the financial position of the institutes of TAFE in a memo to the former department's chief executive dated 15 February 2000, distributed yesterday as part of an AEU media release. It states:

Institutes of TAFE are expected to operate and be responsive in a competitive marketplace—

Mr Brindal interjecting:

The SPEAKER: The member for Unley will come to order.

The Hon. J.D. LOMAX-SMITH: It continues:

. . . however are currently constrained by government and departmental policies and restrictions that make it difficult to trade its way out of the current financial position.

This memo confirms that the former government was made aware of the problems facing TAFE institutes and it chose to take no action. Since coming to office, we have not only instigated the Kirby review but also now have finances being overseen by central TAFE administration with the assistance of Treasury officers, and have initiated strategies at individual institutes to improve financial management and help wipe out debt over time. There is no doubt that our TAFE institutes continue to provide world-class educational outcomes and, in some cases, award winning qualifications. We know the importance of the TAFE and VET sector. This government understands the need to link economic development with training outcomes. We are committed to restoring the TAFE system to viability. However, unlike the former government, Labor is prepared to make the tough decisions to ensure that this state gets the world-class TAFE system it deserves.

GOVERNMENT, OPENNESS AND ACCOUNTABILITY

The Hon. DEAN BROWN (Deputy Leader of the Opposition): Will the Treasurer advise the house why he is not committed to attaining high standards of openness and accountability? The government's charter of citizens' rights to information in South Australia promises, and I quote (this is a different quote): 'that the South Australian government is committed to attaining the highest standards of openness and accountability'. However, in early August this year, I requested that documents pertaining to the purchase of the MRI machine at the Queen Elizabeth Hospital be released to me under freedom of information. On 27 September this year, I was formally notified that documents in the Treasurer's office and the Department of Treasury and Finance were still being assessed. On 7 November this year, I was formally notified that the documents were still being held by the Treasurer's office and the Department of Treasury and Finance. On 27 November 2002, the documents still have not arrived.

The Hon. K.O. FOLEY (Treasurer): I have to chuckle when Dean asks questions like this. The Deputy Leader of the Opposition has raised an issue—

Mr SCALZI: Sir, I rise on a point of order. My point of order relates to the use of names. The Treasurer has just referred to the deputy leader as 'Dean'. We are all aware that that is his Christian name, but I did not think that it was appropriate.

The SPEAKER: My attention was distracted momentarily, but the Treasurer should not transgress. No-one is here in their own right by their own name. We are all here each representing about 22 000 South Australians, and the name of the electorate or title of the office of the member in the parliament should be used whenever addressing remarks to that member or making remarks about the actions of that member in the course of the discharge of one's duties.

The Hon. K.O. FOLEY: Thank you, sir. I do confess to that error, and I apologise. The deputy leader has raised an issue and, again, I am happy to obtain an answer. I will restate for the record that this specific issue is being appropriately handled by FOI officers in the Department of Treasury and Finance—

An honourable member interjecting:

The Hon. K.O. FOLEY: Sorry—inappropriately handled? I cannot speak for all my colleagues, but I can say what has occurred in my office. FOI after FOI has been lodged probably in most, if not all, ministers' offices—everything from the folders waiting for us when we came into government; just issue after issue. My colleague, the minister responsible, may further elaborate at some point, but I suspect that hundreds, if not thousands, of hours are being consumed by public servants meeting these FOI requests. A lot of serious taxpayers' money is being involved in processing FOIs. I can only surmise and say it would appear that, because of the sheer volume of FOIs being put in by this opposition, that is somehow clogging the system.

I can recall incidents that happened during the term of the last government. I remember when the Leader of the Opposition wanted to FOI polling data from SA Water and I think, from memory, the leader was told that he could not have it, or that it would cost an extraordinary amount of money. In the end, of course, our normal sources provided them to us, and we did not need the FOI. But the former government frustrated the opposition on every possible occasion with respect to gaining access to FOI. I think that, at one stage, the member for Mitchell may even have appeared in court on behalf of the then opposition, because we were trying to get information out of them. We had to go to court and we were asked to pay tens of thousands of dollars, from memory, for some of the information being requested.

We were frustrated, stopped and interfered with. The whole system of FOIs was abused by members opposite. But this government is an accountable, proper and responsible government, and we do not interfere: we leave it up to our FOI officers. I can say that the dedicated team on my staff and in the Department of Treasury and Finance are working diligently through every FOI request. I stand back from it. We will deal with the FOI as it was designed by law to be dealt with; we will not misuse and abuse it like you lot opposite did.

The SPEAKER: Order! The chair succumbs to the temptation to avoid further quarrel over this matter, given that it was a substantial part of the compact for good government, and points out to the house that the solution to the problem lies in the hands of the members of the house. It may well be that, to avoid unnecessary and vexatious inquiry under freedom of information as well as to ensure that ministers are open and accountable in the way in which they provide information in a timely manner to members, a committee of the parliament ought to examine each application and determine whether it is a legitimate inquiry that will involve the public in great expense. I leave the matter in the hands of the house, trusting that it will deal with the problem that has arisen and caused considerable controversy not only in the chamber but also around the corridors.

BUSHFIRES

Mr CAICA (Colton): My question is directed to the Minister for Emergency Services. Has the recent rainfall affected the Country Fire Services' assessment of the bushfire season?

The Hon. P.F. CONLON (Minister for Emergency Services): I acknowledge the longstanding commitment to protecting our community of the member for Colton as an active firefighter. Most parts of South Australia have experienced rain during the past two weeks. The falls were widespread, with rainfall in excess of 30 millimetres being recorded in locations through the southern Eyre Peninsula, Yorke Peninsula, Kangaroo Island, the Mount Lofty Ranges and the South-East.

The Bureau of Meteorology has commented that this rainfall has reduced grassland fire danger due to increased humidity and lower temperatures but that this is in the short-term only. The impact of the rain on forest fire danger is to be expected to be longer, because the forest litter has become wet. This will mean that the forest fire danger will remain reduced for up to one or two weeks while the fuel dries.

I have been advised by the CFS that this information needs to be considered in conjunction with the soil dryness index recordings that were taken prior to the recent rainfall recordings taken at representative sites through the state on 21 November. The soil dryness recordings in Clare, Mount Crawford, Mount Barker, Naracoorte and Mount Gambier show that the fire season is between one and two months earlier than last year, while the clear evidence of the impact of recent rainfall and soil dryness will not be available from the Bureau until mid December.

A significant change in the soil dryness trend is not expected. This leads the CFS to believe that this will continue to be a dangerous fire season and that all our efforts should be concentrated on preparedness and planning for a difficult summer. I therefore again urge householders to prepare their homes to manage the dangers of a bushfire. Additionally, the community should be alert to, and notify the police of, anyone they see behaving suspiciously or who may be lighting fires.

HF RADIO SYSTEM

Mrs PENFOLD (Flinders): Will the Minister for Transport advise when he will provide the house and my constituents with additional information regarding the operational status of the HF radio system? On 5 July, I wrote to the minister regarding the operational status of the emergency radio station Coast Radio Adelaide. On 5 August, I wrote to the Premier requesting further action and clarification of the matter. On 15 August, I asked the minister to confirm when the emergency radio system would be fully operational and asked what actions the government was undertaking to solve the problem. The minister advised the house as follows:

> I do not have a clue what the answer is; I will try to get the answer and bring it back to you.

I did not receive a satisfactory answer. So, again on 15 October, I again asked the minister whether the government had been able to have the reception of the emergency radio signals improved. Again, the minister said he would 'bring back additional information for the honourable member and the house'. Again, this did not occur. More than four months after my first letter, the cray season has begun and tuna boats will be joining the cray fleet in the Great Australian Bight in less than a week. As reported in the *Advertiser*, two men from a shark boat are already missing, presumed dead, in the known emergency radio black spot in the Bight.

Mr Brokenshire interjecting:

The SPEAKER: Order! The member for Mawson is warned.

The Hon. M.J. WRIGHT (Minister for Transport): I thank the member for Flinders for her question. The member has raised this issue a number of times both in and outside the parliament. It would be fair to say that she may not have received the answer that she wants to hear, but she certainly has been provided with updated information on a regular basis, so I do not think the piece that she just put before the chamber reflects true accuracy.

The Hon. I.F. Evans interjecting:

The Hon. M.J. WRIGHT: And I am about to. As I just said, before the interruption from the member for Davenport, there has been ongoing dialogue with respect to this issue and, as the member for Flinders knows full well, that information has been provided to her on a regular basis. Briefings have been organised, and additional information that the member for Flinders and people in her electorate have kindly provided to me has been provided to TSA and the federal government. This is an ongoing issue. We are working hard at this, and I hope that the member for Flinders appreciates that.

The member for Flinders has asked a detailed question, and I would like to provide a detailed answer. Before July 2002, emergency marine radio communications were provided via a federally funded Telstra coastal radio network. On 1 July 2002 this system ceased operation, leaving states responsible for providing marine distress and safety radio services for recreational fishing and small commercial trading craft. Decisions by the federal government and subsequently by the Australian Transport Council were taken before my appointment as Minister for Transport. However, I am aware that the Australian Transport Council resolved in November 1999 that the Telstra service would be extended to June 2005 or until a suitable technical solution was identified. The decision not to extend the Telstra contract beyond June 2002 was made for financial and technical reasons but has meant that the states have had to implement an interim HF marine radio network until at least June 2005. The federal government has met the set-up costs of the interim HF radio network, but to save money it has brought forward the cessation of the Telstra network from 2005 to 2002.

Through the Australian Maritime Group, South Australia has helped establish the state based replacement HF Marine Radio Network. A base at Port Augusta, Coast Radio Adelaide, was recommended to Transport SA as being necessary to overcome a historic lack of reliable coverage on the West Coast. This station was also to provide a redundancy for the national network stations in Perth and Melbourne. Following technical difficulties and equipment delays, Coast Radio Adelaide began operating on 19 August this year. The state's HF marine radio network now operates to specification. However, the member for Flinders raised concerns that the new replacement HF emergency radio system has not overcome communication problems in the Eyre Peninsula area, especially in the Great Australian Bight. In response to those concerns, a number of actions are under way. In September, I wrote to the commonwealth Minister for Transport and Regional Services, John Anderson, about Coast Radio Adelaide concerns, and those of the West Coast in particular, and sought his cooperation in auditing the design, deployment and operation of Coast Radio Adelaide. A copy of that correspondence went to the member. Mr Anderson replied on 31 October indicating that Australian Search and Rescue, within the Australian Maritime Safety Authority,

would provide advice to Transport SA to evaluate the HF marine network. Unsurprisingly, Mr Anderson distanced himself from any suggestion of financial assistance.

In the meantime, Transport SA has been working with the Royal Flying Doctor Service, equipment suppliers and vessel owners to identify whether there are any problems with emergency coverage. An issue raised by the Royal Flying Doctor Service concerned the lack of time the scan function on the radio monitoring equipment allowed them to identify and respond to incoming calls. Transport SA and the Royal Flying Doctor Service, together with equipment suppliers, have designed new software to better suit these requirements. This software was fully installed on 11 October of this year, and tests show a significant improvement to incoming calls responses. Transport SA is also intending to add an extra frequency to the HF marine radio system—channel 2182—to improve coverage at night. Transport SA has also forwarded a survey to all vessels with HF radio. To date only a limited number of responses have been received, but preliminary feedback is promising.

South Australia is not alone. Most states are concerned with the level of service left by the commonwealth's withdrawal. The level of concern has resulted in the National Standing Committee on Transport agreeing that the Australian Maritime Group would reactivate its technical working group to conduct a systems evaluation of the national coastal safety radio monitoring system and respond to any issues identified. The Australian Maritime Group will be meeting at the end of this week on Friday 29 November.

In closing I note and share the honourable member's concern with obtaining appropriate safety radio monitoring, not just for the West Coast, but for all South Australia. Finally, I would like to share with the house that at the last Australian Transport Council meeting, about three weeks ago—I cannot remember exactly—I also raised this issue directly with the Deputy Prime Minister, John Anderson.

HOSPITALS, AFTER HOURS GP CARE

Ms RANKINE (Wright): My question is directed to the Minister for Health. Will South Australia receive the $5 million from the commonwealth for after hours GP care, promised by the member for Finniss prior to the last election? On 29 May 2002, the member for Finniss said that the government had dumped after hours GP trials at the Queen Elizabeth Hospital and the Women's and Children's Hospital even though the Liberal government had secured $5 million from the commonwealth over the next two years to fund the service.

The Hon. L. STEVENS (Minister for Health): I am pleased to be able to answer this question, and I thank the honourable member for the opportunity. This matter has been raised previously, and I know that all members will be interested in the answer—particularly the member for Finniss. On 7 February 2002, just prior to the election, the member for Finniss announced that he had negotiated $5 million over two years to fund after hours GP clinics at Noarlunga and in the northern suburbs. On 8 July 2002, after all available funding for the trials at the Queen Elizabeth Hospital and the Women's and Children's Hospital had been spent, the member for Finniss told the house that the federal Minister for Health and Ageing had specified that the agreed $5 million was for after hours care clinics at the Queen Elizabeth Hospital and the Women's and Children's Hospital.

On 9 July 2002, I wrote to the federal Minister for Health and Ageing seeking advice on the claims made by the member for Finniss, and I want to tell the house that I have now received a reply from the Hon. Senator Kay Patterson. This is what the letter says, in part:

> I understand the announcement to which you refer was an election promise made by the former minister of South Australia that he would seek to implement upon regaining office. This did not occur.

The letter then says:

> No separate budget allocation of funds has been made by the commonwealth for the purpose.

After all these months, I want the house to be quite clear that the claim made by the member for Finniss that the government dumped services funded by this special grant was incorrect.

Mr BRINDAL: I rise on a point of order, sir. The minister was reading, in part, from a letter. Will the letter be tabled?

The SPEAKER: Was the minister reading from a letter addressed to the department?

The Hon. L. STEVENS: I did quote from a letter from the federal Minister for Health. I am happy to table it.

The SPEAKER: Then that is so ordered.

ROADS, EYRE HIGHWAY

Mrs PENFOLD (Flinders): Is the Minister for Transport now able to advise the house whether the widening of Eyre Highway is on schedule? On 2 August this year I wrote to the minister regarding the widening of Eyre Highway west of Ceduna. My constituents use this road frequently and are concerned for safety reasons. I did not receive a response, except for an acknowledgment of receipt, which did not arrive until 16 October. Consequently, on 21 October I asked the minister to update the house on the widening of the highway. He informed the house as follows:

> I do not carry around in my back pocket all this information about every individual road in the state. However, I make this offer: if anyone in the house would like some information about any road, whether it be in their electorate or out of their electorate, they only have to let me know and it will be made available expeditiously.

I have asked three times and have not received a reply.

Members interjecting:

The SPEAKER: Order! The chair recognises the minister.

Members interjecting:

The SPEAKER: Order! The minister is on my right. I have recognised the minister. Most noise—should I call it din—seems to be coming from elsewhere.

The Hon. M.J. WRIGHT (Minister for Transport): Thank you, Mr Speaker. I do believe that when I made that offer I was talking about a briefing but, nonetheless, the member is—

Mrs Penfold interjecting:

The Hon. M.J. WRIGHT: I am only telling you what I believe. You may not agree, but that is what I believe I made the offer about. Nonetheless, the member is fully entitled to the detail and an answer to her question. I undertake that she will get that answer within the next 24 hours, if not sooner. I also repeat the offer which I believe I made and to which she refers in her question, that is, if she would like a detailed briefing on this issue, I will also make sure that it is organised for her as a matter of priority. The briefing might well provide her with additional detail, which could be of some

value to her and her constituency—but she can make that judgment.

GOAT ISLAND

Mrs PENFOLD (Flinders): Will the Premier advise the house whether any public notification or consultation was undertaken prior to yesterday's announcement suggesting Goat Island as the preferred location for two yellowtail kingfish farms? Goat Island is located about 40 kilometres off shore from Ceduna in an area known as Nuyts Archipelago and the Isles of St Francis, and is home to a population of about 94 000 short-tailed shearwaters and other bird species, including the brown falcon. Only 900 metres from Goat Island is a small colony of Australian sea lions, and there is some debate about whether or not this is a breeding colony. Just 12 kilometres from Goat Island on Lounds Island is a breeding ground for a colony of about 50 sea lions and, when last surveyed, 26 pups. In fact, surveys reveal that the offshore islands in the area are home to at least seven individual Australian sea lion colonies and breeding grounds, some with up to 112 pups. Some are also home to New Zealand fur seals. It has merely shifted the problem.

The Hon. M.D. RANN (Premier): This will give me another opportunity to talk about piniipeds. The thing I forgot to mention yesterday was that, whilst I mentioned that they were different species but of the same family, there is an easy way for the member for Flinders to spot the difference, and that is to look to their ears, because the sea lion has ears, as well as rotated flippers. That is why they are a little more agile on the land. However, the poor, hapless, ear-less seal from New Zealand (although I must say somewhat unfairly referred to as the rabbit of the ocean, which is not true and is an outrageous defamation of the New Zealand fur seal) does not have ears as we know them: it has small punctures at the side of the head. Is the member for Flinders asking the government to kill off aquaculture on the Eyre Peninsula? Is that what you are asking for? She is nodding.

Mrs Penfold: That's what you're doing.

The Hon. M.D. RANN: What we are doing is on the best possible advice from the Minister for Agriculture and Fisheries—although, of course, you would know that seals and sea lions are not fish—

An honourable member: They eat a lot of fish.

The Hon. M.D. RANN: They eat a lot of fish but they are not fish. In fact, they are preyed upon by fish, for instance, the great white shark.

The Hon. K.O. Foley: Isn't that a mammal?

The Hon. M.D. RANN: No, sharks are not mammals. I am doing my best to educate the house. We tried to get the best possible decision. We were told that this is a unique breeding colony and, therefore, we were told to move it to another area. There always have to be compromises when dealing with the pressing needs of both the industry and the environment. We have taken at heart the best interests of the environment and the state in cooperation with the company. If the member for Flinders seriously wants this government to kill off all aquaculture on Eyre Peninsula, she is dealing with the wrong government, because I am not prepared to do it. We are prepared to make balanced decisions, involving matters of judgment. The difference between us and members opposite is that we are prepared to listen to the arguments and then make a decision. That was the problem with the previous government: it could not make a decision. As for FOIs—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —you did not really need to lodge FOIs on the previous government, because members opposite spent half their time ringing us up, all hours of the night, leaking against each other. I had to go wandering through the streets to homes in inner-city suburbs to pick up hundreds of pages of government documents.

Members interjecting:

The SPEAKER: Order! The Premier will come to order. The question was not about freedom of information.

The Hon. M.D. RANN: Thank you, sir. I am trying to be free with my information about piniipeds. I am available for a more detailed discussion at a later date.

SCHOOLS, KOONIBBA ABORIGINAL

Ms CHAPMAN (Bragg): Will the Minister for Education and Children's Services advise the house when the matter of the building at Koonibba Aboriginal School, located about 40 kilometres west of Ceduna, will be addressed so that the current restrictions on student learning can be overcome? On 15 May this year, the building that housed the Koonibba Aboriginal School's library resource and computer rooms had an occupational health and safety default notice put on it and was consequently demolished on 6 September this year. I am advised by members of the Koonibba Aboriginal School Sub-branch of the Australian Education Union and other members of the school staff that at the time the minister had approved a replacement building. The school outlined its requirement for this building but has received no response or further information. The Koonibba union sub-branch and the school staff advised that student learning is being severely affected, library resources remain in storage and access to information and communication technology is restricted to one 45 minute lesson per week, because the computers now have to be located in the reception classroom. They point out:

> This is a very unsatisfactory solution because it means the computers are now unavailable for other classes for most of the day. Even if a student uses a computer, the reception class is distracted from their learning.

The Hon. P.L. WHITE (Minister for Education and Children's Services): I thank the honourable member for her question. She mentioned that I had given approval I think in September for a replacement building at that site. I would have to check my records to see when I gave approval for that. I was not aware that there had been any problem with delivery of it, but generally delivery of facilities in country and remote regions has its problems, so it is possible that there may have been an issue. However, without checking with the department I could not answer the member's question today, so I will take it on notice and get back to her with the detail.

ECONOMIC DEVELOPMENT BOARD

Mr O'BRIEN (Napier): My question is directed to the Deputy Premier. What is the government's position in respect of the Economic Development Board's issue paper on finance?

The Hon. K.O. FOLEY (Deputy Premier): I thank the member for Napier—a member who, with a strong and successful business background, is obviously very interested in many of the pathfinder papers of the EDB. The Economic Development Board in this pathfinder paper has highlighted several key issues for the state, and this one on finance I

argue is one of the most important. It considers that getting finance right in terms of the availability of finance, particularly venture capital, is a critical issue confronting our state.

The discussion paper argues that business access to finance on reasonable terms is a prerequisite for a viable industry and broader economic growth. An inadequate flow of venture capital is limiting high risk and early stage business expansion in South Australia which is desperately needed to revitalise the state's industries. The state's low deal flow limits its attractiveness as a base for investment fund managers.

The Economic Development Board believes that the state needs a number of locally based venture capital firms offering both capital and experienced management and will explore options that are available to government to help facilitate and achieve this outcome. The Economic Development Board recommends that the government develop for itself a prudential capital management policy that utilises both traditional and more innovative options for public finance of public investment such as the best practices available with public-private partnership arrangements. The Board also recommends that the state government be more proactive in pursuing avenues for increased commonwealth funding for major infrastructure projects. I advise the house that the paper is available on the website www.sa.biz. The government welcomes the paper on finance and looks forward to public comment on the issues it contains.

SCHOOLS, MEADOWS PRIMARY

Mrs REDMOND (Heysen): My question is directed to the Minister for Education and Children's Services. Why has not the minister taken any action to address the problem of the water supply at the Meadows Primary School, a supply which the school has been advised is unfit for drinking? At present the Meadows Primary School has a dual water supply: rainwater for drinking purposes and bore water for all other purposes, but including the tap contained within the school's toilet block. The school's governing council wrote to the minister on 23 October, raising concerns with respect to the bore water use within the school grounds.

I also wrote to the minister, and the school's governing council has written again this month. The school has had the water tested and has been advised by the District Council of Mount Barker that the bore water is not suitable for drinking. The school has expressed concern that it cannot guarantee that students will not drink this bore water, therefore posing a health risk for its students. The school has requested emergency funding of $3 000 to supply rainwater to the taps in the toilet block. As yet they have not received any response from the minister.

The Hon. P.L. WHITE (Minister for Education and Children's Services): I will seek an appropriate response from my department on that. For these sort of incidents, the department is freely accessible at the end of a telephone line. Usually, things of this sort of magnitude are fixed straight away. I am not sure who, if anyone, in the department might have been contacted, but I will certainly ask the department what the current situation is. I do not know the answer here and now, but I will get back to the honourable member as soon as possible.

FREEDOM OF INFORMATION

Mrs GERAGHTY (Torrens): Does the Treasurer have any further information on the deputy leader's FOI application?

The Hon. K.O. FOLEY (Treasurer): I have asked my office to follow up as best we can in the limited time we have had, and I will undertake to provide further information should that be required.

The Hon. W.A. Matthew interjecting:

The Hon. K.O. FOLEY: Let's just listen. I advise the house of the following. The HomeStart freedom of information application was dated 23 May and received by the Department of Treasury and Finance. I am advised that the department informed the deputy leader that it would not meet the FOI deadline.

The Hon. Dean Brown: I said that. I said that to the house, but that was in July.

The Hon. K.O. FOLEY: Let's just listen, please. I am advised that he has not communicated with the DTF officers since that time. So, he can raise it in here but has not sought to follow it up. This is just what I am advised. The Treasurer's office, my office, provided information to the Department of Treasury and Finance officer handling this matter in June. So, my office was very quick to supply this to the DTF FOI officer in June.

Members interjecting:

The Hon. K.O. FOLEY: No, let's just wait: don't get too excited about this. Just listen. The Department of Treasury and Finance has not yet responded because it is sorting through the documents. I am advised that it is because of the volume of applications that it has taken so long and because of the broad scope of the request for information on HomeStart.

Members interjecting:

The Hon. K.O. FOLEY: Hang on. This is the information I am provided with. This is the advice I am given. We have been in office now some eight or nine months. Let us listen to the next piece of advice I am given. Since the change of government, the FOI officer, one officer in the Department of Treasury and Finance, has received approximately 45 applications under FOI. I can advise the house that not only has he not processed this particular one but he still has not processed up to 20 applications: 20 of those 45 are still outstanding although the poor officer is working through them as quickly as he can.

In the last year of the Liberal government there were six FOI requests for information. In eight or nine months there have been 45, and not only are we still sorting through this one but we are still sorting through another 20. I am advised by the Department of Treasury and Finance that the deputy leader's request is in the queue and is being worked through as diligently as possible. I am advised that the Department of Treasury and Finance has sought information from all branches of the Department of Treasury and Finance and is at present preparing a draft determination that is yet to be reviewed by crown law, which I am advised is normal operating procedure.

On the subject of the MRI request, I am advised that we have had a quick check and, guess what? Neither the Department of Treasury and Finance nor my office has received an application for FOI from the Deputy Leader of the Opposition. He stands in this place making all sorts of accusations but in the past 45 minutes we have been unable to find an application from the deputy leader in my office. We are working through this as quickly as we possibly can and will have our information when we can. The deputy leader should at least be open and up front.

RIDGEHAVEN PRESCHOOL

The Hon. D.C. KOTZ (Newland): Will the Minister for Education and Children's Services advise the house when she will sign off on the tender pro forma to enable the reconstruction of the Ridgehaven preschool to take place? On 26 April, the preschool building at Ridgehaven Primary School was destroyed by fire. The school community was advised that reconstruction would occur to enable preschoolers to have access to a new preschool building for the start of term four. As that did not occur, the community was then advised that the construction would start in early November and finish in time for the start of next year. Parents have contacted me advising that construction has not yet started, and they are now concerned that children enrolling for the coming year will not be accommodated at Ridgehaven and the temporary accommodation raises questions of occupational health and safety.

The Hon. P.L. WHITE (Minister for Education and Children's Services): I can answer this question, because I have signed off. The tender for that work has been awarded to a company called Partek, from memory, and the work will be done in time for the start of the school year.

SITTINGS AND BUSINESS

The Hon. P.F. CONLON (Minister for Government Enterprises): I move:

That question time be extended by one minute.

Motion carried.

ELECTRICITY SUPPLY

The Hon. DEAN BROWN (Deputy Leader of the Opposition): Why does the Minister for Energy continue to blame the drought for the reduction in the electricity supply outlook from a surplus to a shortfall of 250 megawatts in generating reserves? In his ministerial statement to this parliament on 18 November the minister gave as his first reason:

The turnaround in the generation reserve forecast is due primarily to reduced hydro capacity caused by drought. . .

He repeated, in answering a question from me, 'The primary problems are the drought.'

An honourable member interjecting:

The SPEAKER: Order! The deputy leader has the call. I want to hear the explanation.

The Hon. DEAN BROWN: The minister has not denied that the Snowy Mountains hydro scheme is holding water reserves above required allocations, conservatively estimated to be in excess of 1 million megalitres. The water is in the reservoirs, and the drought was not even mentioned.

The Hon. P.F. CONLON (Minister for Energy): Firstly, again, I resent the really slippery attempt to select words out of what I said. If they could even do sums on energy they could understand it. I said 115 megawatts from the drought, 500 megawatts from Loy Yang going down. If they cannot add that up, I simply cannot help them. I have to say, I do not think I can help this mob on electricity; they are hopeless. But let me explain this: the effects of the drought I am talking about is the Dartmouth being at 15 per cent capacity. Goodness me!

GRIEVANCE DEBATE

GOVERNMENT, OPENNESS AND ACCOUNTABILITY

The Hon. R.G. KERIN (Leader of the Opposition): Today I wish to talk about the contempt that this government is showing for its own rhetoric on openness and accountability. From day one, and before the election, the Premier pledged so often that his government would not be one of secrecy but, as we have so often discovered with the government, the reality does not match the rhetoric that we are constantly hearing. For all its claims of openness and accountability, what we have found is that this is a government of secrets; a government that refuses to answer questions in the house; a government that ignores FOI requests and then comes in and tries to misrepresent them; and a government that leaves estimates questions unanswered, despite repeated requests for that information. They are hardly the trademarks of an open and accountable government.

This government is so media focused that it is prepared to manipulate all government information to suit its own purposes, and not those of the general public. The withholding of answers to estimates questions is a classic example. During estimates, the Treasurer and most of his ministers were asked to provide details of the much talked about planned budget cuts for 2002-03. Here we are, over four months later almost, and we still have not received most of the responses to those questions. Questions in the parliament on this same issue have also received nothing but lip-service and dodging with respect to addressing the questions that have been asked. Of course, this begs the question: what are they hiding? I suspect that they do not want us to know what programs they are cutting—if they have even determined which ones will be cut. Either way, it is my strong suspicion that this information will not see the light of day until the parliament rises for this year, and it will be released, perhaps, away from the scrutiny of the house. No matter what the Premier may tell you, this is not an open and accountable government.

But these are not the only estimates questions that have gone unanswered. Across all the portfolios there are literally dozens of questions that are yet to be answered. The house may remember that, in February this year, the then opposition leader said:

I will insist that we will return to the system that previously applied under Labor, that questions asked during the important estimates hearings are answered by ministers within two weeks.

By any measure, the Premier has failed to live up to this promise. Early this morning, and today during question time, we also raised the issue of FOIs. The opposition has been frustrated by the sheer number of FOI applications that have gone unanswered or have simply been ignored. In those cases, where we have received responses, it is not uncommon for whole pages to have been blanked out, with no explanation whatsoever as to why that is the case. Let us also not forget that this is the government that attempted to introduce fees for MPs wishing to make FOI applications. Again, this is not the hallmark of an open and accountable government, and that introduction of fees can only be seen as a way of restricting the ability of all members of parliament to make applications under freedom of information. That is very much against the charter that has been released over the last week.

Again, this is not the hallmark of an open and accountable government.

It is about time that the South Australian public learnt the truth behind the spin that we hear. The Premier's promises of an open and accountable government have fallen flat. Time and again it has been shown that the government's rhetoric does not match reality, and it is now time for the government to be honest with the South Australian public and deliver on its key promise.

I think that our greatest concern—and the concern of many—is the fact that it was flagged to us that this year ministers would have to find cuts of $190 million collectively and, to date, they largely go unidentified. The government has been found out with cuts such as those at the Julia Farr Centre. But, to date, those cuts are largely unidentified, they have not been announced and there have been no answers re the portfolios from where the cuts will come. We could ask the question: have ministers delivered those savings? We could also ask whether or not there will be a blow-out, and what discipline the Treasurer and cabinet have placed on ministers to say what savings are made. We are halfway through the financial year, and the fact that we have not been told where the cuts will occur in certain portfolios is a point of major concern. I just hope that we do not see a fiddle. An enormous number of public works have been put on hold. Very little public works spending is going on, and I would hate to think that, at the end of the year, with recurrent expenditure going over, we will see a further cut to the public—

Time expired.

NILE, Rev. F.

Mr KOUTSANTONIS (West Torrens): My grievance today is about the Hon. Fred Nile and his recent comments about the wearing of traditional Islamic clothing by women and by people who wear certain clothing in the practise of their faith. I was disappointed by his remarks. I often agree with the Reverend Fred Nile on some issues, but on this issue I disagree with him totally. The Reverend Fred Nile's contribution to the debate on, if you like, the war on terror or the world uniting against terrorists, which includes Islamic nations uniting against terrorist acts, has been unhelpful. I would say that his remarks are offensive not only to people of the Islamic faith but also to people of the Christian faith. I am a practising Greek Orthodox Christian. If people choose to do so, it is customary to wear a head covering that is very similar to Islamic wear. I know that some orthodox nuns wear similar clothing as that described by Reverend Nile as being inappropriate. He forgets that this clothing has a tradition not only within the Islamic faith but also within the Christian faith.

For us to be having a debate today about what kind of clothing is appropriate at a time when we are on a heightened alert for terrorist activities is sad and reflects very poorly on the Reverend Fred Nile. I do not think his views reflect those of the people whom he represents. I was also sad to hear remarks from other quarters in South Australia on this issue, and I find those remarks also to be offensive. We in this chamber are people of good faith. Not everyone here is a Christian; I am not sure if there are any people of the Islamic faith in this chamber, but I know that all South Australians would rally against any form of prejudice against someone for their religious beliefs, especially those of the Islamic faith.

A great deal of people within South Australia practise faiths other than Anglicanism; there are Methodists, Catholics, Orthodox Christians, Jews, Muslims, Hindus, Sikhs and other religions. We should tolerate those religions, because they enrich our society, not detract from it. I was very concerned that a member of this chamber made comments about those issues. I know he is a man of faith as well, and I understand that he is quite passionate about his faith. However, I thought his comments were not helpful. They might have been taken out of context, so I give him the benefit of the doubt and will not name him here today.

There are in this state people whose families have lived here for six generations, who are of the Islamic faith and who choose to wear their traditional dress. It is up to us in this chamber to defend their right to practise their faith freely. We had migration to South Australia and this continent because people fled religious persecution. They came to this nation, to the United States and to other nations around the commonwealth to flee religious persecution. It is our duty to uphold these rights for all members of the South Australian community, regardless of what they pray and preach.

Many members of Islamic communities have come to my office asking how they can help to educate Australians and help to fight the war on terror. Some of the first communities in Australia to condemn the Bali bombings were those of the Islamic faith. I can tell you that the Islamic college in South Australia has received death threats. That is completely inappropriate, because they also have people who have suffered at the hands of terrorists. All members of parliament should act responsibly now and not kowtow to the fear and scaremongering that is going on in our community.

Time expired.

ELECTRICITY PRICES

The Hon. W.A. MATTHEW (Bright): For the last eight months and before that in the state election we have heard the rhetoric from this Labor Party that it would be an open, honest and accountable government. That screamed from the Labor Party web site, but members opposite have shown themselves to be anything but that so starkly yet again in this chamber today. This government is not displaying those characteristics. Instead, we see a government of secrecy, conspiracy and deals concealed behind closed doors. This government is not open and accountable; it has not been honest with the South Australian public. It has also demonstrated itself to be a government of broken promises, not just on freedom of information, as was demonstrated clearly in this chamber today, but also on many other issues. I wish to focus on just some of its broken promises in relation to the electricity issue.

The Labor Party promised cheaper power. It said on the first day of the election campaign that if you want cheaper electricity you vote for a Mike Rann Labor government. That is what members opposite said, and they circularised a promise card. Labor's promise card had a photograph of the now Premier on one side and on the other a message in the name of Mike Rann, encouraging South Australians to keep the card to ensure that he keeps his pledges. He has not kept those pledges, and he certainly has not kept the one in relation to electricity and cheaper power. Members opposite also promised that they would provide concessions to low income earners and pensioners on electricity. They undertook to match a commitment given by the then Liberal Party at the

time of the last state election. Again, we have seen Labor fail to honour that promise.

In this chamber last week, in response—or rather, non-response—to questions that the opposition has asked of the Minister for Energy and the Treasurer, they have clearly highlighted that there will be no concessions for pensioners or low income earners beyond those which are already available, despite the fact that from 1 January next year South Australians will pay 32 per cent more for their electricity. They pay a higher price under Labor's electricity structure in the peak usage summer months. This means that pensioners and low income earners have effectively been thrown to the wolves by this government that has for so long claimed as a Labor Party that it champions the underprivileged and the rights of those who need greater help in our community. They have deserted them in the most cold, heartless and cruel way.

The real concern beyond that is that electricity prices do not need to be going up by the amount they are. Yesterday in this chamber the government was hit with four questions in relation to electricity prices, and in not one case was any of those four questions answered by the minister concerned. Rather, the minister ducked for cover, refusing to provide detail in relation to those questions. The minister attempted to handball the issues to the Essential Services Commissioner and tried to say that the Commissioner had responded to those issues. He attempted to belittle the questioning line of the opposition, initially saying that it was about information that had been in the public domain for three or four months, and then changing his argument just a couple of questions later to indicate that it had been in the public domain for a month. It has been in the public domain for about that time, and I have always thought that about four weeks is a reasonable time to see whether a minister will take action. However, this minister took no action in relation to electricity prices.

Many energy experts have examined the situation in South Australia. As an opposition we have quoted in this house the words of Dr Robert Booth, a respected energy consultant who claims that there is no justification for electricity price increases beyond CPI. Those claims must be addressed by the government.

Ultimate responsibility and accountability lie with the Minister for Energy. He cannot handball this issue to anyone—the Essential Services Commissioner, a committee or staff. He must stand up in this chamber and answer those questions, and to date he has refused to do so. He has avoided the issue and he must and will be held accountable in this chamber. This government has dropped the ball on electricity. It failed to legislate on time; it failed to act.

Time expired.

TERRORISM

Mr RAU (Enfield): I reflect today in this grievance on something of which perhaps a lot of people are aware in a background sense but which perhaps they are not aware of in a conscious way, and that is the fact that our country and indeed the world are entering into a very difficult period. It is a new period of history, where the values and understandings that all of us grew up with as younger people are being challenged and daily being moved by our governments, by the society in which we live and by the world in which we are living. For example, I refer to the bill that we will be debating later today, which is a reference of power to the commonwealth in relation to terrorism.

I will not say any more about it, but that is an example of what I am talking about. Who would have thought, some two or three years ago that this state parliament would be considering such a matter? It is in the context of these changing times that the very important contribution by the member for West Torrens strikes a chord with me. Some of the words that we have become accustomed to using in the last few decades to describe various aspects of our society are perhaps no longer adequate for our purposes.

It is the case that words are occupied, almost as territory might be occupied, by different groups who inject their own meanings into these words and, in a sense, repel others who might attempt to use the word for some other purpose. As I was listening to the very thoughtful contribution of the member for West Torrens, the word that sprung to mind was 'multiculturalism', because multiculturalism is a concept which means many things to many people. It is a concept which had its flowering (I suppose that is the word to use) in the late 1960s and early 1970s, and I have heard people describe it broadly at one end of the spectrum as support and, in fact, financial encouragement provided by governments for groups to retain and foster different culture right through to the other end of the spectrum to people expressing it in terms of being able to get a Chinese meal somewhere near the corner of their street. That is the breadth of the understanding that people seem to have of the word 'multiculturalism'.

What concerns me, involving the matters touched on by the member for West Torrens, is the way in which some members of our community who do not, in some respects, share the views of a majority of our society are being marginalised and, in a sense, their position made more difficult by the use of terms such as 'multiculturalism'. It seems to me that we might be better off, in these changing times, defining our relationship within our community by reference to a broader concept, an inclusive concept, of citizenship based on a common goal within our society, namely, adherence to the rule of law and acceptance that we are primarily Australians and loyal to the way of life of the Australian community and that, although we all have our differences, our primary focus is that of citizenship.

Through this focus, more individuals who have lived in this country for many years and who are not yet Australian citizens should perhaps be brought into the fold and encouraged to become citizens; to participate in the affairs of our government and to share their views with the rest of the community. With respect to those people who have a soft spot in their heart for the word 'multiculturalism', I would ask them to reflect on whether, in our changing times, reference to people whose views are not identical to the majority of Australians is best served by that reference, and whether it might not be an improvement for all Australians to start focusing on those views and values that we all hold in common rather than spending a lot of time focusing on those elements involving difference.

Tolerance of difference is a central tenet of citizenship. Citizenship, it seems to me, is the new banner that we should be carrying into what will prove to be, I am sure, a very difficult age lying ahead for all of us all with the uncertainties around the globe and in our region.

MUSIC HOUSE

Mr HAMILTON-SMITH (Waite): I rise on the subject of Music House to again remind the house that we are facing opposite one of the most boring and uncreative governments

in Australia at present. The minister has risen today to confirm what we all knew was probably inevitable in light of last week's statements: that the board of Music House has today elected to go into voluntary administration; that Music House would now be going into a period of uncertainty; that Sims Lockwood would be involved as administrators in trying to sort out that uncertainty; and that the future, not only of Music House but of the programs it runs, such as Music Business Adelaide and Music Online, are in doubt and possibly face a very bleak future—if there is a future at all. I will come back to that point in a moment.

In Patrick McDonald's excellent article in the *Advertiser* this week, it was pointed out that Music House has just got off the ground and has turned into an amazing success. After just nine months of operation, the venue is already starting to pay its own way, including administration costs. It is attracting sometimes a full house of 600 people and, as part of this agenda, every touring act which performs has a local support artist. Music House has considerable potential to grow beyond that and to become an even more successful venue. It is creating a great opportunity for young artists to practise their art and to gain some prominence, keeping in mind that it was created out of the ashes of the impact of poker machines on live music and bands. Music House has been predominantly funded by the federal government from revenue involving the parallel importing of CDs. At this stage only a relatively small proportion of state government funding has gone into it.

There have been a number of mistakes in the way the government has handled this matter. The government has fobbed the whole responsibility for the issue onto the board. However, some serious questions were raised last week about the way the government has approached this—and I want to reiterate them. First of all, in the nine months that this government has been in office, the minister has had to admit to the parliament that he did not visit Music House. There has been some argy-bargy between the opposition and the government about whether or not they were invited—whether or not there was a letter. The minister said there was no letter, and the next day he said there was a letter, but it only said to come and visit: it was not actually an invitation to meet, etc. I think the minister has been a bit fragile on that matter but, needless to say, the government should have known what was going on and exercised greater fiscal surveillance over the events and affairs of Music House so that it did not suddenly discover problems towards the end of its first year.

On assuming office, the government should have asked the right questions. The minister should look for the skeletons in the closet; look for the problems; drag them out, deal with them and get them fixed. Clearly, a problem was emerging here and it has taken some time for it to come to light. I hasten to add that this is on top of the government's decision to cut $200 000 from live music anyway. On 29 July, in answer to a question I asked in budget estimates about the $200 000 slashed from live music, the Premier stated:

> We have not continued the funding in that area, mainly because of the budget situation. . .

So, there goes $200 000. Not only that, but the opposition recently forced the government to provide $500 000 for live music as part of the government's Gaming Machines (Gaming Tax) Amendment Bill 2002. Where is that $500 000? Where is the commitment to live music? There are four staff facing loss of jobs; there is a building that has been upgraded into a fabulous facility; the minister is hinting that it might have a future, but there are no details.

Will the Labor Party privatise Music House? What is the government's vision for the future? Will the negativity that it has now thrown around Music House kill off its success? Will there be anything to recover? The government should have become involved earlier; become aware of the problems; sat down and sorted them out and got the thing back on track far earlier, rather than merely inheriting this situation and announcing to the parliament the situation we have had explained to us over the last few days. I think it has been mismanaged. It is a bad message to young people. It is a bad message to live music. It should and could have been handled better. We now have to try to rescue something for young people and live music so that the state can prosper.

Time expired.

SELECT COMMITTEE ON PARLIAMENTARY PROCEDURES AND PRACTICES

Mr HANNA (Mitchell): I rise to speak about the Select Committee on Parliamentary Procedures and Practices which delivered an interim report in July 2001. The committee came down with a series of recommendations and, since that time, I have been quietly lobbying for some implementation of those recommendations. I want to alert the house and the public to some of the key features of the report's recommendations. The main point is that the times for speaking in the House of Assembly would be cut substantially but I think not unfairly. For example, I refer to the Address in Reply debate, which traditionally takes place after the Governor's speech to the parliament at its official opening.

In past times that occurred every year, and there were then a series of half-hour speeches from a range of members, so that for days on end parliamentary time was taken up with these free-ranging speeches on various matters. It is suggested that the time allowed for the mover and the key respondent from the other side be limited to 30 minutes instead of one hour, and that for other members it be reduced from 30 minutes to 10 minutes. Maiden speeches or, as I prefer to call them, inaugural speeches should be reduced from one hour to 30 minutes. There is ample time in 30 minutes to say all that you would wish to say about a wide range of topics. Even in 10 minutes you can take a topic and deal with it comprehensively and thoroughly.

In respect of second reading speeches, that is, the speech given about the principle or the proposed concept of a bill after it has been introduced, currently the mover and the leader of the opposition on the other side are entitled to unlimited time in which to speak on the second reading. We have had some examples—and I am not pointing to any member, in particular, because they come from both sides of the house—where members have spoken for four hours or more. Clearly, members have been trying to deliberately drag out proceedings for political reasons. Sometimes there are good political reasons—if there is such a thing—for doing that but, if we are to have a house that is respected in the community, we need to do something about cleaning up our behaviour, and one aspect of that is speaking within reasonable time limits.

There are other aspects to the report, including the naming of members, which occurs when a member is disciplined. Currently, there is a set piece debate with a speaker for and against from both major parties as to whether a member's apology should be accepted. It always goes on party lines and

it virtually always backs the Speaker's ruling. If it did not, it would be virtually a motion of no confidence in the Speaker. Because it ends up being the Speaker's decision, in the sense that the Speaker has named someone and not accepted their apology, it is proposed that the exclusion of a member be entirely up to the Speaker. Of course, the house is still master of its own destiny and can change any of these recommendations by suspending standing orders and taking a different course.

A wide range of other archaic practices are dispensed with, leading to modernisation of the way in which we do things and making it easier for members of the public to understand. I was pleased to come out of our caucus meeting on Tuesday morning with an informal committee being set up on the Labor side. It is chaired by the Minister for Government Enterprises (Hon. Pat Conlon), and under his leadership I am hoping that the Labor Party can refine its response to that select committee. I know that Karlene Maywald (member for Chaffey) has been pursuing the issue. She was on the committee when it deliberated. I am hoping that, although change is taking place at a glacial pace, there will be something in the new year which we can bring into the parliament and which will bring us all into better repute in the community.

Time expired.

ECONOMIC AND FINANCE COMMITTEE: GREEN PHONE (PRELIMINARY INQUIRY)

Ms THOMPSON (Reynell): I move:

That the 41st report of the committee, on Green Phone (Preliminary Inquiry), be noted.

As members would be aware, Green Phone Incorporated arose out of a funding application by the Greater Green Triangle Regional Association to the commonwealth government's Networking the Nation grant program. The project received $2.3 million in funding from Networking the Nation, a further $100 000 from the Victorian government and $110 000 from the South Australian government.

Green Phone was a local telecommunications network set up to reduce communications costs and improve services across a region that covered western Victoria and south-eastern South Australia. The intention was to create a community-owned telco, which would provide cheaper telephony and data services. In particular, it aimed to provide local call internet access and to improve data transfer speeds to encourage e-commerce. Regrettably, an administrator was appointed by the management committee of Green Phone on 25 October 2001, and the association subsequently went into liquidation in December 2001.

In response to significant interest in relation to the issue in the South-East, the Economic and Finance Committee resolved to make preliminary inquiries into Green Phone's demise to ascertain whether a full scale inquiry was necessary. The committee sought evidence from the relevant parties and received a written submission from the liquidator. Subsequently, it conducted hearings at which members of each of the three management committees attended, as well as the former CEO of Green Phone.

In the light of the evidence provided, the committee considered that it was not appropriate to undertake a full-scale inquiry, given the ongoing investigations by the liquidator. In any case, the committee determined that an investigation would be more appropriately undertaken by the Office of Consumer and Business Affairs. Notwithstanding this, the committee identified a number of important issues from its inquiries. As outlined in the report, the most significant issue identified by the committee is that the liquidator has not yet made a final report. The liquidator is awaiting legal advice in relation to whether 'there may be an action against any past or present members of the committee (board) of the association'—advice which the liquidator initially sought over 12 months ago. The committee felt that this delay was unreasonable for all parties, and was concerned that the matter be resolved as expeditiously as possible.

The committee invited the liquidator to attend a hearing. However, he was interstate and unavailable for several months. While the committee felt that it would have been valuable to question the liquidator, it did not pursue the matter, as it later resolved not to undertake a full-scale inquiry.

Another issue identified was that the Department of Industry and Trade was not able adequately to monitor Green Phone, due to the nature of the grant it made. While it appears that many of the circumstances were outside the department's direct control, there may be some lessons to be learnt from this experience. The committee also noted that the commonwealth government had reviewed its grant process in the light of the experience of the $2.3 million funding grant to Green Phone and the subsequent liquidation of that organisation.

The committee was also concerned that in the course of its inquiries it received conflicting evidence on several subjects. The committee did not endeavour to pinpoint the cause of Green Phone's demise, nor did it seek to investigate further the issues identified. The committee determined that it was not the appropriate body to undertake such tasks, particularly as the liquidator's investigation is ongoing. However, the committee believes that several serious issues warrant further investigation by the appropriate authority. For this reason it has recommended that the Minister for Consumer Affairs consider referring the matter to the Office of Consumer and Business Affairs for investigation.

Members would realise from that very brief report of the committee that there are some issues of grievous concern that have been raised through the inquiry into Green Phone. I am very much aware of the concern of the South-East community and its disquiet that this matter has not yet been able to be resolved. Indeed, it was very disappointed that the Economic and Finance Committee was not able to undertake a more comprehensive investigation of the issues raised. However, as the Speaker mentioned today, the committee is not a court, and there are legal issues to be investigated. As previously indicated, we were very disappointed that the liquidator had taken so long to report and had not pursued more vigorously the request for a legal opinion that he had sought about a year ago.

The committee was very interested in the way the community of Mount Gambier and surrounding areas had gone about trying to provide an important modern and expensive service to itself. The community saw that it was not receiving best value through the existing service providers and there were issues about the country location and the costs of operating ICT in the country that it was hoping to address. I commend the community for attempting to take on this issue in the way it did. The fact that some of the processes may not have been the most desirable is, indeed, very regrettable, and

I know that the community would have liked us to be able to identify just what it could have done better. However, in the time, with the information and at the stage of the whole issue of Green Phone when the liquidator had not reported, we were not able to undertake such investigation to give that reassurance to the community. I certainly hope that the liquidator's report will throw much more light on the issue so that the community can bring this matter to closure, get on with it and not feel intimidated about taking other initiatives to build community infrastructure. It is important to note—and I am sure the member for Chaffey will elaborate further on this matter—that other communities have been able to be successful in this type of venture. So, it is not the type of venture itself which is the problem.

Mrs MAYWALD (Chaffey): I concur with the comments that have been made by the Chair of the Economic and Finance Committee, and I thank all members for their contributions to this preliminary inquiry. It has certainly been a very regrettable incident, the business venture having started off with so much promise and enthusiasm and an incredible amount of community, local, state and federal government support. Unfortunately, the Economic and Finance Committee is not the appropriate jurisdiction to undertake the extensive inquiry that is really needed into this issue. The community quite rightly feels aggrieved by the process, and what has happened has undermined the confidence of the community to take on projects such as this. I am hopeful that, as a result of our preliminary inquiry, the liquidator and others will certainly take on board the comments of the committee and expedite the process of closure for the community so that we can basically move on from this unfortunate saga. I thank all the witnesses who attended. I understand that the community has been exposed to significant pain over this issue. I know that people travelled quite some distance to provide evidence to the committee.

I am hopeful that, as a result of the efforts of our preliminary inquiry, further investigation will be undertaken and that the liquidator can, indeed, finalise his investigation into the matters surrounding Green Phone. I am also hopeful that other communities will not see this as a concept problem but more of a management problem. I also hope that in the future other communities can learn from the mistakes and failings of the Green Phone project and look toward more successful community partnerships between communities and local, state and federal governments to provide the substantial services that are required in regional areas. Regional areas have to be innovative to ensure that they can stay in touch with what is happening in metropolitan areas. It is not always profitable for the big companies to come out and invest in rural and regional communities; therefore, we tend to lag behind technology improvements that would otherwise be just expected as standard within a city. So, communities have to be innovative, and I am certainly hopeful that, as a result of our preliminary inquiry, the investigations into this sorry saga will be concluded in a timely fashion now. I also hope that the community can get on with it and can have confidence to look forward and learn from the mistakes of this unfortunate saga.

Motion carried.

PUBLIC WORKS COMMITTEE: STATE RECORDS ACCOMMODATION

Mr CAICA (Colton): I move:

That the 184th report of the committee, on State Records accommodation, be noted.

The Public Works Committee has examined the proposal to apply $4.92 million of taxpayers' funds to the State Records accommodation project. The committee is told that State Records, a business unit within the Department for Administrative and Information Services, administers the State Records Act 1997. State Records also has the responsibility of administering the Freedom of Information Act 1991 and the information privacy principles. The archival collection consists of those official records considered to be of sufficient historical importance to be retained permanently. Records date from 1834 and include valuable documents relating to South Australia's beginnings as a colony and its role in federation. State Records presently operates on two sites—the government owned Netley Commercial Park complex and private leased accommodation at Gepps Cross.

In 1998, a strategic plan revealed that the Netley premises could not have its capacity increased and that the Gepps Cross facility was inadequate for permanent storage. This situation threatened State Records' ability to effectively comply with the requirements of the State Records Act in relation to its promotion and facilitation of access to the collection without more appropriately designed and located facilities. Subsequently, the 1991-2000 capital investment statement included a $5 million provision for improved facilities for State Records. A split facility (public and agency customer services in the CBD and a single repository in the inner metropolitan area) was identified as the preferred option for economic and practical reasons. For financial, operational and expansion capacity reasons, an upgrade of the Gepps Cross facility is the only feasible option for the permanent records repository. The only viable option that can be delivered within the capital allocation is the Bickford North building in Leigh Street and Gepps Cross. The committee is told that it is proposed to:

- establish a CBD presence for State Records in the Bickford North building, 26-28 Leigh Street, providing appropriate facilities to enhance services to the community and government;
- partially upgrade the current repository at 115 Cavan Road, Gepps Cross, to meet the Australian standard for the storage of archives;
- provide efficient accommodation at both the Leigh Street and Gepps Cross sites for State Records staff and volunteers providing services to government and the community.

It is proposed to lease the whole of the Bickford North building—1 600 square metres over basement, ground, first and second floors—subject to final measurement after the base building works are completed. The lease will be for 10 years. Government will contribute $1 million towards the base building upgrade to achieve a favourable rental of approximately $150 per square metre. The second floor will be subleased out by DAIS real estate management.

The State Records fitout will seek to create a contemporary, publicly accessible interactive facility within a heritage shell that showcases State Records through a range of methods. The facility will include a range of electronic interactive media, as well as exhibition spaces, reading desks, project rooms and office accommodation. The Gepps Cross two year renew option on the current lease expires on 30 April 2004. The next rent review is due on 1 May 2003. Therefore, it is proposed to surrender the current lease and

enter into a new lease for 15 years from 1 May 2003. The Gepps Cross building owner has agreed to provide government with a $500 000 cash incentive, payable on completion of the Gepps Cross upgrade works, as part of the negotiated arrangements. The permanent records at Netley will be relocated to Gepps Cross. The facility at Gepps Cross is a purpose-built repository for the commonwealth and state archives for storage of temporary value records.

Works at Gepps Cross will include office alterations, specialist storage space and back-of-house repository spaces, including temperature and humidity controlled facilities for long-term storage of archival material. The cost of these specialist operations will be borne by government. Air-conditioning at Gepps Cross will incorporate an economy cycle for free cooling on days of suitable external ambient conditions, which will provide savings, given that the system must be operating 24 hours a day. These features will be supplemented with energy efficient design and materials as well as low energy and movement activated light systems, all of which will contribute to energy savings in the order of 30 per cent.

The Bickford North Building fit-out will include similar ecologically sustainable design features and facilities. The Bickford North Building is listed on the state heritage and Adelaide City Council's local heritage registers. The proposed scope and design of the base building fit-out is consistent with the heritage character of the site. The project seeks to achieve the following aims:

- increased awareness and use of the archival records of government by the community;
- long-term preservation of the archival collection in accordance with Australian standards;
- capacity to cater for future growth of the collection;
- more effective and efficient services to government; and
- an increased involvement of community volunteers.

The Bickford North Building will attract $82 000 per annum from the sublease of the second floor from 2003-04, and the agency will also save costs forgone from the Netley facility of $215 000 per annum from 2002-03.

The estimated capital cost of the project is $4 920 000. Operating costs relating to the Bickford North Building will total $317 000 in 2002-03 and $305 000 per annum ongoing from 2003-04.

Additional electricity and airconditioning maintenance for Gepps Cross will total $78 000 per annum from 2002-03. As the Gepps Cross facility is currently occupied by State Records, existing recurrent costs are already part of State Records budget. Economic analysis reveals that the proposed solution is the most cost-effective option, given the capital outlay restrictions.

The Gepps Cross facility will be completed in August 2003 and the Bickford North Building will complete its fit-out in December 2003. The committee notes that the proponents have endeavoured to produce a cost-effective facility that meets both national standards for the housing of permanent records and provides a successful user-friendly interface for the general public and government agencies.

The committee also notes and supports the incorporation of energy efficiency features in both sites as an integral part of the overall project. The committee further notes that the base building works at the Bickford North Building, including the remediation of rising salt damp evident during the committee's site inspection, will under the proposed lease be the responsibility of the building owner, and this has been agreed to by the parties. Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee recommends the proposed project.

Mr VENNING (Schubert): I rise briefly to support the Chairman of the Public Works Committee and say that this is again a very thorough and professional report. It is an interesting committee to be on. In my first six or seven months on this committee I have found it extremely interesting. I took a lot of interest in this project because, being a six person committee, we have to have a fair bit of expertise, and there are also inquiring minds. I have enjoyed it because it is an area that I personally have been involved with, particularly in relation to building construction, restoration and so on. Each member has his or her own areas of expertise and interest in relation to probing projects such as this. The state records and archives are an important part of a government's and state's historical records and of the operations of its executive administration and bureaucracies.

As we all find in our own homes, we have important data that must be kept but what do we do with it? It is the same situation in relation to a parliament and the state archives. What do we do with these records? You cannot get rid of them, you must keep them, because they are very important records. The most important thing is—and this applies even in the home—they must be put in a place where you can find them again. That is a great trick, of course, of putting things away and not being able to find them again. Secondly, there is the question of storage, because often their condition deteriorates because of all sorts of dry rot, silverfish, or whatever.

State Records and Archives thus provides a facility for us to store these valuable documents with a record to enable us to find them. They offer a half-day service for that facility, whereby we can call for information to be brought in from either of the two repositories, for a very reasonable fee. I think that is brilliant. Also, in inspecting the facility I was quite overtaken by the quality and the way in which they store records in huge compactuses and in mint condition. Much of the documentation is historic and it is good to see it is in good hands.

Noting that this is a $4.9 million project, we had a close look, as lay people. It is very comforting to know that people like the Chairman (Paul Caica) and the other committee members—the members for Norwood, Unley and West Torrens—and I have the opportunity to look at projects such as this, and certainly it is a very interesting area. We look at the money that is allocated to the job required, and in this instance there were two projects, one being the refurbishment of a modern building, being the current repository in the outer suburbs, which was fairly straightforward—bringing a building built back in the 1970s up to scratch—and, secondly, the other half of the project was the restoration of the historic Bickford North Building in Leigh Street in the city, which is an historic precinct.

By taking over this building the government is doing its part in revamping and assisting that Leigh Street historic precinct. The building has character but is very much down in condition. However, we could see that it will come up well. As the Chairman said, I was particularly interested in the salt damp situation. It is all very well to take over a building like that. I did note that there were veneers, a false wall, on all the basement walls. I pulled off a vent, and they were a little bit aghast at my doing that, but on looking behind you could see quite severe salt damp, and in fact the smell was there as

well. By subsequent correspondence we were assured that the building owner will recover the cost of any recurrent salt damp problem. That would mean damage to any fixtures and fittings that the new tenant will have, so I was pleased to see that.

The airconditioning was in need of a huge upgrade. In a building such as this there was very little airconditioning—only the odd single unit. It will be an open space unit and certainly they will need a very detailed and extensive airconditioning system. I did note, with my basic knowledge of electronics, that the lift system in the Bickford North Building was old. I presume that upgrade is also included in the $4.9 million.

The final point I always raise is that, if we are spending this sort of money on an old building to get the best deal we need to have long-term tenure to be able to get our money back. We have to be careful about that. I am sure that we do have long-term tenure, with right of renewal, for the building in Leigh Street.

So, I think the Public Works Committee has done a fine job here—what it is supposed to do. As I say, I do enjoy this work. The committee is well chaired and is well run, and our staff do a good job as well. So, speaking from the perspective of having been chairman of the ERD Committee and now as a member of the Public Works Committee, I think the parliament takes these committees for granted. I think really this is the parliament at work. People say that if it is for the government they never get their money's worth. The Public Works Committee, in looking at any project costing $4 million or more, will ensure that the state government gets its money's worth. In this instance I think it has, and I certainly look forward to the opening, and maybe we might even fluke an invitation.

Ms CICCARELLO (Norwood): I will speak only briefly to this motion and will not indulge in the self-congratulatory exercise of the member for Schubert, although I am certainly also very pleased to be a member of the Public Works Committee, because I think it carries out a very important and useful function. I am very happy to support and commend this project, because as a former librarian of the State Library of South Australia I feel that this is an issue of extreme importance to the community. I do not think we can overestimate the value of our state records and the opportunity this will provide not only for current generations but also for future generations to access information about our state. It is of extreme importance.

Many people in the past have talked about the loss of the library of Alexandria and the enormous amount of information that is no longer available to society. Whilst not comparing our state to what happened in those days, last week we had an example, when we were looking at some students who were doing their year 12 exams. It was highlighted that South Australian history is not being studied very much by students. This is a great shame, because I think the history of our state is of utmost importance, so having the records for people to be able to do this is of great value. This project is important because it will be very accessible as a result of having the offices in Leigh Street. It is a very central location, and people from all over the state will have access.

Another good thing is that people of a non-English speaking background will be able to have access to records, and the Aboriginal community will also be able to have a central spot where they can access information about their history. I commend this report to the parliament and echo the sentiments of the Chairperson and other members of the committee.

Motion carried.

PUBLIC WORKS COMMITTEE: SOUTH AUSTRALIAN PLANT BIOTECHNOLOGY FACILITY

Mr CAICA (Colton): I move:

That the committee's report, on the South Australian Plant Biotechnology Facility, be noted.

The Public Works Committee has examined the proposal to apply $7 million of taxpayers' funds to the South Australian Plant Biotechnology Facility. Indeed, it is an exciting project. The committee was told that this project began in 1999 as an agreement between Adelaide University and SARDI to develop a $2.7 million plant bioscience research facility at the Waite campus of Adelaide University at Urrbrae, with $2 million of South Australian state government funds. Between 1999 and 2002 the facility grew in scope as the Australian Genomic Research Facility (AGRF), and its federal funding, joined the project, and then in 2002 Adelaide University won a bid to establish the Australian Centre for Plant Functional Genomics in South Australia, which was in turn accompanied by further funding.

The increase in funding and change of brief resulted in a complete review of the project, and all users agreed to combine the various elements into a single facility to achieve economies of scale and create a larger, more impressive bioscience facility. The project reflects the importance of bioscience as a key growth sector in the South Australian economy. The committee was told that the government will fund a purpose-built research facility and associated office space for plant biotechnology research, development and commercialisation at the Waite, on land owned by Adelaide University. The building will be owned and operated by the university in close collaboration with the contributing partners.

The project has a total budget of $9.2 million (exclusive of GST), with the state government contributing $7 million. The new building is seen as the first development of a longer-term vision to create a bioscience sub-precinct on the south-east sector of the Waite. The building will house the national headquarters for the Australian Centre for Plant Functional Genomics (ACPFG); the national Molecular Marker facility; the agricultural node of the Australian Genomic Research Facility (AGRF); a node for the Cooperative Research Centre for Plant Molecular Biology; a commercial unit; and potential industry partners. The proposed 3 300 square metre research and office facility is a two-level building plus undercroft on a rectilinear footprint, articulated at the Hartley Grove facade with a major entry feature.

The building footprint covers an area of approximately 1 500 square metres on each of the upper two levels. The cost of $2 648 per square metre takes into consideration the contoured site and need for an undercroft for car parking, and includes specialised research facilities and full fit-out. The building has a central core, which comprises stairs, lift, toilets and service rooms. The core is surrounded by laboratories and some offices, all of which have direct access to external light. The undercroft is an open deck car park, which will be partially dug into the ground adjacent to the back on the western end of the glasshouses in the existing plant research centre. It will have 64 car parking spaces and 207 square metres for plant growth rooms. The building will remove 80

car parks from the current Hartley Grove car park, 64 of which will be replaced in the undercroft. As Mitcham council requires 120 car parks, the Paratoo Road car park extension will be increased by 136 car parks.

The building incorporates numerous energy-efficient and environmentally sustainable features, including its north-south orientation, tinted glass, efficient insulating materials, stormwater interceptor traps to remove solids and oils from run-off, high efficiency lighting and cooling systems, and effective natural and built shading. The project aims to consolidate the Waite as a leading international centre for plant technology and to establish it as one of the three top plant science research centres in the world.

Doing so will both build the depth of South Australia's agricultural bioscience research base and at the same time generate extra employment at the Waite. The results of the research conducted in the new facility will improve the agricultural sustainability of field crops, which are a significant part of the South Australian economy, and augment global efforts to make agricultural production more effective and more sustainable. The project is not designed as a specific revenue-raising measure for the state government, but the committee was told that the facility's objective is to become self-sufficient within 10 years through the development and commercialisation of its research.

The total project budget of $9.2 million is comprised of $7 million from the South Australian government, $1.5 million from the AGRF and $700 000 from the university. The building will be owned and operated by the university and the state will accrue no recurrent costs once the building is complete. The proponents told the committee that they are on a tight project program and intend to complete construction of the facility by November 2003. The committee commends the proponents of the project for the attention that they have paid to environmental and energy-saving features on the facility and encourages similar approaches to all government-sponsored projects.

The committee is of the opinion that these features may have been enhanced by the addition of a grey water reticulation system within the facility and the retention and reuse of stormwater run-off from the car park and the roof. Such a system could be utilised if not in the building itself then on the extensive garden and recreational facilities that form the Waite campus. The committee notes that the Plant Biotechnology Facility is the first component of a longer-term future bioscience subprecinct at the Waite and that its anticipated success may produce a need for further and expanded facilities requiring state government support. Pursuant to section 12C of the Parliamentary Committees Act 1991, the committee recommends the proposed public work.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE: TRANSPORT ACT REGULATIONS

Mr HANNA (Mitchell): I move:

That the report of the committee, on regulations under the Transport Act 1994—No. 243 of 2001, be noted.

I speak to the report of the Legislative Review Committee on certain regulations under the Transport Act. In fact, the regulations being considered by the committee dealt with a proposed 4.23 per cent increase in taxi fares. That increase came into effect on 15 November 2001, and it was the task of the Legislative Review Committee to assess whether that was appropriate. However, some special circumstances had to be considered, and I refer particularly to what is known as the taxi camera levy, or the security levy paid by passengers of taxis over the last few years.

Some six or seven years ago it was decided that it was necessary to increase the security measures in taxis. A driver had been murdered at around that time which, naturally, prompted intense concern. The resolution that was hit upon by the taxi industry, in conjunction with the Passenger Transport Board, was for a 1 per cent levy to be collected by the taxi drivers themselves as a supplement to the fare paid by each passenger. At all times the PTB (Passenger Transport Board) was responsible for the oversight of the taxi industry in respect of this levy. As a matter of practice, the drivers did not do anything in particular with the extra money collected. Instead, the usual practice of splitting 50-50 with the owner of the cab was applied so that in those cases where a driver was working for someone else the driver in effect would keep 50 per cent of that levy and the owner of the cab would keep the other 50 per cent.

The purpose of the levy in its entirety was to go towards the cost of buying new security measures for taxis. Right from the commencement of the scheme there was a difficulty, namely, that the money collected by the drivers, as they picked up their 50 per cent takings at the end of the day, was simply put in their pocket: it never went towards payment for security measures for taxis, in the same way that the extra money given to owners by drivers at the end of the day (representing 50 per cent of the takings, more or less) was simply put into the general income of the owner. No particular fund was ever set aside for the implementation of the proposed security measures. In respect of those security measures, taxi cameras have been the most talked about. The cameras operate by activation of the drivers, such that a camera installed inside the cab will observe the passenger areas of the cab. The driver is to activate that camera only in an emergency situation.

The idea is that the camera would then take film of the occupants and, if there was a threat of violence to the driver, possibly a crime being committed, the driver, as soon as possible, would then have to go to a particular station for the unloading of the film so that it could be put into the possession of the police, and appropriate action could be taken against any offenders. In conjunction with this measure—a very important measure that has been implemented in the last few years—is the installation of a GPS (global positioning system) for identifying the position of taxis wherever they are in town or anywhere else, so that if, for example, an alarm was raised by a taxi cab driver it would not take long for assistance to be rendered because the central booking service could direct police or other taxis to the assistance of the driver in distress.

In any case, the taxi levy that was collected has been accumulating in a notional sense over the years to some thousands of dollars. As I have said, in respect of drivers that money has simply been pocketed. In respect of owners that money has also been pocketed although, to be fair, there have been some outlays, such as the recent installation of taxi cameras and a contribution to the booking service for the installation and operation of the GPS. There have been some outlays for which, arguably, drivers have had to pay, but there has been absolutely no reckoning or accounting in respect of the levy they have received.

It is important to underline again that that levy has been collected from passengers, the customers. The role of the Legislative Review Committee and this parliament is not only

to look to the safety of the taxi industry personnel but also to protect the interests and rights of the customers. It was in respect of bonus money being received by personnel in the taxi industry (that is, levy money in excess of that required to implement the security devices proposed) that the committee looked at the 4.23 per cent increase, which was given to taxi operators about a year ago. The basis for that increase was an increase in what is called the taxi cost index, which takes into account, as one would expect, a range of ongoing costs, such as tyres, petrol, maintenance of the vehicle, and so on. It should not be a device for recouping capital expenditure; for example, it is not there to recoup the cost of buying a cab or a licence. The PTB, the agency of oversight in respect of the industry, did not appear to consider fully a possibility that the taxi operators should pay for the recommended security devices when it was determined what those devices should be such that they would be purchased and have the money recouped later from consumers.

That is a method which might have allowed an easier reckoning of how much money would be sufficient. The PTB was also remiss because there was promised a review of the taxi levy and the related security issues. The only review about which the committee received evidence was a 1998 taxi task force report in which it was reported that there was, 'widespread ignorance' among the industry about the purpose, nature and direction of the levy collected. In response to that, the Passenger Transport Board took no action whatsoever.

To summarise the position, the Legislative Review Committee commenced its inquiry by looking at the taxi industry and what it had done with the 1 per cent levy that it had collected for security purposes. If that money had been diverted into matters that were otherwise covered by the taxi cost index, it would not have been appropriate to award them the full fare increase through that 4.23 per cent increase. However, when the committee heard evidence from members of the industry and from the PTB, it became apparent that the PTB had taken an extraordinarily hands-off approach to the whole issue. It had really just let the industry run free with the money that was being collected for a dedicated purpose from members of the public using taxis.

The majority report of the committee was critical of the PTB on that score. It was unfortunate that, in the committee, the matter appeared to become divided on political lines. In my opinion, the majority came to the view that it did simply because it began with an open mind investigating the taxi industry in respect of the levy, and ended up receiving considerable evidence that grounded criticism of the PTB. The committee ended up approving, in a sense, the 4.23 per cent increase. That increase has been in place for a year, anyway.

In respect of the 1 per cent levy, it was recommended that it be discontinued immediately. As things turn out, the committee took so long in its sometimes acrimonious deliberations that, as the Minister for Transport has recently stated, the levy is about to be discontinued, anyway, because all taxis are meant to have the security cameras by 1 December this year, in any case.

I would like to thank the majority of members on the committee. The Hon. Dorothy Kotz offered a number of helpful and balanced comments. The Hon. Ian Gilfillan, in his reserved way, contributed wisely to the deliberations, and the Hon. Carmel Zollo chaired the committee fairly and sensibly this year until her recent resignation. I have also enjoyed the company of Robyn Geraghty, the member for Torrens, on that committee. In essence, the regulations that were considered have been approved by the Legislative Review Committee and, thus, I have moved that the report be received.

Dr McFETRIDGE secured the adjournment of the debate.

STATUTES AMENDMENT (NOTIFICATION OF SUPERANNUATION ENTITLEMENTS) BILL

The Hon. I.F. EVANS (Davenport) obtained leave and introduced a bill for an act to amend the Parliamentary Superannuation Act 1974, the Police Superannuation Act 1990 and the Superannuation Act 1988. Read a first time.

The Hon. I.F. EVANS: I move:

That this bill be now read a second time.

I will make a short contribution to put my colleagues at rest about the amendments that I am moving to the parliamentary and other superannuation acts, because I know that they all have a keen interest in matters of parliamentary superannuation. This is a simple bill. It will not bring down the government, but it will make it easier for ordinary people in the street, or those in the professions, who belong to these superannuation schemes to understand their entitlements under their superannuation scheme. I will explain the background to the bill, which I think will clarify the purpose of the bill.

I was contacted by a constituent who had been a member of a super scheme for many years. This constituent left the Public Service at the age of 46 and went into private enterprise, and continued to work in private enterprise. When he was about 55½ years of age, he was contacted by an employee of the superannuation scheme and asked why he had not taken his super. He said, 'I am not eligible because I am working in the private sector.' He was told that he was eligible, so he then applied for his super. It is paid, basically, from the time of application, so he missed out on the first six months of his super, and that has cost him $12 000. I have taken that matter up with the Treasurer by letter, and that is not really part of this bill. I am waiting for the Treasurer to respond to me (and I do not criticise the Treasurer for not having responded yet, because he would have received the letter only in the past two or three weeks).

This bill simply says to superannuation fund managers that they must write to the members of the fund when they are 54½ years of age—basically, six months before the entitlement is due—and inform them that they are due for the entitlement, so that members of the fund are aware that they are entitled to the payout at a certain age. When my constituent contacted his super fund, he was told that that information was in their annual report—and, sure enough, at page 19, or 22, of the superannuation fund report, there in the fine print, it states that a person is eligible. In fairness to the fund, it was accurate: the information did appear in its annual report. But, in reality, I do not think there are too many people out there in the community who sit down at night and read their superannuation fund annual report from cover to cover.

Ms Bedford: And understand it!

The Hon. I.F. EVANS: And understand it, yes. This bill simply picks up on those superannuation schemes (and they have been advised to me by parliamentary counsel) where there is not a clear notification process. This measure puts in a clear notification process so that, once this bill becomes law, those funds will have to write to people six months

before the entitlement is due (in most cases, that will be at age 54½), and inform them that in six months' time they are due for this entitlement. At least people can then make a judgment about what they want to do. So, this matter really arises from an inquiry by a constituent in relation to his super. Hopefully, the Treasurer will be able to help me sort out the other matter about his $12 000.

The other point raises a whole range of questions, such as how many other people have not been paid their full amount because of that very same problem? I have raised those sorts of questions with the Treasurer. They are really outside the scope of the bill, but that gives the house some background. I do not want to add any more. I think it is a simple bill, and I look forward to bipartisan support on such a simple matter. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure will come into operation one month after the day on which it is assented to by the Governor.

Clause 3: Interpretation

This clause is formal.

PART 2

AMENDMENT OF PARLIAMENTARY SUPERANNUATION ACT 1974

Clause 4: Amendment of s. 19A—Preservation of pension in certain circumstances

Section 19A provides that a pension payable to a member pensioner to whom the section applies will be preserved if the member pensioner has not reached the age of 55 at the time of his or her retirement. Subsection (3) provides that the member pensioner may, at any time after turning 55, require the South Australian Parliamentary Superannuation Board to commence payment of the pension. If no such requirement is made by the member pensioner before he or she reaches 60 years of age, the Board must commence payment of the pension.

This clause amends subsection (3) by inserting a new paragraph that has the effect of requiring the Board to notify the member pensioner in writing, not less than six months before the member pensioner's 55th birthday, that he or she may require the Board to commence payment of the pension when he or she reaches the age of 55.

Clause 5: Amendment of s. 22A—Other benefits under the new scheme

Section 22A of the principal Act deals with the benefits payable to a new scheme member who is not entitled to a pension or other benefit under the Act. If the former member has not reached the age of 55 at the time he or she ceases to be a member, he or she may elect to preserve both the employee component and employer component of the benefit. If a component of the former member's benefit is preserved under section 22A, subsection (5) provides that the former member may, at any time after turning 55, require the Board to pay the component to him or her. If no such requirement is made by the member pensioner before he or she reaches the age of 65, the Board must pay the component to the former member.

This clause amends subsection (5) by adding a new paragraph that requires the Board to notify a former member not less than six months before the member turns 55 that he or she may, on reaching that age, require the Board to pay a component to which he or she is entitled.

PART 3

AMENDMENT OF POLICE SUPERANNUATION ACT 1990

Clause 6: Amendment of s. 22—Resignation and preservation

Section 22 falls within Part 4 of the principal Act, which deals with the superannuation benefits payable to new scheme contributors, and concerns the entitlements of a contributor on resignation. Under subsection (1), a contributor may elect to preserve his or her accrued superannuation benefits. Subsection (2) applies in relation to a contributor who has elected to preserve his or her benefits and provides that he or she may, at any time after reaching the age of 55, require the Police Superannuation Board to make a superannuation payment. If no such requirement is made on or before the contributor's 60th birthday, the Board must make a superannuation payment to the contributor.

This clause amends section 22(2) by inserting a new paragraph that has the effect of requiring the Board to notify the contributor of his or her entitlement to a superannuation benefit. This notification must be given to the contributor in writing at least six months before the contributor's 55th birthday.

Clause 7: Amendment of s. 34—Resignation and preservation of benefits

Section 34 of the principal Act deals with benefits payable to old scheme contributors on retirement and provides for various instances where a contributor may elect to preserve benefits to which he or she is entitled. In each instance, the contributor is entitled to require the Board to make a payment to him or her when he or she has reached the age of 55 (or, in one instance, 60). This clause amends section 34 by inserting provisions that have the effect of requiring the Board to notify a contributor of his or her entitlement to require the Board to make a payment. Notification of an entitlement must be given to the contributor not less than six months before the entitlement becomes available.

PART 4

AMENDMENT OF SUPERANNUATION ACT 1988

Clause 8: Amendment of s. 28—Resignation and preservation of benefits

Clause 9: Amendment of s. 28A—Resignation pursuant to a voluntary separation package

Clause 10: Amendment of s. 39—Resignation and preservation of benefits

Clause 11: Amendment of s. 39A—Resignation or retirement pursuant to a voluntary separation package

The sections amended by these clauses deal with benefits payable to contributors on retirement. Sections 28 and 28A are concerned with new scheme contributors and 39 and 39A with old scheme contributors. These sections deal with various instances where a contributor may elect to preserve benefits to which he or she is entitled. In each instance, the contributor is entitled to require the Superannuation Board to make a payment to him or her when he or she has reached the age of 55 (or, in certain circumstances, 60). Clauses 8, 9, 10 and 11 amend these sections by inserting provisions that have the effect of requiring the Board to notify a contributor of his or her entitlement to require the Board to make a payment. Notification of an entitlement must be given to the contributor not less than six months before the entitlement becomes available.

Mrs GERAGHTY secured the adjournment of the debate.

INDUSTRIAL AND EMPLOYEE RELATIONS (EXEMPTION OF SMALL BUSINESS) AMENDMENT BILL

The Hon. I.F. EVANS (Davenport) obtained leave and introduced a bill to amend the Industrial and Employee Relations Act 1994. Read a first time.

The Hon. I.F. EVANS: I move:

That this bill be now read a second time.

I will make a short contribution and will not delay the house for long. This bill essentially amends the Industrial and Employee Relations Act in regard to unfair dismissals for small businesses that have no more than 15 employees and where the employee has been employed in the business less than 12 months. It is similar to bills introduced in the previous parliament by the then government, and it is basically all about trying to provide an incentive to small business to employ, rather than leaving as it stands what is generally considered by small business to be a disincentive to employ, that is, the unfair dismissal legislation. Unfair dismissal remains one of the single most important issues for small business not only in South Australia but also Australia wide. I know that on about 20 occasions the federal government has tried to get changes to the unfair dismissal legislation through the federal parliament.

Mrs Geraghty interjecting:

The Hon. I.F. EVANS: The member for Torrens says, 'That and everything else.' I can understand why the federal government has tried to move to provide some incentive for small business to employ by changing the unfair dismissal legislation on a not dissimilar basis to what we have moved here today in the house. The fact is that to virtually every survey you undertake with small business there is a consistent answer as to why they do not wish to employ: they are scared of the unfair dismissal legislation as it stands; they clearly do not understand it and they think it is legalistic to a large degree. Small business's attitude, therefore, is, 'We won't employ.' There are 81 000 small businesses out there. If you can get them into a more positive frame of mind to employ, it has to have a positive impact on employment, economic growth and all those things that are good for the state.

A study was done recently by the Melbourne Institute of Applied Economic and Social Research of the University of Melbourne. It is interesting that this study, commissioned by the Department of Employment and Workplace Relations, shows that the state and federal unfair dismissal laws cost small to medium business about $1.3 billion per annum. That is a statistic that governments cannot ignore. I know that the previous government and the federal government attempted to address this issue but, if you believe the 'State of the State' report written by Roger Sexton and Mr Champion de Crespigny, they say we are a small business driven economy to a large degree. That is one of our very strong sectors, with 81 000 small businesses. Here we have a piece of legislation not only here but Australia wide that on this report's evidence is costing that sector $1.3 billion a year. We say that is a statistic that should not be ignored by parliaments.

If you want that in terms of jobs, this report states that these laws have contributed to the loss of about 77 000 jobs from businesses which used to employ staff but which now no longer employ staff. By that they mean that small businesses have had two or three employees, the employees have retired or gone with their partner when they have been transferred interstate and, because of concerns about unfair dismissal claims, the employers have decided, 'It's too hard; I'm simply not going to re-employ.' So, the business has dropped from two or three employees down to family members. The authors calculate that some 77 000 jobs have been lost from businesses which used to employ but which now do not employ. That does not take into account jobs that do not exist because they have simply decided they will not create a job, so they are saying, 'We have never employed, we could employ but we won't employ, because of the unfair dismissal regime that exists.'

We have not adopted the strict model of the federal government. My recollection of its original legislation was that it was basically exempting small business forever from the unfair dismissal provisions. We recognise that those with a philosophical bent against this style of legislation will not accept that, so we have gone for more of a middle ground and are saying, 'Let's at least exempt them for a year and provide some incentive to small business in that way.' We see this as an industrial reform that would help small business. The Liberal Party very much stands for supporting small business, and we think that to reform the unfair dismissal laws as proposed in the bill would be a positive example of the parliament's listening to small business and taking action to provide incentives to them to get out there and employ. If you had 81 000 small businesses each employing just one more it would have a significant impact on the South Australian employment figures (and, therefore, unemployment) and participation rates.

The purpose of the bill is to exclude small business from unfair dismissal legislation for a period of 12 months. It is consistent with federal legislation or attempts to amend the federal legislation. I will not hold up the house any longer. We have long held the view that small business is an important sector within the South Australian economy. We think we should be doing something other than just taxing small business. If you look at its record since its election in March, this government has a very simple philosophy for small business, and that is to tax it. The hotels industry has an extra tax of $134 million a year and then another $18 million over four years. The report of the select committee issued yesterday proposes increased costs to businesses through crown leases, and there are increases in stamp duties in the budget. So, in every aspect this government has lined up business and said, 'We're after you and your money.'

The Environment Protection Act amendments went through the upper house yesterday. The amendments that the government moved to the penalties under the bill which increase environmental penalties by some $2 million are again a message to business that this government is after them. We think the agenda needs to be balanced. It is one thing to say to business that you will tax them to high heaven and fund government out of their activity, but you have to listen to small business and ask, 'What are the things we can do to help you grow your business, the economy and jobs?' In virtually every survey that is undertaken in relation to small business they will say that one of the top five issues that most concern them is the unfair dismissal legislation.

We would encourage the government and the minister to listen to small business and take on board this amendment to the Industrial and Employee Relations Act, particularly in light of the Stevens review, which itself raises the issue of unfair dismissals. It wants to expand the current regime to apprentices and trainees—take them out of the VEET Act and bring them under this act which would then make them, as I understand the briefing, subject to the unfair dismissal regime that exists under this act. That is the very unfair dismissal regime that businesses are saying they do not support; that they have problems with; and they lack the confidence to employ under that regime.

If the government does not deal with the unfair dismissal legislation, it will remain a disincentive to small business to take the gamble, to mortgage their own assets, to go out and take a risk in growing their own wealth and, while growing their own wealth, growing the state's wealth providing jobs for the people in the community. We think this is a positive thing that should happen, rather than a negative one. I leave the house with those thoughts, and I hope that the government, through its processes—and I appreciate that the government will have to go through its processes with the bill—will adopt the bill as an attempt to help small business grow in this state. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure will come into operation one month after the day on which it is assented to by the Governor.

Clause 3: Amendment of s. 105A—Application of this Part

Section 105A of the principal Act falls within Party 6, which deals with unfair dismissals. Subsection (1) currently provides that Part 6

does not apply to a non-award employee whose remuneration immediately before the dismissal took effect is $66 200 or more a year. This clause amends subsection (1) by adding an additional class of person to whom Part 6 does not apply, namely, an employee employed at the relevant time in a small business on a regular and systematic basis for less than 12 months.

The relevant time is the time that notice of dismissal is given. If notice is not given, the relevant time is the time the dismissal takes effect.

A small business is the business of an employer who employs not more than 15 employees. (This does not include casual employees who are not employed n a regular and systematic basis.) However, a business resulting from the division of a business in which more than 15 employees are employed is not to be regarded as a small business even though not more than 15 employees are employed in the business.

Mr SNELLING secured the adjournment of the debate.

PREVENTION OF CRUELTY TO ANIMALS (PROHIBITED SURGICAL AND MEDICAL PROCEDURES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 November. Page 1888.)

Mr MEIER (Goyder): I rise to support this bill, and to thank the member for Morphett for bringing it before the house. Parliament is made up of members from a variety of backgrounds, including a variety of professions. I think it is great that we have a veterinary surgeon in our ranks and it is good to hear some of the thoughts and concerns of the member for Morphett gained from his experiences as a veterinary surgeon.

The bill, which seeks to prohibit the practice of tail docking, is something that I would not have given much thought to prior to it coming before the house. In fact, I well remember in earlier days owning a dog that had had its tail docked and I thought it was very natural, in a sense. Of course, it was very unnatural because the tail would have had to be docked when the dog was a puppy. I have looked at information surrounding tail docking, and I must say that it has surprised me that it has taken this long for this legislation to come before our state parliament. It looks as though we are leading the way in the case of the states of Australia because no other state has prohibited tail docking yet, although the Australian Capital Territory has. So, let us lead the way for the states.

The evidence is very much against tail docking. Certainly the Australian Veterinary Association make their position very clear, and they regard the amputation of dogs' tails to be an unnecessary surgical procedure and contrary to the welfare of the dog. In fact, the AVA recommends that all canine organisations in Australia should phase out tail amputation from their breed standards.

I must admit that I did not realise that the docking of tails caused considerable pain to the puppy. There is clear evidence from the information which can be obtained on the web that indicates that puppies are in considerable stress and pain when this procedure is carried out. It should be recognised that the procedure is usually carried out at about the age of two to five days, and a pair of scissors and a very tight rubber band are generally used. The procedure does not have to be carried out only by a veterinary surgeon, it can be carried out by experienced breeders and, generally speaking, anaesthetics are not used. Yet the cutting of the tail involves the cutting through of highly sensitive nerves, muscles, tendons and severing bone and cartilage connections.

No wonder the article to which I was referred indicated that puppies give repeated intense shrieking vocalisations the moment the tail is cut off and during stitching of the wound, indicating that they experience substantial pain. Additionally, inflammation and damage to the tissue can also cause ongoing pain while the wound heals. So, certainly from a cruelty to animals perspective the docking of tails does not seem to be at all desirable.

It was interesting to ascertain why tail docking started, and it seems that it goes back some hundreds of years. Theories put forward include the possible prevention of rabies—well, I think that theory could be put to rest without too much trouble; that it would prevent back injury to the dog—I do not know that dogs have such huge tails that it would cause injury to their back; that it would increase the speed of the dog—that, I can understand (a big long tail); and the prevention of tail damage due to fighting.

So almost all, if not all, of those reasons do not seem to hold up in this day and age and I think we, as members of parliament, should realise that it will be a step in the right direction to legislate to prohibit the docking of tails. The member for Morphett has also asked the question on whether dogs would look silly or very different by having long tails whereas we now see them with short tails. But, as is stated in an article that I have been referred to: certainly not, because can we image what breeds such as Labrador Retrievers or German Shepherds would look like if they had their tail docked. They would look silly with them docked. What is wrong with many of them, such as rottweilers and cocker spaniels, having long tails? I know that a large number of cocker spaniels have longer tails these days.

I thank the member for Morphett. I trust that this bill can be dealt with as soon as possible. I believe some members want to have the opportunity to speak, at least next week. As I said, this is a subject to which I had not given much thought. I never bothered to investigate it, but the evidence put before me makes it clear that this is a move in the interests of all dogs. It seems that veterinary surgeons for some years have been reluctant to carry out tail docking.

While South Australia may lead the states in Australia, compared with overseas countries we are behind the eight ball. Norway has banned the practice since 1987; Sweden and Switzerland since 1988; Cyprus, Greece and Luxembourg since 1991; Finland since 1996; and Germany since 1998. There are many examples of countries that have prohibited tail docking. It is time for us to show the lead for Australia.

Mr SCALZI (Hartley): I, too, wish make a contribution, and I commend the member for Morphett for bringing this bill to the house. It tells us much about our society. If we can deal with cruelty to our animals and pets, then it tells us something about our attitudes towards society in general. I do not think in this day and age we can tolerate cruelty to animals for cosmetic reasons.

I am proud to say that I have a French poodle named Sheila—I thought I would give her a great Australian name. She is a beautiful dog and she is complete, because she has a long tail. I know she is a lot happier for it.

Ms Bedford: How do you know that? That's outrageous!

Mr SCALZI: I would not have it otherwise. How do I know? I know because my dog tells me with the very thing that people want to cut off: she wags her tail when she is happy. In fact, I am so pleased with Sheila that her photograph will be on my calendar, so my constituents will see her

this year. Previously, her photograph has been on my pamphlets.

The ACTING SPEAKER (Mr Hanna): Order! The honourable member will get back to the substance of the debate. We do not need to know what is on his calendar.

Mr SCALZI: I was trying to promote dogs with tails—which is the substance of this bill. I commend the member for Morphett for introducing this very sensible bill. This measure is necessary. Of course, there are exceptions for surgical reasons, where it is necessary if the dog has a physical problem or a disease, or is injured in an accident. Obviously, the tail can come off in those circumstances, that is, in the interests of the dog. However, it should not come off in the interests of the owner so that people can say, 'My dog looks better than your dog.' It should not be about the appearance of dogs for fashion purposes. The docking of a dog's tail for these sorts of reasons is wrong.

The member for Morphett should be commended for this bill. He has clearly stated the reason why he has introduced it and, obviously, he is well qualified in the area. He was an eminent veterinarian before coming to this place. I am sure that the member for Enfield would agree also, because he has recently introduced some important measures in relation to tattooing and body piercing. People might think these issues are humorous but, in reality, they are very important pieces of legislation.

This bill deals with cruelty to animals. In this day and age we cannot allow cruelty to animals, just because it suits us to have their appearance in a particular way. I urge all members to vote accordingly to keep dogs in tact. I understand that a veterinary surgeon may dock a dog's tail if he is satisfied that the procedure is required for therapeutic purposes.

Mr Snelling: What could that be?

Mr SCALZI: I am not an expert in illnesses of dogs. Indeed, I am not an expert on canine matters and, unlike the Premier, who gave us a lecture on seals earlier today, I know that the member for Morphett has thoroughly researched this matter. He has not taken on this matter lightly. In some ways, I am embarrassed that I did not think about it earlier, and it is also negligent of other members of parliament, in a way, because Australia is a country with high pet ownership. We know the importance of having pets, yet we have not dealt with this measure to ensure that dogs are left in tact so that they can say goodbye in the morning by wagging their tail.

Mr SNELLING secured the adjournment of the debate.

ECONOMIC AND FINANCE COMMITTEE: EMERGENCY SERVICES LEVY 2002-03—INTERIM REPORT

Adjourned debate on motion of Ms Thompson:

That the 38th report of the Economic and Finance Committee, on the Emergency Services Levy 2002-03—Interim Report, be noted.

(Continued from 10 July. Page 691.)

Mr MEIER (Goyder): I would like to thank the committee for the work it has done.

Mr Snelling: Tell us about the report; give us a summary.

Mr MEIER: I would be happy to that but I feel, in the interests of bipartisanship I guess I could say, that the honourable member opposite last week gave an excellent summary and outline. As one of the members of longer standing here, I am well aware that repetition is out of order. Sometimes I really feel that members get out of hand by repeating what other members have said on a particular issue, and that point of order should be taken more often than it is. In light of bipartisanship and cooperation, I am happy to support this committee report. I thank the members involved and wish this measure a speedy passage through the parliament.

Motion carried.

STATUTES AMENDMENT (SUPERANNUATION ENTITLEMENTS FOR DOMESTIC CO-DEPENDENTS) BILL

Adjourned debate on second reading.

(Continued from 20 November. Page 1890.)

The Hon. D.C. KOTZ (Newland): I rise to support the member for Hartley's bill. I commend the member for introducing a bill that takes away a great number of the discriminatory factors that were evident in the previous bill we debated in this house. There has obviously been a great deal of comment and discussion on the relevance of both bills. However, the bottom line of the member for Hartley's bill is that it shows up quite clearly the discriminatory aspects of the other bill that has been discussed. In terms of gender alliances, the member's bill is a very open, inclusive, fair and reasonable bill. If it is passed by this house, it will alleviate concerns most of us have regarding looking purely at sexual influences in determining superannuation outcomes. Many areas of superannuation are now being discussed among members across a broad range of acts and bills. This is probably one of the best times in the history of superannuation debates. What has been designed and is now being sought to be implemented in this place by the member for Hartley is something which I think everyone in this chamber should seriously consider.

I have no problem at all with the provisions of the member's bill, except perhaps for one area in which I believe that the member for Unley will seek to move an amendment to remove the cap. If that cap in itself is discriminatory, I hope that members will support that amendment through the committee stage. If members have any concerns about a discriminatory component of this bill, they should see that clearly removed, and that should inspire support from all members. I am very pleased that the member has taken the time to look at all the different aspects that relate to domestic co-dependence as it opens up access to superannuation for people who obviously have relationships and partnerships not necessarily defined purely by a sexual nature or in a sexual manner. In this instance, that has certainly brought me to support the member for Hartley's bill.

I think that most members of this house would abhor any suggestion of discrimination. Our laws in this state are quite clear, and I think all of us who are legislators in this house understand that the very basics of discrimination should not be accepted under any circumstances. This bill deals with superannuation for those who have a caring and compassionate relationship, maybe in a partnership without any sexual connotations, which opens up all aspects of the bill to non-discrimination. I again congratulate the member for Hartley: it certainly shows that he is a very caring and compassionate individual who in the debate has certainly enabled us to understand, in areas where some of us have not even considered as part and parcel of a bill that seeks to regulate or open up and dispense with a form of discrimination, that

people are disadvantaged because of situations that have resulted from partnerships that have existed for many years.

I remember not so long ago seeing a late-night movie (which seems to be the only type of movie I get to see these days) about the story of two spinsters. It was not a story that enhanced a sexual relationship—

Mr Meier: *Arsenic and Old Lace*?

The Hon. D.C. KOTZ: No, that goes back even further than the time of this movie. I think there was a murder in that, but there was not in this movie.

The Hon. S.W. Key interjecting:

The Hon. D.C. KOTZ: No, it was not that, either. I cannot remember the title, but it came to the point where those two wonderful ladies had supported each other in partnership for many years. One owned the home they resided in, but the other supported the income and obviously contributed to the mortgage of the home, participated in income sharing and owned many of the bits and pieces that make up a home that they enjoyed in partnership with each other. As the story unfolded, one of the dear old spinsters passed away, leaving the other, who had been the home body rather than the person who had gone out to work, to bring in the major income to the household. Obviously there had been an agreement between the two women that the house belonged to whomever was the survivor of the pair, but unfortunately the relatives descended upon the lone spinster in the residential home and claimed almost every item in the household, and the house itself.

The sad aspect was that everything was sold and everything that this spinster had received as a gift, whether for birthdays or anniversaries, was claimed by the relatives, and all the wonderful sensitive paraphernalia that was part of her life was taken away from her and she was an isolated lonely individual. I do not recall the end of the story telling exactly what happened to her, which was very sad as well, but it gave us a good impression that some partnerships are co-dependent and, under circumstances like that, there should be protection for individuals who have participated in a partnership both in material goods in a home and in the home itself.

Mrs Geraghty interjecting:

The Hon. D.C. KOTZ: No, from what I recall there was nothing written but only an agreement between the two individuals, and the terrible relatives decided that it was all their property and they were only interested in gaining whatever dollars they could out of the remaining property. That was part of the sadness of the story because you cannot rely on others to do the right thing by you, so we have an opportunity here to make sure that in legislation we open up those opportunities for partners. With those few words, I avow my support to the member for Hartley on this bill and thank the member for Torrens for her contribution.

Mrs GERAGHTY secured the adjournment of the debate.

FREEDOM OF INFORMATION

The Hon. K.O. FOLEY (Deputy Premier): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.O. FOLEY: I answered a question today from the member for Torrens in relation to the Deputy Leader of the Opposition's freedom of information applications. In particular, I advised the house that my office was working through it as quickly as it could and would have the information when we could. The ever efficient staff in my office have been diligently working on this and I have an answer. I thought it was best to give it as soon as I could.

Earlier, the Deputy Leader of the Opposition in his question to me noted that he had requested that documents pertaining to the purchase of the MRI machine at the Queen Elizabeth Hospital be released to him under freedom of information laws. The Deputy Leader was referring to a request he made to the Minister for Health by letter dated 15 August 2002. As I advised the house earlier—

Ms Chapman interjecting:

The Hon. K.O. FOLEY: No, you've got to listen, Vick. As I advised the house earlier, the Deputy Leader of the Opposition did not lodge an FOI request on this matter directly with my office or the Department of Treasury and Finance. I can now advise the house that by minute dated 16 August 2002 the operations manager for the Minister for Health wrote to the senior administrative officer from my office requesting Department of Treasury and Finance documents in response to the Deputy Leader's request.

By minute dated 12 November 2002, the senior administrative officer in my office responded to that request and provided the operations manager of the Minister for Health with a full response. I understand that, as a consequence, the Minister for Health will be providing that information to the Deputy Leader shortly.

TERRORISM (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 1955.)

Mr HAMILTON-SMITH (Waite): The opposition will be supporting the bill, and I commend the government for its promptness in bringing the matter to the house. We will support the bill with some reservations and concerns, which the member for Bragg and I will deal with over the course of the next hour or so. Of course, we are all aware that this bill flows from the agreement by the commonwealth and the states on 5 April to decide upon a new national framework that is needed to meet the challenges facing the people of Australia and, indeed, the world, resulting from the events of 11 September and other acts of terrorism. International and organised criminal groups do not respect state or national borders, and their activities can result and have already resulted in injury, death and considerable harm to Australians. In the face of that risk, it is very clear that there needs to be a more formal and agreed set of arrangements between the states and the commonwealth as to how to respond to such events. In fact, in relation to terrorism, on 5 April the leaders agreed in particular that the commonwealth would have responsibility for national terrorist situations, to include attacks on commonwealth targets, multi-jurisdictional attacks, threats against civil aviation and those involving chemical, biological and radiological or nuclear materials.

The leaders also agreed to take whatever action is necessary to ensure that terrorists can be prosecuted under criminal law, including a reference of power of specific jointly agreed legislation (including rollback provisions) to ensure that the new commonwealth law does not override state law where that is not intended, and to come into effect by 31 October 2002. We are slightly beyond that date but, nevertheless, acting with considerable speed. The commonwealth was to have the power to amend the new commonwealth legislation in accordance with provisions similar to

those that apply in the corporations arrangements. Any amendment based on the referred power was to require consultation with and agreement of the states and territories, and this requirement was to be contained in the legislation. I think we will be debating that specific point and I note that the government has an amendment dealing with it.

It is interesting to note that the leaders also agree that the existing Standing Advisory Committee on Commonwealth-State Cooperation for Protection Against Violence (SAC-PAV) was also to be reconstituted as a national counter-terrorism committee, with a broader mandate to cover prevention and consequence, management issues, and with ministerial oversight arrangements. I am particularly pleased to be leading for the opposition on this matter, given that during my 23 year career as an officer in the army I was involved for most of that time with the national counter-terrorist plan. In fact, I was there at the time of the original raising of SAC-PAV, following the Hilton bombing in Sydney in 1978 and the subsequent efforts by federal and state governments to put together in considerable haste an effective national counter-terrorist plan.

There simply was not one before, and members might recall the deployment of the army to protect CHOGM in 1978 following the Hilton bombing, under very fuzzy and unclear constitutional arrangements. It was subsequently agreed between the commonwealth and the states that the federal government would have final solution responsibility for the resolution of a terrorist incident. In fact, it was decided that the army would maintain that capability and the Special Air Service regiment (SAS) was tasked to provide it. There was debate at that time about whether state police forces should each maintain their own counter-terrorist capability and whether incidents should be dealt with under state law. There was also debate as to whether or not, following the German model of GSG-9, the Federal Police should raise a federal counter-terrorist force and whether a set of federal laws should take precedence, and that the federal counter-terrorist response force provided by the Federal Police would respond in the event of a terrorist incident.

However, as I stated, at the end of the day it was resolved that the final solution capability would reside with the commonwealth. In fact, I commanded that first capability in 1980 as commander of the first counter-terrorist team in the SAS regiment, and was involved with hosting a number of visits by SAC-PAV, by chiefs of police from each of the states, ministers of police and some premiers, as well as federal ministers, to Swanbourne in Perth, during which a number of conferences were held to resolve the very issues associated with how a significant terrorist incident might be resolved. I mention that background simply to say that this is nothing new, in the sense that terrorism has been with us and recognised by both federal and state governments since that time. Indeed, there has been an effective national counter-terrorist plan in place since at least 1979.

Those arrangements are well oiled and work very well. Exercises have been conducted here in South Australia and in all states. The arrangements for handover from the state to the federal authorities are very well practised and well ordained. However, it has been deemed by the leaders as a consequence of their 5 April meeting that those arrangements need to be revisited and enhanced, and the opposition welcomes this further evolution of those arrangements. We note with interest that the leaders also agreed (in clauses 15, 16 and 17 of their agreement), in respect of dealing with multi-jurisdictional crime, to legislate through model laws for all jurisdictions—and I emphasise 'through model laws'—and mutual recognition for a national set of powers for cross-border investigations covering controlled operations and assumed identities legislation, electronic surveillance devices and witness anonymity.

Legislation was to be settled within 12 months. There was also to be legislation to develop administrative arrangements to allow investigations by the Australian Federal Police of interstate offences incidental to multi-jurisdictional crime, an important point I will refer back to later, because it raises the issue of how federal and state police would interact in regard to the legislation before us tonight. Further, the leaders agreed to modernise the criminal law by legislating in the priority areas of model forensic procedures (during 2002), model computer offences (during 2002) and model serious drug offences. I guess all that raises the issue as to whether a model set of laws, adhered to by all the states, might have been a more appropriate arrangement for the resolution of these needs by the states and the commonwealth, rather than a devolution or reference of powers, shall we say, from the states to the commonwealth. But that is a broader issue.

We note that the bill before us relates particularly to four key pieces of federal legislation that have been mentioned in the second reading explanation, and also note the commonwealth's concerns that it does not feel that it has the specific constitutional power to deal with the general area of terrorism or any general power to make criminal laws and that, in light of that, the scope of any commonwealth power to enact broad terrorism offences is supported by a patchwork of other specific commonwealth heads of powers. Clearly, in the commonwealth's view it was expedient to fill the gaps and eliminate, so far as possible, constitutional uncertainties by asking the states to refer power to the commonwealth under section 51(37) of the Constitution.

The states agreed with that position and have agreed to refer the necessary power to the commonwealth, and this bill effects that. It means, in effect, that the state is referring a broad criminal law power to the commonwealth. For example, 'a terrorist act' is going to be, in effect, redefined and, in the view of the commonwealth, more thoroughly defined. The opposition foreshadows that during the committee stage it would like to go through the schedule clause by clause, because we have some questions we would like to ask the government as to how those definitions of 'a terrorist act' and the actions that fall within it might be actioned and effected here within the state as a consequence of the passage of this bill.

There are certain other points in which we have considerable interest. One is the issue of fault. The issue of recklessness (which is mentioned in the schedule and, therefore, in the bill) also is of interest to us. On reading section 5(4) of the Criminal Code Act 1995, we note that 'recklessness' deals with the issue of a person with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist or, having regard to the circumstances known to him or her, it is unjustifiable to take the risk. It deals with the whole issue of risk and whether a person is reckless with respect to a result if he or she is aware of a substantial risk that the result will occur, and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk. The question of whether taking the risk is unjustifiable is one of fact and, if recklessness is a fault element for a physical element of a offence, proof of intention, knowledge or recklessness will satisfy the fault element. We have some questions that we would like to ask,

during the course of discussing the schedule during the committee stage, about how that aspect of this bill might operate on the ground.

There are a number of other initiatives in the bill that are of interest to the opposition. In particular, we note that, in the Australian federal system, there is a distribution of legislative powers between the commonwealth and the states, but that the legislative powers of the commonwealth parliament are confined by the constitution, and that this bill picks up that issue by dealing with the question of roll back—which, of course, was part of the agreement between the leaders. We note that section 109 of the constitution governs the position when such laws are inconsistent with each other, but we note that the spirit of the bill is along the lines that, in the event that there is such an inconsistency, although the constitution requires that the state law is invalid, even though they may be the same, and it would be possible for a person to obey both the state and federal law, the extent of meaning of section 109 has been the subject of a great deal of litigation in High Court decision making.

But this bill indicates that the commonwealth is prepared to be very flexible in such a conflict and is prepared—and virtually agreed—to provide for roll back in the terrorism reference. The provisions proposed by the commonwealth are in sections 100.6 and 100.7 of this bill. On this issue, the commonwealth indicates that it is prepared to be accommodating—or as accommodating as it can be—to maximise the scope for a joint concurrent operation of state and commonwealth criminal laws and, thus, to avoid problems of indirect inconsistency. We would like to explore some aspects of that during the debate.

We also note that the referral to the commonwealth is a referral of the text of the commonwealth legislation. The question, of course, arises what would be the position of the commonwealth if it wanted to amend the terrorism legislation (and I note that there is an amendment to deal with that) because, as it stood, we recognise that the commonwealth may have been able, by regulation or by its own action, to go ahead and change its legislation in the spirit of having to check that with at least four of the referring states, but without any necessarily binding obligation to do so, given that it may be difficult—or, in fact, quite impossible—for one federal parliament to bind another. But that will be raised and explored further by my colleague the member for Bragg and, no doubt, stretched out further during debate.

This is, clearly, a necessary bill, and we recognise the need for it. We note the government's proposed amendment. As I said, we have a number of questions that we want to ask regarding the schedule. We want to be assured that the bill will not have any unintended consequences—for example, that it will not unnecessarily bind or interfere with the actions of officers of the state, such as the police, whether they be in uniform or under cover; that it may not be used to frustrate state police in the performance of their duties; and that it may not open the door to a new level of bureaucracy or a new level of empowerment of Federal Police in such a way as to interfere with the rights and abilities of the state police to carry out their duties.

We will support the bill. As I said, we have a series of questions that we want to ask. We commend the government for the expeditious way in which it has brought the bill to the house—though we note that the Premier's enthusiasm to be out the front there, leading the charge on this, may well have encouraged the commonwealth to perhaps seek to assume more powers than it might ordinarily have sought to assume and, in particular, has possibly circumvented the option of looking at model rules as an alternative approach to ensuring that there is a common set of legislative arrangements in each of the states that is agreed with the commonwealth. However, having said that, we support the spirit of the bill and we look forward to the committee stage.

Mr RAU (Enfield): I also rise to support the bill. In so doing, I would like to place particular emphasis on the problems that have given rise to the initiative that brings this bill about. I do not think that there is anyone in this parliament who would not share the concern of the member for Waite and others about the threat that is presently posed in this country, and other countries around the world, by organisations and individuals who do not have the same respect for the law and human life that we do, or that we would expect others to have, and there is no doubt that, in order to combat and to deal with those groups and individuals, it is necessary for nations to have the power to interrupt the behaviour of those people, to find out who those people are, to place those people, if necessary, in gaol and, certainly, to the extent possible, keep them out of the country. I have no qualms whatsoever about supporting the bill in as much as that is its objective.

I note that it is part of a national scheme, and I would like to direct a few remarks to the question of how this bill is seeking to achieve this outcome as opposed to the outcome it is seeking to achieve. I want to underline that point. There is a great distinction between what this bill seeks to achieve, in my opinion, and the way in which it seeks to achieve it. The constitutional arrangements that have been selected for this bill are arrangements which rely upon a certain part of the Australian Constitution, namely, section 51(37). Section 51(37), along with all the other parts of section 51 of the federal Constitution, is a part that deals with what are concurrent powers of the states and the commonwealth. That means that both the states and the commonwealth have the legislative power to deal with matters that are covered under section 51. Importantly, though, section 109 of the Constitution provides that, where the commonwealth steps into the field, or legislates specifically on a matter under section 51, the effect is that the state is effectively removed from legislative authority in that area.

[Sitting suspended from 6 to 7.30 p.m.]

Mr RAU: To recap on where I was before the dinner adjournment, I was saying that this bill obviously should have, and will have, the support of members on both sides of the parliament. However, in my case at least, that support is not unequivocal. I stress that my concerns are not with legislation at a commonwealth or state level which has the effects of chasing down, rooting out and dealing harshly with terrorists who are nothing but criminals and deserve to be treated as such. My concerns with the legislation deal not with its objectives but with the methods by which the parliaments of the state and federal governments have chosen to pursue those objectives.

I now turn my attention to the methodologies and make a couple of observations about them. These methodology observations, or problems with methods, fall into two broad categories: first, the constitutional issues; and, secondly, details of the proposed legislation itself. As I said before the dinner adjournment, the constitutional issues arise in this

way: the state parliament is proposing to utilise section 51(37) of the federal Constitution which provides:

> Matters referred to the parliament of the commonwealth by the parliament or parliaments of any state or states but not so that the law shall extend only to states by whose parliament the matter is referred or which otherwise afterwards adopt the law.

This particular mechanism is not the only way by which states and the commonwealth can harmoniously deal with a national problem. There are many other ways in which these things can occur.

Ms Chapman: Unified state laws.

Mr RAU: The member for Bragg, who is a renowned legal personality, quite rightly says that the states could pass uniform legislation. The commonwealth could have, in effect, dovetailing commonwealth legislation—

An honourable member: And a model law.

Mr RAU: And a model law, exactly. The advantage, of course, in my opinion, of going down the model law route as opposed to the constitutional referral route is that the state parliament at all times retains control and responsibility for the legislation concerned. I can understand why some state governments other than this state government see it to be an advantage not to have the political responsibility of this sort of legislation sitting in their parliament. Obviously, unlike South Australia, there are states of Australia where there are large communities that are deeply affected, or feel themselves to be deeply affected, by legislation of this type.

It might be convenient, one might have thought, for the parliaments in those states not to have to worry about taking responsibility for what flows from this legislation. However, I am particularly concerned about South Australia only. For my part, I would have preferred to see a model law approach taken whereby the state of South Australia and this parliament retain control of the mechanism by which these laws are put into place.

I emphasise again that I am not arguing about whether we should be getting tough on terrorism. I am merely talking here about the structure. There are certain constitutional consequences of adopting the section 51(37) mechanism. As I said before the dinner adjournment, section 51 of the federal Constitution identifies a range of powers that are enjoyed by the state and the commonwealth. They are not like section 52 of the Constitution, which deals with exclusive powers of the commonwealth. Section 51 provides, in effect, for the commonwealth or the states to legislate not only about a range of matters, including such things as industrial relations and so forth, but also for matters which are referred under section 51(37).

As long as the commonwealth parliament does not pass a law under section 51(37), the state clearly has authority to pass any law it likes about this subject of terrorism. However, as soon as the commonwealth steps into the legislative field by enacting commonwealth legislation on this subject, section 109 of the federal Constitution provides that commonwealth laws prevail over state laws to the extent that there is an intention evidenced in the commonwealth legislation to cover the field so that the state laws are displaced from that field of legislative possibility.

This means, in effect, that the state, by virtue of passing this particular referral legislation, will, for the period of the legislation, be excluded from the ambit of the referral of power. I realise that the bill before the parliament does have termination of references as clause 5 of the bill. I do understand that there has been some discussion as to how that might be dealt with. Clause 5(1) provides:

> The Governor may, any time, by proclamation published in the *Gazette*, fix a day as the day on which references under this act are to terminate.

On its face, it would appear that the state parliament is enacting here a provision that enables it to bring back its referral of power at any time by proclamation of the Governor. In the small amount of research that I have been able to do on this subject this afternoon, it appears to me that it is anything but certain that that provision is going to be, or could be, effective. Various legal conundrums are thrown up by the fact that as soon as the commonwealth legislates it covers the field under section 109 of the Constitution. In covering the field, arguably it displaces the state regulation of the field, and the state regulation of the field includes the provision that enables the state to get its power back.

Of course, there is a converse argument to the effect that the state parliament can never bind a future state parliament and that, in those circumstances, it should not and could not be interpreted in that way. However, the authorities that I have had a chance to look at indicate that this is not a clear point. It is possible that the effect of this legislation is a permanent transfer of legislative power to the commonwealth from the state, and I think that is a serious matter.

Whether or not we ultimately think that it is a good idea for this particular type of legislation to proceed, it is very important to draw the distinction between the state enacting a model provision, which is and remains within its control, and the state handing over part of its legislative competence to the federal government, possibly on a permanent basis.

The other aspect of the legislation which concerns me is that, when you examine the schedule to the bill which deals with terrorism, we have a situation where, in effect, the commonwealth has the power to proscribe a particular organisation or collection of individuals and to say, 'This collection of individuals, or this organisation, we declare to be a terrorist organisation.' Whatever differences I might have with the present federal government, or even the present federal Attorney who, in my modest opinion, has done a poor job of defending the judiciary over recent years, that has nothing to do with the fact that I do not expect them to act as a person such as Saddam Hussein might act when armed with this sort of power.

I expect that Mr Williams and other members of the present federal government will bring genuine and thoughtful consideration to the question of whether or not an organisation should be proscribed. But we have to bear in mind that once an organisation is proscribed the raft of powers then vested in the commonwealth government to deal with such an organisation is enormous. They include what would otherwise be exclusively state powers to deal with matters otherwise not in the commonwealth's control. There is the obvious problem that, were an irresponsible federal government elected or an irresponsible minister to be placed in a position where he or she were able to make moves in relation to the declaration of organisations as being terrorist organisations, that would be a very dangerous thing indeed for democracy in this country.

This bill really raises one of the great paradoxes of our democracy. To what extent do we employ fire to fight fire? To what extent are we prepared to change the structures of our own system and our own concepts of natural justice and rights of individuals at home in order to impact what I accept absolutely as a very real threat, largely from abroad but also at home? It really does mean that we are back into the sort of mindset which occurred during the cold war. I am not

suggesting that this legislation is drafted with the intent of a McCarthyist sort of witch-hunt; that is specifically not my view. However, I do make the point that this legislation provides an enormous breadth for abuse if it produces a position where the executive arm of government chooses to abuse it. That is a very real risk. As I said before, the structure of this power referral means it is all in the commonwealth basket. It is not possible for a state such as South Australia to say to a federal government which is pushing the line too far, 'Hang on, we think you are going too far; we want the power back.' I should say that it may not be possible; I realise the bill provides that it might be. There is a question as to what brake or temper there is on the commonwealth, should it get out of line.

Coming back to where I started, I applaud the initiative of various state governments and the commonwealth government to seek a cooperative solution to what is undoubtedly a very real problem. I applaud the state and federal ministers concerned for having given very serious consideration to this problem and for recognising that some drastic measures were required in order to provide an opportunity for a solution to the problem. I recognise that in the years to come we may be very grateful that this legislation is in place, because it may save this country and other countries a tremendous amount of heartache and perhaps prevent the sort of carnage and loss of life which we saw in Bali and which we have seen in the United States. In my view it is a tragedy that in doing that there was not a better way in which the effect—which I am not arguing about—could have been created through other legislative means.

The only other matter I would like to refer to is the fact that it appears that the legislation as drafted—certainly I am talking here about the schedule, which is a commonwealth bill—goes to some lengths to protect what I think is very important, and that is the right of advocacy, protest, dissent or industrial action which is not intended to cause serious harm or a person's death or endanger the life of a person or create a serious risk to the health or safety of the public. It would appear that, if that is to be an element of this legislation, the democratic expression of a different point of view should never be challenged by this legislation. That is something that deserves credit, even though obviously the threat presented by the criminals and lunatics that this is directed towards is a very serious one. As I have said, I support the bill and I support the objects of the bill. I support the state and federal governments in taking on the necessary and in some respects unpalatable task of dealing with this problem, but I do regret that it was not possible for another mechanism to be devised to achieve this outcome.

Ms CHAPMAN (Bragg): There is little doubt that I would join many Australians in sharing the sentiments of the Attorney when he spoke both in his ministerial statement and in the second reading on this matter, saying that the world effectively changed after September 11. I think he recorded it as 11 September 2002 in *Hansard*, but we really know he was talking about 11 September 2001. It was an event which attracted the attention of Australians and many people in the modern world—or the western world, as some would describe it. However, as has been outlined, the events were such that, notwithstanding the passion of the moment and the depth of despair and pain that were experienced, this was soon to be followed by events which really did touch on the lives of Australians and South Australians, when the recent events in Bali brought home to us all the consequences of doing nothing in relation to those in the world who have no regard for human life and spirit, who have, whether perceived or real, a fear of the modern world and who will callously and cruelly strike down people in the world, including young South Australians such as Josh Deegan, who was a South Australian who had a life ahead of him but for this callous, malicious and cruel act. The only crime he committed was to celebrate with his team mates at a holiday destination of many young Australians, at which he was struck down.

So, the emotion of the times has directed the attention of the commonwealth parliament to this matter with some urgency in ensuring that Australia is protected in the future. All that is well meaning, and I commend the federal government for the action it has taken in providing support and assistance to those who have lost members of their own family and relatives and friends in Bali and elsewhere in the world under callous acts of terrorist assault. They have chosen what I would describe as option A, which is in a format in our parliament for support now. I think we are only the second state parliament to consider this and to be called upon to support it. It requires our cooperation; if the other states join in supporting this option A then of course it will be a clear act of cooperative federalism, which in itself will be some binding together of our commitment to attempt to protect our people in the future and prevent the carnage and injury that have occurred in the past.

I believe this bill is one which can be supported under the option A proposal, but only because the bill provides for protections of state interests. Even with those, I would have to say that, in the absence of the foreshadowed amendments, I would personally have some difficulty in looking at that proposal. As has been mentioned, there are two alternatives. One is to examine unified state laws and the other is, of course, to do nothing. I think we have all agreed that to do nothing is not a serious option. The safeguards in this proposal are what has cemented my support and, I believe, others on both sides of the house to allow this to sit comfortably with them.

The bill requires support to enable a clear direction without concern as to the implementation or operation. It requires the support of all the states to be at one on this. Principally, that is because terrorism knows no borders. Terrorist acts, no doubt, contravene the laws of the place where those acts occur. Many terrorist acts will involve offences committed in a number of jurisdictions within Australia. As an example, an act may be planned by conspirators in a number of places; explosives made in yet another; transported to a third and then a fourth place; and then exploded in a fifth jurisdiction.

So, we understand the importance of ensuring that if we are to minimise jurisdictional difficulties under option A the leaders must put into place their agreement that the states refer their respective powers to the commonwealth parliament. This would ensure that we minimise the jurisdictional difficulties and enable the commonwealth parliament to pass constitutionally valid laws to cover the whole gamut of terrorism operations in Australia.

It has already been identified that, at present, the commonwealth parliament is limited in the jurisdictions and areas of responsibility for which it can make laws for the peace, order and good government of the commonwealth. Over 100 years ago the states transferred areas of responsibility, including trade and commerce—everything from quarantine to foreign affairs, bankruptcy, marriage and divorce. The list goes on; it even includes taxation—more the pity. It also makes

provision for the future because section 51(37) provides for matters to be referred to the parliament of the commonwealth by the states and, to paraphrase that, to make laws that shall extend only to states by whose parliament the matter is referred.

So, there was some contemplation that there would be a possible need in the future, and merit and advantage, in referring other powers; and that time has come. The corporate laws in relation to children, for example, which had not been contemplated in the late 19th century and which would be included—for example, children born of parents who are not married—are all examples of areas upon which there has been reference of powers in the past. So, it is not new, but it is not something that is jumped to in a hurry—and for good reason.

The other real option was for each of the states to pass uniform laws to ensure that we would also minimise jurisdictional difficulty. I believe that process could have been implemented with appropriate planning and the support of the other states and, given the welcoming consistency of support that has apparently been indicated by the other states (at least by their premiers in entering into the agreement that has been referred to), I believe that could have been achieved.

In any event, this is the course that the commonwealth has identified it considers is appropriate. The premiers have signed up, and there is merit in this approach—but, as I say, with qualification. I would like to refer to those which I consider to be fundamental to the basis upon which I and, I believe, other members have indicated and will indicate their support.

Firstly, and I think most importantly, this is a power that can be terminated by proclamation of the South Australian Governor. That is absolutely critical. I note that the member for Enfield expresses some concern about the permanency of this legislation, and I note his concern for the power of a subsequent state parliament to act in a manner to revoke approval for this move, that is, that perhaps a circumstance may arise where they feel that that referral of power should no longer continue and that they would act upon it.

I do not share the same reservation about their power and even, indeed, their will to do it in certain circumstances, but I do accept that once the power has transferred the will to do so will be under considerable pressure and that it may not actually follow through—so there is a concern about that. Nevertheless, the power is there, and it is not often where the states have referred power with this sort of qualification. However, it is important and it is necessary.

The second area is that the commonwealth and state laws on this issue will have a concurrent operation, that is, that commonwealth laws will not exclude the state laws which cover the same offences. This is an interesting concept because there are provisions in the commonwealth Constitution, specifically in section 109 and other parts of constitutional common law, which repeatedly tell us that if there are laws that are in conflict, for example, then the commonwealth provisions shall prevail. That has been used many times in the legal process for the commonwealth to secure its exclusive jurisdiction and operation over certain areas that affect our daily professional and business lives.

I say it is relatively unique but, again, it is one which will, I hope, help to secure some preservation of the state's position. Probably the most novel, but nonetheless important provision, is the fact that the commonwealth has come to the states and accepted that there will be a provision in their own Criminal Code to ensure that they do not have the power to amend even their own terrorism legislation except with the agreement of a majority of states and territories, including at least four of the referring states.

Some commentary has been made in relation to the capacity for the commonwealth to restrict its own jurisdiction, and I expect that that would be an interesting argument in the High Court—and it may still be, given that the clause within its own code is still there. I cannot say that I am overly confident in any way about that provision. In particular I am referring to the schedule of the bill under section 100.8 which sets out the commonwealth's acknowledgment and acceptance that there would be provision for express amendment requiring the majority, and four states respectively, as I have indicated.

They have made a commitment to it, but I am not at all confident that can be enforced and that any challenge to the High Court may undermine it. I am very pleased to have received notice from the Attorney-General that he proposes to move an amendment to facilitate, within our own substantive part of the bill under consideration, the inclusion of exactly the same requirements. If and when division 100.8, or any part thereof, is struck down, we in the state of South Australia have already made provision in our part of the substantive bill, as part of the condition of our referral of power, to protect that. That is absolutely critical to protect the interests of the state, and it has been very significant in terms of my supporting this bill—not because of the objectives, but because there was an alternative. Perhaps it was an even better alternative, but this is the course we have been asked to consider. It is an alternative with those appropriate safeguards to allow it to proceed. I have concern about some aspects of the bill, in particular the schedule, the extent of definition and the extent of offences which have been identified. I have no doubt that wiser minds than mine have traversed these generous (in definition) offences that carry very heavy penalties from 15 years to life imprisonment.

I join with the member for Enfield in expressing some concern about prosecutions against those who might be members of terrorist organisations. I was trying to imagine how you would take all reasonable steps, if you were a member of a terrorist organisation, to cease being a member. I do not imagine you would ring up Osama bin Laden and say, 'I've had a bit of a change of heart. I'm not keen to stay in your organisation. I want a refund and I'm out.' There are aspects of the implementation of this about which I am concerned, namely, the reliance on one of the processes in which a terrorist organisation can be defined in a regulation provision under division 102.1, which provides 'after a minister has been satisfied on reasonable grounds that the Security Council of the United Nations has made a decision relating wholly or partly to terrorism'.

I do not have great confidence that the Security Council of the United Nations is a body on which I would rely to identify the appropriate terrorist organisations. It may be it takes the view, for example, that persons who operate in organised arrangements in the state of Israel are terrorist organisations. There will be different views in the community about whether they should be identified as such. I am not certain anyone is on any list at this stage, but I certainly want to be clear about what the minister would want to be satisfied about under the provisions of subsection (2). Hopefully, it will never be relied upon and there are other ways in which it can be identified.

There are other aspects in relation to the bill which I propose to address during the committee stage, but I thank the

Attorney-General and other members of the briefing committees, including Mr Goode (who have been kind enough to provide information about this somewhat difficult area to me), the shadow attorney-general and other members, for the speed with which they have dealt with an area of concern that has been at the forefront of the minds of many of us. The foreshadowed amendments have developed from that. I compliment the Attorney-General in attending to that matter speedily and appropriately. I will be supporting the foreshadowed amendments. I will leave further comment to the committee stage.

The Hon. R.B. SUCH (Fisher): I support the bill, which is trying to deal with terrorism at what we could label the micro level. I do not want to spend a lot of time focusing on that but, rather, on what I call the macro level. Earlier this year I had the privilege of visiting the United States, where I had a briefing from people actively involved in anti-terrorism. They were telling me and others how they would protect reservoirs, airports, and so on. Rather cheekily, I posed the question: why do you have to do this? The obvious answer is that there is a terrorist threat, but the fundamental question is: why is it that we have people in the world who hate the United States—and presumably us—to such an extent they want to kill us or destroy our way of life?

While this bill is not tackling that issue, the more fundamental question needs to be addressed. I do not believe it is being addressed adequately, either here, in the United States, the United Kingdom, or any other western democracies. One could argue that there is no point in trying to accommodate people who have a fundamentalist belief; who are essentially fanatical; who reject our way of life and our Judaic Christian traditions; and who, paradoxically, also reject what they see as the decadence of the west. We have an ironic situation where they reject the Judaic Christian belief and its manifestation but, at the same time, reject—

The Hon. M.J. Atkinson interjecting:

The Hon. R.B. SUCH: They reject what they see as a decadence. Various theories have been put forward in relation to the Bali tragedy. It was supposedly an attack on western decadence. I think that is rather simplistic and probably does a grave injustice to those wonderful people who lost their lives. I do not judge their activity in that light at all. If people are prepared to kill you, then I do not have a problem in taking very severe measures to ensure they do not. I do not believe on ethical or any other grounds you can argue against people having a right to protect their life against that sort of threat.

Some people say it stems from injustices, and that we are the focal point of that hatred, but I think that is simplistic. Hungry people rarely create revolutions; they rarely engage in ideological debate or pursuits. One usually finds that that comes from quarters other than the people who are hungry or absolutely deprived in a physical sense. At the moment, we have people, clearly, who have an ideological bent that is different from ours. By taking it to its fanatical or fundamental level of extremism, they will not be in a situation or mind frame where they will accept any compromise. It is a bit like trying to negotiate with someone who has a knife at your throat; you can talk as much philosophy as you like and argue about tolerance, and so on, but it is somewhat beside the point.

Nevertheless, I think we could be doing a lot more in relation to our relatively minor role in the world at large. We should be trying to influence the United States to be more even-handed in its foreign policy, particularly in relation to the Middle East. That is a sore point among many people in the Muslim world who see the United States, in particular—and that is understandable because the United States is the big boy—as the enemy or the threat. One thing that has compounded that and helped create that hatred is the stationing of military forces in areas which the Muslim community at large regards as sacred, for instance, Saudi Arabia. In the case of Australia, the liberation of East Timor was seen as challenging and provocative. What happened there was that basically a Christian or essentially Roman Catholic community was given the chance to move out of a nation that was predominantly Muslim. Ironically, the Australian government does not wish to extend the same freedom of choice to the people of Irian Jaya who have very little in common with the bulk of the Indonesian people. However, for reasons of expediency we remain largely silent on their future and their quest for independence. That is another issue for another day.

There is no easy answer. We can be independent from the United States, and we should be, but not for any reasons of being anti-American. As I have said before, I have great fondness for the American people. However, as a proud Australian, as someone who regards themself as a nationalist, I would like to see us be more independent in all areas and not come under the domination of the United States.

The Hon. M.J. Atkinson: We had better spend some money on defence then.

The Hon. R.B. SUCH: As the Attorney points out, if you want to be independent you have to pay for it. Australians want the good life. They want the consumer society but they are not prepared to pay either for investment or to defend themselves. If you want to be independent, you have to be prepared to pay the price. It we are not prepared to be independent, we will be seen as part of the US—in effect, the 51st state of the United States. If we became independent from the United States, we would still have our Judaic Christian aspects, even though they have been diluted over time. We would however still be seen as decadent by many of the people in the Muslim world, by the fundamentalists. Even if we became more independent from the United States, it would not get rid of that challenge we face as a result of people who have taken upon themselves that degree of fundamentalism and fanaticism.

We have seen it recently in Nigeria where I understand over 200 people have been killed as a result of Nigeria hosting the Miss World beauty contest. The female journalist who wrote the article suggested that the Prophet Mohammed would have been happy to marry one of the beauty queens, and they passed the death sentence on that journalist. In our society we find that rather extreme. However, when you talk about people who subscribe to fundamentalism, it is to be expected. We have to acknowledge that in our society—maybe on a lesser scale—we have our fundamentalists, as well. The United States certainly does. Many of the southern states of the United States have a lot of people whom we would have to regard very much as fundamentalist. One of the ironies of the current situation is that the United States is reflecting more of that fundamentalism and is in conflict with many of the fundamentalist elements that exist in the Muslim world.

The sorts of measures that we see addressed in this bill in terms of referring the powers to the commonwealth are necessary, even essential. However, we should not kid ourselves that they will guarantee us the freedom and the

security that we might wish for. Indeed, I do not believe you can stop terrorists if they are prepared, for example, to give their life. This is shown in many parts of the world with suicide bombers and others. You can stop elements of terrorism, you can take on people in Afghanistan, you can drop bombs on people you suspect to be terrorist leaders or terrorist organisations, but if people are prepared to sacrifice their lives because of their extremism and their fundamentalism, there is no way you can build any total barrier against that sort of fanaticism.

The thing we have to guard against (and this is what I took the member for Enfield to be suggesting) is that we have to be careful that in order to protect our freedoms we do not lose them. That is one of the great ironies and challenges of dealing with terrorism—that we do not take away the values and freedoms we have in our society in order to protect the very freedoms and liberties that we enjoy. That is the conundrum for societies like ours: how far do you go protecting the freedom of the majority by taking away freedoms within the society? It is a very difficult balancing act. We are talking not about finetuning here but about governments trying to make a judgment about what measures they put in place to protect the people without going so far as life becoming unbearable and losing the freedoms we are seeking to protect. That is the challenge of the sort of measure before us tonight.

One person's terrorist is another person's freedom fighter. In this country we need a lot more sophisticated debate about the issue of terrorism. It is starting to emerge now. We saw it recently with Josh Deegan's father questioning some aspects of Australian foreign policy and the actions of the federal government. That is healthy debate which is coming out of a personal tragedy for the Deegan family and others. Australians tend live the, 'She'll be right mate,' easy going, lackadaisical approach. Sadly, I do not think that is feasible or possible. We have to get more streetsmart in terms of understanding different cultures. Our teaching and understanding of the different cultures and faiths and so on is not that great. There is no way that we can deal with issues of terrorism or any other international aspect if our people do not have a basic understanding of the cultures, languages, customs and traditions.

We have seen some of that ignorance displayed recently by the Reverend Fred Nile with his rather provocative statement about what Muslim women might be carrying under their attire. On a light-hearted note, I am reminded of Spike Milligan and when someone asked him, 'Is anything worn under your kilt?' He said, 'Absolutely not. It's all in perfect working order.' Just getting back to the seriousness of this issue, we in this community must develop a greater understanding of the forces that are going to affect us. New Zealand has basically opted out. It might have that privilege, but I do not believe that Australia can or should opt out. We cannot retreat into little colonies of xenophobia, bigotry or hatred, because whether we like it or not we are part of the wider world and will increasingly interact with the rest of the world.

We are one of the great trading nations of the world, for a start. There is no way we can shut our doors, have a moat and form ourselves into some sort of castle separated from the rest of the world. We as Australians, through the Australian government, could help to reduce some of the misunderstanding about Australia. The key element and the wonderful thing about our approach to what is often called multiculturalism—and we can debate that as an appropriate label—is the element of tolerance. We can go around the world preaching tolerance but, as I said earlier, if the fanatics and the ideologues are not interested in talking, you are wasting your time anyhow.

We could make sure that in terms of our foreign policy we have some understanding of the plight of the Palestinians and are not simply always siding with America, irrespective of the merits of the issue, and not automatically taking the side of Israel versus the Palestinians. We should accept that both of them have rights and entitlements and should view them in an even-handed way. We could be doing a lot more in relation to Indonesia to help break down some of the barriers that are clearly emerging. We need to think about and act more in terms of getting a genuine closeness with the people of Asia, in particular with Indonesia.

The last thing we want as a result of the Bali tragedy is to turn away from Indonesia and try to isolate ourselves from them or isolate them from us. I support this bill—it is a necessary move. I do not believe for a moment that it tackles the root cause of terrorism, and I do not think anyone is claiming that it can, would or should. However, that should not stop us collectively as Australians trying to look at the bigger picture and trying to deal with some of the root causes of terrorism as best we can. But, at the end of the day, we have a right to live with freedom and without fear, and we should take all measures necessary, without taking away the basic freedoms of our society that we have inherited and enjoy. We should do all that is necessary to continue what we have developed in this country and will go on to further develop—a wonderful country with freedoms, the right of expression and a high degree of tolerance. In supporting this bill, my concern is that we do not go too far and take away the very freedoms that we are ultimately trying to protect.

Mr GOLDSWORTHY (Kavel): From the outset the Bali bombings were a cruel, undeserved, callous act by a group of people who obviously do not value human life and who look to terrorise innocent folk. However, I believe in the strength and resilience of the Australian people, and the belief in the decency and honesty of the vast majority of people. We are in uncertain times; however, in the end good will triumph over evil.

I will turn my comments to the Australian outlook on terrorism. Australia's and this state's security outlook and perspective have been sharpened by the bombings in Bali on 12 October. We know that at least 180 people were killed. Almost half of them were Australians and obviously a number of South Australians; it was an extremely tragic event. We also know of more than 100 Australians injured, some seriously, as a result of the bombing. We know, too, of scores of Indonesian casualties, not to mention the enormous damage done to Bali and Indonesia more widely.

The attacks in Bali bear all the hallmarks of international terrorism, with a disturbing twist in that the attacks took aim at soft targets—innocent tourists—with deadly effect. For Australia, first, the Bali bombings underscore that terrorism is in Australia's region—it is on our doorstep. The bombings remind us brutally that no-one is immune and that everyone is threatened. Secondly, the bombings also raise fundamental questions about security in our region. With few exceptions, such as New Zealand and Singapore, the countries of our region face real challenges in developing the capacity to confront and defeat terrorism.

In addition, if left unchecked, terrorism has the potential to obstruct the welcome trend towards a mature democracy

in Indonesia and to destabilise other countries in our region. The bombings have tested the maturity and resolve of the institutions of state—the central administration, local authorities, police, intelligence services and the armed forces—in Indonesia. The Bali bombings do not represent a clash between Islamic and Western norms, cultures and civilisation. The war against terrorism is a clash instead between tolerance and moderation on the one hand and zealotry and extremism on the other.

The attacks in Bali, aimed at westerners in a predominantly Hindu enclave, with the largest Muslim population, demonstrate that only too clearly. They were as much an attack on democratic moderate forces in Indonesia as they were on the West. They remain part of an extremist campaign to establish Taliban-style regimes throughout South-East Asia—a campaign that we know is heavily influenced and funded from the Middle East. None of what has happened in recent weeks has tempered our nations resolve to fight terrorism.

We cannot become immune to terrorism by silence or inaction on acts of indiscriminate yet very deliberate violence. We cannot simply curl up in a ball and pretend that it is not there or that it will not happen to us. To do so would be to play into the hands of the perpetrators of these crimes.

The events of the past few weeks do not give us any reason to review our longstanding policy of engagement in our region. Indeed, if anything, our economy, political, defence and security ties with East Asia and with the South-West Pacific have provided a strong base to cooperate with other countries to overcome the scourge of terrorism.

As a nation, Australia has been working hard in our region, particularly in South-East Asia, to strengthen intelligence, law enforcement and counter-terrorism capabilities. Australia has concluded agreements designed to enhance counter-terrorism cooperation with Malaysia, Thailand and Indonesia. I believe we are negotiating further such agreements with other key regional countries, including the Philippines.

Some have suggested that the Bali bombings so close to home should be cause for rethinking our commitment further afield. Our efforts must remain resolute, sustained and mature in nature, and global, regional and domestic in place. Australia has troops on the ground in Afghanistan as part of our contribution to the international coalition forces there. In the end, our primary obligation must be a preparedness to defend our sovereignty in the political and economic systems that express our values and freedoms.

I turn to the importance of business, which plays a vital role in this important matter. The conditions for growth and stability, including in this state, are the same the world over. Good governance, freedom of expression and association, transparency and accountability, democracy and the rule of law are all fundamental. Economic openness to exchanges in trade, technology, investment and intellectual property are also absolutely essential. Access to basic services such as health care and education and, through it, the opportunity to work and earn a living for oneself and one's family is a requisite. Part of the terrorist agenda is to force economies to turn borders into barriers; to erect walls behind which people live in fear, behind which businesses avoid risk and behind which economies, including those most in need of development, stagnate. We are a robust industrialised economy, politically stable, with mature institutions and the rule of law well entrenched. We are a tolerant, diverse and well educated society with much to contribute to the region in terms of our skills in interaction.

I support the bill, as have all members speaking previously. As I said earlier, I believe in the strength and resilience of our nation and our state. We are fundamentally a decent and honest society and, whilst these times are testing, I am sure that we will triumph.

Dr McFETRIDGE (Morphett): I support this bill. Unlike the reports in this morning's *Advertiser* where politicians were right at the very bottom of the trust and faith ratings, I am one (although not because I am a politician) who does actually have some faith in the ability of both state and federal politicians to know how to run this country, and I speak in a very bipartisan way. Fear and greed are the two biggest motivators in life, and here we have to be very careful that our decisions, our deliberations and our opinions are not based on fear. Certainly, as other members have said, the atrocious happenings overseas from 11 September to closer to home, the Bali bombings, make us live in fear of what could happen.

How many years ago was it that that serial pest ran in through the front doors of this chamber and threw open his coat? I know that the Speaker at the time, although he had had a few heart palpitations before that, thought that it could have been a bomb. How close we come to being victims. But we must not allow ourselves to be victimised or to live the role of the victim.

The history of intelligence organisations in Australia, particularly in South Australia, is quite interesting to look at. In the 1978 report of the Royal Commission on the Dismissal of Harold Hubert Salisbury by the late (unfortunately) Hon. Roma Flinders Mitchell, there is a discussion on the history of the first intelligence section in South Australia. The report states:

> In August 1939 immediately prior to the outbreak of World War II and following a conference of Police Commissioners and representatives of the Defence Department with reference to internal security in Australia, an intelligence section was set up in the South Australian Police Force.

The work of the intelligence section when first inaugurated was mainly aimed at:

> 1. Continuous observations, in peace or war, of all potential enemy agents, saboteurs and persons of hostile or subversive association.
> 2. The scrutiny, in cooperation with the Military and civil intelligence departments, of publications and correspondence of all natures.
> 3. Assisting the Censorship Authorities when requested to do so—

let us hope we do not see censorship, or even censorship by omission, in the press—

> 4. A fully organised, comprehensive system for collecting and collating the information gained by such observation, and for distributing it to the authorities responsible for taking preventative action.

It is really an amazing thing that what goes around comes around. We were living in fear then of subversive activity, albeit of a different sort. The communists and fascists were what we were afraid of. ASIO was formed in 1949 by Prime Minister Chifley. The role of ASIO was outlined by Mr Chifley, as follows:

> You will take special care to ensure that the work of the Security Service is strictly limited to what is necessary for the purposes of this task and that you are fully aware of the extent of its activities. It is essential that the Security Service should be kept absolutely free from any political bias or influence, and nothing should be done that

might lend colour to any suggestion that it is concerned with the interests of any particular section of the community, or with any matters other than the defence of the Commonwealth. You will impress on your staff that they have no connection whatever with any matters of a party political character and that they must be scrupulous to avoid any action which could be so construed.

I have great faith that our current security organisations are, as Prime Minister Chifley said, beyond reproach and act in the most ethical ways. The thing that we have to be careful of when setting up anti-terrorist organisations, as Roma Mitchell said in her royal commission report in 1978, is ensuring that natural justice does prevail; that investigations are justifiable. We do not need to set up a Star Chamber, and by setting up investigations into terrorism we have to be very careful that we do not limit our own civil liberties and our own civil rights or turn Australia into a jingoistic xenophobic society similar to what Fred Nile would have us do. What is he going to do with pregnant ladies? What do they have under their skirts?

I really am concerned that we maintain a level head and a cool, calm and intelligent outlook. What we need in assessing how far we go with intelligence organisations is perhaps exemplified in the Special Branch security records report to Don Dunstan from acting Justice White back in 1977. Justice White set himself up as judge, jury and executioner in the case of Harold Salisbury. He gave what he thought was a qualified opinion. Let me just look at some of the things that Justice White said, as follows:

I spent many days examining the records of Special Branch. I found there a hard core of genuine security intelligence material, substantially conforming with the criteria, relating to extremist left-wing and right-wing organisations and persons reasonably suspected of being potential security risks in the security areas of espionage, terrorism, sabotage and subversion. However, I also found there a mass of records—

in his opinion—

relating to matters, organisations and persons having no connection whatsoever with genuine security risks.

Who was Justice White to make that statement? As the member for Fisher said, one person's terrorist is another person's freedom fighter. We heard the Premier say that he is going to treat arsonists the same as terrorists. The other thing that we need to guard very carefully was also brought up by the late acting Justice White in the Special Branch security records investigation, page 22, as follows:

The rights to privacy and to freedom of political opinion demand that more specific and cautious evaluations should be made of situations, organisations and persons before information is collected and stored.

We need to make sure that the people doing this for us are the right people, not just people giving an opinion. An opinion is not worth much unless it is a qualified opinion. The report continues:

The criteria for identifying subversion must be reasonable and realistic, and those thought to be involved in such subversion must only be treated as suspects where the suspicion is based on reasonable grounds.

I will give some examples of reasonable grounds. There were many Labor Party politicians, ACTU officials, university students, and there was also one card-carrying senior Liberal parliamentarian listed in the Special Branch files. He was listed as a communist because, some decades before, he had been standing at or near a communist book shop. This is the sort of thing that we have to avoid. As an example of an absolute extreme of what can happen if we are not careful about the way in which we monitor our organisations (and, as I said before, I do have faith in their ability), the FBI, under J. Edgar Hoover, listed as radicals people such as Helen Keller, the blind and deaf author, who was described in FBI dossiers as a writer on radical subjects.

Mr Deputy Speaker, I totally agree with what you said before: we need to be very careful that our security organisations are given enough power to do what they need to do in the current world circumstances. But, certainly, looking back on history, we do not need to return to a xenophobic fear factor. We do not need to look towards a society where everyone is watching everyone else, and where people are scared to pick up a suitcase that could possibly have a bomb in it. That is the last thing that we need to go to. Terrorist organisations in Australia, and people who support them, need to be rooted out and, certainly, our politicians, both federal and state, need to be given the power to do whatever is necessary to maintain the society that we know and value in Australia. I support this bill.

Mr HANNA (Mitchell): I am glad that at least we are debating this bill in the state parliament, but the essence of it relates to the commonwealth legislation which has been drafted and to which we are acquiescing by means of giving away our legislative power to the commonwealth. The powers that security services in Australia will have after the passage of this and similar bills around Australia are not only awesome but they are also unnecessary. I am appalled by the breadth of the commonwealth drafting, and I am really fearful about the consequences for innocent people should there be any abuse of the powers provided.

What I aim to do now is talk about the breadth of the legislation and then question whether the security services and Federal Police, who will be enforcing the key legislation, can really be trusted by the Australian public with the very broad powers that are here provided.

The definitions contained in the schedule to the bill with which we are dealing are extraordinarily broad. I refer to the definition of a terrorist act. One can see that it is an act or even a threat made with the intention of advancing a political, religious or ideological cause. It has to involve intimidation of some kind—that might mean endangering property or life, and there is no doubt that these are serious issues. The problem is in the way in which the legislation is drafted and the scope that it allows for abuse by overzealous security or police forces, as the case may be.

When one thinks about it, people publicly demonstrating on almost every occasion would have some political, religious or ideological cause. It is really public protest that is one of my major concerns with this bill. Every time a crowd assembles on the steps of Parliament House, on a wharf, on a work site or marches down one of Adelaide's streets, they are likely to have a political, religious or ideological cause that they wish to advance. The question then becomes whether they fall within the second part of the terrorist act definition. Obviously, if they cause a person's death, no-one will have any argument that they should be dealt with severely. But should the same punishment fall on a person or a group of people who seriously disrupt an information system—for example, if a group that has a political or ideological purpose sits in an office as a means of passive protest—but, nonetheless, unlawful protest—by being unlawfully on premises, and prevents the use of computers or a telecommunications system? Would that not be seriously disrupting an electronic system, including an information system or a telecommunications system? If the

answer to that question is yes, it could be judged to be a terrorist act, with the very severe consequences that follow.

It is true that there is an exception for advocacy, protest, dissent or industrial action if there is an absence of certain prescribed harmful intentions. But the difficulty with respect to many public protests is that people go along to these events with a great range of intentions. For example, take the S11 protests in Melbourne a couple of years ago. I was present at those protests, and the great majority of people wished to peacefully protest and make a point about inequity on a global scale in terms of the resources of the world available to humanity. However, a few people were undoubtedly agitators and meant to cause more mischief than the majority intended. Some people were even willing to go to the lengths of property damage to achieve those intentions. The problem then is that, in what would otherwise be an innocent protest, there may be one person who is willing to commit a terrorist act and who may then colour all the people who are there with them and expose them to very serious penalties.

I want now to turn to another aspect of the schedule, which is the operative legislation, so to speak, and pick out just one example, because of the limited time available. If a person has a thing that is going to be used for a terrorist act, they expose themself to punishment if they are reckless as to the future use of that thing. I will give an example—not an unrealistic one. A person could go into a firearms shop and say, 'This is a particularly nice pistol, and I would like to buy it. I will come back tomorrow and pick it up.' The firearms dealer puts it aside, but does not make inquiries of the potential purchaser about what they are going to do with the firearm and, unbeknown to the firearms dealer, the person who is contemplating purchasing the gun also has a fantasy about committing some terrorist act—it might be shooting a computer at Parliament House, or it might be even shooting a person, which are serious matters in themselves. There is not an issue about whether the terrorist act is ever actually carried out: it is sufficient for the potential purchaser, in this scenario, to have such an intention for there to be a terrorist offence under the legislation. So, the firearms dealer who has been reckless about the possible use of the weapon which he or she might sell commits an offence under the legislation and is exposed to many years of imprisonment. In my view, the extension of powers under the legislation given to security forces is therefore too broad and is a real risk to the liberty of innocent, law-abiding Australians.

It is of particular concern that the federal Attorney-General, the Hon. Daryl Williams, sought to rush this legislation through parliament. It is an indictment on the federal Liberal government that, on the evening of 12 March this year, the federal Attorney-General expected a harsher version of this legislation to be passed through the House of Representatives in Canberra the very next day. As one commentator, Margo Kingston, a writer with the *Sydney Morning Herald*, said:

> . . . the package first reverses the onus of proof at the starting line. Rather than prove to its people that there is a need for all these new laws and explain why civil liberties should be trampled in its cause, they trample first, and leave it to citizens to prove they're not needed.

I am pleased to say that, because of party pressures in the federal parliament and, no doubt, within the ruling federal Liberal Party itself, the laws were somewhat modified. However, we still have laws that have too broad a reach. After all, it would not matter so much if they were really necessary. No-one disputes that, with the Bali bombing and the recent evidence of some Jemaah Islamiyah activity in Australia, there is a need for security forces to be vigilant and to implement the powers they have to detect and remove threats to Australian citizens. The point is that they already have ample powers: the NCA has extraordinary powers. It is unfortunate that the Prime Minister thought there was a better means of employing security forces and anticrime forces in Australia and saw fit to draw up plans for the demise of the National Crime Authority. There will be a replacement organisation, but I question whether it will be as effective as the NCA.

Although there is a need for vigilance and for our security forces to be on top of any terrorist threat, there is ample power in our existing laws—whether it be for the NCA or whether it be for the Federal Police or whether it be for ASIO or ASIS—to detect and remove any such threat. You cannot have a terrorist in Australia without that person breaking the criminal law. The criminal law is sufficient, in my opinion, to investigate and remove any terrorist threat we face.

I raise the question then about whether our security forces can be trusted with these extensive new powers. I will give two examples, one of which is from some time ago. I think that it is timely to recall the ASIS raid in the Sheraton Hotel on 30 November 1983. That was a generation ago but, given the lack of frequency with which we see Australian security forces operating in public, this bungle stands out as an appalling example of the over-reaching of powers exercised by the security forces. That was a case where the manager of the Sheraton Hotel was accosted by a stranger in a lift who said, 'Come with me. You are not going to get hurt, but come with me.' The manager retreated, and a scuffle followed.

The manager was far from reassured that he would not be hurt if he did what the stranger said. When a group of hotel employees came to the rescue and attended the lifts, a group of men wearing masks carrying weapons, ranging from automatic pistols to submachine guns, burst through threatening people with those weapons and making a getaway. If these are the people whom we are now entrusting to detain people without communication with a lawyer, to interrogate people without assistance from any other person, I am fearful for what might happen to innocent people.

To take a more recent example, we had raids on a number of homes, presumably as part of the investigation of Muslim groups in Australia, following the Bali bombing. I do not have any issue with the fact that it was necessary to investigate the people concerned. Rather, my concern is about the nature of the raids and the force with which they were executed. Civil liberties lawyer Stephen Hopper described it recently on the television program *Sunday* as follows:

> During one particular raid there was a gentleman, his wife and two children present. ASIO came in and said, 'We've got a warrant' and then stood aside and the Federal Police came in with their guns drawn. They held the gentleman down on the floor with guns at his head and his wife at the time was upstairs breastfeeding. She heard the commotion and came to the top of the stairs in a split-level apartment and was met on the stairs by male and female AFP officers and they held guns to her head. They held the guns approximately a couple of inches from her face and told her to freeze. She was then taken downstairs, she wasn't allowed to put on her Islamic coverings, and made to sit there in front of the police officers until the ASIO people who were going to conduct the interview arrived. The woman was terrified. She didn't really know what was going on. By not allowing her to put on her appropriate clothing, she felt it was a form of sexual assault.

That is only one example of such powers being abused. I am afraid that happens when you give powers to security forces that are too extensive for what is necessary. It does not matter at what stage in history or what nation we are talking about:

security forces are constantly seeking more powers for the way they do their job.

It happens with our own state police force. Quite often, if arrest rates, prosecution rates or conviction rates are down, it is all too easy for the South Australian police force to suggest legislative amendment to remedy the problem when it is not always the true solution to the problem in the sense that there are usually causes other than legislative deficiency for the lack of success.

I have tried to point out that the powers contained in the schedule to the bill we are dealing with are too broad for what is necessary despite the recent terrorist activity in the world—some of it close to our shores. Secondly, I have tried to point out that the security forces we have, on occasion at least, have gone beyond the extensive powers already given to them in terms of their invasion of the liberty of innocent people.

It is a sad day for me when South Australia is giving up its power to legislate in respect of these offences. I understand that it is a national scheme and that all states have agreed to take part in it. I suspect that the real reason for that, as much as anything, is the political imperative of not being seen to be soft on terrorism. We well know the political damage that our Liberal opponents would seek to wreak if we were tardy in passing legislation such as this.

A suggestion I have made before today is that the referral of powers should be for a limited time only, so that at least the South Australian parliament could preserve our rights as a community and revisit the issue if we felt that national security forces were over-reaching themselves, but that suggestion has not been taken up and we are stuck with giving away South Australia's powers in respect of these new offences. So, it is with a heavy heart that I support the bill, but the public needs to be aware that we have entered a new phase in the policing of ideological, political and religious activity in Australia.

Mrs HALL (Morialta): As we know, much has been written and said many times about this complex and challenging subject post September 11, 2001 and post October 12 this year. One thing on which we do agree is that we now live in a world that has very dramatically changed. For this generation of Australians, those dates—September 11, 2001 and October 12, 2002—I believe will be indelibly locked into our memories, because each of us can probably recall in some detail what we were doing at the time when we first heard or watched those barbarous events unfold. We in this chamber all share in the grief of our nation and the individuals and families who had to cope with the loss and maiming of their families post October 12.

This bill highlights in a very real sense those changed circumstances, those changed times and whatever the future may hold. As we know, this bill is receiving bipartisan support. I applaud the objectives of this legislation and the very complex cooperation that is taking place across the parties and across federal, state and territory governments in the approach that has thus far been taken. As has already been said, we know it is about the referral of those powers that are contained in great detail in the schedules of the bill. As we have heard from many of the previous speakers, they are the powers that are believed to be necessary to the commonwealth to properly care and look after the issues as they have defined terrorism.

Many of us believe it is being done to protect the individuals and institutions in our country from acts of terrorism, but in many ways one has to believe how ironic it is that these are the very freedoms within our society—our tolerance, core values and standards—that cover our individual liberties and freedoms, such as our freedom of expression and freedom of worship, where religion is a matter for the individual and governments are determinedly secular. In particular, I believe it is our belief in and support of democratically elected governments that are so threatening to these well funded and apparently well trained fanatics, these cruel and murderous fundamentalists.

It is at times like these when our society and our way of life is under threat from these vicious minorities I have mentioned that I believe we need and recognise leadership. I must say that in a general sense I am encouraged by the response of all Australian governments, but in particular I pay tribute to Prime Minister John Howard for his strong leadership during these recent challenging times. Following the tragedy of Bali when as a nation we were still coming to grips with the horrifying loss of life and unfolding events, the Prime Minister said:

> We fight terrorism because we love freedom; we fight terrorism because we want to preserve the way of life that this country has; we fight terrorism because we share the values of other countries that are in the war against terrorism; and we fight terrorism because it is intrinsically evil and you do not seek to covenant with evil and you do not seek to reach an accommodation with those who would destroy your sons and daughters and take away the security and the stability of this country.

I believe it is worthy of comment that I admire the strong demonstration of bipartisan support for the leadership and policies of the Prime Minister and the federal government, and in that light it is important to look at some of the comments that have come from Labor leaders. I believe another one is worthy of quoting, because it is a strong and very descriptive statement that came recently from the leader of Australia's most populous state—obviously, the state of New South Wales. Premier Carr said in the *Australian*:

> The enemy we face here is a group of totalitarian Islamists who have hijacked one corner of one of the world's great religions. That's who they are. They are fascists, they are Islamic fascists and totalitarians. They are a tiny corner of one of the world's great religions. Their approach is simply to destroy anyone who is not of their fanatical world view. By being who we are, democratic, peace-loving and pluralistic, we've made ourselves targets.

Coming from Premier Carr, I believe they are extremely strong and very telling words.

We know from all that has been said that this bill is a essential part of the cooperative and consultative approach adopted by all governments to enable the legal framework to work properly to protect Australians from this madness called terrorism. When the Attorney-General introduced the bill we heard that the basic agreement of the 20 resolutions covering more legal certainty between the commonwealth and state agencies took place at the April meeting of COAG. While the provisions exist to protect our much cherished civil liberties and we have all heard and have agreed on them, here in South Australia we are now set to make our contribution to this component of the national legislation. I strongly support that contribution.

Many aspects of the 20 resolutions or so have been covered in detail by some of the previous speakers, and at this stage I will not canvass some of those issues, because I know that many questions will be asked and discussed during the committee stage of the bill. In particular, it will be those that cover the issue of transfer of powers, states' rights and in particular personal freedoms. It is my view that, by virtue of the very nature of this complex issue, any response we

commit to, any government and any parliament needs a degree of flexibility, because only the passage of time will enable us to know how serious the threat is to our country.

I do not think anyone doubts the need to be vigilant, but I would cite two current examples of the need to react to what I believe are changing circumstances. One is the recent security alert about which there has been much debate and the advertising campaign that is about to commence on what the public should be doing, what we should be looking for, the safety issues related to attendance at special events, how we should not allow terrorist threats to prevent or scare us from going about our daily lives and how we should always use our commonsense and have confidence in our state policing services, along with the relevant and appropriate commonwealth and state agencies. In addition to that instance, there is the new airport surveillance, with the recent announcements of the need to upgrade our security at Australian airports. Predictably, the debate is now on about who should pay, and for what. There certainly does not appear to be any debate about the need.

These are just two examples of the new responses to changing circumstances and new information with which we are all having to cope. I must say that, when I read on the front page of the *Australian* this morning about the 3 000 South-East Asian sleeper cells trained in terror, it confirmed rather starkly the need for our constant vigilance. It also reinforced our need not to be afraid but, preferably, to be vigilant.

Once again, we see the federal government being attacked by some for providing an alert and an appropriate warning. At the same time, there is another group which is criticising the federal government for giving any warning and alert at all. Sadly, it is one the truisms in Australian politics, and I guess international politics, in cases such as this that you are damned if you do and damned if you don't; and I think that is quite a sad reflection on the society that we are having to cope with in these changing times.

Like so many countries in the western world that share our standards and similar values they, like us, are having to cope with the threat that terrorists pose to our civilised societies. I would like to share with the house something that was very vividly and somewhat colourfully demonstrated to me in England some weeks ago, when I happened to be in central London on the day of a very substantial anti-war demonstration.

As you know, Mr Speaker, in a previous life I was a journalist, and I covered many such demonstrations. This one was larger than some of those that I have covered but, as one of my colleagues said at the time, the usual participants were there. It was on a Saturday and there were many of the sorts of banners apparent that can be seen at this type of demonstration, particularly when there is a large component of anti-American activity. This particular demonstration included the British Prime Minister Tony Blair on their hate list along with the very predictable anti George Bush banners. My observation and my anger was twofold.

The whole of central London was closed down for many hours; the underground was shut; buses and taxis had to stop running; traffic was absolutely chaotic; and the police had to work very hard to ensure that the protesters and the public did not come to blows. There was one particularly colourful group of protesters that really angered me. That was the group that was appropriately dressed and carrying a defaced American flag. The blue stripes were correctly depicted but, in the corner occupying the red stars, was the swastika—the symbol of the Third Reich and the Nazi regime. I was absolutely outraged at the defacing of the American flag in that way, because I considered it to be an absolute insult to all those people who had suffered at the hands of the Nazis. I experienced my first hands-on feeling about how insolence in those sorts of circumstances can happen.

At the end of the protest march, with the demonstrators having achieved one of the main objectives, namely, to get maximum media coverage, the filthiest mess of broken banners—litter that you could imagine—was left around for council officials and others to clean up. Police had to contend with total chaos in traffic, as well as angry Londoners and visitors who had to contend with extraordinary inconvenience and the traffic problems. To make matters really worse, the many thousands of protesters hopped onto their charter buses and drove away to get ready, presumably, for their next anti-war-American demonstration.

One cannot help but ponder how what appeared to be a majority of protesters would have fared if they had tried those same set of tricks, that is, of closing down the centre of their capital city in their country of origin, before coming to England to enjoy the freedom of a western democracy. What is even worse to ponder is that a minority of those marching in that protest against the freedoms we enjoy could and would support murderous terrorist attacks against those of us who live in free and peaceful nations with democratically elected governments and constitutions that protect the freedoms that we in this chamber value so highly.

The demand of protecting ourselves carries with it, by necessity, a great deal of secrecy, so I am sure that we will not be in a position, nor would we want, to alert our enemies or prejudice the safety of our communities with a great deal of detail. However, despite the fact that most of us must remain in relative ignorance of the safety precautions that have already been put in place, I have very great confidence in our elected governments and the checks and balances provided by parliament and so impressively supported by our armed forces, our police forces, our security personnel and those who work in civil defence, all of whose job it is to keep Australian citizens safe. I again say that I strongly applaud the initiative of the federal government, which is strongly supported by the state and territory governments, in taking these measures and making sure that they are implemented as soon as possible.

Mr SNELLING (Playford): I rise with a little reluctance to support this bill—reluctance not because I am in any sense a 'peacenik'—unlike most members of my party I generally agree with the Bush government's strategy of dealing with Iraq, and I do not have a particular problem with expanding the powers of security agencies to deal with these types of offences—but because I do not think anyone here this evening, nor has the commonwealth, really explained why adding another layer of legislation is necessary in order to deal with terrorism.

No-one has explained to me sufficiently that the existing criminal law is not able to deal with terrorist acts. And, if you pick any terrorist act that has been committed, I cannot think of any that you would have difficulty in prosecuting in the state of South Australia under the existing criminal law. What worries me a little is that this legislation is not really designed to do much, but it is being essentially media driven, together with a demand that the state and commonwealth governments are seen to be doing something, even if it is only cosmetic; so, that is what we are presented with tonight.

One could take the point of view that, well, if all we are doing is making cosmetic changes, there is no real problem. But, I think that when you unnecessarily introduce another layer of complexity into the law you may find yourself facing unforseen problems in the future. I would like to draw a few examples from the schedule which has been drawn up by the commonwealth and given to the states as a fait accompli.

The first example I wish to draw to the attention of the house is the definition of 'terrorist act'. A terrorist act is not an easy thing to which to give a legal definition. I think you are much better off talking about murder, destruction of property, assault and those sorts of offences, which are encompassed by a terrorist act, without having to try to define what a terrorist act is. Because of this referral to the commonwealth and the commonwealth's desire to be seen to be doing something, we add difficulty. The schedule provides:

> 'terrorist act' means an action or threat of action where:
> (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
> (c) the action is done or the threat is made with the intention of:
> (i) coercing. . . the government of the commonwealth or a state, territory or foreign country. . .

That is a fairly broad definition, from which a lot of things could be taken out. If you take that in isolation, a lot of things could be called a terrorist act. The schedule then excludes certain things from being a terrorist act in a later part. 'Advocacy, protest, dissent or industrial action' is removed, but it is a funny way to go about it, that is, to define something very broadly but then in a roundabout way exclude certain things from it. We could have a situation, for example, where certain industrial action could perhaps be taken to be a terrorist act. I will draw a hypothetical example, namely, water supply workers who took industrial action which involved not dealing with sewage and which would have public health implications. Under the definition of 'terrorist act', it comes in because it is done with the intention of advancing a political or ideological cause; and it is done with the intention of coercing a government. The schedule also provides:

> (2) Action falls within this subsection if it:
> (e) creates a serious risk to the health or safety of the public or a section of the public;

We could have a situation where normal industrial action could evade exclusion under part 3 of industrial action because it could create a risk to the health or safety of the public. The schedule also provides:

> 'terrorist organisation' means:
> (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in, or fostering the doing of a terrorist act (whether or not the terrorist act occurs);

There is no exclusion of whether such assistance has to be intentional or unintentional. Qantas, for example, unintentionally flying a terrorist off to a certain part of Australia to commit a terrorist act would presumably fall under this definition of a terrorist organisation. I draw this example not because I seriously believe that Qantas would ever come under declaration of being a terrorist organisation but, rather, to draw to the attention of the house the difficulty of legislating for a specific offence of terrorism. My belief is that terrorist acts are adequately encompassed by existing criminal laws of the states.

It is a fairly sound conservative maxim that 'if it ain't broke, don't fix it'. I do not think that the commonwealth has adequately explained how anything is 'broke', or how its proposed legislation might fix anything. As I have said, I do not share the member for Mitchell's suspicions of our federal security agencies. I myself do not have a problem with broadening their powers to enable them to do their job properly. I think trying to create a new offence of terrorism, just so the commonwealth can be seen to be doing something, is a risky strategy and may have unforeseen consequences. The schedule is legally poorly drafted and has not been thought through. However, I acknowledge that the state has no real choice except to go along with what the commonwealth is demanding. I raise these concerns at this stage. I sincerely hope my concerns do not prove correct and that through these laws we are somehow able to reduce the risk of terrorist acts being perpetrated on the community.

Mr WILLIAMS (MacKillop): This has been a most interesting debate, and I understand it has probably gone on considerably longer than many expected. To my mind it is one of those opportunities we have in this house to express our thoughts over a much broader canvas than we generally have. Generally, we are confined to specific functions of the state government. We are looking here at a much broader issue, which is not necessarily the purview of this house. However, in my opinion, we are taking quite dramatic action in handing these powers onto our colleagues in Canberra. I will come back to that shortly.

Having listened to a number of members speak in this chamber tonight, I think we all are agreed on one thing. I think we all are agreed that if someone came to our country and perpetrated a crime, which we put under the broad definition of terrorism, we all would want to exact the same retribution on that person or those persons. We all abhor an act of terrorism. In the past 18 months, there have been two very significant events on the world stage. The most recent event in Bali on 12 October this year affected Australians most directly, and the earlier event occurred on 11 September 2001.

I do not think any sane person could condone these events in any way. Having said that, for the life of me I struggle to put myself inside the mind of a terrorist, to understand what anguish or anxiety must be happening inside their mind, more particularly that of a suicide bomber. One must assume—and I do assume this—that, at some stage on their journey from being a normal member of a community or society somewhere on the face of the world to one of being a suicide bomber or a terrorist and planting a bomb somewhere to reek damage and mayhem on their fellow citizens of the world, they must—at least in their own mind—have some rational reason for doing so. That is something that we must contemplate—where or how, or how or why they come to that terrible decision in their own mind to carry out the sorts of acts that are being perpetrated across the globe.

We have concentrated on those two events I have just mentioned. However, if we are realistic, we should look not just at the recent history of the last 12 or 18 months but at the history over many years. If we do so, we will suddenly come to the realisation not that terrorism is new and is a tool of warfare that has just been discovered but that it has been happening in various theatres around the world for many years. The difference is that suddenly it is affecting us on our doorstep or even inside our home.

I am a little concerned that our reaction to this change may, indeed, be somewhat of a knee-jerk one. It also concerns me that so many people in our communities—particularly the old and vulnerable—are suddenly living in fear. By and large, for most of those people that fear is

unfounded. I have an elderly mother who from time to time—and I am sure a lot of other members have the same experiences—expresses to me her fear of all sorts of things, whether it be being mugged in her own home or being the victim of some terrorist bomb. The chances of either happening to her are infinitesimally small, yet in her own mind they are very real fears. One thing we and the mass media should endeavour to do is play down those fears somewhat and put them into context, because they impact on people's lives unnecessarily. Notwithstanding that, we have to be prepared, because the world we know is changing and is destined to change—unfortunately it is not necessarily for the better. We have to accept that in the immediate future, in the mid term, we will be subject to acts of terrorism in our own land. I despair at this.

I have had the very fortunate opportunity to travel to a number of parts of the world, and most places to which I have travelled outside Australia have been Third World countries rather than developed countries. I can say with every confidence that the Australian people are as peace loving and as welcoming as any in the world. I wonder why people would want to inflict terrorist activities on us. I go back to what I was saying earlier: I try to put myself in their mind and understand their rational thoughts. I repeat: I am sure to them at the time they are rational and, through their despair and frustration, they see and justify their actions as being the only way forward for them. Having said that, I in no way believe that anything could condone the sorts of actions that have been perpetrated on innocent people in many places.

We have the paradox where we must be vigilant and prepared, yet in that very vigilance and preparedness we are increasing the anxiety within our own society and perpetuating the very problem that we are trying to solve. In weighing up what we might be willing to forgo for our ongoing protection, I contemplate my forebears—my relatives—who made what is referred to as the ultimate sacrifice for their King and country. I contemplate the sorts of things they fought for—the freedoms that tens of thousands of young Australian men and women fought for. Are we now prepared to forgo and give up those freedoms in the face of this threat which is quite unknown, quite unquantifiable? To be quite honest, I do not think we have contemplated that or weighed up the threat, nor have we quantified the risk to ourselves and weighed that up with the sorts of things that we would give up—the sorts of freedoms that generations before us have fought valiantly for and allowed us to have.

I happen to be a very fervent states' rightist, and I have severe disquiet in my own mind in contemplating what we are doing here—the powers we are passing on to Canberra in a free way. Over a long period of time, Canberra, aided and abetted by that august body the High Court of Australia, has usurped many of the powers and rights of the states. One of the things about which we in the states need to be vigilant is maintaining the powers of the states. The people are best served if the governance of themselves is devolved as far and as wide, and as far down the chain, as possible. That is why I believe in states' rights over federalism because, the further we pass those powers up the chain, the less opportunity the people at the bottom—the John and Jill Citizens in suburbia and on the farms—will have to influence decisions in Canberra than they do at their local council or in this parliament.

For those reasons, I have grave concerns about handing on any powers whatsoever to our federal colleagues. Yet again, that brings a similar paradoxical situation. I also believe that to fight this virtually invisible enemy we need to be coordinated; we need to fight with one voice, so to speak; and it is necessary for our federal jurisdiction to have these powers. I question whether this is the most efficient or only way we can pass these powers to the federal government. Since being in this place, a number of policy settings have come up where we have used what is known as template legislation, where all the states pass a similar piece of legislation to allow things to happen in a federal-type way without it being totally under the control of the federal government. I am somewhat disappointed that the states have not been able to devise a method of doing that here. I find it most intriguing that we have six Labor governments at the state level and a Liberal government at the federal level and that the six Labor state governments got together and passed this power to the federal government with barely a whimper. I find that remarkable in a political sense.

In conclusion, I do not anticipate with a huge amount of optimism that we will not be bloodied yet again in the near future. I say that with a heavy heart because I do not believe we deserve it.

Ms Ciccarello: Who does deserve it?

Mr WILLIAMS: I am not suggesting anybody deserves it, but I am sure there are other answers that we and people with a much greater power and jurisdiction than we have in this place have not seriously considered, and it disappoints me that those with that jurisdictional power have not on a world scale over the past 50 to 100 years been able to more equitably distribute the richness of this world, acknowledging that there are some very sound root causes to the problems we will face in the not too distant future.

The Hon. M.J. Atkinson interjecting:

Mr BRINDAL (Unley): My contribution can be brief or it can be longer if the Attorney wants to keep interjecting. It is 9.40 p.m. and many of our colleagues would like to be home, but I am glad this matter is being debated. Like my colleagues who have spoken before have said, this is one of the most significant measures that will face the house in this government. What we are being asked to do is highly significant not only to this government but also to the people of Australia. Like the member for MacKillop, I am very worried about this measure. It is not that I do not support it, but I am most grateful that Australian parliaments are passing this measure to an Australian federal parliament. I have enough belief in the integrity of our democratic system and the Australian people to hope that the worst excesses of this bill, as the member for MacKillop pointed out, will never be realised.

If I was in many other countries of the world and was a member of the legislature, I would be very worried about passing this sort of bill as it can lead to frightening conclusions. If history teaches us one thing it is that, when leaders stand up and proclaim that in the name of the people they need to protect the people and need all sorts of powers, you see that as the beginning of a Robespierre-type regime that leads to worse excesses, all perpetrated against the people in the name of the people. It is most unfortunate that we find ourselves as a nation in a position where the parliaments of Australia need to consider these measures.

Bali left an indelible impression on us all. As member for Unley, with the Sturt football club deeply involved, I had the responsibility of attending a number of ceremonies that had a profound effect on me and on all people associated with it. To see something like this strike home is unfortunate. As the

member for Norwood said, who does deserve it? No-one deserves it, but it was inflicted on us. The tragedy of those people who lost their lives in Bali is that their deaths could indelibly change the face of this nation. From what I heard, those who died were, above all things, proud Australians—proud to be Australian, proud of the way of life we have and proud of all this nation represents. Yet in some ways we are being asked in this bill potentially to walk away from some of our most treasured beliefs and way of life, and that is a worry.

I am reminded of the time when I was young and a Dutch lady used to help my grandmother with the housekeeping. I was about 15 years old and she said, 'Whatever you do, get your education,' and I asked, 'Why?' She said, 'When the Germans came to the Netherlands, they took everything, literally, and we were forced to eat tulip bulbs.' She said that the one thing they could not take from them was their education, their minds and their intellect. In measures such as this I fear that leaderships around the world that stand up and talk about the phantom menace and conjure all sorts of bogies seek to limit our life and our freedom by so doing. The greatest answer to terrorism is education, a belief in ourselves and the community and the Australian way of life.

I do not think it is insignificant that General Rommel once remarked that the troops he feared most were the Australians. With other troops, if somebody was shot somebody would rise to take their place according to the hierarchy. He said that the problem with Australians was that you would always find that, if someone was shot, somebody would take leadership of the group, but it would never be quite who you would expect—it would not necessarily be the next ranking officer. We are an individual people, a people proud of our independence and a people who believe in a fair go and are tolerant. We certainly in no measure want to sacrifice who we are as Australians because of a threat from the outside.

If we succumb to the threats of people who seek to subvert our way of life, they win. The only way we remain Australians is by being proud of who we are, of sticking to what we believe and of letting people such as terrorists know that we will, no matter what it takes, continue to be who we are, continue to stand up for what is right and good and not be cowered into fright and submission simply because bullies, thugs and people who hide in the night and use the cowardly weapons of terrorism can make us fear and subvert this nation. In essence the problem with this bill is that in some ways it starts to say that we have to worry and that they might have won. In doing that we are giving not only to the federal parliament but also to people who are perhaps subject indirectly to the federal parliament, as a lot of this security stuff is clandestine, powers that are in many ways not the powers Australians would normally confer on anyone.

If it is 9.45 p.m. and some of my colleagues are annoyed because lots of people have contributed to the debate, I say, 'Good on those people who have contributed,' because whether or not we pass the bill it is a bill that this house should consider in full and careful measure. What we do here tonight could have profound implications and, if anything goes wrong, I want on the record, as do some of my colleagues, the fact that we did not do this lightly or without reservation.

I believe that as a nation our best way forward is to educate our people, to be who we are and to show as little fear as possible. I do not want my wife, my children or my grandchildren hurt: none of us does. But if we live in fear, as I said, we succumb. And that is not something I want for this nation. That is not something that I think those who were tragically killed in Bali would want to think happened to this nation in consequence. We should be who we are: we should remain who we are; and we should keep legislation like this to a minimum. I hope that this is the first and last time we are asked to consider this sort of measure.

This was a nation that very proudly and very sensibly decided not to ban the Communist Party when the rest of the world was going hysterical and saw it as this huge threat. We did not ban the Communist Party as a political party: we simply killed it off by not being interested. Rather than outlawing it, passing laws and having McCarthy-type inquisitions, what this nation did quite simply was say, 'Hey, we're Australians. We actually don't believe in all that sort of stuff,' and we basically took no notice. It grew no root in this nation because as a nation we did not sacrifice our principles of freedom of political thought or sacrifice any of those things that we treasured but, rather, dealt with it as Australians, ignored it and got past it. And history in that case proved us right.

Therefore, along with my colleagues here, I reluctantly support this measure. This measure worries me. I wonder whether it is entirely necessary, but it is the wisdom of the presiding governments—the Labor governments in the state and the federal government—that it is necessary, and I am not going to stand against it. I would just conclude by saying that one of the reasons why it is necessary, most unfortunately, is because of the political correctness exercised sometimes for political points scoring on behalf of people. It strikes me as absolutely amazing that we cannot have any conversation about modes of dress for people who travel on planes without having officers of this government, for political reasons, go to public meetings and pillory those who say we can talk about clothing, but we can come in here directly after dinner and actually debate giving away enormous powers repressing essential freedoms of the people. We can come and do that in an instant, but we cannot—

The Hon. M.J. Atkinson: Because the Liberal Party asked for it. We are doing this for John Winston Howard.

Mr BRINDAL: I acknowledge that, but what I am saying is that we cannot discuss whether people might feel safer on planes if everybody dresses appropriately. We have to denigrate it and turn it into an argument that this is racial profiling, when it is not. That is the sort of cheap political points scoring that diminishes this nation. That is why I believe the future of Australia is in education, because when Australians truly are more aware and better informed; when people like the Attorney and I are no longer here and our children are, I promise him one thing—our children are truly more tolerant than we were taught to be. They are tolerant, they are understanding, and they are much more capable of mature debate on this sort of issue than the Attorney, in my opinion, at least, has proved to be.

When they have control of this place, we will probably be past the petty points scoring and probably be capable of looking people in the eye saying, 'I celebrate your culture, you celebrate my culture, but in the words of the song, however, "I am, you are, we are Australian", therefore we can work on this together and not score points against one another.' I commend this bill in part to the house.

The Hon. M.J. ATKINSON (Attorney-General): I move:

That the time for moving the adjournment of the house be extended beyond 10 p.m.

Motion carried.

The Hon. M.J. ATKINSON (Attorney-General): I have listened carefully to the contributions from the members for Waite, Enfield, Bragg, Fisher, Kavel, Morphett, Mitchell, Morialta, Playford, MacKillop and Unley. I thank all members for their contribution to this debate. In response to the member for Enfield, my advice is that the state's referral of power to the commonwealth can be revoked and the power returned to the state parliament. There is High Court authority for the referrals being subject to termination by proclamation by the Governor, and I refer to the case of Regina v The Public Vehicles Licensing Appeals Tribunal Tasmania, ex parte Australian National Railways Pty. Limited.

The member for Bragg made salient points in defence of the legislative power of the State of South Australia. She was concerned that the definitions in the schedule are too wide, and I share that concern. I agree with the member for Bragg when she said that she did not have confidence in the UN Security Council to decide which organisation is a terrorist organisation, and she remarked that we were stuck with the commonwealth bills. I think that is correct. The members for Fisher, Kavel and Morphett concentrated more on terrorism than they did on the provisions of the bill or the constitutional points, but I did enjoy the member for Morphett's revisiting of acting Justice Michael White's report on the Special Branch files matter. I thought that his criticisms of acting Justice Michael White were perhaps harsh, because Michael White was addressing himself to files that were compiled during the Cold War and were about the threat of Soviet subversion rather than the terrorism we face today.

I think that perhaps Michael White was entitled to be critical of Special Branch, given that the consequences of Soviet subversion in Australia were never going to be terrorist violence against South Australians. The threat of Soviet subversion was quite different in kind, I think. The member for Mitchell said that he was appalled by the breadth of the commonwealth's drafting of the bills. His comments were mainly on the schedule. He said that the referral of power to the commonwealth, to give constitutional power to enact these bills, should be for a limited period only, and I agree with him. The government of South Australia agrees with him that it would have been far more desirable if this referral had been for five years only. However, the commonwealth was insistent on its being an indefinite referral. If any state had resisted an indefinite referral, we would have been characterised by members of the commonwealth government as acting as useful idiots for the al-Qaida organisation. If we had resisted in any way the commonwealth's desires on this matter, wedge politics would have been at its worst.

An honourable member interjecting:

The Hon. M.J. ATKINSON: The member says 'Sadly', and I agree. The member for Morialta gave an entertaining and perhaps insightful account of anti-war protesters in London, but the member for Playford returned, I think, to the substance of the bill when he argued that the existing criminal law in South Australia could deal adequately with terrorism, and we should be reluctant to create new offences which may only serve to complicate prosecutions. I think he was right when he said that governments feel compelled to create new criminal offences because they must be seen to be doing something about a problem.

The member for MacKillop was also concerned about the scope of the bill, which he thought damaged the Federation, and I agree with him that template, or mirror, legislation would have been preferable to referring power to the commonwealth. The member for Unley said he was confident that what he called the excesses of the bill would not be realised in misconduct by commonwealth security forces. I thank all members for contributing to the debate. Most of it was interesting and worth following. It is remarkable that so many members should have doubts about this bill, yet we shall pass it unanimously.

The SPEAKER: For my purposes, may I say that, whereas I am tempted to go into ground which might yet again result in my finding myself the subject of attention rather than the matter before the house, I will resist that temptation in almost every particular. I commend the minister for the summary that he has given the debate and endorse the sentiments that he has expressed about those noble and sensible remarks that have been made in what I regard as a good piece of parliament in this debate. The member for Playford most closely came to the assessment of the legislation which I have.

I am compelled to say, however, that the member for MacKillop invited us to contemplate what might be going on in a terrorist's mind. That evoked in me the necessity to define what a mind constitutes. It is not just the capacity for thought: it is the capacity for thought about life which implies, indeed requires, all of us to remember that people have feelings. Terrorists, as the legislation would have us believe, and as the member for MacKillop took the meaning of the word, are people who do not have that capacity anymore.

As I know from personal experience, self-hypnosis removes any attention to feeling, either for self or for those who are the object of the activities in which self has decided to engage. In any other circumstances, it is simply not possible to go in, get through and come out the other side. To that extent, the legislation does not address itself to the madness from which people who perpetrate terrorist acts suffer. That is sad. It is equally sad that it is not possible, through counselling, to address that madness and, through doing so, professionally rehabilitate the mind, because there is no normality in that mind to which those of us who here tonight have engaged in the debate can understand, unless we go there ourselves or have been there in some earlier personal experience.

The best that I can do personally for the benefit of those honourable members who may not understand the things about which I speak is to invite them to discuss what happens in battle with an old soldier; or maybe someone close at hand, such as the member for Waite, might be able to tell them what they could expect it to be like were they to be confronted with those sorts of things. It is not possible to reason with terror and those who perpetrate it.

Altogether, I commend the legislation and regret, as do other honourable members, that the commonwealth produced the framework. I also regret, however, that the states of their own volition did not take the initiative of doing what was necessary without, indeed, the necessity to consult or involve the commonwealth. That was always a possibility.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. M.J. ATKINSON: I move:

Page 4, after line 26—Insert:

(6) For the purposes of this Act—

(a) an amendment of the terrorism legislation; or
(b) an amendment of the criminal responsibility legislation that applies only to the terrorism legislation (whether or not it is expressed to apply only to the terrorism legislation),

is not covered by subsection (1)(b) unless it is made in terms that have been approved by—

(c) a majority of the group consisting of the states, the Australian Capital Territory and the Northern Territory; and
(d) at least 4 states.

(7) For the purposes of this section, a notice published by the designated person for a state or territory, in the gazette of that state or territory—

(a) setting out or identifying a proposed amendment of the terrorism legislation or the criminal responsibility legislation; and
(b) indicating that the state or territory has approved of the terms of that amendment,

is conclusive evidence that the state or territory has approved of the terms of that amendment.

(8) For the purposes of this section, the designated person—

(a) for a state, is the Governor or Premier;
(b) for the Australian Capital Territory, is the Chief Minister; and
(c) for the Northern Territory, is the Administrator or Chief Minister.

My officers have discussed the possibility of this amendment in briefing the opposition and the Independents. The amendment implements the agreements reached at COAG and the Standing Committee of Attorneys-General about the rules that apply when and if the commonwealth wants to amend the law that has been referred to it by the bill. The amendment may take the form of either an amendment expressly to part 5.3 of the Criminal Code or an amendment to the general principles of criminal responsibility contained in chapter 2 of the Commonwealth Criminal Code which apply only to part (5) of 5.3. The proposed rule is that the amendment may only be made in terms of the referral if it is agreed by a majority of states and territories and there are at least four states in agreement. This rule is set out in subsections 6(c) and 6(d). It reflects the agreed position set out in the referred text of the Commonwealth Criminal Code at section 100.8. Our advice is that section 100.8 is ineffective, but that the same rule in the referral bill would be effective.

I will not hide from the house that the commonwealth does not think that the same rule in the referral bill is desirable or effective. I am of the opinion that the question of desirability is for the state and not the commonwealth. So far, the commonwealth has not given me access to its legal advice that the amendment I now propose is ineffective. If it does so, I will have that advice examined. The purpose of the amendment is clear. I want to preserve the position of the state, so I seek to insert it now. There is no question that this state will cooperate with the commonwealth in an effective fight against terrorism; that is not in issue. This bill refers to the commonwealth a considerable swathe of state criminal law. The interests of the state should be protected in a constitutional sense, and by this amendment I propose to protect it.

Ms CHAPMAN: As I have indicated previously, I support this amendment. However, I do have a couple of questions. As I understand it, New South Wales is the only state that has complied with the terms of this agreement by introducing similar legislation into its own parliament. Did that parliament exercise the same level of protection that the Attorney says is necessary by inserting that in the substantive part of their bill; and, if not, why not?

The Hon. M.J. ATKINSON: New South Wales did not include this kind of clause in its bill. However, in his second reading speech the minister told the Legislative Assembly that he was awaiting advice from the commonwealth on whether such a clause would be effective and he might revisit the matter when that advice was available.

Ms CHAPMAN: My other question is in relation to the legal advice which the Attorney has touched on. As he understands it, the commonwealth has sought advice on the validity of the clauses within its own criminal code, and it seems that it has been suggested that there is a capacity for that clause to stand. I ask the Attorney when he sought to be advised of the opinion and whether there is any expectation that he will receive it; or, if it has been denied, whether any explanation has been given.

The Hon. M.J. ATKINSON: The federal Attorney-General has said that he has advice from the commonwealth Solicitor-General that a clause of the kind I am advocating now to the house would not be effective. My officers have sought a copy of that advice for more than a fortnight and it has not been given to them by the commonwealth. I wrote to the federal Attorney-General requesting the advice, and that letter was faxed to him today. However, I asked him for that advice orally about a fortnight ago.

Amendment carried; clause as amended passed.

Clause 5.

Mr HAMILTON-SMITH: The opposition understands that essentially clause 5 is an 'out' clause that enables the state to terminate the reference of power to the commonwealth and, in effect, revoke the agreement. Can the Attorney explain whether he envisages under clause 5 that the state may choose to partially exempt itself from any aspect of the bill, or is clause 5 there only to enable the state of South Australia to fully and completely revoke the references under the act? Could there be some partial exclusion of itself from the act by the state of South Australia?

The Hon. M.J. ATKINSON: Our advice is that either the state revokes or it does not revoke. It is important, from the point of view of the state of South Australia, that we reserve our right to revoke the referral of power at some time, and this is the device that we propose to use to terminate the referral. We think that it is preferable to referral being able to be revoked only by a vote of both houses of parliament. I think that both houses of parliament would be happy for the government of the day to be in a position to try to restore the state's constitutional power. I am also advised that revocation by a vote of both houses is constitutionally suspect.

Mr HAMILTON-SMITH: Can the Attorney say what the experience has been in regard to referred powers and the revocation of such references? Is there any history of referred powers having been revoked by the state, and can the Attorney explain what circumstances he might envisage arising that could result in the state's exercising its rights under clause 5 to revoke the referred powers? Is clause 5 there only to make us feel comfortable but, in effect, it is highly unlikely to ever be used by the state?

The Hon. M.J. ATKINSON: The difficulty in answering that question definitively is that no state that has referred a power to the commonwealth has ever sought to revoke referral, so we do not have case law on the subject. The clause is in the bill as a safety valve. Many members have expressed concern about how the provisions in the schedule might be applied in practice. So, some years down the track this state may have to use the authority to revoke in this bill as a bargaining chip with the commonwealth to get the

terrorism law redrafted—that is, if it is applied in a manifestly excessive way.

Before the Solicitor-General moved on to another job, he advised me of a number of substantive criticisms of the provisions in the schedule that he thought might be sufficiently serious to lead to a High Court challenge and a possible finding of invalidity, even after we had referred power to the commonwealth. Most notable among these was his analysis of the fault element of the proposed offences. Many of the proposed offences are strict liability offences in areas where strict liability is unprecedented.

Ms CHAPMAN: In relation to the revocation under clause 5, the Attorney has outlined that circumstances have been identified to him where we might need to exercise the power to revoke, as advised correctly by the now Mr Justice Selway QC. There is not a precedent, and I appreciate that, but can he explain? Let us assume that a circumstance arises where the state takes the view that we should take back and exercise this power, and let us say, for example, that it is resolute in the view that it should prosecute under state law in relation to a murder. For example, the commonwealth takes the view that something is a terrorist act and it wants to be able to apply this legislation; there is a dispute over that and, whatever the merits or otherwise, South Australia takes the view that it should resume control of this matter and exercise its own jurisdiction without interference or interruption and, without the argument as to whether both the jurisdictions can operate together and all those things that could still be argued, they say, 'No, that is it; we are taking it back.' The process is then that the Governor makes a proclamation. Perhaps others in the house are already clear on this, but I would like the Attorney to explain the process of what would happen then. That is, would the Executive Council meet and confer with the Governor, and so on? What is the shortest time frame achievable from the issue being identified, perhaps the person being taken into custody and the opportunity for this revocation taking place? Will the Attorney give me a time frame as to how long that could take?

The Hon. M.J. ATKINSON: The member for Bragg is quite right: it is possible that the commonwealth may use this to usurp the state's criminal jurisdiction and that, for instance, at some time the commonwealth may care to characterise an ordinary murder in the state as a terrorist act and then seek to prosecute the accused, when ordinarily the state Director of Public Prosecutions would do so. If the state felt that its criminal law jurisdiction was being usurped, the Attorney-General or the Premier would make a cabinet submission on the matter that would go to cabinet on a Monday. The recommendation would be that the Governor make a proclamation under section 5 of the act revoking the referral of power and, three months later, that revocation would come into legal effect. At some point, of course, there would be negotiations, and I imagine that the commonwealth would try to talk the state out of revoking the entire referral, and some kind of settlement might be reached. Alternatively, the commonwealth could insist on its usurpation and challenge the state's rights to revoke in the courts, during which time I imagine a commonwealth criminal prosecution would proceed.

Ms CHAPMAN: I use the word 'executed' cautiously in that circumstance; I will come to capital punishment a bit later. When the Attorney-General's representative (I think it was the Premier) met with the other premiers of the country in April this year with the Prime Minister and/or his representative, I trust that this termination clause was discussed and agreed with by the other state representatives. If that is the case, to the best of the Attorney's knowledge, was it included in the New South Wales legislation and, if it was not the same, in what way did it differ? Secondly, is it the Attorney's understanding that it is the intention of the other states to introduce a similar clause in their legislation?

The Hon. M.J. ATKINSON: The answer is yes, yes, yes and yes.

Ms CHAPMAN: And at the time of the meeting, can the Attorney tell me whose idea this was?

The Hon. M.J. ATKINSON: Revocation was discussed by officers of each of the states in advance of the COAG meeting. They contemplated, and indeed I imagine the state premiers contemplated, a commonwealth-state agreement along the lines of the Corporations Law.

Clause passed.

Schedule.

The CHAIRMAN: In regard to the schedule, clearly, it is not possible to amend someone else's criminal code. Obviously, members can ask questions, but in order to expedite things we will use the numerical listings at the top of the pages. So, we will start with division 100.1.

Mr HAMILTON-SMITH: Paragraph (c) of the definition of 'terrorist act' refers to 'coercing, or influencing by intimidation, the government of the commonwealth or a state, territory or foreign country, or of part of a state, territory or foreign country': can the Attorney envisage any circumstance where an unintended consequence would be that an employee of the state of South Australia, such as a police officer acting in uniform or out of uniform or some other officer of the state required to take action, could inadvertently have charges brought against him or her by a third party on the basis that they have committed some sort of terrorist act?

The Hon. M.J. Atkinson: A police officer?

Mr HAMILTON-SMITH: Yes, any officer of the state who might be accused by a third party of influencing by intimidation the government, or intimidating the public or a section of the public, and so on. Ostensibly, anyone intimidating the public or a section of the public runs the risk of coming under this definition of a terrorist act.

The Hon. M.J. ATKINSON: I know that the member for Waite is concerned about this partly owing to his service in Northern Ireland.

Mr Hamilton-Smith interjecting:

The Hon. M.J. ATKINSON: Well, I think that is the inspiration for this question. It is a very good question and I am pleased to answer it. There is no exemption in these provisions for members of the police force, security services or the army. Therefore, public prosecutions could be brought against members of Australian police forces or the Australian Army for alleged offences against this section. Private prosecution of a serious offence can go beyond the committal stage only with the agreement of the Director of Public Prosecutions—that is here is South Australia, at the state level.

Mr HAMILTON-SMITH: The Attorney might recall an overseas example involving the case of officers of the British Army involved in an incident where they engaged IRA terrorists on British soil in Gibraltar. They had to go through a legal process to establish that they themselves did not in fact breach the law and, as the Attorney pointed out, there have been numerous examples in Northern Ireland of officers of both the police force and the military being brought before the courts in third party prosecutions where they have been

accused of acts of terror and so on. I take it from the Attorney's response that he has a concern that this definition of 'terrorist act' could draw into itself an officer of the South Australian police force acting under cover, or in uniform, or some other person, at some stage; and that is a cause for concern.

The Hon. M.J. ATKINSON: I think the member for Waite's point is an extraordinarily good one and I think his concerns are well founded. At this stage of the committee's deliberations, we are discussing commonwealth legislation for which, I am afraid, I am not really responsible other than moving this bill that contains a schedule which is wholly commonwealth legislation.

Ms CHAPMAN: I note the Attorney's point and I accept that we are dealing with something currently in the commonwealth legislation. But, what is also being dealt with here is a transfer of power to ensure that we are covering this. So, I think it is relevant to identify what is actually there even though we are not in a position to change what is in the commonwealth code. There are many examples, I am sure, that could be relayed but I do have some concern about the extent of the definition of 'terrorist act' and how that might impose a circumstance where the federal government may decide to take action that would clearly overlap what would be a state jurisdiction. The way I read it—and perhaps the Attorney could clarify this—is that, for example, if an offender were to attend the property of someone who had certain religious beliefs and caused physical harm or property damage to the occupier, and threaten or intimidate the spouse of the occupier in the course of that criminal act against the principal victim (if I can put it in that category), then that could be construed as a terrorist act if you add to it that the intent on the part of the offender was to cause harm or damage to the victims because of their different religious beliefs.

Paragraph (c)(ii) provides for intimidating the public or a section of the public and, as we do not have a definition of 'section of the public', it could involve two people. So, one principal victim, one other person who is intimidated, a religious bent against the victims, and we have a clear overlap with what is criminal law in South Australia under which they would be appropriately prosecuted if apprehended, detained and identified with or without DNA testing. As we could have that difficulty, could the Attorney clarify that? Is there some way I am misreading this, or is there a situation where we do have a very significant overlap in what I can only think of as being the simplest example?

The Hon. M.J. ATKINSON: The member for Bragg's point is well made and she may well be right. I am not in a position to comment authoritatively, other than to say that this provision may well catch that topical organisation known as the black shirts.

Ms CHAPMAN: If that situation was to prevail, that is a circumstance where the state may take the view that this would be conduct more appropriately dealt with in the state jurisdiction. Can the Attorney give any reassurance—I would not go so far as an undertaking because, of course, he may not be in that position forever and I will not add to that—that in those circumstances the state would act to ensure that its opportunity to prosecute the matter as a criminal offence within the state jurisdiction would be pursued?

The Hon. M.J. ATKINSON: There is a protocol between state and commonwealth DPPs on how these matters are worked out. Indeed, if the Blackshirts were operating in Adelaide and were prosecuted by the commonwealth under these provisions, we would think the commonwealth was acting excessively, and I would be inclined to advise the South Australian Labor government to negotiate with the commonwealth using the threat of revocation, if the intent of this referral is violated. I think the political situation in which we find ourselves now and which is allowing this untrammelled referral will not always obtain. There may be different circumstances in years to come where it will be politically much easier for the state to remonstrate with the commonwealth about these matters.

Ms CHAPMAN: I have one more question in relation to the exclusion of action which falls within conduct of advocacy, protest, dissent or industrial action. The Attorney-General commented in his second reading explanation that it is clearly the intention that someone who is quite legally taking their protest—I think he used an example in relation to industrial action—should be protected—and that is clearly in the Commonwealth Criminal Code at this stage. Was there any discussion between the state representatives as to this definition that has been provided, to ensure aspects in relation to a protest, for example, which may have a religious flavour or ethnic aspect, of which there is some protest, for example, a protest in relation to the treatment of refugees in Australia, that would be seen as potentially a circumstance to fall within this provision?

The Hon. M.J. ATKINSON: The commonwealth passed these four bills without reference to the state.

Ms CHAPMAN: In relation to division 100.3, there is reference to the states and territories and their votes or opportunities to be taken into account in the majority principle, and also in other areas for the four states in the revocation power. I note that the Australian Capital Territory, an important region in Australia, appears to be of the same weight in the circumstance of its vote on the issue in relation to revocation. There are details here as to the operation in respect of a territory, so I ask it under this category. Is this something that is unprecedented? If it is not unprecedented, is there another example the minister can indicate where the ACT is given this level of equal vote?

The Hon. M.J. ATKINSON: The Australian Capital Territory has not had a vote in these kinds of matters in the past but, just recently, at the Ministerial Council on Corporations, the ACT was admitted as a voting member of that ministerial council. I suppose, given that the territory qualified on that occasion, the commonwealth felt that the Australian Capital Territory had attained a status which entitled it to be mentioned in this way in these bills.

Ms CHAPMAN: Division 100.4(2) deals with the operation in relation to terrorist acts or preliminary acts occurring in a state that is not a referring state. Will the minister explain what will happen in that circumstance if, for example, this occurs in Western Australia and Western Australia decides, for whatever reason, not to be a referring state? I am not sure I understand the process of what is introduced under this provision, as to what action the non-referring state can take to exclude a circumstance, for example, where there is deemed by them to be an excessive use of this power by the commonwealth.

The Hon. M.J. ATKINSON: In this subclause, the commonwealth is defining what it can do without referrals, that is, rely solely on the Commonwealth Constitution.

Mr HAMILTON-SMITH: Divisions 101.1 through to the 101.6 relate to various offences committed as terrorist acts and associated with terrorist acts. Most terrorist organisations comprise three essential elements; first, there is a

fighting force or a terrorist force which commits the acts; behind that there is an auxiliary element which may ferry weapons, stores, food and equipment to the fighting force and which may not be a front-line capability; behind that auxiliary there is an underground, which may not be a fighting component of that terrorist organisation but which may offer safe houses or assist with the gathering of intelligence information. These are the three components of most terrorist or guerilla forces.

The divisions to which I have referred deal with training. A person is guilty of a terrorist act if they train, possess things and, in division 101.5, collect or make documents. For example, if an elderly couple is walking their dog past a prospective target, such as a bar, the Governor's residence or Parliament House, and reports back to another party that there is a police officer on the front gate from 4 o'clock until 6 o'clock every afternoon, and that second party passes that information onto a third party and then ultimately to the fighting component of the terrorist force, which then commits an act and uses the information, is that elderly couple that provided the information guilty of an offence under this act, in the Attorney-General's understanding, because they have provided the information through a series of parties to the terrorist organisation?

The Hon. M.J. ATKINSON: My advice is that division 101.1 could be used for the elderly couple walking their dog, considered in conjunction with the provisions of the commonwealth Criminal Code on aiding and abetting, and conspiracy.

Mr HAMILTON-SMITH: Contained in nearly all the six components of division 101.1 is a paragraph (c) which deals with reckless behaviour. I note that the definitions in section 5(4) of the Criminal Code provide a definition of 'recklessness'. I will not repeat that, as I mentioned it my second reading speech. It really is a case of if you suspect it and turn a blind eye, you are guilty of recklessness. Could the Attorney envisage how this might be applied? For example, a Qantas employee over a drink could mention to another party that security was particularly lax at a certain time, and that information could be used for an event. However, that employee might have had reason for concern but might not have consciously said to himself, 'That person could be a terrorist.' Could that Qantas employee inadvertently be drawn into an offence through being reckless? Although they may have had cause for concern, there is no real belief that they were talking to and dealing with someone who had a terrorist intent.

The Hon. M.J. ATKINSON: The circumstances that the member for Waite outlines are really on the borderline between recklessness and negligence in the Criminal Code. We would say that to be reckless the Qantas employee would have had to be consciously aware of the risk.

Ms CHAPMAN: On the question of penalty on terrorism and in this code, they have obviously identified 10, 15 and 25 years, depending on the seriousness of the offence and the nature of the intention and knowledge. It may be that this is universal, but were any of the states consulted, either at the April meeting or prior to the introduction of the federal bill, as to what penalties would apply?

The Hon. M.J. ATKINSON: No.

Ms CHAPMAN: Did you make any inquiry as to what they might be before they went into the federal parliament?

The Hon. M.J. ATKINSON: They were put to the federal parliament well before the COAG meeting.

Ms CHAPMAN: Their having been put into the federal parliament, did you decide that it might be worth raising that at the meeting, or did you feel as a state that you would make no contribution on the question of penalty, given that you were going to be asked to transfer powers that would cover that?

The Hon. M.J. ATKINSON: In the discussions, the states were represented by officials of premiers and chief ministers' departments rather than by officials of the Attorney-General's Department. Therefore, these officials were more concerned with the referral and the structure rather than the content of the commonwealth legislation. As I said earlier, my Solicitor-General wrote me opinions on the content of the legislation comparatively late in the piece.

Ms CHAPMAN: On the question of penalty, assume for the moment that the federal government or any subsequent federal government decides that it will increase the penalty for the principal offence to, say, capital punishment. They could say, 'What is in the legislation about our not having the power to do this is just a nonsense, and we will do it, anyway.' The states—as we would in passing this—would take some objection to that, because we would say, 'You don't have the permission of four of the referring states etc.' On a penalty such as that (which obviously would be quite unique in this day and age), are you in a position to give a commitment—and would you do so—that you will revoke or take such action for the Executive Council to instruct the Governor to revoke if capital punishment was introduced or an attempt was made to do so?

The Hon. M.J. ATKINSON: The policy of the government is one of opposition to capital punishment.

Mr MEIER: As the member for Bragg has pointed out, I note that the terms range from 15 years to life imprisonment. What plans does the government have on hand for extra prisons in this state, if any?

The Hon. M.J. ATKINSON: For offences against commonwealth law, those prisoners are commonwealth prisoners and, if the commonwealth wants to accommodate its prisoners in a South Australian gaol, they pay for it.

Ms CHAPMAN: I have a question about the introduction which is in several of these divisions, but it is in division 101.3. Where there is an attempt to codify the law, it is not uncommon to identify (and it is usually in subparagraph (5) or (6) of these clauses) the opportunity for the trier of fact to be able to substitute the prosecuted offence with an alternative offence—obviously without having pleaded that—if they are satisfied that the defendant would, on all the facts, be guilty of another offence, and then there is this qualification about ensuring that there is an accordance of procedural fairness. Is this an issue on which the Attorney was consulted? Even if the Attorney was not, does he have any view as to whether that is acceptable or is unique in some way that the defendant would be deprived in those circumstances in not having had the claim clearly outlined in the pleadings or in the summons?

The Hon. M.J. ATKINSON: We were not consulted on the matter. We would not be greatly concerned because of the proviso about procedural fairness.

Ms CHAPMAN: I refer to divisions 103, 101.4 and others, that is, the introduction that it is the defendant who bears the evidential burden in relation to the matter in some of these provisions. In particular I ask, first, whether the Attorney has any concern about this. It is a significant shift of the burden of proof on the defendant in circumstances under which they may be charged under this bill. Secondly,

does the Attorney have any view as to whether the insertion of this evidential burden under a notation is capable of being enforced as distinct from a guide to the judicial officer who might be implementing this legislation?

The Hon. M.J. ATKINSON: The question is too complicated for us to answer now, especially since it is not our legislation. Evidential burdens are quite common in criminal law and procedure. The reversal of putting the evidential onus on the accused commonly occurs in modern criminal law and procedure.

Schedule passed.

Title passed.

Bill reported with an amendment.

Bill read a third time and passed.

CRIMINAL LAW (SENTENCING) (SENTENCING GUIDELINES) AMENDMENT BILL

The Legislative Council agreed to the bill with the amendments indicated by the following schedule, to which amendments the Legislative Council desires the concurrence of the House of Assembly:

No. 1. Page 3, line 14 (clause 4)—Leave out proposed subsection (1) of new section 29A and insert:

(1) The Full Court may, by declaratory judgment (a guideline judgment), establish, vary or revoke sentencing guidelines.

No. 2. Page 4, lines 5 to 18 (clause 4)—Leave out proposed new section 29B and insert:

Initiation of proceedings for guideline judgment

29B. (1) Proceedings for a guideline judgment may be commenced—

(a) on the Full Court's own initiative; or

(b) on application by the Director of Public Prosecutions; or

(c) on application by the Attorney-General; or

(d) on application by the Legal Services Commission.

(2) An application for a guideline judgment must be accompanied by the applicant's proposal as to the terms in which the judgment should be given.

(3) The Full Court may, if it thinks appropriate, give a guideline judgment in the course of determining an appeal against sentence.

(4) However, if the Attorney-General has applied for a guideline judgment, the proceedings must be separate from other proceedings in the Full Court.

Sentencing advisory council to be given opportunity to make written report on proposal for guideline judgment

29BA. (1) If proceedings for a guideline judgment are commenced by application to the Full Court, or the Full Court itself initiates such proceedings, the Registrar must—

(a) notify the sentencing advisory council of the Court's intention to hear and determine the proceedings; and

(b) request the Council to make a written report to the Court, within a reasonable time stated in the request, on the questions to be considered by the Court in the proceedings.

(2) If the proceedings have been initiated by an application, the notification and request must be accompanied by a copy of the applicant's proposal as to the terms in which the judgment should (in the applicant's opinion) be given.

Representation at proceedings

29BB. (1) Each of the following is entitled to appear and be heard in proceedings for a guideline judgment:

(a) the Director of Public Prosecutions;

(b) the Attorney-General;

(c) the Legal Services Commission;

(d) the Aboriginal Legal Rights Movement Inc.;

(e) an organisation representing the interests of offenders or victims of crime that has, in the opinion of the Full Court, a proper interest in the proceedings.

(2) The sentencing advisory council may appear in the proceedings and, if the Full Court requires assistance from the Council (beyond its written report), must appear in the proceedings.

(3) If the sentencing advisory council appears in the proceedings, it is to be represented by one of its members who is a legal practitioner or by independent counsel instructed by the Council to represent it.

No. 3. Page 4, lines 20 to 24 (clause 4)—Leave out subsections (1) and (2) of new section 29C.

No. 4. Page 4 (clause 4)—After line 32 insert the following new Division:

DIVISION 5—SENTENCING ADVISORY COUNCIL

Establishment of sentencing advisory council

29D. The sentencing advisory council is established.

Functions

29E. The functions of the sentencing advisory council are as follows:

(a) to report in writing to the Full Court on the giving, or review, of a guideline judgment;

(b) to provide statistical information on sentencing, including information on current sentencing practices, to members of the judiciary and other interested persons;

(c) to conduct research, and disseminate information to members of the judiciary and other interested persons, on sentencing matters;

(d) to gauge public opinion on sentencing matters;

(e) to consult, on sentencing matters, with government departments and other interested persons and bodies as well as the general public;

(f) to advise the Attorney-General on sentencing matters.

Composition

29F. The sentencing advisory council is to consist of not less than 7 and not more than 10 members of whom—

(a) 2 must have broad experience of community issues arising from administration of justice in criminal matters by the courts; and

(b) 1 must have experience in issues affecting victims of crime; and

(c) 1 must be a legal practitioner with broad experience in the defence of accused persons; and

(d) 1 must be a legal practitioner with broad experience in the prosecution of accused persons; and

(e) the remainder must be experienced in the operation of the criminal justice system.

(2) The members of the Council are to be appointed by the Governor on the recommendation of the Attorney-General.

(3) A member of the sentencing advisory council is to be appointed by the Governor to chair meetings of the Council.

Conditions of office of members

29G. (1) A member of the sentencing advisory council holds office (subject to this section) for a term (not exceeding 3 years) specified in the member's instrument of appointment.

(2) A member's office becomes vacant—

(a) if the member reaches the end of the member's term of office (unless the member is re-appointed for a further term); or

(b) if the member dies or resigns from office; or

(c) if the member is convicted of an indictable offence or an offence which, if committed in South Australia, would be an indictable offence; or

(d) the member is removed from office by the Governor for misconduct.

Procedures

29H. (1) A meeting of the sentencing advisory council may be convened by—

(a) the Attorney-General; or

(b) the person appointed to chair meetings of the Council.

(2) The member appointed to chair meetings of the sentencing advisory council is to preside at meetings of the Council and, in the absence of that person, the members present are to choose one of their number to preside.

(3) The number of members necessary for a quorum at a meeting of the sentencing advisory council is to be ascertained by dividing the total number of members of the Council by 2, ignoring any fraction resulting from the division, and adding 1.

(4) The sentencing advisory council should act by consensus, if possible, but, if a general consensus of its members is not possible, a decision in which a majority of its members concur or, if they are equally divided in opinion, a decision in which the presiding member concurs, is taken to be a decision of the Council.

Staff

29I. The sentencing advisory council is to have a secretary and any other staff reasonably necessary to enable it to carry out its functions.

Consideration in committee.

The Hon. M.J. ATKINSON: I move:

That the Legislative Council's amendments be disagreed to.

I do not think there has been much legislation before this house for which the government has a clearer mandate. I talked about guideline sentencing on radio in Adelaide for years leading up to the most recent state election, yet the opposition has used its numbers in the Legislative Council to fiddle with the mandate that this government has on guideline sentencing. It is remarkable that this conservative opposition is seeking to insert—

Ms Chapman: Liberal opposition.

The Hon. M.J. ATKINSON: The member for Bragg says 'Liberal opposition'. Yes, in this respect it is a despicable, left Liberal amendment to insert a useless bureaucratic process into guideline sentencing. It is a lawyers' picnic that is being advocated. Among the amendments is that a sentencing advisory council be established, to be given the opportunity to make a written report on proposals for a guideline judgment. When the Court of Criminal Appeal deals with its first guideline case, it will have quite enough advice by the time it has heard from the Attorney-General, the Director of Public Prosecutions, the Legal Services Commission, the Aboriginal Legal Rights Movement and from an organisation representing the interests of offenders or victims of crime. It will have quite enough material before it without hearing from another entity to be appointed by the Attorney-General.

Clause 29BA says that the Court of Criminal Appeal may request the sentencing council to make a written report to the court within a reasonable time stated in the request on the questions to be considered by the court in the proceedings. However, if you look at the composition of the sentencing advisory council, it is from its very beginning going to be a council that is all over the place on sentencing questions. It will not have a coherent view, because people of goodwill have differing views on sentencing. You will not get a sentencing advisory council that is able to come up with a consensual coherent view on sentencing. The member for Bragg smiles because she knows that is exactly right, but this amendment by the other place is just a bit of opposition sour grapes about the government's mandate on guideline sentencing.

Mr Brindal: I have Bob Francis on the phone—would you like to take the call?

The Hon. M.J. ATKINSON: Any minute—thank you for giving me a topic for tonight. The amendments go on to say:

The sentencing advisory council may appear in the proceedings and, if the Full Court requires assistance from the council—

most unlikely—

(beyond its written report), must appear in the proceedings.

We have to hire at taxpayers' expense another lawyer to go before the Criminal of Criminal Appeal. We have one lawyer representing the Attorney-General, one representing the DPP, one from the Legal Services Commission, one from the Aboriginal Legal Rights Movement, one from an organisation representing offenders, another representing victims and then we will have yet another lawyer from the sentencing advisory council. It is just a lawyers' picnic and I hope members of the parliamentary Liberal Party were advised that this amendment is nothing more than a job creation scheme for Adelaide lawyers.

The amendments provide that the functions of the sentencing advisory council are to provide statistical information on sentencing. The Office of Crime Statistics does it now and does it well. Another function is to include information on current sentencing practices. I can obtain that information from the Office of Crime Statistics and from the policy and legislation section of my own department.

This sentencing advisory council is going to conduct research. Oh no, not more research! It is going to gauge public opinion on sentencing matters. I do not know why a sentencing advisory council would be in any better position than any member of this parliament to gauge public opinion on sentencing matters. According to the Liberal Party amendments, the sentencing advisory council is going to consult on sentencing matters with government departments and other interested persons and bodies as well as the general public—not just 'the public' but 'the general public.' Maybe the member for Bragg will tell us what the adjective 'general' adds to the noun 'public' in this drafting.

Finally, the sentencing advisory council is going to advise the Attorney-General on sentencing matters. Frankly, I already have more than enough advice on that matter. I wholly reject these amendments. I call upon the committee to reject these amendments and we will fight them in a deadlock conference and for as long as it is necessary to get rid of this utter rubbish.

Ms CHAPMAN: I have listened with interest to the warm and friendly words of the Attorney-General in his presentation tonight. I suppose they were in there but heavily disguised by the embarrassment that he must feel in the determination that has been presented to us from the other place after, clearly, some wise consideration of the Criminal Law (Sentencing)(Sentencing Guidelines) Bill. Because that is what it involves: wise consideration has clearly taken place by the members of the other place, who have presented an appropriate regime that ought to apply. In the previous debates the issue has been raised as to what possible advantage there would be in the whole criminal sentencing process to impose guidelines which have been singularly unsuccessful in other jurisdictions around the country.

To the best of my recollection, even the minister's superior, the Premier of New South Wales, has got rid of this idea as wholly inappropriate and unsuccessful. Given that the Attorney-General has decided that this is the way to go and that it is necessary to impose guideline sentencing on the judges, one has to wonder why he would leave it in the hands of the judges whom he has clearly criticised as being incapable of being able to outline appropriate determinations in their sentences. This is because of the claim that judges are failing to impose appropriate sentences and set non-parole periods in relation to offences that he has should attract a higher and more severe penalty. He says that the public has made demands and the parliament has decided that it ought to have guideline sentencing under the bill that was previously presented by the Attorney; and now he complains when the other house has considered this matter and decided that, if we are to have guideline sentencing, we should do it properly and ensure that we have an appropriate structure with appropriate personnel and appropriate representation in the courtroom to ensure that a guideline judgment will be a useful tool and instrument in achieving the objectives that he outlined in the original debate.

The bottom line is that, if we are going to have guideline sentencing in South Australia, if we are going to have that imposed on us and the members of the judiciary are going to

have it imposed on them, let us do it with assistance and guidance and with a structure that will protect South Australians to ensure that this will not become a nonsense and so that it will at least have an opportunity to be useful to South Australians.

While we are on the point of other jurisdictions, I am reliably informed that these very same amendments to ensure that the operation also occurs in other jurisdictions have just been passed in New South Wales; that is, Premier Carr has, through his government, decided that this is the meritorious way to go. If you have sentencing guidelines that will be useful, this is the structure which is appropriate and which has been passed—and in exactly the same terms, I am informed, as the amendments that have been introduced in Victoria. So, it seems that Premier Carr and Premier Bracks have a clear understanding of what is necessary to make sentencing guidelines operational, appropriate and useful to the people of their jurisdictions, yet the Attorney-General speaks with such scathing disregard as to the appropriateness of this and the apparent waste, in his view, of taxpayers' money in the appropriate representation and structure that these amendments provide.

I wholly support these amendments. I thank members of the other house for their wise and careful consideration in bringing this bill back to the attention of this house so that we may institute a regime that will be useful for the people of South Australia.

The Hon. M.J. ATKINSON: The Liberal Party was in government in this state for eight years, and the shadow Attorney-General held ministerial office for much of that period. The opposition argues that the Court of Criminal Appeal already hands down guideline sentences, and I think that there is merit in that contention. Why, in the previous eight years, did the Liberal government not give the Court of Criminal Appeal the benefit of a sentencing advisory council? Why did it wait eight years before it moved this proposal in the other place, when a Labor government was elected?

Ms Chapman: We need them.

The Hon. M.J. ATKINSON: We don't need them.

Motion carried.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

The Legislative Council agreed to the bill with the amendments indicated by the following schedule, to which amendments the Legislative Council desires the concurrence of the House of Assembly:

No. 1. Page 16, line 7 (clause 24)—Leave out 'section is' and insert:

sections are

No. 2. Page 16 (clause 24)—After line 26 insert the following:

(f) a condition requiring that a copy of the consent issued by the Council be kept in such manner, and in any place, specified by the Council.

No. 3. Page 17 (clause 24)—After line 6 insert the following:

Marking or tagging of cleared vegetation

30A. (1) The regulations may establish a scheme for the marking or tagging of any cleared native vegetation of a prescribed kind.

(2) A scheme established under subsection (1) may—

(a) extend to persons who are in possession of native vegetation after it has been cleared;

(b) make provision for the marking of cleared native vegetation in a manner determined by the Council, or for the use of tags issued by the Council;

(c) prescribe fines (not exceeding $10 000) for contravention of a regulation;

(d) make any other provision that may be necessary or expedient for the purposes of establishing the scheme envisaged by subsection (1).

No. 4. Page 17, lines 20 to 36 and page 18, lines 1 to 6 (clause 25)—Leave out all words in these lines.

No. 5. Page 19 (clause 25)—After line 20 insert the following:

(i) require the respondent to refrain from an act or course of action, or to undertake an act or course of action, to ensure that the respondent does not gain an ongoing benefit from the breach.

No. 6. Page 26 (clause 28)—After line 6 insert the following:

(fa) dig up any land by the use of hand-held equipment for the purpose of taking samples; and

No. 7. Page 26, lines 7 and 8 (clause 28)—Leave out 'where an authorised officer reasonably suspects that a person has committed a breach of this Act' and insert:

with the authority of a warrant issued under section 33C

No. 8. Page 26, line 8 (clause 28)—After 'take' insert:

mechanical

No. 9. Page 26, line 11 (clause 28)—Leave out 'the breach' and insert:

a breach of this Act

No. 10. Page 26, line 12 (clause 28)—Leave out 'under paragraph *(g)*' and insert:

under a preceding paragraph

No. 11. Page 28 (clause 28)—After line 9 insert the following:

(1a) Where, on the application of an authorised officer, a magistrate is satisfied that there are reasonable grounds to believe that a person may have committed a breach of this Act, the magistrate may issue a warrant authorising an authorised officer to take action under section 33B(1)*(g)*.

No. 12. Page 30 (clause 28)—After line 31 insert the following:

Offences by authorised officers, etc.

33EA. An authorised officer, or a person assisting an authorised officer, who—

(a) addresses offensive language to any other person; or

(b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: $5 000.

No. 13. Page 31 (clause 29)—After line 36 insert new subsection as follows:

(7) Despite subsection (1) of section 17 of the *Environment, Resources and Development Court Act 1993*, a person cannot be joined under that subsection as a party to proceedings on an appeal under subsection (1) of this section but the Court may, if it is of the opinion that there is some good reason for doing so, allow a person who is not a party to the proceedings to appear or be represented in the proceedings and, in so doing—

(a) produce documents and other materials; and

(b) make representations and submissions.

Consideration in committee.

The Hon. J.D. HILL (Minister for Environment and Conservation): I move:

That the Legislative Council's amendments be agreed to.

I accept the amendments moved in the other place. Some of them are hostile to the position put by the government, but they are of minor significance, so I indicate that I will accept them. Others were hostile but not part of our original package, and I also accept them.

Ms CHAPMAN: I compliment the minister for his acceptance of the amendments. It seems that he could give a lesson to the preceding speaker in the house tonight on the importance of the acknowledgment of that wise consideration in the other house. We thank the minister for his consideration and support of these amendments.

Motion carried.

LOCAL GOVERNMENT (ACCESS TO MEETINGS AND DOCUMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 1776.)

Mr BRINDAL (Unley): Sir I have to inform you that, as lead speaker for the opposition, I have unlimited time, and I intend to use it.

Ms Breuer interjecting:

Mr BRINDAL: If the member for Giles wants to inflame the situation, as she did the other day, that is fine. In principle, the opposition supports this measure. The minister will be aware that, when in government, we completely rewrote the Local Government Act. It is a little disappointing, and I hope that the next minister will rectify this matter (and I do not say that to put this minister down; I say it simply because there is an enunciable change): there are in the transitional schedules, and in what is left of the old act, elements that need to be attended to. I hope that the new minister, or this government, will bring those matters before the house as expeditiously as possible, because there are still some things that remain to be tidied up from the old act.

We support this measure. We have an amendment, which we think is sound and sensible, which concerns rating and rating policy. It is of great concern to the people of South Australia. The editorial in the *Advertiser* spoke in favour of it, albeit that it criticised us for not introducing the measure when we were in government, to which there is a simple answer: you cannot be all wise and all knowing on every facet of legislation. That is why we have parliaments: to consider in an ongoing fashion the evolutionary nature of the political process. So, we bring this amendment here.

I realise that, in preliminary talks with the minister, he has not indicated that he is minded to accept the amendment, and I find that very disappointing. He is a person whom I have found, in his occupation of the portfolio, to have some grasp of the subject, and I simply cannot understand his lack of foresight and his political insensitivity to what is, after all, a very good and well thought through legislative measure that would be very popular with the people of South Australia. If it is not particularly popular with the LGA and with certain elected members or officials, I say only this: there are more ratepayers in South Australia than there are councillors, and there are certainly more ratepayers in South Australia than there are mayors or officers of the LGA.

My job here, as the opposition spokesman, is to see that the legislative framework for local government is carefully and properly constructed, on behalf of and for the benefit of those people in South Australia whom we in this place all serve, whether it involves ratepayers or electors. I do not, therefore, resile from representing a party that is not afraid to stand up and say that the legislative framework of local government is better served by this amendment. If the government, in its wisdom, cannot see that, the government will answer for it because, quite frankly, we will talk to our colleagues in the upper house and see whether we can change their minds. We will also get out there and talk to the public of South Australia and ask the legitimate question whether this government, in not accepting this amendment, is more interested in serving the Local Government Association and the various interest groups in local government than in serving the ratepayers of South Australia. That being said, it is 11.25 p.m., and I do not want to delay this house too long. I am quite capable of counting, and I have canvassed some of my colleagues, who—

Mr McEwen: Unsuccessfully, I might add.

Mr BRINDAL: Yes—the member for Mount Gambier volunteers that I might have canvassed them unsuccessfully. What that means is that I can count. I have no intention, therefore, of calling a division. If the government is not minded to accept this amendment, I will not score some stupid point by proving that I know that we will lose the amendment. So, if the government does not accept it, I will not call 'divide'. I simply say that the government is wrong in not accepting it, and we will make every amount of political capital that we can out of it. If the government does something that is sensible, we will give it credit. If it does something that we think is stupid, we will give it a bucketing. If it does not accept this amendment, we will give it the biggest bucketing and pasting that we can give it. I promise the minister—and the future minister—that I will not give up on it. I will hound him until he is eventually minded to accept the amendment.

I believe that my colleague has some questions on a particular aspect of one of the clauses, but we are minded to accept the rest of the clauses. It is a sensible measure. We support sensible measures: it is a pity that the government did not do the same.

Mr McEWEN (Mount Gambier): I rise to support the initiatives encompassed in this amendment bill and compliment the minister on the further action he has taken in relation to his filed amendment, 88(1), based on advice received from the Local Government Association in relation to making copies of any report for the Ombudsman available to the council. That was not contained in the original bill. The LGA was happy to support the bill with that amendment, and I compliment the minister on that initiative. I further compliment the minister on the work he has done in relation to amendments to section 54, 'casual vacancies', because the recent and tragic loss to the community of Mount Gambier of its mayor, Don McDonnell, on 8 September threw up an anomaly, in that once that community had concluded the grieving in relation to that sad loss it then focused on the process of electing a replacement.

It was obvious that, for a short term such as that, the replacement would come from within the ranks. It was equally obvious that any person wishing to seek the office of mayor in the future would need to take the opportunity at this time, because the successful person would be given a position of advantage in the mayoral election in May next year. So, it was understandable that two or three councillors would put forward their names. As the act stood, if three councillors, for example—as happened—put their names forward, two of them would then lose their seat. The council would then have to function with a lesser number and, of course, it would lose two of the three most talented individuals, because they were the people, based on experience, and whatever, who would be putting their names forward.

It so happened that the roll closed on 30 September. Nominations for the vacancy created by this devastating loss closed on 14 November and, as we would have expected, there were three. The poll closes on 16 December and, on that day, one will be successful. Without this amendment, the other two councillors will lose their place and, of course, there is not time to fill those positions through a casual vacancy process. So, I compliment the minister, and I trust that the house will support that amendment.

The final brief observation that I want make is in relation to the amendment filed by the Hon. M. Brindal. I believe that the honourable member himself sees an inherent problem in the amendment he has put forward. Like all of us, the honourable member is a ratepayer and, from time to time, as a ratepayer, he will want to lobby his local council in relation to a particular initiative or a particular investment that may

require the raising of a significant amount of capital. We all do that as ratepayers.

If the honourable member finds himself in that predicament, the last thing he would want is to be constrained by the act. It is not good policy to be dictating to another sphere of government to this level in terms of collecting rates. It is the election process that makes those decisions and not another sphere of government. As ratepayers, the honourable member, like all of us, knows that we exercise that right every third year on the third Saturday of May when we make a judgment as to who should represent us. None of us wants this amendment to take away from us the right to lobby our local councils in relation to all sorts of things.

When you think it through, this amendment is actually flawed in terms of taking away a democratic right we all want when we choose to participate democratically in elections for local government. So, when you think through it, there is actually a flaw in the process. So, I see the threats about it becoming an issue of some significance in the future as being somewhat hollow. With those remarks, I offer my support and that of my community to the bill.

Mrs REDMOND (Heysen): I rise to generally support the bill but, as the member for Unley indicated, there is one clause I would like to comment on, and it is the same clause that the member for Mount Gambier commented on. Unfortunately, I do not share his enthusiasm for the proposed amendment. I refer to the amendment proposed for section 54 of the act. Perhaps it would be easier if I explained my position by first explaining what section 54 currently provides.

As the honourable member indicated, that section deals with casual vacancies and, amongst other things, provides that the office of a member of a council becomes vacant if a series of things happen. The circumstance of the Mayor of Mount Gambier appears as 1(a); that is, if the member dies or if he resigns. Further down under paragraph (e) his office is vacated if he becomes a member of an Australian parliament. I have no difficulty with that. If someone is a member of council and stands for and wins that election and is subsequently sworn in as a member of state or federal parliament, their office as a councillor is vacated. I have no problem with that. My difficulty relates to subsection (2) which follows on from there and provides:

> If a member of a council stands for election to an office in the council other than the one presently held by the member, the latter office becomes vacant at the conclusion of the election.

That to me represents an inconsistency. It is all right to stand as a member of state or federal parliament, but, for instance, if you are a council member and another ward council position becomes available, or the office of mayor (as in Mount Gambier) becomes available, under the current legislation, once the election is concluded, regardless of the outcome, you have vacated the office you held and it is no longer yours. The proposed amendment to clause 7 says that will not apply if the member is not elected to the office for which they stood and the conclusion of that office falls within five months before polling day for a general election (that is, that day in May every three years).

My difficulty is that it seems that, under subsection (1), if you stand for election to be a member of state or federal parliament, nothing happens to you: that is, you have not vacated your office as a councillor if you are then not elected. However, if you stand for election for an alternative position, such as a council or mayoral position, even if you do not win and subsequently take up that position, under this provision you are then prevented from continuing in the office of councillor unless it happens to fall within the last few months. In that case, you are allowed to continue for those few months until the election.

It seems to me to be only reasonable that, if you stand for the position of an alternative councillor but are not elected to it, you should be able to remain the councillor for the position that you already hold. I cannot see why that should be treated differently from the situation of being elected as a member of state or federal parliament. I suggest to the minister—and I have not had a proposal drafted, but I will try to have one drafted for the upper house when this goes to the other place—that it would be more appropriate to simply say that, if a vacancy occurs within five months of a general election, there is no need to hold a by-election and the office can remain vacant. However, if someone is not elected to that new position for which they have applied, why cannot they hold their position in the seat they were already holding? That is the only difficulty I have with these amendments. Other than that, I am happy to support the bill. I urge the minister to consider that suggestion, because it does seem to be only reasonable that if you can move to state or federal parliament without having to give up your seat as a councillor then you should be able to do so in council.

The Hon. J.W. WEATHERILL (Minister for Urban Development and Planning): I want to first thank those councils and, indeed, the Local Government Association for participating in the period of public consultation which surrounded the issue of a discussion paper concerning these provisions in the act. Many useful submissions were made in that process which allowed us to refine the provisions that we have finally brought before the house. I also thank the member for Unley for his contribution. I note that he supports in broad terms the thrust of the act and notes that, in many senses, it is a continuation of the thread which began with the 1999 act and builds on the measures of accountability in that act. However, we say that it goes much further in a way which will enhance both the standing of councillors in the general community and enable people to have some trust in the way they go about their businesses.

The honourable member, however, does take the opportunity to piggyback onto the recent debate on rates by moving an amendment. Unfortunately, in our view, one might describe the amendment as a good thought but one that fails in the execution. So, the sentiment about attempting to address the question of rates through some process of accountability is a laudable objective, but the mechanism chosen by the honourable member by way of the amendment is counterproductive. I will just go on to explain that.

The first thing to say about the whole question of rates, though, is that we agree that councils need to be more accountable about the way in which they spend taxpayers' money. I have consistently said that people do not care what you call it—whether it is rates or whether it is income tax—it is all tax to members of the community, and they want to know that they are getting value for money. They want to know that it is being levied against people with the capacity to pay it, and it is applied to areas of need. In doing this, we believe that there needs to be a much more comprehensive approach to addressing this whole question of how councils raise their rate revenue and the way they spend their money.

We are particularly concerned to improve councils' strategic planning and expenditure and revenue policies. We

have attempted to encourage councillors to lift the level of their professionalism—to lift the level of sophistication in the way they actually raise rates and spend their money. The difficulty with the amendment is that it will only exacerbate the problems of councils seeing budgeting and rate setting as separate processes.

What needs to be realised here is that this amendment seeks to trigger a public consultation process around a particular rate revenue. So, once it hits CPI plus 1 per cent, this public consultation process is triggered. In essence, the philosophy behind this is to focus on the revenue side of the debate. The terms of the amendment are that, if a council is proposing to fix rates under this section for a particular financial year that would, in accordance with the council's budget, result in the council's recovering from general rates charged on land in the council area an amount which exceeds CPI plus 1 per cent, the council must go out on this public consultation policy. We are very concerned that we have a revenue policy that needs to be seen as an integral part of the budget process. At the moment we fear that there is too much of councils seeing what their expenditure needs are and then seeing what drops out of that in terms of their revenue needs. So, one starts with a whole wish list or grab bag of expenditure items which become the starting point, and then one works next on the question of the revenue side; and it is a question of just fixing the rate in the dollar so that one meets those expenditure needs. That is one approach to the budgeting process, but we want to discourage that approach to budgeting.

We want to encourage the view that raising revenue and determining expenditure are taken into account in one and the same process. You cannot disconnect the way you are raising your revenue and the effect that will have on ratepayers from the expenditure needs. One has to focus on expenditure; one has to focus on the cost side of the debate and on priorities, just as we as a tier of government must focus on priorities. It may mean that you will have to decide not to do certain things, for which we get pilloried. The point is if that you are a serious tier of government you must have a sophisticated rating policy. Your provision triggers the requirement to consult on hitting the CPI plus 1 per cent. It will not assist, because it will have a number of counterproductive effects. The first thing is that it will become the de facto minimum so, under your proposal, you can bet your bottom dollar that all those councils that did not do CPI plus 1 per cent will do so in the future, as that will become the de facto minimum.

The second thing is that councils may avoid the consultation requirement by attempting to stay beneath it in circumstances where they should be going above it. They may not want to go near the proposition. The honourable member knows that they will attempt to avoid this measure in any way they possibly can, and that will introduce a negative incentive into this system, whereby councils will seek to come under the cap in circumstances where they should actually be asking for revenue which exceeds the cap. That will be counterproductive in relation to things like asset maintenance and renewal where they are meeting the legitimate needs of their ratepayers.

A sad fact is that, for those councils which the honourable member is worried about and which had large hikes, that becomes the base for next year. Those councils have already had their big dip this year, and for next year they can have their CPI plus 1 per cent without any more trouble. The worst thing about this is that it will lead to the very thing that happened to the honourable member when he introduced the rate cap post structural reform. The honourable member must recall that he introduced a rate cap which he then had to abandon quickly, because it was completely impracticable.

Mr BRINDAL: I rise on a point of order, sir. I claim to have been misrepresented and I ask the honourable member to withdraw. I did not introduce a rate cap: I took a rate cap off.

The ACTING SPEAKER (Mr Koutsantonis): Order! The member may not debate the point of order.

The Hon. J.W. WEATHERILL: I apologise—

Mr Brindal interjecting:

The ACTING SPEAKER: Order! I do not uphold the point of order; it was frivolous and antagonistic toward the debate. I would say that the honourable member will have an opportunity in committee to refute the minister's argument.

Mr BRINDAL: I rise on a point of order, sir. Is it in order—

The ACTING SPEAKER: Does the honourable member have the standing order?

Mr BRINDAL: Yes.

The ACTING SPEAKER: Then state to which standing order you are referring.

Mr BRINDAL: I will look it up and then I will take it.

The Hon. J.W. WEATHERILL: Perhaps I can save the honourable member's time. If he was not involved in the original decision to impose the rate cap, I apologise for suggesting he was. However, he was very intimately involved in removing it, and he knows it was an impracticable measure which has all the hallmarks of the existing measure that he put in place. For all practical purposes, it will have the same effect. Councils will spend all their energies lobbying the government to make regulations specifying that certain amounts can be disregarded for the purposes of the calculation, because nobody will want to bear the opprobrium of going to their communities and consulting about exceeding this rate cap.

We submit that this amendment will leave a misleading impression in the minds of ratepayers that they will not have rate bills which exceed the CPI plus 1 per cent. The honourable member knows that, as a consequence of different valuations across the rating area and increasing values, that will most likely not occur on balance across local council areas. So, there will be many disappointed people. This bill will have generated expectations around capping rates at a certain level, and many people will be disappointed, because there will be differential rates which significantly exceed the CPI plus 1 per cent.

The honourable member should be aware that the government has taken a different approach. It has challenged councils to monitor the impacts on the most vulnerable ratepayers and make appropriate rate relief available, and it has indicated that blunter options such as limiting increases in rate revenue on individual rate bills or mandating rate relief schemes will be considered if councils fail to respond.

We do not favour the idea of arbitrarily limiting councils' ratepaying capacity. It is unlikely that a one size fits all process will be effective in local government. The former minister would be well aware of the fact that nothing can be said of the whole of local government in a completely homogenous way; there are so many differences across and even within councils from time to time.

That addresses the point that the member for Mount Gambier makes about the fact that, fundamentally, local government is another sphere of government. It is responsible to its own electors and it has to sink or swim on the decisions

it makes. This is a measure that will introduce all the wrong incentives to the system. We have challenged local government to consider the measures it can introduce to make itself more accountable to its communities. We have made that very clear to local government, and we have set out a range of measures to which we expect it to respond.

There is another rating season in which we will consider the way in which local government behaves and, if it does not take up the challenge we have given, we may have to approach this parliament again and introduce legislation which mandates a number of rate relief measures.

Those are the broad remarks I seek to make in relation to the amendment, but in the broad sense we welcome the support for the balance of the bill which in large measure goes to openness and accountability measures for local government and which corresponds to the broad commitments that this new government made in its early days to usher in a new spirit of openness and accountability to public affairs in this state.

I would also like to thank the member for Mount Gambier for his contribution, and look forward to his assuming the role of Minister for Local Government. He has demonstrated a clear understanding of the priorities of this government. I have had opportunities to consult with him in my early days as Minister for Local Government and have appreciated his advice in relation to each of the measures that have come before this house as well as broadly in relation to my work in local government.

I thank the member for Heysen for her contribution relating to the clause to which she drew our attention (clause 7), concerning casual vacancies. As I understand the member for Heysen's point, it relates to the act as it presently stands. It does not relate to the amendment that we seek to make to the act. So, all I can proffer in relation to that is that we are prepared to consider that at some future time in relation to the ongoing maintenance of the act, but it is not something which is being intruded upon by the existing amendments.

I suppose that if we had a little more time it may have been useful to explore it on this occasion. However, can I just remind the member for Heysen and those opposite that there is a certain urgency about the passing of these measures given that 16 December of this year is a deadline to achieve its practical effect, at least in relation to the affairs of Mount Gambier council. So, I take on board the member for Heysen's remarks. I do not seek to dismiss them, but I would ask that they be taken into account at a later time upon the consideration of the act. I thank all members for their contribution and commend the bill to the consideration of the house.

The ACTING SPEAKER: Does the member for Unley have a point of order?

Mr BRINDAL: Yes, sir. Earlier tonight, a point of order was taken by the member for Playford and you upheld the point of order. I point out to you—

The ACTING SPEAKER: Order! I did not uphold a point of order from the member for Playford at all.

Mr BRINDAL: I am sorry, what did you do? I thought you—

The ACTING SPEAKER: You took a point of order and I did not uphold it.

Mr BRINDAL: I stand to be corrected. I will consult the *Hansard* report. That was not my recollection.

The ACTING SPEAKER: The member for Playford was sitting next to you.

Mr BRINDAL: Yes, I know.

The ACTING SPEAKER: So he could not have moved a point of order if he was out of his place.

Mr BRINDAL: That was the exact point of order I was going to take.

The ACTING SPEAKER: I thank the member for Unley for his wisdom.

Bill read a second time.

In committee.

Mr BRINDAL: Mr Acting Chairman, I think the member for Heysen is indicating that she wishes to question clause 7. I do not have any real questions before the amendment that stands in my name, which I do want to formally move and which is a reason for going into committee, otherwise it is not even moved—I point that out to members opposite. However, the member for Heysen may wish to question other clauses.

Mrs REDMOND: Mr Acting Chairman, I want to at least ask a question on clause 7.

Clauses 1 to 6 passed.

New clause 6A.

Mr BRINDAL: I move:

Page 4, after line 30—Insert new clause as follows:

Amendment of s. 50—Public consultation policies

6A. Section 50 of the principal Act is amended by inserting after subsection (9) the following subsection:

(10) Subject to any other provision of this Act, a council may, for the purposes of this Act, combine a report and public consultation process required under one provision of this Act with a report and public consultation process required under another provision of this Act.

New clauses, page 8, after line 25—Insert new clauses as follows:

Amendment of s. 153—Declaration of general rate (including differential general rates)

17A. Section 153 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) If a council is proposing to fix rates under this section for a particular financial year that will, according to the council's budget (or proposed budget), result in the council recovering from general rates charged on land within the area of the council for that financial year an amount (in total) that exceeds the amount (in total) recovered (or expected to be recovered) by the council from general rates charged on the same land for the immediately preceding financial year plus the relevant adjustment factor under subsection (9), the council must, before declaring those rates—

(a) prepare a report on the council's proposal; and

(b) follow the relevant steps set out in its public consultation policy.

(5) A report prepared for the purposes of subsection (4)*(a)* must address the following:

(a) the reasons for the proposed increase in general rates above the relevant adjustment factor;

(b) the way in which general rates fit into the council's overall rates structure and policies;

(c) in so far as may be reasonably practicable, the likely impact of the proposed increase in rates on ratepayers (using such assumptions, rate modelling and levels of detail as the council thinks fit);

(d) issues concerning equity within the community,

and may address other issues considered relevant by the council.

(6) A public consultation policy for the purposes of subsection (4)*(b)* must at least provide for—

(a) the publication in a newspaper circulating within the area of the council a notice describing the proposed increase in general rates, informing the public of the preparation of the report required under subsection (4)*(a)*, and inviting interested persons—

(i) to attend a public meeting in relation to the matter to be held on a date (which must be at least 21 days after the publication of the notice) stated in the notice; or

(ii) to make written submissions in relation to the matter within a period (which must be at least 21 days) stated in the notice; and

(b) the council to organise the public meeting contemplated by paragraph *(a)*(i) and the consideration by the council of any submissions made at that meeting or in response to the invitation under paragraph *(a)*(ii).

(7) The council must ensure that copies of the report required under subsection (4)*(a)* are available at the meeting held under subsection (6)*(a)*(i), and for inspection (without charge) and purchase (on payment of a fee fixed by the council) at the principal office of the council at least seven days before the date of that meeting.

(8) A rate cannot be challenged on a ground based on the contents of a report prepared by a council for the purposes of subsection (4)*(a)*.

(9) The relevant adjustment factor for a financial year to which subsection (4) applies will be an amount determined by multiplying the amount (in total) expected to be recovered by the council from general rates on relevant land for the immediately preceding financial year[1.] by the relevant inflation rate under subsection (10) plus 1 per cent.

[1.]This financial year is designated as 'PFY' for the purposes of subsection (10).

(10) The relevant inflation rate for a particular financial year (PFY) is a rate (expressed as a percentage) equal to the variation (rounded to two decimal places) between the Consumer Price Index for the December quarter of PFY and the Consumer Price Index for the December quarter of the financial year immediately preceding PFY.

(11) For the purposes of subsections (4) and (6), any amounts of a kind prescribed by the regulations may be disregarded (and the regulations may provide for ancillary or related matters).

(12) In this section—

'Consumer Price Index' means the Consumer Price Index (All groups index for Adelaide).

Amendment of s. 156—Basis of differential rates

17B. Section 156 of the principal Act is amended by striking out subsection (14c).

Mr BRINDAL: In answering the matters put forward by the minister, I say to him in deference that perhaps the difference in this case is not only opinion but also relative experience. I acknowledge most of the points that the minister has made, and certainly in local government one size does not fit all. The minister made some very valid points. If I understood him correctly, I find it interesting that the minister would say because I might agree with him that this will become the benchmark that local government would set, that is, they would all go at least to that and try to never move above it and never to move particularly below it as well. I direct to the minister's attention the history of the City of Charles Sturt, which is in the minister's own area, for the last three or four years. When no year differs from any other year, and no matter how much the property values rise, the percentage increase of the rates is still generally quite high.

So, for them to be limited to this will be an improvement for the people of Charles Sturt council, no matter what. I freely admit that I would like Unley to build a swimming pool and, by this very provision, to contemplate the building of the swimming pool would necessitate the council's putting forward a plan and consulting that plan to the ratepayers. It is therefore less likely to be accepted by either the councillors or even put to the ratepayers for discussion. I acknowledge that is a limitation, but what limitation is it?

The Hon. J.W. WEATHERILL (Minister for Local Government): I move:

That standing orders be so far suspended as to allow the house to sit beyond midnight.

The SPEAKER: I have counted the house and, as an absolute majority of the whole number of members of the house is not present, ring the bells.

An absolute majority of the whole number of members being present:

Motion carried.

Mr BRINDAL: I was making the point that the difference, I think, between the opposition's and the minister's stance in relation to this amendment is one of interpretation and degree. The minister claimed that, in effect, this would set a benchmark which would be almost automatically reached by all councils. Both the minister and the member for Mount Gambier said it would make it then almost impossible for councils to undertake this process; and the minister further said that this is a democratic process and that we should not interfere in the democratic process. Mr Chairman, could you speak to the member for Norwood? I find it distracting.

The CHAIRMAN: Order! The hour is late and it will be even later if we do not get some order in the committee. If members at the back want to have a chat, they ought to go elsewhere than in the chamber.

Mr BRINDAL: Thank you, sir. We are not denying their right to set the rates. That is the point. I did not, as the minister said, introduce a rate cap. I was not the minister at the time. As a matter of record, the government of which I was a backbench member did introduce a rate cap. That was not perhaps universally approved within the party by everyone at that time. When I became minister, the rate cap was removed under special circumstances one year before it was due to be removed, because what became very obvious was the inevitable consequence of this level of government's imposing a rate cap on local councils and then foolishly expecting at the end of that rate cap that local government would not jump up their rates to a level at least to take account of the lost revenue for the past two or three years. Rate caps simply do not work. The idea of this—

The CHAIRMAN: Order! Will the members for Chaffey and Morphett take heed of the chair's advice.

Mr BRINDAL: Therefore, the idea of this measure is not in any way to limit the rights of council to seek to raise revenue. I point out to the minister that, even when the last government imposed a rate cap, that rate cap was in place—and this happened in most councils—only where the council did not go to its ratepayers and seek an exemption from the rate cap. The City of Salisbury did: it went to its ratepayers and said, 'As an expanding city, we have a number of works that need to be done. We don't think a rate cap should apply in this city.' Guess what? The ratepayers of the City of Salisbury accepted the council's plan. It was thought through, it was argued, it was consulted on, and the ratepayers, being intelligent people, accepted that plan. There was never a rate cap in Salisbury, and that was because they went with a decent plan.

All this amendment seeks to do is provide that there should be greater accountability between the ratepayers of a city and the council of the city. The member for Mount Gambier can say, 'Yes, we have a process called an election. That process happens once every three years. There are three budgets between an election.' I simply cannot see why this government can argue and is arguing that it is wrongful process to put into the law not a capping or any expectation on the part of this house of what the money will be spent on but simply a principle in law that councils should be more accountable to their ratepayers than is the case. It was put to

me in discussions outside this chamber whether the same standards should apply to this chamber.

Many in this chamber—including the Speaker, the Chairman of Committees, me, many members opposite and on this side of the house—have argued, not just disingenuously, for greater accountability to the parliament. It is something that quite a number of people in this place have argued for—that the executive government through this parliament and this parliament itself should be ever more accountable to the people it serves. I am not seeking for local government any greater accountability than we would expect to impose on ourselves.

The minister's argument was quite interesting and very true. It is an unfortunate truism of the democratic process—simply that councils work out what they want, they do I think he called it a wish list, they add it all up, they work out the rate in the dollar that will then apply, and then they say, 'Good heavens! Ratepayers won't wear this.' So they then cut back their expectations of what they will fund until they get to a level of increased rates that they think they can get the ratepayers to bear, and that is where the rate in the dollar is set. The minister says quite rightly, 'Is that good setting of public policy? Is that what should happen?' I agree with him: the answer is 'No.' But of all the years I have been here and the years I was privileged to be minister for local government, it is what happened year after year. However, where I find the minister's argument disingenuous is that if he can tell me that is any different for a state government I want to know how. I was privileged to sit in the cabinet as he has been, and it seems to me that the processes of budgetary consideration in any state government are not dissimilar.

Every minister goes to the Treasurer saying, 'This is what we need with our portfolio,' and the Treasury officials tote up the needs of every minister which then exceeds the total state budget—probably by two or three times—and a pink fit is had by Treasury officials, who then argue, 'We can't afford all that.' Every minister is then told how much to chop their budget by to fit into a figure that represents the revenue that the government believes it can raise from the people of South Australia. That process the minister described involving what local government does is truly no different from the process involving what the state government and every government does.

Is it an ideal process? The answer is: absolutely and completely no. It probably is not the best way for the government to run its business and to give the people the best that it can. If any member of local government can do what the minister wants—laudable as it is—where, in this nirvana, through intelligent discussion they can get the taxpayers or ratepayers of this state to see that what we want is perfectly reasonable so that they will happily part with ever increasing amounts of money, I would be interested to see that person enter this house and do that because no-one has yet achieved it.

We have an imperfect system, an imperfect way of achieving what the minister wants—laudable though those aims are. This amendment quite simply does not tell local government how much to raise. In that context, I point out to the minister that he has challenged local government in terms of social justice components; he has not told them what to do, but he has challenged them to do better in terms of social justice. That is quite right; I support the minister in that. I think what he is doing is fair and just and right, but he is not trying to dictate to them, he is trying to encourage them, and members on my side would support him in that endeavour.

What we are trying to do by way of this amendment is similar; it is quite simply to turn around and say to local government, 'We don't want to interfere in your rate setting process; we don't want to stop you collecting whatever money you think you need. What we do want you to do though is, if you want to collect more money, to discuss it with your ratepayers and get them to be part of the process.' The minister knows that with this amendment we do not seek to bind the council to any decision that the ratepayers might make. They are asked to publicly consult. The responsibility is not being removed from the councillors; the councillors, as the elected body, still have the responsibility of making the decisions. They can consult, they can disagree, they can set the rate at whatever level they want.

If the minister does not believe that the ratepayers of South Australia have a right to be told when rates are going to escalate out of kilter, I think his comments in this house tonight are at variance with his comments in the *Advertiser* when some of the rate increases were announced and with his sentiments. I hope the minister will reconsider, but I am afraid that he will not. I do not want to delay the committee any longer—

Members interjecting:

Mr BRINDAL: —because the backbenchers are restless but, if members opposite wish, the house is extending past 12 a.m., and if we want to we will exercise the rights of this place to do what this place allows us to do. Otherwise we will be as expeditious as we can, but trying to coerce people into speaking for shorter or longer than they need to speak is not conducive to conducting the business of this house in an orderly way. If—

Ms Rankine interjecting:

Mr BRINDAL: No. If this house set its timetables and priorities in a manner that we did not have to be here—

The CHAIRMAN: Order! I think the member for Unley is getting away from his amendment. We are talking about local government access to meetings not the operations of the house. I call the honourable member back to the topic.

Mr BRINDAL: I thank you, sir, for your guidance, and I will take it. Suffice to say hopefully it will not take too long, but it is not helping if we are getting constant interjections.

The CHAIRMAN: I remind members to my right that they should not provoke the member for Unley.

The Hon. J.W. WEATHERILL: I will respond briefly. We support the notion of accountability—that is the first proposition. What we do not support is this method. That is the difference, and I outlined my reasons earlier. It will not be helpful to the people whom we are interested in protecting simply to promote this measure. One could easily imagine a situation of a pensioner in a house that enjoys a substantial increase in valuation. A rate in the dollar is set without regard for the means of an individual ratepayer to meet a substantial increase in their rates and, even under a CPI plus 1 per cent regime, one could imagine a 10 per cent to 30 per cent increase in the rate notice for that individual.

This measure fundamentally does not address some of the central issues that have emerged in the recent public debate about rate setting. We have invited and placed a considerable amount of pressure on councils to respond. There are a number of deficiencies with this tool. I said at the outset that it was a good, well-intentioned amendment in that it seeks to address the question of accountability, but it is in a way that is not nearly sophisticated enough. So we have invited councils to do what they can to get their house in order.

In some senses it is a tribute to the member for Unley and the bill he helped shape that all the relevant tools already lie in the hands of councils to resolve this issue. They have all the tools in the tool kit to design a rating policy that can protect vulnerable ratepayers. They have all the tools in their tool kit that can link good strategic planning to their budgeting process, and they have all the tools necessary to make their ratepayers aware and get public support for it. We do not think they are being used; we have invited them to use the tools that they possess and, if they do not, we will take the next step, and there will be further legislation in this house compelling them to take these steps. This measure is counterproductive for the reasons that I outlined earlier.

Mr BRINDAL: I start to see where the minister is coming from. If I am allowed to concentrate, this will be my last comment on this clause. I accept what the minister is saying. I know that this measure is not sophisticated in terms of social justice and that it does not address the needs of the elderly retired lady whose husband has died and who lives in a house the value of which is ramping up year after year. The challenge the minister has given local government is to address those measures; that is acknowledged. This measure does not seek to address that. As the minister said, if this measure sought to address that social justice need, it would be inadequate and crude; that, too, is acknowledged. What the minister is seeking I and most of my colleagues support—it is a different thing.

This measure is not about social justice for people in council areas. They have the tools and it is the minister's job on behalf of this government to encourage them to use the tools, and we support that. This measure is simply about accountability and not about just the battlers. This measure is about every person who sits in this house and is a ratepayer, from the wealthiest to the poorest people in Unley. This measure seeks nothing more than greater accountability between the council and its ratepayers.

I draw the minister's attention to another provision in the bill. We sought not to limit councils' capacity to raise rates, but we did seek through an artifice to say that each council must have a rating policy and that that policy must be published. That was the mechanism whereby we wanted to make councils generally accountable to all ratepayers—the very wealthy to the very poor.

'How will you raise your rates?' we asked. If the minister looks on the various council web sites, as I have, he will find that every council has conformed and has a rating policy, which is passed in about three minutes, directly according to the law and is filled with legalese gobbledegook that says nothing. When the ratepayers ask, 'Have you got a rating policy', they are told yes and they look it up and find that it says very little. The mechanism that we put in the act to try to make councils accountable through its rating policy has not worked. It did not do what we wanted it to do. So, this is not a social justice amendment but an accountability amendment. I think that earlier we were arguing from two different points of view. The minister, I think, was arguing for social justice, with which we agree, while I am simply saying that this demands a greater level of accountability between elected councillors and the administrators of councils—who, after all, have a lot more to do with setting the budget (a bit like the hidden Public Service in our system) than the elected councillors, making that group more accountable to the people.

The minister is not minded to accept the amendment, and we will see what happens in another place. I do not want to take a third measure on this. I hope that he understands that we are talking about two slightly different issues—he is talking about social justice and I am talking about accountability. If you like, I am talking about what Menzies spoke about in the speech about forgotten Australians. This is not just about the battlers: this is about every ratepayer, including the very rich, the very poor and everybody in between. It is a measure that seeks accountability for them. That is how the *Advertiser* wrote about it in its editorial, and that is how I think the Messenger will take it up after tonight. That is what the minister will, in this house at least, deny to the ratepayers. But that is his right: he is in government, and the government has the numbers in this place. All we can do is come in here as an opposition and constructively suggest improvements. It is for the government, with the numbers, to say that they are improvements or otherwise. It is also for the minister to accept the consequences.

New clause negatived.

Clause 7.

Mrs REDMOND: The minister did not seem to understand the point I was making. He seemed to misinterpret my comments as referring only to section 54 as it currently stands in the act. I want to clarify with the minister his understanding of the amendment to section 54 by clause 7 of the bill. My reading of it, starting with the beginning of section 54, is that the office of a member of a council will become vacant, first, under subsection (1) by a series of events, and under subsection (2) if a member of a council stands for election to an office in the council other than the one they already hold. So, the office they already hold becomes vacant if they stand in the election and, at the end of the election, whether they have received the office or not, that office is vacated and they are no longer a member of council. So, if they have failed in the election, they are no longer a member of the council.

As I read the amendment—and I want to clarify with the minister whether I am reading it correctly—new subsection (2)(a) means that, if the member is not elected but it is within five months of the normal election date, we will let them continue as a councillor. But, if it is longer than five months after the election, the member having stood for another office in the council—whether it be a position in another ward or the position of mayor—if any of those positions becomes a casual vacancy and a member of council stands for it, my reading of new section (2)(a) is that, if they are successful, the office that they previously held will obviously be vacated and they will move to their new office. But, if they are not successful and that occurs within five months of an upcoming election, they can stay in the office until then and there is no reason to hold a by-election. If it is longer than five months, they must vacate the office they were in. So if, six months before an election, they stand for the position of mayor because it has become available as a result of a casual vacancy—as in Mount Gambier, with the death of the mayor—the effect of the provision is that the person is still automatically obliged to stand down. The point I am trying to make is that that seems to be inconsistent with subsection (1).

If a councillor decides to stand for election to a position in state or federal parliament, the office that they hold as a councillor becomes vacant only if they actually win that election and are sworn into office, because section 54(1)(e) specifically provides that they vacate the office only if they become a member of an Australian parliament. But, under subsection (2), if they apply for an office within the council,

that is, another councillor position or a mayor's position, they automatically lose the right to continue as a councillor, even if they do not win the office they are seeking. That is the point I am trying to make.

The CHAIRMAN: Before calling the minister, I encourage members not to unnecessarily delay the house. We know that it is a democratic process but some members seem to be saying the same thing over and over again, which in my view is repetitious.

The Hon. J.W. WEATHERILL: I am still having difficulty grappling with the point being made, but I suspect the difficulty may lie in this. Does the member for Heysen have a copy of the Local Government (Elections) Act?

Mrs Redmond: No.

The Hon. J.W. WEATHERILL: Section 6(2) of the Local Government (Elections) Act provides:

> A supplementary election will not be held to fill a casual vacancy if—
>
> (a) the vacancy occurs within five months before polling day for a general election. . .

That is the nature of the connection between the provisions. This provision is in a sense consequential in relation to that. Does the honourable member understand that proposition?

Mrs REDMOND: Yes, I see that proposition and understand fully that the intention is that, if we get close to a general election, we do not want to hold a by-election, in essence, if there is a casual vacancy. My difficulty with the section is this. If someone seeks election to another office and they are not successful, why should they then miss out on maintaining their position as a councillor? That is the effect, and it is not something that the minister is creating in the amendment but something that he is not correcting in the amendment. The section, I think, was badly cast in the first place. Leave aside the question of the five months: I accept that you do not want to hold a by-election within five months of a general election of a local council. That is fine. But, if you are a councillor and the position of mayor or another councillor in another ward comes up because of a casual vacancy and you want to apply for that, the effect of the act at the moment is that you will lose your position of councillor if you go for that position unsuccessfully. That seems to me inconsistent with the position provided in existing section 54(1), which provides that, if you apply for state or federal parliament and go to an election, if you do not win the election you are still a councillor but, if you apply to be mayor on a casual vacancy and you do not win that election, you have lost your seat on the council.

The Hon. J.W. WEATHERILL: I understand that the honourable member does not like the current provision. All I can say is that the point is well made but the government has not had an opportunity to consider that matter. There may be some cogent reasons why there is a distinction with a member of parliament. No doubt the framers of this legislation in their wisdom had some thinking in mind. I must say that, while the package of measures has been out for some time, this particular measure has been brought in as a sort of emergency matter to deal with the Mount Gambier situation.

I ask the forbearance of the house to allow us to deal with that issue. No doubt, there will be ample opportunity to revisit this and various other matters concerning the act should this continue to be a pressing issue and should we be persuaded that it really is a mischief that ought to be remedied.

Mr BRINDAL: To move this along expeditiously and reasonably constructively, I point out that the wisdom of those who drafted the act was not actually infallible. I find the arguments of the member for Heysen compelling. It is within the minister's capacity—and it often happens—to undertake to examine this matter between the houses where, mindful of the arguments of the member for Heysen, the members may well seek to reform this. If the minister were to give his word that he would examine this and perhaps talk to the member for Heysen about it between the houses, I am sure that the opposition would quite happily sit down with the minister, work out whether something could be done between the two houses, and sort it out then.

The Hon. J.W. WEATHERILL: I am happy to give that undertaking, but I must qualify it with these remarks. There will be a relatively short time line between now and when this has to be debated in the other place. The passage of the legislation is crucial in terms of remedying the mischief that presents itself with the Mount Gambier situation. So, I simply cannot promise members opposite that there will be sufficient time to allow my agency to analyse the full implications of such an amendment.

Clause passed.

Clauses 8 to 14 passed.

Clause 15.

The Hon. J.W. WEATHERILL: I move:

> Page 8, lines 8 and 9—Leave out subsection (5) and insert:
>
> (5) The Ombudsman must supply a copy of any report to—
>
> (a) the minister; and
>
> (b) any council that was under review, or that has (or had) a council committee that was under review, and may also publish any report, a part of any report, or a summary of any report, in such manner as the Ombudsman thinks fit.
>
> (5a) The minister may also publish any report, a part of any report, or a summary of any report, in such manner as the minister thinks fit.

Amendment carried; clause as amended passed.

Remaining clauses (16 to 34) and title passed.

Bill reported with an amendment.

Bill read a third time and passed.

ADJOURNMENT

At 12.34 a.m. the house adjourned until Thursday 28 November at 10.30 a.m.