HOUSE OF ASSEMBLY

Monday 23 February 2004

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

KNEEBONE, Hon. A.F., DEATH

The Hon. M.D. RANN (Premier): I move:

That the House of Assembly expresses its deep regret at the death of the Hon. A.F. Kneebone, former minister and member of the Legislative Council and places on record its appreciation of his long and meritorious service and that, as a mark of respect to his memory, the sitting of the house be suspended until the ringing of the bells.

The Hon. Alfred Francis Kneebone (known as Frank to everyone), a former Labor minister, died on 18 February aged 98. This morning, I and the Minister for Transport, you, sir, as Speaker, the Hon. Ron Roberts as President of the Legislative Council, and a number of former members of parliament, including the Hon. Harold Allison and the Hon. Don Banfield, and others attended the funeral of Frank Kneebone.

Frank was a greatly loved person in the parliament and also as a retired member. He was elected to the Legislative Council in 1961 and retired from politics in 1975. In 1965 he was appointed as a minister in the Walsh government, holding a variety of portfolios, including labour and industry, railways and transport. In 1975 Frank was appointed chief secretary in the Dunstan government, also holding the position of lands, repatriation and irrigation. Frank Kneebone was born in Cooldgardie in Western Australia in 1905 and had a career in both Western Australia and South Australia. At one stage he was a baker. He tried to enlist in World War II but was refused enlistment because of a massive injury to his leg which he had sustained in a car accident. So, he worked in munitions, both in South Australia at Finsbury and also, I think, at one stage, on Yorke Peninsula.

Before he entered parliament, Frank was the state secretary of the Printing Industry Employees Union of Australia. He became state secretary of the union in 1950 and the union's federal vice president in 1952. He was also a president of the United Trades and Labour Council and a member of the Labor Party's state executive for a number of years. For six years Frank was a member of the Apprentices Board, and he was a member of the School of Arts Council for eight years.

In 1961 he defeated eight other candidates for the Central Districts No. 1 vacancy in the Legislative Council preselection ballot. Interestingly, he was not expected to win that preselection. As I say, there were eight other candidates. The person who won third place in that ballot was Norm Foster, who was then an officer of the Waterside Workers Federation at Port Adelaide; and Norm directed his preferences to Frank, which got Frank over the top. Frank Kneebone's career closely followed that of his father, Harry Kneebone. Harry had been the member for East Torrens in the House of Assembly in 1924 and 1925 before becoming a senator in 1931.

In his maiden speech in October 1916, Frank spoke with great understanding of the plight of the unemployed, and he said:

In my capacity in the trade union movement, it is my unfortunate experience to grapple first-hand with the misery and the many problems caused by unemployment. The unemployment situation is so serious that anything that can be done to assist the position should be done immediately.

He also spoke of the importance of education and of the State Library, advocating for a new building for that institution. As Chief Secretary and Leader of the Government in the Legislative Council, Frank held a significant position in the Dunstan government. He was held in high regard by other members and was remembered as a true gentleman by parliamentary staff. I know that Don Dunstan often spoke highly of Frank Kneebone as a most honourable man, a stalwart of both the labour movement and the ALP, someone upon whom he could rely for his wise counsel and for his honesty, integrity and loyalty and someone who always put the interests of advancing the working people of South Australia uppermost.

Frank was actually liked by both sides of the house. Upon the announcement of Frank's retirement from parliament, the Hon. Ren De Garis (then Leader of the Opposition in the Legislative Council) spoke kindly of him. In his speech, Ren said:

I am fully appreciative of his hard work, his calmness and his humility. His able leadership is appreciated.

Ren De Garis's quote continues:

During the whole time the Hon. Mr Kneebone has been leader of the government in this council, I do not remember any time when he has been other than the complete gentleman, nor do I remember any time when he has uttered a single word to which any honourable member could take exception.

During his time as a minister, Frank was known as a modest punter and was often seen at the races and the trots. Once he reached the age of majority, as he called it, he took up lawn balls. I know that he was a very active member of various parliamentary bowling tournaments and also active in the retired members' club. In 1996, aged 90, Frank Kneebone married his second wife, Pat Evans, who was 78 at the time. The Minister for Transport and I visited the newly married couple. Frank, aged 90, said that he thought that the wedding was important to quell any gossip or rumours amongst the senior citizens at Wesley House.

Mr Speaker, I never heard anyone say anything bad about Frank Kneebone. I think about Jack Wright, who admired Frank's work as his predecessor in the Department of Labour as Minister for Labour, and many of the reforms with which the Dunstan government grappled in the very early days, such as the complete reform of industrial relations and a complete reform of workers compensation, which Frank Kneebone led. Also, I know that Frank Kneebone worked closely with Don Dunstan in the area of Aboriginal rights. Frank Kneebone served with a whole generation of members of parliament who, sadly, are no longer with us.

In the past few months alone we have farewelled former premier Des Corcoran, Tom Casey and now Frank Kneebone. Frank leaves his second wife, Pat, his two children, two stepchildren, six grandchildren and 17 great-grandchildren. At today's funeral service, all of us who were present could feel the immense love of his family for Frank. On behalf of the government of the Australian Labor Party and, I am sure, all members, may I pass on my sincerest condolences to Frank's family.

The Hon. R.G. KERIN (Leader of the Opposition): On behalf of the Liberal Party, I second the Premier's condolence motion and express our regret at the passing of the Hon. Alfred Francis Kneebone MLC, former minister of the Crown and member of the Legislative Council, and place on the

record our appreciation for his distinguished public service. Mr Speaker, I ask that you convey to Mr Kneebone's family our deepest sympathies and appreciation for the contribution he made to the state since his election to the Legislative Council in 1961.

He was born in Coolgardie, Western Australia. The former state Secretary of the Printing Industry Employees Union and President of the United Trades and Labor Council began his political career in 1961. He defeated eight other candidates for the vacancy in a preselection ballot for the blue ribbon Labor seat, central No. 1 district, which was vacant in the Legislative Council. Following closely in the footsteps of his father, Mr Harry Kneebone, (the former member for East Torrens in 1924), Frank Kneebone served as minister in both the Walsh and Dunstan Labor governments. As well as his role of Chief Secretary, Frank Kneebone also served the state well as Minister of Labour and Industry and Minister of Transport and later as Minister of Land, Minister of Repatriation and Minister of Irrigation. I am told he had a great ability to sit down with people and listen. I have seen a cutting from a paper, headed 'Farmers to march on city' which states:

> An army of 100 angry soldier settlers from zone five in the South-East will arrive in Adelaide this week to battle the lands minister Mr Kneebone. 'We will stay until we break the minister,' said the spokesman from the South-East Mr Kevin McEwen.

Obviously, there have always been firebrands by the name of McEwen coming out of the South-East, but I think Frank Kneebone had the ability to negotiate with people—and I am sure the Premier knows what it is like to deal with a McEwen from the South-East: they can be difficult at the best of times. The next day the paper actually reported that the chairman of the farmers' committee offered a vote of thanks, someone clapped and 'the minister looked relieved'. Anyone who has been a minister has been through similar sorts of experiences.

Mr Kneebone was also a member of the board of management of the State Bank of South Australia on his retirement from parliament. Mr Kneebone was extensively involved with many issues, including structures to deal with national disasters, the building of the new public library on North Terrace and the economics of the day, particularly employment issues. In his capacity in the trade union movement Frank often grappled first hand with the misery and problems caused by unemployment, memories of which remained with him throughout his political career. He believed the most important ingredient for economic health was a positive attitude and the confidence which comes with the responsibility of actually being employed.

Frank had an enthusiasm for life and enjoyed nothing more than a game of bowls. As Chief Secretary in 1973 he commented that he felt he should take more of an interest in racing and other sports. In the line of duty, Mr Kneebone planned many trips to the races and trots, conceding that he was in fact a modest better.

As the leader of the government in the chamber, Mr Kneebone became well known for his swift and thorough handling of bills in government business and rapidly earned the cooperation and admiration of parliamentary colleagues, as quoted today by the Premier. He was seen by many as a real gentleman and his integrity gained him the respect of all members. When he retired from the Legislative Council in 1975 he had every justification for feeling satisfied with his record as a member. His love of life continued past his retirement from politics and Frank married his second wife, Pat Evans, at 90 years of age. I am sure all members present will join in paying respect to the late Mr Kneebone and acknowledge the very worthy contribution he made to our state.

The Hon. M.J. WRIGHT (Minister for Transport): Both the Premier and the Leader of the Opposition have spoken eloquently about Frank Kneebone in many ways and certainly there is no need for me to go back over that. At a personal level, it was a pleasure to know Frank Kneebone. In his latter life he lived at Wesley House in the electorate of Lee, which I have the good fortune to represent. When visiting there on a number of occasions—I tried to get there regularly—he was an absolute gentleman to meet with and to share time with, as you do when you go to retirement villages. You had to be at Wesley House for only a short time to appreciate and realise the respect in which he was held by all the people at Wesley House. Frank rarely spoke about politics, although in a private discussion he may raise a few issues but certainly not in front of residents during that jovial sort of occasion.

Both the Premier and the Leader of the Opposition referred to his second marriage. The Premier referred to the time we went to see him not long after that marriage took place. I well remember Frank telling me—and the Premier (then leader of the opposition)—on that occasion and on subsequent occasions what a difference it made. He saw no barrier or reason why you would not get married a second time at 90 years-of-age; he just described it as a natural course of events.

He enjoyed life and the people around him. It was a pleasure to be there with the Premier—and yourself, Mr Speaker—today. In speaking with family members who were very kind to us and appreciative of the fact that we had made the effort to be there, they defined and described him so well as 'a quiet achiever'. Of course, he was much more than that. He achieved a lot throughout his life, whether it be at a political or a personal level. As the local member, I am richer for having had the opportunity to meet with him and the people with whom he lived on a regular basis, and I regard it as a very fortunate opportunity that I have had in life.

The SPEAKER: For my part, I, too, knew Frank in consequence, I guess, of his interest in the art of lawn bowls and more particularly our participation in those annual events formerly called Parliamentary Bowls Carnivals. I had known Frank earlier than that, during the time he was a minister, but not in any context other than as somebody wishing to make submission to government and, he in his then role as minister, being perhaps in the position of having to receive the, if you will, deputation of opinion that I was making on behalf of both my own enterprises and that of other people.

All honourable members who knew him and those who have spoken today have referred to him as a thorough gentleman; and indeed he was. I guess the most amazing and humorous thing I remember was being told by Frank himself on the way to a bowls carnival something that he considered to be important before getting married to Pat Evans after having been widowed for the second time. He explained that he thought it vital that the family understand his feelings and desires but not to the exclusion of their rights. So, he sought the permission of his children before getting married, having been treated to the same courtesy by them before they had married at an earlier time in their lives. He saw their reaction as somewhat amusing, in retrospect. The fact that he was a gentlemen is best illustrated by the fact that he did not presume that they would necessarily agree.

I thought that was an amazing measure of the man that he was referred to as 'a quiet achiever' since he never made a fuss and always did what was possible, the most important of which, I am sure, is that, in the maxim of looking after the little people, the reforms to workers' compensation cover provided at his instigation to the work force in South Australia made it a safer and more secure place for people to be able to work—but more especially to get to work and to get home from work—without there being any risk to their family's income in the likelihood of a misadventure. He confided in me on another occasion when I discussed that matter with him that he never foresaw the extent to which some people from amongst the ranks of those who could benefit would take such liberties as to bring the reforms he had introduced into question, if not disrepute. He was unhappy about those people who took advantage where it was not in the public interest to do so.

I guess if he was ever firm about anything, it was always that he was firm on being fair, absolutely fair, even in bowls. Along with the other members, I offer my condolences, too, to members of the Kneebone family, and I thank the Premier, the Leader of the Opposition and the Minister for Transport for their remarks and assure them that a record of the proceedings will be forwarded to the family on their behalf. I invite all members to join me in carrying the motion by standing in their places.

Motion carried by members standing in their places in silence.

[Sitting suspended from 2.23 to 2.30 p.m.]

QUESTIONS

The SPEAKER: I direct that the written answers to questions on the *Notice Paper*, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 134, 138, 194 and 216; and I direct that the following answers to questions without notice be distributed and printed in *Hansard*.

STATE VOLLEYBALL CENTRE

In reply to **Dr McFETRIDGE** (25 September 2003).

The Hon. M.J. WRIGHT: My office wrote to you on 1 October 2003 requesting you furnish proof of the allegation. I am not aware of any formal response from the Member to support his question. Further, this project is the responsibility of the school and the Department for Education and Children's Services.

As the honourable member is aware, the role of my portfolio relates to a grant which part funds the project. The remainder of the funds for the project are derived from a joint arrangement between the school, council and DECS.

The government makes no apology for ensuring all governance processes and systems are followed to ensure government funding is expended appropriately.

CAPITAL WORKS, UNDERSPEND

In reply to **Hon. M.R. BUCKBY** (12 November 2003).

The Hon. M.J. WRIGHT: The table below shows capital investment program expenditure in 2002-03 for the Department of Transport and Urban Planning (DTUP) agencies under my responsibility.

	2002-03 Original budget $m	2003-03 Revised budget $m	2002-03 Actual expenditure $m	
Transport SA	134.216	125.962	129.497	
TransAdelaide	8.260	8.090	6.927	
Passenger Transport Board	7.500	8.770	7.325	
Totals		149.976	142.822	143.749

It shows that transport's actual expenditure on capital works was $0.927 million above the revised budget. The difference between the original and revised budget is largely attributable to the deferral of $10 million for the SE Rail project.

NORTH HAVEN BOAT RAMP

In reply to **Hon. R.G. KERIN** (2 December 2003).

The Hon. M.J. WRIGHT: This matter refers to an environment and emergency services pontoon situated adjacent the Cruising Yacht Club (CYC) ramp at North Haven.

The SA Boating Facility Advisory Committee (SABFAC) recommended funding assistance for an application from Port Adelaide Enfield Council in early 2002, based on design drawings supplied by the council.

Upon completion of construction work, it was noted that the approach structure to the pontoons, and the pontoons themselves, were translocated approximately 2.5m northward of the design position.

I am advised that the executive officer of SABFAC contacted the Port Adelaide Enfield Council to inquire whether the structure was in breach of the Development Approval. I am advised that council's response was that it had not breached the Provisional Development Plan. However, the location of the facility was at variance with Provisional Building Rules consent. Council followed up by requesting that the owner of the pontoons (the CYC Ramp Pty Ltd) submit a variation to the Development Application to formalise a revised Development Approval. This matter is currently in the process of being finalised.

I am also advised by Transport SA that the pontoons adequately meet their intended purpose. The structure was primarily intended to allow berthing access for emergency vessels (ie police, volunteer coast guard, MFS etc) and provide sewage pump-out facilities for recreational vessels. Its secondary purpose is that of a lay-by berth for small vessels waiting to access the public ramp at busy times.

CHILDREN'S SERVICES, PAYROLL SYSTEM

In reply to **Ms CHAPMAN** (12 November 2003).

The Hon. P.L. WHITE: The intention of the department is to replace the AUSTPAY system for the Children's Services employees in the department as a matter of priority. This system has been in use since 1985.

Currently a new system for all Department of Education and Children's Services (DECS) employees is in development and it is intended that Children's Services will be the first cohort of employees to be migrated to this system. I am advised by my department that on current plans, parallel testing, where the new and the old systems run together, is due to start in 2004.

Implementation for all other DECS employees will be subject to a final decision about the best long term option for the department. My most recent approval with respect to the Human Resource Management System was regarding the implementation for Children's Services employees.

MATTER OF PRIVILEGE

The SPEAKER: The exigencies of the research involved mean that the opinion of the privileges matter drawn to the attention of the house during the course of proceedings last week is not available, and when I have it I will present it to the house. I reasonably expect that to be this time tomorrow.

AUSTRALIAN CRIME COMMISSION

The Hon. M.D. RANN (Premier): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: Since 11 September 2001 and the tragic Bali bombings, Australians have never been more aware of the evil of terrorism. In the aftermath of these and other tragedies around the world, the imperative for decision makers and authorities in this country has been to unite to

form Australia's best defence, regardless of political persuasion and state and territory borders. At the summit on Terrorism and Multijurisdictional Crime, Australian government leaders (including the Prime Minister, the premiers and chief ministers) agreed to replace the National Crime Authority (NCA), the Office of Strategic Crime Assessment (OSCA) and the Australian Bureau of Criminal Investigation (ABCI) with a single Australian Crime Commission.

Through the Australian Crime Commission, our state is supporting national law enforcement that will improve criminal intelligence collection and analysis; set clear, national criminal intelligence priorities; and conduct intelligence operations and investigations into criminal activity of national significance. Commonwealth legislation has already been enacted. Complementary state legislation is now needed so that the Australian Crime Commission can operate effectively to combat organised crime across borders.

Today, cabinet approved the introduction to state parliament of a model bill that has been drawn up after consultation with officers in each state and territory and the commonwealth, including law enforcement officers. The ACC will be able to conduct investigations and intelligence operations into serious and organised criminal activity in South Australia. This means that commonwealth, state and territory offences can be investigated as seamlessly as possible.

The ACC builds on the strengths of the National Crime Authority—while removing barriers to its effectiveness. It is crucial to investigating complicated and sophisticated organised crime that crosses state and territory borders. The bill will provide investigatory powers, including search powers, under warrant, and coercive examination powers. The ACC will have better analytical and predictive capability that will better help it to identify criminal links to counter terrorist activity.

The legislation when enacted will also enable South Australia to take part in the investigation and prosecution of serious organised crime that crosses state borders. We know that international and organised criminal groups do not respect state or national borders. That is why cooperation across all states and territories is so important in combating criminal and terrorist activity that has the potential to do immeasurable harm and damage. The new powers of the ACC will allow it to more effectively crack down on organised crime, wherever it occurs in Australia.

South Australia's co-operation on the anti-terrorism front does not stop there. Already SAPOL representatives have taken part in an Advanced Counter Terrorism Investigation Training Program run by the Australian Federal Police. Some of those skills will be used next month when South Australia is involved in Australia's largest and most ambitious multi-jurisdictional counter-terrorism exercise called Mercury 04.

The 10-day operation, starting on 22 March, will be the first of four major exercises planned within Australia this year, to test our readiness and effectiveness to combat terrorism. Mercury 04 is the first counter-terrorism exercise to be held across a range of states and territories simultaneously. The Northern Territory and Tasmania will play a central role, with South Australia and Victoria also involved.

A wide range of new and more complex scenarios will incorporate chemical, biological and radiological threats—providing a opportunity to test our State Counter-Terrorism Plan that is currently being finalised. During the 10-day exercise I will be in contact with the Prime Minister and the other three heads of government to test our joint decision making links in a large scale national crisis. Essentially, it will be run like a war game—an anti-terrorist exercise involving the states and the Prime Minister's office. This will also provide a valuable insight into our state's preparedness and cooperative capabilities.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Environment and Conservation (Hon. J.D. Hill)—

National Environment Protection Council—Report 2002-03.

QUESTION TIME

FAKE DRIVERS LICENCES

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Premier. Will the Premier advise the house what immediate action the government is taking to counteract the situation where fake South Australian drivers licences are now being offered for sale on the internet for less that $100?

The Liberal Party has had its attention drawn to a website, which is apparently well-known to many of our youth, offering fake drivers licences for all Australian states at a cost of only $90. The product offered for sale appears to be an exact replica of a genuine licence, including the holograms.

The Hon. K.O. FOLEY (Deputy Premier): I thank the member for the question; a very good question. In fact, the government is aware, I think, of the particular website you are referring to, because I can only assume that somebody who—

Mr Hamilton-Smith: What are you doing about it?

The Hon. K.O. FOLEY: What am I doing about it? I am about to explain. That is why the question, answer, then we will move on. The website—

The Hon. P.F. Conlon: He usually likes to give the answers himself.

The Hon. K.O. FOLEY: That is right. Dear old member for Waite who can only but spend money. This matter was brought to my attention and, indeed, to the attention of the Premier at a meeting we held last week to formulate an appropriate, measured, but very strong government response to the issue of underaged drinking in our nightclubs and hotels. In fact, the Liquor Licensing Commissioner, Bill Pryor, showed us a web site, which I can only assume someone has passed on to the opposition—

Mr Brokenshire: A good man.

The Hon. K.O. FOLEY: He is a good man. I am pleased that the honourable member thinks that.

The SPEAKER: Order!

The Hon. K.O. FOLEY: I do, too.

The SPEAKER: The Deputy Premier is, I am sure, as all members in the last two years have come to appreciate if they did not understand before, well across his subject. He does not need the assistance of any members of the opposition or other front benchers to provide the house with the information sought by the question. The Deputy Premier.

The Hon. K.O. FOLEY: Thank you, sir. That web site is of concern. I am told that it may not be the only one—in fact, almost certainly it would not be the only one—where people have been able to access fake IDs and fake drivers licences, with relative ease. In fact, as the honourable member said, for a very few dollars one can purchase, seemingly very easily, across the internet fake licences and IDs. That meeting

was attended by the police commissioner, senior officers, the Liquor Licensing Commissioner and other senior government officials, as well as members of the Australian Hotels Association, and we walked through the options available to us.

I will leave this particular problem in the hands of the police as to whatever operational decisions they should take in terms of whether or not it is possible to track down this web site in London. That is a matter for the commissioner to deal with, and he undertook to look at the options available. But it does raise the issue of the quality of security of our drivers licences. In fact, representatives from the Department of Transport, as I speak, are considering what our options are for making our drivers licences much harder to forge in the future. We are considering a number of options that we believe will go a significant way forward to make it more difficult to forge drivers licences.

However, in this modern world, I suspect that it is impossible to eliminate such a practice, but it is clearly incumbent upon government to do all it can to make it more difficult.

The Hon. M.D. Rann interjecting:

The Hon. K.O. FOLEY: Exactly. I point out that on this web site you can buy a drivers licence for any Australian city, I assume many Canadian provinces and probably most of the United States, and who knows where else. It is clearly a web site designed to find all in communities in the western world who may wish to access these particular forgeries. That is just one measure in a raft of measures of the committee which the Premier is chairing and of which I am co-chair. We are meeting regularly and we will meet again this week. As the Premier indicated last week, we should be in a position this week to come to the parliament with a list of initiatives that we are undertaking immediately to clamp down on underage drinking in South Australia.

One very important element of that will be what we can do to restrict access and availability of forged IDs; but I can say that that is but one element of what will need to be a multi-pronged attack on the issue of underage drinking in our community.

HOSPITALS, EMERGENCY DEPARTMENTS

Ms BEDFORD (Florey): My question is directed to the Minister for Health. The number of people attending public hospital emergency departments is resulting in increased admissions. What steps are being taking to manage this increased demand?

The Hon. L. STEVENS (Minister for Health): I thank the honourable member for this important question. Unfortunately, the number of patients presenting at emergency departments continues to increase. While the number of attendances at emergency departments increased by just 2 844 over the last three years, the number of people admitted to hospital through emergency departments increased by 12 065. That is an average of about 4 000 more admissions each year through the metropolitan emergency departments of our public hospitals.

I noted comments published over the weekend by the President of the AMA and the member for Finniss. There is broad agreement that we are particularly seeing the direct impact of the ageing of our population, combined with a lack of accessibility to GPs who can provide early primary health care to people. As the Menadue report detailed, South Australia is ageing the fastest of all states and, inevitably, people reach an age where chronic illnesses occur, resulting in increasing numbers in our emergency departments. While we are focusing on primary health care and early intervention strategies flowing from the generational health review, the federal government must address the crisis in bulk billing and get more GPs into our outer metropolitan areas.

At the same time as implementing the generational health review the government is rebuilding our emergency capacity. Last May the Premier opened the new emergency department at the Royal Adelaide Hospital and a new emergency department is now part of new construction at the Lyell McEwin Health Service. The $120 million stages 2 and 3 redevelopment at the Queen Elizabeth Hospital, announced by the Premier earlier this month, will also include a new emergency department. At the Flinders Medical Centre a new emergency extended care unit was opened last March to ease overcrowding, and staff numbers in that emergency department have increased from 110 in 1998-99 to 164 this year.

The recent establishment of the 38-bed City Views Transitional Care Facility at Julia Farr is also assisting to meet demands at Flinders. The Flinders Medical Centre has also been working for the past 12 months on a range of initiatives to achieve best practice in bed management and has introduced new models of care to improve the flow of patients through its emergency department and the hospital itself.

Finally, Professor Chris Baggoley, Director of Emergency Medicine at the Royal Adelaide Hospital, has a special role for the Department of Human Services in coordinating improvements across all hospitals in metropolitan Adelaide, as far as their emergency departments are concerned, in line with the recommendations of the generational health review. There are many things to be done but I must say that the $75 million cut to commonwealth funding for health in South Australia over the next five years has only made the job harder.

SPEED CAMERAS

Mr BROKENSHIRE (Mawson): Will the Minister for Transport advise the house how much revenue was raised from speed cameras between 1 July 2003 and 31 December 2003 and to which specific policing initiatives and road safety projects those funds were directed? The government last year announced that from 1 July 2003 all money raised from speed cameras would go into special funds for police and road safety.

The Hon. K.O. FOLEY (Deputy Premier): I am happy to obtain that information for the honourable member and provide it to him at the earliest opportunity. I noted with interest the press release of the shadow police minister last week, where he was having a go at the government; he was critical of the government, clearly in reference to speeding motorists along Hutt Street in the city, from memory.

Mr Brokenshire: Hutt Road.

The Hon. K.O. FOLEY: Hutt Road, was it? The shadow minister was doing the typical opposition tactic of attempting to have two bob each way, that is, 'We as an opposition support road safety and the need to have speed calming devices but how dare the government actually raise revenue from it!' Given the opposition's track record of doing that, I find that extraordinary.

I want to make this statement and make it very clear as police minister: too many South Australians are dying or being seriously injured on our roads. Governments must remain ever vigilant and, indeed, must become more vigilant

in clamping down on speeding motorists. The answer to the problem is simple: if people do not wish to pay speeding fines they should not speed. If we can lower the speed limits in this state, thousands and thousands of South Australians over the generations ahead will go home alive or without serious injury. There is no budgetary measure that I would rather see not achieved, that is, the expected revenue from speeding fines. If that comes in under budget, that means there are fewer people speeding, and that means there will be fewer people dying on our roads. I say to the opposition: if they are serious about road safety, if you are serious about an alternative government for this state, show some responsibility and give up your cheap politics.

LIVESCAN

Mr RAU (Enfield): My question is to the Minister for Police. How does the government intend to implement the recently trialled Livescan technology?

The Hon. K.O. FOLEY (Minister for Police): I thank the member for Enfield for a constructive question about policing initiatives in this state. South Australia Police recently conducted a three-month trial of the Livescan system, an inkless fingerprinting process whereby finger and palm prints are scanned by electronic laser. The scanned images can be entered into the National Automated Fingerprint Identification System to crossmatch images with others in the national CrimTrac system. The crossmatching can enable virtually immediate identity verification.

This three-month trial consisted of a single Livescan device placed at the Elizabeth Police Station between 1 August and 31 October last year. During the trial period, 707 prisoners were fingerprinted, of whom 30 provided false details and another 21 either had fingerprint history in another state or details that did not match those recorded on SAPOL's systems. Further, there were seven occasions where prisoners' fingerprints matched fingerprints obtained from scenes of crimes which were held on the unsolved crime database. SAPOL is currently progressing the procurement of a further 14 Livescan devices which are to be fully integrated with the CrimTrac National Automated Fingerprint Identification System. These devices will be put into the main charging stations of each local service area with one being located at the Fingerprint Bureau in the State Forensic Science Centre. This is a further example of how this government is significantly boosting the technology and capability of our police stations in this state.

A request for tender has been conducted and evaluations nearly completed. Contract approval and execution is envisaged by the middle of next month. Roll out is planned in two phases, with seven being installed between April and June and a further seven between July and September. Site preparation and the training of our officers in the new technology is expected to occur simultaneously with the roll-out. The National Automated Fingerprint Identification System helps our police to fight crime more effectively, and funding for this new technology underlines this government's resolve to give the police the tools they need to do their job better. Ever since we came to government, we have been increasing resources for policing by building new police stations and putting 200 extra police into service over the next 18 months, and millions upon millions of dollars are being made available for new technology. This government has demonstrated that, when it comes to the policing and safety of our community, unlike members opposite who cut, cut, cut the police, we are resourcing them all the time.

TRAFFIC POLICE

Mr BROKENSHIRE (Mawson): Will the Minister for Police advise whether he will employ additional traffic police to address the increased levels of road trauma within South Australia? Following the introduction of the 50 km/h default speed limit, income from expiation notices has risen significantly. In one instance alone—Hutt Road, Adelaide—revenue jumped from just under $37 000 relating to 240 offences in the six months ended 28 February 2003 to almost $198 000 from 1 069 offences in the following six months—a five-fold increase.

The Hon. K.O. FOLEY (Minister for Police): I may be wrong, but I think the member raised that in the media last week, so he is recycling a story that is good enough for the media one week and brings it into the parliament the next week. So be it, if he is bereft of decent questions. This government is putting on 200 extra police officers over the next 18 months. When the member for Bright was the minister for police, from memory (and I stand to be corrected if he is so bold to do so), they cut police numbers. I say to the shadow minister: 'Do your homework; put a little more effort into your questions.' We are putting more police into this state—200 over the next 18 months—and that is a fact of which this Labor government can be very proud, because we have a history of more police officers, unlike the previous Liberal government, which has a history of fewer police officers.

COURTS ADMINISTRATION AUTHORITY

Ms BREUER (Giles): My question is to the Attorney-General. How does the Courts Administration Authority ensure the public has trust and confidence in the workings of the courts?

The Hon. M.J. ATKINSON (Attorney-General): I can understand why the member for Giles would want an answer to this question because, from time to time, there has been public disquiet about how the courts explain their work to the public; and it is quite common for sentences handed down by judges to be criticised intensely on radio and by our morning paper, *The Advertiser*. The Courts Administration Authority has an important role to play in providing assistance and information. In 2003, the authority sought to have a sustained and constructive conversation with the public in many ways. The Courts Administration Authority held two educational roadshows, in conjunction with the parliamentary Education Officer, to give teachers, students, electorate staff and the public in regional areas information about the courts and the parliamentary process. You, sir, of course would say that parliament is merely the highest court in the land, and I know you subscribe to that particular constitutional doctrine.

Mr Venning interjecting:

The Hon. M.J. ATKINSON: The member for Schubert interjects with his agreement with that doctrine. In March, 350 students and 40 members of the public in Murray Bridge, Naracoorte, Kingston, Mount Gambier and Penola participated in workshops and mock court hearings. In August, seven schools in the Riverland came to the workshops and 40 members of the public attended an evening mock parliamentary debate. These educational roadshows went well and a visit to the north of the state is planned for 2004. A court reference

group was also established, comprising members of the courts and the authority, which met various representatives of the public. One such meeting was with members of the Chinese and Vietnamese communities where discussions included how to improve communication with and court services for these communities.

Magistrates continue to talk to indigenous communities in remote parts of the state about long-term justice problems and possible solutions. Indeed, we have two magistrates flying up to the Pitjantjatjara lands from time to time, not to hear cases, not on circuit, but just to talk with the locals—and the member for Heysen nods in agreement: it seems worthwhile. An email contact centre was established last year allowing members of the public to access information from all courts, with routine inquiries being responded to within two hours. Further, separate positions of media liaison officer and communications manager were created. The latter position aims to improve communication with the public in all forms, including, for example, making court documents and forms more understandable. These are just a few examples of the way in which the Courts Administration Authority continually strives to have a useful conversation with the public on the work of the courts and to improve access to information about court services and processes.

PUBLIC TRANSPORT

The Hon. M.R. BUCKBY (Light): Will the Minister for Transport explain to the house why regional councils are being required to contribute to the payment of public transport? I am advised that regional councils are being required to contribute one-third to the cost of public transport in their areas.

The Hon. M.J. WRIGHT (Minister for Transport): I will check the detail but, to the best of my knowledge, that formula of two-thirds from the state government and one-third from councils is the way it has been operating for quite some time. Although this does not relate necessarily to the tenor of the question, I advise that the issue of regional public transport has come up regularly during the consultation phase of the draft transport plan. We have looked at it very seriously and a whole range of options are under active consideration as to how we might be able to do it better in the future.

Regional public transport is of concern in local communities. The subject has come up regularly at those meetings and when getting feedback about the draft transport plan, and it may well be that we need to explore those options and find better ways of doing it. In regard to the specifics, I will check the detail that the member for Light has raised and come back to him with that information. To the best of my knowledge, as I have said, those figures have been around for quite some time.

TRINITY COURT

Mrs GERAGHTY (Torrens): My question is to the Minister for Housing. Has the government found a suitable use for the Oakden community housing facility?

The Hon. S.W. KEY (Minister for Housing): I thank the member for Torrens for her question, and I know that she has been most active in her involvement with the Oakden community housing facility. On Wednesday 11 February I had the pleasure of opening Trinity Court at Oakden. This facility is a joint community housing venture providing long-term housing for people with disabilities. Trinity Court is now the home for 22 former residents of the nearby Strathmont Centre and ends the uncertainty that has been associated with that facility's future.

Members will recall that the facility was originally intended to house elderly people from the Austral Asian Christian Church, but its use was reconsidered after the church had difficulty finding appropriate tenants. We now have a new partnership in place to run the facility which includes South Australia's Community Housing Authority, the Austral Asian Christian Church Housing Association, Intellectual Disability Services Council and Intellectual Disability Accommodation Association.

The Asian community in Adelaide has made a significant financial contribution to the project and I believe that this is an excellent example of collaboration between government and community organisations, ending up with first-class housing for people with a disability. The government is committed to supporting these type of accommodation programs, and we think that it is important that we have housing for people in the greatest need. I am very proud to say that Trinity Court is an excellent example of that.

SPEED LIMITS

The Hon. M.R. BUCKBY (Light): Will the Minister for Transport, with the cooperation of the Adelaide City Council, undertake an immediate review of speed limits within the city council area? Many motorists have advised me, and I have also observed, that the inconsistency of speed limits through the parklands is causing confusion in the minds of Adelaide motorists. Examples quoted to me are Glen Osmond Road, Goodwood Road and Montefiore Road, all of which are 60 km/h, and Peacock Road and Hutt Road, which are both 50 km/h. Motorists say to me that they need some consistency.

Mr Brokenshire: Hear, hear!

The SPEAKER: Order! The honourable member for Mawson and the rest of the group in his cheer squad do not need to yell 'Hear, hear!' every time a question is asked and every time the name of the leader is mentioned. Whilst that sycophantic behaviour might appeal to some, it is inappropriate in this place.

The Hon. M.J. WRIGHT (Minister for Transport): The Deputy Premier, the Minister for Police, has already made a number of points about the 50 km/h speed limit and I will not go back over those. I think that the member for Light well understands the process that has been put in place with regard to its introduction. Not only was the moratorium in place for three months but a process has been put in place by which, if a particular road or street warrants reassessment, the council, whether it be the Adelaide City Council or any other, has the capacity to do that and that reassessment can occur. Whether that leads to a change, obviously, depends on the circumstances.

It is interesting that the Adelaide City Council has had a range of different policies with respect to the introduction of the 50 km/h limit, but one thing that we know for sure as a result of the introduction of that limit, whether it be in the Adelaide City Council or in any other metropolitan area or rural area, is that it is working. We know that it is working because we are starting to get the statistical information about the reduced number of deaths and the reduced number of casualties on 50 km/h limited roads.

TOUR DOWN UNDER

Ms CICCARELLO (Norwood): My question is to the Minister for Tourism. What did the Jacobs Creek Tour Down Under bring to South Australia this year?

The Hon. J.D. LOMAX-SMITH (Minister for Tourism): I know that the member for Norwood has a keen interest in cycling events. This year, the Jacobs Creek Tour Down Under was an unprecedented success. As members will know, this year 470 000 people joined the cyclists on the street, but the focus of the event was changed to incorporate a major tourism push for the first time. Previously, the bicycle race was seen as a safe, world class touring event, but it lacked a focus on tourism, and this year we have seen the efforts put in over the last two years really pay dividends. Last year we started a Breakaway Tour for non-professional cyclists; this year it was sponsored as the Be Active Tour by the Department of Recreation and Sport.

In the first year (last year) we achieved 613 entrants to that race. This year we received 1 387 entrants, 21 per cent of whom were interstate and overseas contestants. The women's criterium series, a circular road race around the city, was entered by 51 women, and the national championship component comprised 42, of which 86 per cent were overseas or interstate contestants. The men's criterium had 24 per cent coming from interstate and the veterans race series had 233 participants, of whom 43 per cent were from interstate and overseas. We therefore achieved almost 2 000 entrants into our additional ancillary events beyond the 96 professional competitors.

We also enhanced our Supporters Club from 90 members in 2003 to 140 in 2004. We were particularly keen to have holiday packages and brought 63 entrants through the Proud Australia portal, if you like, as travel packages. Italia Spring Tours brought 42 interstate and overseas guests and All Trail Bicycle Tours from Victoria brought 11 guests.

This is the first year that we have had any significant inroads into tourism attached to the event. In addition, the 2004 race was a landmark event for television coverage. We had a 266 percent increase in air time nationally, with daily half-hour programs nationally and a two-hour live coverage for Stage 6. This was because of a renegotiation by the SATC to get maximum coverage. In addition, Fox Sports broadcast daily highlights, and nationally there were events throughout the whole program. This related to a change from a 3 to 1 return—

Mr BRINDAL: I rise on a point of order. I draw your attention, sir, to the length of the answer and the availability of ministerial statements.

The SPEAKER: The honourable member for Unley wants the chair to make a subjective judgement about relevance of the material to the question. I do not hear the minister transgressing from the nature of the inquiry, though I have to say it was pretty much an inquiry on the basis of what information is available to people about the improvement of their prospects of comfort in spiritual life in the Old Testament. I know that the member for Unley might be a student of Abraham and that there is more to it than just that. However, the solution to the problem of which the member for Unley complains is in his hands, and that of the house itself. The minister.

The Hon. J.D. LOMAX-SMITH: The improved return for media coverage amounts to an 8.1 compared to a 3.1 percent return on investment. But most particularly, and I think Unley was a beneficiary of this event, with its street party and community involvement, the Jacob's Creek Tour Down Under is, of course, a community building event, and it is, of course, a safe cycle event. The important thing about the event is that it generates major tourism activity for the first time ever and we are marketing now in North America and Europe to produce significant numbers of tourists coming to our state.

Members interjecting:

The DEPUTY SPEAKER: Order! The member for Mawson and the minister can go outside if they want to talk privately to each other. The member for MacKillop.

PERMIT APPLICATION PROCESSING

Mr WILLIAMS (MacKillop): My question is to the Minister for Transport. Will the minister take measures to ensure that his department processes permit applications in a timely manner? On 3 April 2003, a constituent in the South—East operating a transport company applied for a B—double permit for several routes around Lucindale. On 11 December 2003, with the matter still outstanding, I wrote to the minister seeking an answer to my constituent's application. To date, neither my constituent nor I have received any response to those applications.

The Hon. M.J. WRIGHT (Minister for Transport): I thank the member for his question. Yes, of course we will follow that up for the member, and I apologise if it has not already been attended to. In regard to permit applications, late last year—and perhaps it is occurring now as well with the harvest season and so forth—there was some work whereby my office certainly tried to provide some additional assistance to members in regard to some of this not being processed quickly enough. Yes, I will certainly undertake that for the member for MacKillop.

This, of course, is not necessarily always a simple solution, because although we would want to process these permits as quickly as possible, we also have the responsibility to get the balance right. It is a balance of wanting to make sure that road safety is paramount, without disadvantaging those people who are seeking the permits. Perhaps it would not be unfair to say that in the past, under a previous government, permits were on some occasions provided which at the least may be questionable in regard to that.

The development must take account of that. Obviously, we must get that balance right. It is not a simple question. As a broader issue, the department is undertaking some work in regard to this issue. I would suggest that the issuing of permits is an area that does require some attention to get that balance right. I will certainly follow that up for the honourable member.

SPEED LIMITS

The Hon. M.R. BUCKBY (Light): Will the Minister for Transport advise how many submissions Transport SA has received from local councils to revert back to the 60 kilometre speed limit instead of 50 kilometres, and how many have been approved?

The Hon. M.J. WRIGHT (Minister for Transport): I do not know the answer to that question. I am happy to get that detail. The member for Light would not expect me to have that sort of detail. However, we must be mindful that the 50k default speed limit is working. That is what we must be mindful of. As I said in a previous answer, a process is in place when councils make a request for a road to be reviewed.

Of course, as I also said in a previous answer, that does not mean to say that the request will be agreed to because set criteria have been agreed as to whether the speed limit of a road should be 50 kilometres or 60 kilometres.

As the Minister for Police quite correctly asked in one of his previous answers: is the opposition serious about road safety? All opposition members want to do is come in here and nitpick about the 50k zones. That is all they want to do. We know that the 50k speed limits are working. The opposition is not serious about road safety.

Members interjecting:

The DEPUTY SPEAKER: Order!

The Hon. R.G. KERIN: Can I ask a supplementary question, sir?

The DEPUTY SPEAKER: Order! You can. We are waiting for the member for Mawson to restrain himself. Perhaps the member for Mawson could go and explore Hutt Road while we have question time. The leader.

The Hon. R.G. KERIN (Leader of the Opposition): As a supplementary question to the Minister for Transport: is the same policy in place for both country and city council areas on the issue of 50k and 60k speed limits? I am aware of one council wanting to revert from 50 kilometres an hour back to 60 kilometres an hour. It was told that a different policy applied in the country and it would not be able to do so.

The Hon. M.J. WRIGHT: I am not aware of that. I think that, by and large, the policy is the same. The criteria may slightly vary, but it is my general understanding that the policy is the same. What we do know is that the 50k speed zones are working. We know that, in the 10 months since 50k speed zones have been in operation, there has been seven fewer deaths. We also know that we have had 40 fewer deaths and serious crashes. We know that the 50k default speed limit is working. We also know that what South Australia has introduced, that is, a 50 kilometre per hour default speed limit, has also been introduced by every other mainland state in Australia.

STATE AQUATIC CENTRE

The Hon. W.A. MATTHEW (Bright): My question is directed to the Minister for Recreation and Sport. Why did the minister's chief of staff accuse the Mayor of Marion and her media adviser of facilitating a leak to *The Advertiser* in advance of the Marion/State Swimming Centre announcement last Friday, and why did the minister's chief of staff threaten that the minister would not attend the announcement if an advance story carrying my name appeared in *The Advertiser*?

Members interjecting:

The DEPUTY SPEAKER: Order! The house will come to order. The minister.

The Hon. M.J. WRIGHT (Minister for Recreation and Sport): Doesn't the member for Bright have sour grapes? In its eight years in office the former Liberal administration did not get anything off the ground with regard to the potential for a state aquatic centre at the Domain at Marion: it took a Rann Labor government less than two years.

Members interjecting:

The DEPUTY SPEAKER: Order!

Mr Koutsantonis interjecting:

The DEPUTY SPEAKER: Order, the member for West Torrens! I make the point that the minister did not answer the question. I cannot compel him precisely to answer a question, but he has not answered the question. The member for Bright.

The Hon. W.A. MATTHEW: That was my point of order, Mr Deputy Speaker, namely, one of relevance; but if the minister is finished and your call is for my next question, I am happy to ask it.

The DEPUTY SPEAKER: I have made the point. The minister has considerable liberty in how he answers, or does not answer, under current standing orders.

Mr BRINDAL: I rise on a point of order, sir. While the minister is free to answer any question in any way he wishes, in regard to the question asked by the member for Bright, does this matter not constitute an intimidation of a member of this house? If the member chooses not to answer it in this house, will you, sir, refer it to Mr Speaker?

Members interjecting:

The DEPUTY SPEAKER: Order! The member for Unley has raised a point of order. I guess he is hinting at whether it is a matter of privilege. I will refer the matter to the Speaker and he can make some report back to the house on the matter.

The Hon. W.A. MATTHEW: My question is, again, to the Minister for Recreation and Sport. Why did the minister's staff demand that the speech of the Mayor of Marion at the government City of Marion Swimming Centre announcement be changed to remove all references to the project being commenced by the former Liberal government?

Mr Koutsantonis interjecting:

The DEPUTY SPEAKER: Order! The member for West Torrens does not have the call.

The Hon. W.A. MATTHEW: When the mayor was speaking at the announcement, one of my staff who was present overheard one of the minister's staff telling a fellow guest words to the effect of, and I quote: 'This is okay, but you should have seen her draft speech. She even gave credit to the Liberals, but we got rid of that.'

Members interjecting:

The DEPUTY SPEAKER: The member for Goyder is out of order and the member for West Torrens is going very close to getting severe action taken against him. The minister.

The Hon. M.J. WRIGHT: The member for Bright has made a series of allegations and, to the best of my knowledge, none of them are correct. Earlier in a question the honourable member referred to my chief of staff and, as the member for Bright would know, my chief of staff is an absolute gentleman. In regard to the second assertion, and I do not know whether it is still the chief of staff or another member of the staff to whom the honourable member refers, I think that he is making allegations that are simply not the case. That is my belief. It is my belief that the honourable member is making allegations that are simply untrue. And, of course, the mayor can make any speech she so chooses. She is a very competent woman, and she would make a speech with or without the advice of any member of parliament, on either side of this chamber.

Mr Koutsantonis interjecting:

The DEPUTY SPEAKER: Order! The member for West Torrens was given some advice recently; he should take heed of it. We could reach the interesting stage where we do not have politics coming into matters involving MPs and ministers—that would be a first. The member for Playford.

CITIES AND TOWNS DEVELOPMENT

Mr SNELLING (Playford): My question is to the Minister for Urban Development and Planning. What discussions have taken place between state planning ministers regarding the national strategy on population and development in cities and towns, and what is the relevance for South Australia?

The Hon. J.W. WEATHERILL (Minister for Urban Development and Planning): There has been a long period of engagement with other ministers in other states and, indeed, with the federal counterpart minister. There is an unfortunate state of affairs whereby the federal Liberal government, until recently, has taken the view that questions of cities is not a federal responsibility.

This is an extraordinary state of affairs. There is probably not a national government anywhere in the western world that would regard itself as not having any responsibilities for cities policy. Traditionally, it has been the case that there was a strong cities policy under former federal Labor governments. However, we have had extraordinary difficulty in engaging the federal Liberal government on this very question, despite the fact that federal taxation and trade policy and almost every element of the way in which the federal government conducts its affairs has a massive impact on the shape and form of our cities and their effectiveness.

As early as December 2002, planning ministers met in Canberra. At the initiative of the South Australian government, we proposed that the federal government conduct a summit on cities. However, we were unable to engage with the federal minister at the time, because he would not attend the December meeting. We then had another meeting in Adelaide in April 2003 and once again invited the federal Liberal minister. We were, in fact, graced with the presence of Mr Latham, the then federal shadow minister for planning—or what passed for it—and he made a very important speech about the importance of federal governments playing a role in city building policy.

Finally, we managed to get a planning ministers meeting, which was held in Darwin in the middle of last year, where we put on the agenda the question of the federal government's role in relation to cities. Mr Tuckey was the relevant federal minister at that time, and he made it very clear that he did not regard cities as a federal government responsibility so, of course, the request for a summit went nowhere. Fortunately, at the planning ministers' meeting in Perth last week, a more enlightened federal minister, Senator Campbell, agreed to the various state ministers' requests, and a federal summit on towns and cities will be held (most likely in Canberra) on 4 June 2004. This is a substantial issue. There is a crucial need for the federal government to participate in cities policy, and there is now a forum where we can encourage the federal government to do that. I am very sure that the federal Labor opposition will have a policy on cities to take into the next election, and it will be interesting to see whether the federal government can match it.

HOSPITALS, PORT LINCOLN

Mrs PENFOLD (Flinders): My question is to the Minister for Health. How can the minister justify the Port Lincoln Hospital having to have an extended closure of operating theatres in April, which will adversely affect surgery for about 118 patients due to the hospital facing a $360 000 deficit this year?

The Hon. L. STEVENS (Minister for Health): I thank the member for her question and her interest in health services in her electorate. As I told the house last week, the budgets of all country health regions increased by an average of 4.83 per cent last year. There are tensions and pressures across certain areas of the country, one being Port Lincoln. At the moment, my department is undertaking a mid-year budget review where we will be looking at those issues and, wherever possible, we will be looking at there being no cutback in services. The issue in relation to Port Lincoln will be the subject of discussions around the mid-year budget review.

SCHOOLS, STUDENT ABSENTEEISM

Mr CAICA (Colton): My question is to the Minister for Education and Children's Services. What measures has the state government taken to ensure that students regularly attend school, particularly in the western suburbs of Adelaide?

The Hon. P.L. WHITE (Minister for Education and Children's Services): This is an important question, and I thank the member for Colton for his interest and, indeed, his advocacy for this and many issues relating to the schools in his electorate. The state government has put in place a $1 million package of projects to improve the reporting of student absenteeism to parents and to get non-attending students back to school. Five action zones have been set up to bring together principals, school counsellors, attendance officers and district education leaders to work cooperatively on solutions with students and their parents. The projects are being implemented in five attendance action zones, which include schools with some of the highest levels of student absenteeism in the state. Projects in the $1 million package include SMS text messaging to let parents know when their child is absent from school, some on-site child care to support young mums to attend school, information for parents about the importance of regular school attendance and punctuality, support for community-provided breakfast club programs, and programs to help students in their move and transitions in their schooling.

The western metropolitan area is one of the five attendance action zones; in total, there are 40 schools and preschools in that zone. Nine of those schools are aiming to reduce the gap by a minimum of 50 per cent between their 2003 attendance rate and the state average. All other schools in the action zone will aim for a 2 per cent increase in attendance rates this year. Figures in 2003 already show that gains are being made in the reduction of student absenteeism. Millions of extra dollars are being invested in our schools, particularly last year and this year, and it is important that students are at school regularly in order to get the benefit of that investment. As was correctly reported in the *Sunday Mail* a week ago, we are sending a strong message to the community that we are prepared to instigate legal action where we believe there is evidence that children are failing to get an education. The projects in the action zones particularly complement the work being done in all schools around the state to improve student attendance, which includes the development by every government school of an attendance improvement plan.

EUROPEAN WASPS

Mr GOLDSWORTHY (Kavel): Will the Minister for Local Government explain to the house why this government has made the decision to cease funding the European wasp eradication program via the European Wasp Equalisation Fund? This program has been very successful in seeing hundreds of wasp nests eradicated. However, at a time when reports of European wasp activity are increasing, the funding halt for the equalisation fund will exacerbate the problem for councils in whose councils nests occur.

An honourable member interjecting:

The Hon. R.J. McEWEN (Minister for Local Government): I will not be intimated by people on the other side of the house. I have been dealing with this issue over the weekend, because the shadow minister has somehow had an incredible lapse in terms of realising that in 1998 he was the one who said that an eradication program for the European wasp was no longer possible and that there should be a change in the emphasis. Furthermore, he then took money for this program out of the forward estimates. What happened then was that, to allow further studies to go ahead, the program was funded for another three years. It was assumed, of course, that we would not achieve the objective, because the then minister had already said that it would not work. Sure enough, the outcome of the study was inconclusive. There is no point in spending money simply removing wasp nests: we need a strategy around the fact that wasps will be with us for ever and that we are not going to eradicate them. We need a strategy around educating people to come to grips with the fact that, like it or not, these wasps are now part of this landscape. If you are going to use scarce public resources, you need it in terms of focusing on an education program around accepting that these wasps are now part of the environment.

CHILD ABUSE

Dr McFETRIDGE (Morphett): My question is to the Premier. Has the Premier received a copy of the Catholic Church's inquiry into child abuse? If not, does he have any indication as to when the report will be available to be tabled in this place? On 13 October 2003 the Premier advised me in answer to a question that he had both written to and spoken with the archbishop offering to table the report in this parliament. I have been informed by parents involved in this inquiry that the report is now finished.

The DEPUTY SPEAKER: Order! The Premier is not responsible for any church or all churches, but if he cares to respond it is up to him.

The Hon. M.D. RANN (Premier): I did have a conversation with the archbishop and also I wrote to him, from memory, on 13 October. I have not been advised that inquiries by either the Anglican Church or the Catholic Church have been completed. Again, the offer remains open in terms of tabling the reports in this parliament. Certainly I will inquire whether it is true that the report has been completed. Obviously, that is in the hands of the Catholic Church. I suggest that the honourable member contact Archbishop Phillip Wilson directly in order to ascertain the veracity of the information he has been given.

DISTINGUISHED VISITOR

The Hon. M.D. RANN (Premier): In the house today we have a distinguished visitor in the Minister for the Arts, Minister for Auckland, and minister for many other things, the Hon. Judith Tizzard, MP for Auckland Central in New Zealand. She is most welcome here. She is an old colleague of mine from many years ago.

The DEPUTY SPEAKER: I was going to acknowledge the visiting minister, whom we welcome to Adelaide. I also acknowledge—he has now left the gallery—the federal senator, Rod Kemp, Minister for the Arts. He was here earlier on.

SCHOOLS, HECTORVILLE PRIMARY

Ms CHAPMAN (Bragg): My question is to the Minister for Education and Children's Services. Has the government sold the former Hectorville Primary School site which has been closed for three years and which is occupied by squatters who are causing distress to the neighbourhood; if not, what action will be taken to secure the property pending its sale?

Members interjecting:

The DEPUTY SPEAKER: Order! As far as I am aware there is only one Minister for Education and Children's Services.

The Hon. P.L. WHITE (Minister for Education and Children's Services): My understanding is that the property is no longer in Education Department hands. I understand that it is in the hands of the Housing Trust.

SOUTH ROAD

Mr BROKENSHIRE (Mawson): My question is to the Minister for Transport. Following the response I have had following three letters to the Minister for Transport, from memory, requesting an upgrade of the very busy road out of the Victor Harbor-McLaren Vale area—

The Hon. P.F. CONLON: I rise on a point of order, sir. That is not a question but, rather, an explanation. Leave of the house should be sought if the member for Mawson wants to make an explanation.

The DEPUTY SPEAKER: Order! The member for Mawson will phrase it as a question.

Mr BROKENSHIRE: Thank you, sir. Will the minister join with me and constituents of my electorate at 7.15 on a weekday morning to see how busy the traffic congestion is at the entrance to the Sellicks South Road from the Old Noarlunga-Victor Harbor Road, and then take immediate action in the budget to address the problem?

The Hon. M.J. WRIGHT (Minister for Transport): No, I will not.

GRIEVANCE DEBATE

HICKMAN, Mr W.D.

The Hon. DEAN BROWN (Deputy Leader of the Opposition): I raise an important issue about inaccuracies of some credit checks by companies on individuals and the subsequent lack of concern by companies and the state government in correcting this serious error. A constituent, Wayne D. Hickman of Kangaroo Island, approached the ANZ Bank about a loan to buy sheep for his property. Everything seemed to be progressing well until the ANZ Bank told

Mr Hickman that he had a large outstanding debt against him and his loan was refused. He was told the alleged debt was $1 600 owed to ETSA Utilities. He assured the ANZ Bank that that was wrong. He was able to determine through ETSA Utilities that the debt was against a property at Eagle on the Hill owned by D.W. Hickman. That land is not owned by my constituent and the owner is acknowledged as a different person—a Mr D.W. Hickman.

Mr Wayne Hickman asked the bank to correct the records of the credit company with whom they did their check. He was bluntly told that it was not the bank's responsibility to do so. ETSA Utilities told him to ring AGL, who told him they had no bad debts against his name. He rang the Ombudsman's office who referred him to the Electricity Ombudsman, who said he was not able to provide any help. He rang the Attorney-General's Office, who told him to ring the Deputy Premier's (or Treasurer's) office, who told him that they would ring him back on Monday. Last Friday he finally tracked down the credit risk company involved, who claimed they did not have a negative report on his credit worthiness. They deny any error on their part. Mr Hickman asked for a letter clearing his name but they refused to supply one. Wayne Hickman wants this damaging error corrected, but no-one seems to want to accept responsibility to do so.

I am amazed and disappointed by the reaction of the ANZ Bank, although I received a similar lack of interest from this bank in 2001 over another serious incident. The state government seems to have handballed the problem from one agency to another and from one minister to another without any adequate response whatsoever. In fact, I understand there could be legislation covering this, which the Attorney-General's Office obviously did not even realise when they told Mr Hickman to ring the Deputy Premier's (or Treasurer's) office. In the meantime, a very damaging credit checking error persists against an innocent person. How does Mr Hickman get someone to accept responsibility and to act?

PNEUMOCOCCAL INFECTION

Ms RANKINE (Wright): I report to the house that in the first six weeks of this year, a total of nine children under two years of age have contracted pneumococcal infection. Of the five cases reported in the week of 8 to 14 February, four were under one year of age; and in the week of 1 to 7 February, there were two cases and both children were one year old.

On 13 November I put a motion to this house and I appreciated very much the support of members opposite for their clear understanding of what is an important issue in relation to the health and wellbeing of all Australian children. When I spoke in this house in November we had had 405 pneumococcal cases in South Australia since it became a reportable disease in 2001 and 26 people had died. Pneumococcal is four times more prevalent than meningococcal and eight times more deadly and, just for comparison purposes, compared to 20 cases of pneumococcal this year, there have been two cases of meningococcal.

One in 10 infants who contract pneumococcal die and four in 10 are left with significant disabilities. Pneumococcal can leave a young victim with severe brain damage, cerebral palsy, blindness and deafness—and the list goes on. These tragedies are being suffered by our children and their families as a result of a preventable disease—a disease for which protection is available; protection which has been recommended by the federal government's own experts; protection which is being denied our children because the federal government will not act.

On 17 December with the support of the AMA, the Royal College of Physicians, Business SA and the Liquor Hospitality Miscellaneous Workers Union, I launched a national campaign to try to convince the federal government to fund pneumococcal treatment, as has been recommended by its own experts, that is, that the pneumococcal vaccine should be provided free to all Australian children under two. The launch was held at the Royal Adelaide Hospital childcare centre, and I thank them for both their patience in allowing us to intrude on their day and their very strong support. We were also joined by 10 beautiful babies who surprised us all: they happily ate their way through the media conference with not a squeak of discontent.

The launch consisted of a mail-out to all MPs (state and federal) providing them with information about the devastating impact of pneumococcal and seeking their support for a petition calling on the federal government to act. I have been delighted with the response, with messages of support from all political parties pouring into my office on a daily basis. Labor, Liberal, the Democrats, the Greens: at the very least, all have undertaken either to write to or speak with the federal Minister for Health—and I am sure he will very much appreciate that. He will at least get some indication of the concern that exists within the community. Many MPs are distributing the petition around their electorates, and some have indicated that they will also put motions to their state parliaments similar to the one that I have put to our parliament.

I have also written to child-care centres in South Australia and visited many of them personally. Again, I am grateful for their support and the encouraging messages I am receiving from them as they return their petition forms to me. What is very clear to me as I visit centres and talk with staff and parents is that people are unaware of the existence of pneumococcal and its devastating consequences. Last week, I spoke with the mother of a little boy who contracted pneumococcal. I think I can safely say there is not a day that goes by that she does not thank her god for the blessing of allowing her son to fully recover. She did not know what pneumococcal was and she did not know the hazards her baby son faced when she was told that he had it. Then reality hit hard. She and her husband and their families had to deal with indescribable fear and anxiety. Talking of that time still brings her to tears.

How many young mums have to face this trauma and worse before Mr Howard and Mr Abbott act? I will continue to raise this issue until they do. I will continue to build public awareness of the dangers of this preventable disease, and I will continue to report to this house cases here in South Australia as they are reported.

ENVIRONMENT PROTECTION AUTHORITY

Mrs REDMOND (Heysen): I rise to bring to the attention of the house what is, in essence, bureaucracy gone mad. I refer to the Environment Protection Authority. When this authority was set up I was extremely happy that we were going to be paying some real attention to the protection of our environment, but a number of instances that have come to my attention in just my electorate over the past few months have convinced me that here we have a bureaucracy which considers itself to be beyond anyone's control and a law unto itself. It governs itself according to the minutiae of regula-

tions rather than doing what it was set up to do, that is, to protect the environment.

I will go through some of the instances that have occurred just in the electorate of Heysen over the last few months, the most outstanding of which concerns a chicken farm. This chicken farm is located on both sides of a main road: there is a house and some chicken sheds on one side of the road and on the other side a nine-acre allotment with some more chicken sheds. These chicken sheds have been there for some 30 years and have been the subject of various complaints. Indeed, I acted in relation to an offensive smells complaint regarding these chicken sheds when I was in legal practice.

The community at large would be very happy if these chicken sheds were removed, but they cannot be removed unless the owners consent, because they have the right of existing use. The owners are more than happy to remove this chicken farm, subject only to their need to finance that by selling off the nine acres on the other side of the road, which would allow the development of a single house. The owners are prepared to enter into an agreement to allow the compulsory removal of the chicken sheds and everything associated with them on both sides of the road so that the whole farm is closed down and no longer operational. Because it is in a watershed zone it would never again be allowed to be a chicken farm.

To put one house on the other side of the road, the EPA says would be a bad precedent, it would create a new allotment in the watershed. So, instead of getting rid of a chicken farm which has literally hundreds of thousands of chickens raised there every year with all the consequent deliveries and removals by semitrailers, the collection of litter from the chickens by semitrailers, and all the noise, smell and adverse effects for the community of that, the EPA says, 'We can't have a house instead of that because it would set a bad precedent.' The whole community agrees that if every chicken farm in the hills was closed down on the basis that one extra house was erected in lieu of a chicken farm, this would be an added bonus to the environment, but not according to the EPA.

To cite another example of where the EPA does not do what it is supposed to, a few months ago there was a rave party at Meadows. The EPA was advised that this rave party was to be held and it promised to send someone to do something about it, but it did not even take any measurements in order to do anything about the noise, let alone prosecute anyone afterwards. It was back to doing what they should not be doing and that is trying to impose unnecessary regulations on the community at large.

A couple of years ago, a chap in my electorate set up a house cleaning business (that is, cleaning the outside of houses) using high-pressured sprays. He uses absolutely no chemicals, and before he set up the business he went to the bother of contacting all the relevant agencies that he could think of, including the EPA, and he was assured that he did not need a licence to operate the business, that there were no particular requirements, and he spent many thousands of dollars setting up the business. He was just getting on his feet with that business and along came the EPA and said, 'No, you can't operate this business, because the water will go into the drain.' It is perfectly clean water with no chemicals whatsoever added, but the EPA tells him that he can no longer operate his business because the water would go into the drain. One might ask: why do we have drains; what are they for?

Similarly, a local butcher spent many thousands of dollars since purchasing his shop on making it one of the cleanest, tidiest and nicest shops. The council's health inspectors are delighted with the work this chap has done, but the EPA says, 'You can't clean out your trays and allow that water to go into the drain.' In this case, there is a small amount of detergent that goes into the drain system, but I guarantee that what that butcher puts into the drain system at the end of the day from his shop is far less than what the average household puts into any drainage system, a house such as mine with five adults using shampoos, conditioners, dish detergent, washing powder and everything else. The EPA has become a law unto itself, and in my view it needs to be stopped.

FESTIVAL OF ARTS

Ms BEDFORD (Florey): The Fringe is now with us, and that means that the Festival is close by. These events generate much anticipation and excitement as well as visits from family and friends and an increase in tourism in general. Arts and cultural activities are about far more than simple economic statistics, though; they have the potential to bring life and vigour to this state to combine communities, and they are often the things that people most remember about their visit or, indeed, the thing that attracts them to come to Adelaide in the first place. For residents of this state, these events can be a catalyst for enormous satisfaction. The sheer number of those involved in artistic and cultural pursuits is eloquent testimony to their importance in people's lives.

South Australia has always been a city of acceptance, diversity and artistic endeavour. More than any other capital city, Adelaide thrives on being different. This is a place where there is broad community support for special events that encourage freedom of expression. Our international reputation as the Festival State has been forged on the success not only of the biennial Festival but of the states many community-based festivals. Our city is the perfect stage for theatre, cabaret, film, visual arts, and literature and community events of all shapes and sizes. We have a proud history of supporting a diverse range of arts and cultural events, and our reputation for staging internationally acclaimed events continues to grow at an amazing rate.

We are currently living in the vibrancy created by the Fringe. The Adelaide Fringe 2004 is a feast of theatre, dance, cabaret, comedy, music, film and visual arts by over 400 artists and companies from across Australia and around the world. My congratulations go to Karen Hadfield, this year's Artistic Director, and all of her staff and to the multitude of artists for this wonderful festival. The Adelaide Fringe is one of the state's highest profile events, and I understand it is the second largest fringe festival in the world. It is a festival that is accessible and affordable for almost all South Australians and, as the people's festival, I urge everyone who can go along to see as many shows as they can.

Following the visit—or should I say cultural exchange—to this house on Thursday by Kenny Kramer and his fellow performer, Ron Maranian, I was able to secure a ticket to attend one of his three sold-out performances. Each and every person—and there were people from primary school age to pensioners—was enthralled by his stories in relation to the creation of and the stories behind the *Seinfeld* TV show, so very popular in over 90 countries. His show is a fine example of why the Fringe is so popular: keenly priced tickets in accessible venues enjoyed by a large number of people. I

often find that looking through the Festival and Fringe brochures is half the fun.

Very soon, as I said earlier, the Adelaide Bank 2004 Festival of Arts will be here, and Adelaide will be transformed into Australia's cultural meeting place. Hundreds of thousands of South Australians and artists from across the globe will come together for fantastic and inspiring performances. Congratulations must go to Stephen Page, the festival's artistic director, and his team. What a wonderfully talented person he is—his body of work speaks for itself.

I am also looking forward to Adelaide Writers' Week, which promises a stellar array of overseas guests, as well as a line-up of outstanding Australian talent. Adelaide Writers' Week is celebrated throughout the world for the quality and diversity of the writers, both local and international. This year will again be a connection of writers and readers, stimulating debate and an exchange of ideas. I point out that one of our own local favourites in the Holden Hill area, author Doris Katinyeri, will be a part of this year's festival. And, last but by no means least, we must talk about Womadelaide celebrating the sounds of the planet. Womadelaide is one glorious weekend in the magnificent Botanic Park setting, and it will feature Adelaide's inner city artists and artists from around the globe performing on six stages, with the opportunity for those artists to discuss, teach and share their music, arts and dance, providing a wonderful window of opportunity to showcase their cultures.

This sharing of cultural experiences and performances is positive for us all, and anyone who attends is able to see the cross-fertilisation of ideas and creativity that enhances lives and uplifts both performers and the audience. This is the sort of outcome we are trying to achieve in our own area in Modbury. As we saw last week when the Modbury school community project was announced, it will give us the space and opportunity to promote local art. Hopefully, we will have an artist in residence soon, and this will widen the art focus of the City of Tea Tree Gully Council's activities. We have the Golden Grove Arts and Recreational Centre with Greg—

Ms Rankine interjecting:

Ms BEDFORD: It will not be for very much longer. I hope that Greg Hordacre will be working very closely with Greg Mackie and Arts SA, and I hope that events from the next Fringe will be performed in our area, enabling our own people to attend without having to travel into the city and also to experience those sorts of international art happenings at very reasonable prices. I am looking forward to seeing the Fringe reach Modbury and the greater Tea Tree Gully area at its next outing.

SCHOOLS, HECTORVILLE PRIMARY

Mr SCALZI (Hartley): Today I wish to speak about my concerns about the former Hectorville school site, following on from the question asked by the spokeswoman for education, the member for Bragg, in question time. I note that in her answer the minister said that she understands that the site is now in the hands of the Housing Trust. As the local member, I wish I had been informed, because I have asked on numerous occasions, both in this place and outside, what was to happen to the Hectorville school site. Despite whether it is in the hands of the Housing Trust or the education department, there is a problem on that site, and I wish the government would deal with it. I refer to an article in the *East Torrens Messenger* of 7 January headed 'Vandals, squatters invade old school' and a photograph of a resident (who did not want to be identified) inspecting the old Hectorville Primary School site with me. I will still not identify that elderly resident because of the concerns they have about the ongoing problems with vandalism and security at the site and the fear and anxiety that activities at the site are causing elderly neighbours.

In recent times, two stolen cars have also been dumped in adjacent streets, and residents consider that the derelict site attracts this type of activity. The main school buildings—and I saw this—are basically sound with new roofing; however, for the past three years, they have been empty and boarded up. Several air-conditioning units, which were in good condition, have now been progressively vandalised, with components dismantled and thrown from the roof, along with items such as TV antennas and piping. Transportable buildings have had holes broken through the cladding walls, and the grounds are littered with fragments of cladding or asbestos materials. The swimming pool gate has been broken open, the pool is drained and dirty, likewise, various shed and outbuilding/toilet buildings. My constituent says that this happens repeatedly and that repairs are constantly required to secure the site.

I would like to know how much the government has spent on repairs to this site in the last three years and why it has not done something about it. I just wish that I had been informed. When I visited the site it was littered with glass shards, discarded packaging and even belongings from those who have periodically squatted on the site. There is also graffiti and evidence everywhere of the activities which residents report—vandalism, drinking, partying and also use of the oval for car 'donuts'. The asphalt surfaces are breaking down and weeds are growing through and, according to residents, undergrowth and leaf litter, now extremely dry, pose a fire hazard, given the vandalism and squatting. The dumpster supplied for the Down Syndrome Society has attracted large amounts of unauthorised dumping of garbage before Christmas, and this necessitated removal before the contractor could access the dumpster.

Residents are angry at the waste and destruction of sound buildings and at the ongoing noise nuisance and security issues. The site is also ugly and causing uncertainty for those wishing to redevelop or sell the property. As I am informed today, obviously it is in the hands of another government department. The *East Torrens Messenger* reported in August that the education department said it was negotiating the sale of the $2.1 million site at Magill to a state government agency but refused to give more details. Obviously, today the member for Bragg has the detail. I just wish that they would do something about the site so that my elderly constituents can be assured that something will happen to it. I welcome the Housing Trust to the area and the much needed homes. It would be a good idea if that site were developed, but I reiterate that the former government made a promise that two tennis courts would go to the Hectorville Sporting Club, and I hope that this government will honour that promise.

HOUSING, YOUTH

Ms THOMPSON (Reynell): This afternoon I wish to continue the remarks I was making last week about the plight of youth in the southern area who are unable to secure sufficient housing. On Thursday I mentioned that the stock of houses available to the community through the public sector, either through the Housing Trust or community housing, had fallen by approximately 8 000 houses during the

period of the former Liberal government, and I touched on the fact that the commonwealth-state housing agreement had made the job very difficult for state housing members of all persuasions, because the commonwealth apparently does not share the commitment that the current Minister for Housing has to providing good quality, appropriate housing for people in need.

In the south, 981 young people need housing, with 40 of these in crisis. People under 25 now form about 20 per cent of the housing list, and I know in talking with community members that they do not always understand why this might be the case. They expect that these young people would be housed by their parents, or venturing out into group activities. The fact is that many young people are kicked out when they are 16. The *Messenger* tells the story of James, who does not say whether he was kicked out or whether he just decided to leave at 16, but that does seem to be an age in the mind of some people where children are able or obliged to leave home. James has now been couch surfing for about four years and finding it very difficult to get his life in order, as a result of his unstable housing arrangement.

The *Messenger* also tells the story of Kylie, who came from interstate with her partner and her young child hoping to obtain a home in Adelaide, but she was obviously very poorly informed in thinking that she might be able to get a home here. They simply are not available. She has been housed by Southern Junction Youth Services, an excellent organisation run by Ms Chris Halsey, which provides homes for hundreds of young people each year. It also provides support services to enable these young people to manage living in a home, that is, by looking at all the issues of budgeting, getting a good rental record and establishing a record with the various utilities so that they are able to move out and get more permanent housing on their own.

I want to amplify some of the situations that people in need of housing find themselves in when they are quite young. One of the people who has come to my office is Verity, who is living at her partner's mother's house, sharing a single room with her partner and two small children. Also living in the house is the mother and two of her adult children, one of whom has autism, which places extra pressure on the residents in the house. The house itself is in poor condition, with mould on most walls exacerbating the respiratory problem of one of the children. Verity believes that one of the reasons she cannot get private rental housing is because her partner is Aboriginal. She has experienced considerable discrimination in the private rental market and believes, probably with some cause, that that is the reason.

Davina is living with her parents, her brother and her infant son. Her son was born blind and has a number of other medical conditions. Her brother experiences behavioural problems and violent episodes, which creates a very unsafe environment for Davina and her baby. She also is unable to find accommodation. Then there is Gary, who has just been through a drug rehabilitation program. His mother, Hazel, is most anxious to support him to get on with a new life, but he cannot get any housing. His mother has a one-bedroom cottage unit. Hazel was so anxious that Gary have stability in his life and a place to call home that she gave up her bed—sleeps on the couch—to allow Gary to start getting his life together in her room. This is a tragic situation.

CRIMINAL LAW CONSOLIDATION (ABOLITION OF THE DRUNK'S DEFENCE) BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935. Read a first time.

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

That this bill be now read a second time.

The bill, as its title suggests, seeks to amend the criminal law to abolish what is commonly known as 'the drunk's defence'. To put it another way, the bill seeks to overturn the majority decision of the High Court in O'Connor. That is not easy to do. The law to which we seek to return was itself complicated and controversial. To understand what the bill seeks to do, it is necessary to look at the history of the law on intoxication as a so-called defence to certain crimes.

The modern history on intoxication and criminal liability begins in 1920 with the decision in Beard, 1920 Appeals Cases at page 479. In that case, the accused was charged with murder. He was intoxicated at the time he committed the offence. The highest court in England was asked to review the law on the relationship between intoxication and criminal responsibility. The decision sparked a great deal of analysis and debate but, whatever the decision was supposed to mean, there is no doubt about what it was taken to mean.

The decision established the law to be this. Almost all serious offences with very few exceptions require proof of some kind of criminal fault that is personal to the accused, commonly known as intent or knowledge. Serious offences are classified into two groups: crimes of specific intent and crimes of basic intent. The rule is that the accused may use evidence of self-induced intoxication to show that he or she did not have the specific intent required for specific intent offences, but may not use evidence of self-induced intoxication to show that he or she did not have the basic intent required for basic intent offences.

That was the common law in Australia until 1979, when the High Court decided O'Connor. In that case, the accused was seen by an off-duty policeman opening the policeman's car and removing a map-holder and a folding knife from the glovebox. When the policeman asked the accused what he was doing, the accused fled. The policeman caught him and they struggled. In the course of the struggle, the policeman was stabbed with the knife. The accused said that he was heavily intoxicated through a combination of alcohol and tablets with hallucinogenic effect. The evidence of intoxication was, however, weak. He was charged with the offences of stealing and wounding with intent to resist arrest, both of which are offences of specific intent. The trial judge directed the jury in accordance with the Beard rules. The jury believed that the defendant was so intoxicated that he did not form those specific intents required for those offences and, instead, convicted him of unlawful and malicious wounding, a crime of basic intent.

The defendant appealed the conviction on the ground that the Beard direction was wrong. The High Court split 4 to 3 on the question. The majority ruled that the Beard rules were wrong and that they should not be replaced with any special common law rules at all. If there were to be any changes to the common law general principles, they should be imposed by the parliament. The result of this decision was that, at common law, intoxication could be used to deny, on the facts, that the accused had any kind of fault element for any kind of offence at all.

The government believes that as a matter of policy this decision is wrong. It promised at the last election to reverse it. The bill fulfils that promise. As with the Beard rules, the bill does not say that intoxication is never relevant to criminal liability. It will be relevant in some cases and not others. I seek leave to insert the remainder of the second reading explanation in *Hansard* without my reading it.

Leave granted.

The policy behind the Bill is, however, easy to explain. In justifying the *Beard* rules in the later decision of *Majewski* [1977] AC 443, members of the House of Lords made statements with which the Government thoroughly agrees. For example:

> "If there were to be no penal sanction for any injury unlawfully inflicted under the complete mastery of drink or drugs, voluntarily taken, the social consequence could be appalling. … It would shock the public, it would certainly bring the law into contempt and it would certainly increase one of the really serious menaces facing society today.
>
> and
>
> "If a man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition. His course of conduct in reducing himself by drugs and drink to that condition in my view supplies the evidence for *mens rea* [criminal fault], of guilty mind certainly sufficient for crimes of basic intent. … The drunkenness is itself an intrinsic, an integral part of the crime, the other part being the evidence of the unlawful use of force against the victim. Together they add up to criminal recklessness.

General public policy aside, another problem is that the common law may lead to undeserved acquittals. Some would say that it does not matter if the general principles are right if they get to the wrong result—or that the judgment that the principles are right is in itself shown to be wrong by their results. These acquittals are not common but they do occur—and when they occur, the public shows what it thinks of them. The decision in *O'Connor* itself caused a public controversy. More recently, there was the decision in the ACT Magistrates Court in a case known as *Nadruku*. The defendant was a prominent member of a professional rugby club. He began drinking in various licensed premises at about 1pm on a Saturday. Just after midnight, the defendant struck two women within 10 minutes. He was charged with common assault. There was no doubt that he struck the women concerned. The case turned on intoxication. The ACT, like South Australia and Victoria, is ruled by the common law and hence the *O'Connor* principles.

The defendant gave evidence. He said that he was drinking at a rate of about three schooners of full strength beer an hour. He had about 12-20 of these and then consumed about half a bottle of wine, and then resumed drinking beer. He was understandably less precise about how much he consumed after that. He did not eat anything during that period, nor could he recall the assaults. There was good evidence that, by the time he was taken to the police station after the assaults, he was "comatose"—barely conscious. Expert evidence was also presented. The effect of it was that the blood alcohol level of the defendant at the time could have been anything from 0.3 to 0.4 and that such levels were capable of causing death from respiratory failure. The defendant had built up some tolerance to alcohol but must have been in a state of "alcoholic blackout" or "serious organic interruption in his brain". The Magistrate acquitted him, saying simply: "That the degree of intoxication is so overwhelming to the extent that the defendant, in my view, did not know what he did and did not form any intent as to what he was doing.".

The acquittal provoked some outrage—not least from the Magistrate himself. Although not commenting on the law, he said of the defendant's behaviour: "The two young ladies were unsuspecting victims of drunken thuggery, effectively both being king hit. The assaults were a disgraceful act of cowardice.

Not only are these acquittals, although rare, unacceptable, but the fact that the current law makes them possible is unacceptable. The law must be changed to accord with what the public expects of it. It is clear that the public does not condone drunken violence. Nor will this Government. The question is not whether to do something—the question is what to do.

A moment's thought will show that complete abolition is not an acceptable answer. Suppose one of the women hit by Nadruku had died. If the law was such that intoxication was wholly irrelevant to criminal responsibility, Nadruku would be deemed guilty of murder. That would not be the right result. It would, wrongly, classify Nadruku together with those who kill intentionally or recklessly. That would not only value his conduct wrongly, it would devalue theirs. No comparable jurisdiction has ever taken that position. The hypothetical Nadruku may be a thug, but he is not a murderer. On the other hand, it would not violate commonsense to classify him with those who cause death by dangerous driving or other criminally negligent behaviour and convict him of manslaughter. And, if death did not occur, it does not violate commonsense to convict him of assault.

But how do we get to that result? An obvious alternative would be to return to the *Beard/Majewski* rules which governed the common law position in Australia and hence in South Australia between 1920 and 1979. In general terms, those rules would acquit of murder and convict of manslaughter. This may be the right result, but such an option poses problems that I will enumerate.

1. The basic principles of general criminal responsibility have changed and become more complicated than when *Beard* was decided. For example, in the last 50 years, the common law developed the notion that the act which caused the crime must be committed "voluntarily" for liability to attach. Notable examples of involuntariness which defined, and continue to be at the centre of, the genre were sleepwalking, spasms or convulsions, concussion and, more controversially, reflex actions and hysterical dissociation. It is also clear that a person may be so intoxicated by drink or drugs (or both) so as to act involuntarily. The *Beard* rules do not cope with this. If the law is to be changed, voluntariness must be addressed. In essence, this must mean that the voluntariness of any act would be assessed on the fictional basis that the accused was sober and, hence, it would be presumed that the accused acted voluntarily.
2. The law on criminal fault has also changed. In Australia, there has been less stress on intent and more on liability for recklessness. The *Beard* rules do not address this at all. That has not been a problem in England, because the English definition of recklessness, until very recently, judged the accused against the standard of conduct expected of a reasonable person and, of course, the reasonable person is not intoxicated. In Australia, the test for recklessness does not include reference to a reasonable person. This too must be addressed in any solution.
3. More fundamentally, the major problem with framing the *Beard* rules into legislation is that no-one can agree on what is and what is not "basic intent" and "specific intent". How then did the rules work? The answer is that, in practice, before *O'Connor*, where the *Beard* rules applied, the classification of offences into those of "specific intent", where the accused could argue intoxication, and those of "basic intent", where the accused could not argue intoxication, was done by simply listing all the offences that had been the subject of judicial decision. Over the years, the courts had decided a great number of appeals on the subject and, while the general principles were unintelligible, authority decided the classification of the offence. If there was no authority, one waited for it.

Clearly, then, the *Beard* rules pose formidable difficulties. But there is an alternative. The Model Criminal Code Officers Committee was directed by the Standing Committee of Attorneys General to devise a solution. It did so. It has an effect similar to the *Beard* rules, but not identical. The basis of this solution is an attempt to define "basic intent" rather than try to define the slippery notion of "specific intent". The result is that self-induced intoxication cannot be taken into account to deny voluntariness and the intention with which the act was done, but can be taken into account to deny any other fault element, whatever that might be. It is this approach to reinstating a version of the *Beard* rules that forms the basis of the amendments proposed by this Bill.

The general principles work in the following way. All serious criminal offences consist of "physical elements" and "fault elements". Together, these elements make up a crime. All physical elements and all fault elements must be present at more or less the same time to make a person guilty of the crime. These elements are set by the *legal* definition of the offence. In South Australia, the crime and, hence, its elements, may be set out in legislation by Parliament or they may be wholly created by judges at common law, or they may be a mixture of both sources. In general terms, physical elements describe or define matters or events external to the accused. In equally general terms, fault elements describe or define either the

state of mind *of the accused* in relation to the offence that must be proved for guilt to attach, or a hypothetical state of mind by which the accused must be legally judged for guilt to attach.

Physical elements may be conduct and circumstances that describe conduct or consequences, or both. Conduct may consist of an act, an omission or a state of affairs, but is usually an act. Fault elements often attach to these physical elements. Invariably, for example, an act must be done intentionally for criminal liability to attach. An act must also be done "voluntarily" in the sense described before. This can be illustrated by the crime of murder. Generally, so far as physical elements are concerned, murder has two physical elements. It requires proof of any act (the conduct) that causes death (the result). Murder has no legal element that is a circumstance. Fault elements attach to these physical elements. The act must be done intentionally. There are various alternative fault elements for the result, but an intention to kill, recklessness as to death, an intention to cause grievous bodily harm, or recklessness as to the causing of grievous bodily harm, will all suffice. As a matter of completeness, there is also a category of constructive murder but, for present purposes, that can be left aside.

The key to the proposal contained in the Bill is in proposed section 268(2). The effect of it is that, if (a) the prosecution establishes the physical elements of the offence against the accused (called in this Act the "objective elements of the offence") and (b) the accused is grossly impaired by self-induced intoxication, then (c) the conduct (act, omission or state of affairs) is assumed to be both intentional and voluntary. As the example points out, that does not necessarily mean that the accused will be guilty of the whole offence. If the crime alleged requires proof of fault for a circumstance or a result, for example, the fault elements for that circumstance or result are not presumed, and it is open for the accused to deny those fault elements by reason of self-induced intoxication.

In the case of homicide, as the example points out, that means that the accused cannot use self-induced intoxication to deny that the act that caused death was both voluntary and intended. The accused can, however, use self-induced intoxication to deny any fault required as to the result caused by his or her act. Ordinarily, that will not avail much, for there is a natural alternative lesser offence of manslaughter, which requires proof of criminal negligence as to the result. It is not possible to use self-induced intoxication as an answer to an allegation of criminal negligence.

That fact explains proposed section 268(3). The aim of this subsection is to provide negligence based fall-back offences for offences against the person. Since these fall-back offences require, for liability to be established, only criminal negligence as to the resulting harm, the accused cannot plead intoxication to deny the required fault element.

Three further matters require comment. The first is a refinement of what it means to analyse the legal elements of an offence in this way. Under the proposed scheme, self-induced intoxication is relevant to fault as to results. In this it reaches the same position as does the rule based on "specific intent". The difficulty with the proposed scheme lies in the distinction between conduct on the one hand and circumstances on the other hand. This problem was never confronted by the *Beard* rules and needs more detailed explanation. The line between what is conduct and what is a circumstance—and, therefore, what is fault as to conduct ("basic intent") and what is fault as to a circumstance (not "basic intent") is neither fixed nor easy to draw. For example, it might be thought, for the offence of illegal use of a motor vehicle, that the fact that it was a motor vehicle as opposed to anything else is so tied up with the act of illegal use that the fact of being a motor vehicle is part of the act. On the other hand, it might be thought that, for an offence of illegally catching undersized lobster, that it was undersized lobster that was caught is sufficiently independent from the act of taking it as to warrant saying that the fact that it was undersized lobster is not part of the act of catching but a separate element of the offence. This sort of analysis is a matter of degree. It will be a question of law to be decided for any given offence. It is clearly not possible to state in this Bill what the result for all cases will be. It will have to be left to judicial determination.

The second matter that requires mention is the problem of fault elements that have no physical elements. These are quite common. They are commonly expressed as doing something "with intent to" do something else. The result need not have actually happened. What is punished is the doing of the act with the intention of achieving the forbidden result. A good example is wounding with intent to cause grievous bodily harm. It is not necessary that any grievous bodily harm actually happened. What is punished is the wounding with the intent that it would happen. Under both *Beard* rules and the proposed scheme, intoxication can be used to deny the further intent, but cannot be used to deny the intention to commit the act performed—in the example, the wounding.

The third matter that requires comment is the confusion that sometimes arises between an act and its consequences. For example, the offence of malicious wounding can, it could be argued, be viewed in two distinct ways. The first way is that the act is the wounding itself. If this view is taken then, under the *Beard* rules and the proposed scheme in this Bill, an accused could not deny forming an intention to wound by claiming that he or she was intoxicated at the time. The second way is to separate the act from its result—the causing of the wound. If this view is taken, then the wounding becomes a result and, under the *Beard* rules and the proposed scheme in this Bill, an accused could deny forming an intention to wound by claiming that he or she was intoxicated at the time.

This is a real problem. Under traditional intoxication rules before *O'Connor*, the first view is the correct one. But that position was complicated (unintentionally) by developments in the 1960s and 1970s. At that time, the common law courts were developing the role of recklessness in the criminal law as a supplement to intention and knowledge and, in so doing, widening the basis of criminal responsibility. That was true of a number of offences, but among them were wounding and assault. For the courts to reach the position where an assault or a wounding could be committed recklessly, they had to separate the act from its results. This was so because, as a matter of common-sense, people do not *act* recklessly. They act intentionally or knowingly, being reckless as to the consequences of what they do. Reckless drivers are not reckless about the act of driving—they are reckless about the consequences of their intentional act of driving. So to have reckless wounding, for example, the courts separated the act and its wounding effect. A good example is *Hoskin* (1974) 9 SASR 531. What the courts did not pick up was that, in so doing, they created an anomaly in the area of intoxication—for if wounding (for example) was an act and a result, then the fault in relation to the result *should have been* a specific intent. The anomaly was never addressed because *O'Connor* removed the need to address it a few years later and because there was very well established law that wounding was a crime of basic intent, however analysed.

The closest anyone came to finding that this problem existed was Barwick CJ in *O'Connor* itself. He said (at 76-77):

> Further, the question distinguishes in relation to intent, between the physical act and its result as embodied in the indictment or charge: it speaks of the act constituting the assault. This precision in statement may, in my opinion, be important. In the present case, for example, the conviction is of unlawful wounding. But the physical act which supported it was the stabbing with a knife. Doubtless, such an act would be likely to wound. But in relation to intent, it is important, none the less, I think, to distinguish between an intent to use the knife and an intent to wound. In a sense, wounding is a result of the stabbing: perhaps an immediate result. In what follows, I have taken a minimal position in relation to intent and say that at the least an intent to do the physical act involved in the crime charged is indispensable to criminal responsibility. It thus becomes unnecessary for me to discuss in relation, for example, to a charge of unlawful wounding, whether or no there must be an actual intent to wound; that is to say, an intent to produce the described result of the physical act which is intended to be done.
>
> This is not to say that, in my opinion, an intent to produce a result is not included in the relevant mens rea. In relation to many charges of what are styled crimes of "basic intent" an intent to produce a result will be found to be necessary from the very description of the crime. It may be that such an intent is universally required. But, for the purpose of the present discussion, it seems to me to be unnecessary to explore that question. It suffices for my present purposes that at least an intention to do the physical act involved in the crime charged is indispensable to criminal responsibility.

Of course, Barwick CJ did not need to resolve this problem. His decision, and that of the court, made it unnecessary to do so, for the old rules requiring the distinction were swept aside. Restoring the law does require a solution. It must be that an "immediate result" of the kind referred to by His Honour is a part of the act. The purpose of this Bill is to restore a set of rules very close to the old *Beard* rules. The old rules were anomalous in some ways. This was one of them. Pure logic cannot be applied in every situation. Wounding and assault should be treated as if they simply required an intentional and voluntary act, namely to wound and assault respectively, for the

purposes of the drunk's defence, whatever may be the position as to liability for reckless behaviour. That has always been the position under the *Beard* rules and is intended to be restored under this Bill.

This is undeniably difficult law. But it always was difficult law. The Government promised to remove the drunk's defence. This Bill is designed to restore the common law before the decision in *O'Connor* so far as that is possible.

I commend the bill to members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of s 267A—Definitions

This clause inserts a number of definitions of words and phrases for the purposes of the proposed amendment to section 268. In particular, proposed subsection (2) provides that intoxication resulting from the ***recreational use*** of a ***drug*** (defined to include alcohol) is to be regarded as self-induced. Proposed subsection (3) provides that if a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same or another drug, the intoxication will still be regarded as self-induced.

5—Amendment of section 268—Mental element of offence to be presumed in certain cases

Current subsection (2) is to be deleted and 3 new subsections are to be substituted. Proposed new subsection (2) provides that if the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence, the defendant is nevertheless to be convicted of the offence if the defendant would, if his or her conduct had been voluntary and intended, have been guilty of the offence.

Proposed new subsection (3) provides that if—

(a) the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence; and

(b) the defendant's conduct resulted in serious harm; and

(c) the defendant is not liable to be convicted of the offence under subsection (1) or (2); and

(d) the defendant's conduct, if judged by the standard appropriate to a reasonable and sober person in the defendant's position, falls so short of that standard that it amounts to criminal negligence,

the defendant may be convicted of causing serious harm by criminal negligence.

The maximum penalty for causing harm by criminal negligence is as follows:

(a) if the defendant's conduct resulted in the death of another person—imprisonment for life;

(b) in any other case—imprisonment for 4 years.

Proposed new subsection (4) provides that a defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of the alleged offence if it is impaired to the extent necessary at common law for an acquittal by reason only of the defendant's drunkenness.

Ms CHAPMAN secured the adjournment of the debate.

LAW REFORM (IPP RECOMMENDATIONS) BILL

Adjourned debate on second reading.

(Continued from 16 February. Page 1192.)

Ms CHAPMAN (Bragg): This bill was originally introduced on 2 April 2003 by the Treasurer but it was not dealt with before that session of parliament was concluded. As we know, this is the fourth piece of legislation in response to what has been commonly described as the insurance crisis. The other pieces of legislation all passed in 2002, respectively being the Recreational Services (Limitation of Liability) Bill, the Statutes Amendment (Structured Settlements) Bill and the Wrongs Acts (Liability and Damages for Personal Injury) Amendment Bill.

The bill largely arises out of a report of the committee sometimes known as the Ipp committee. However, it is fair to say that it is only to some extent that the recommendations of this committee have been implemented and embodied in this bill. There is widespread belief in our community that one of the principal causes of the so-called insurance crisis in relation to public liability and medical indemnity insurance is the ease with which claims can be pursued and the high level of damages awarded by the courts. Both these issues are directly related to the law of negligence. Many people in our community have concluded that the cost of insurance would be reduced and insurance cover would be more readily available if the law of negligence were reformed.

It is against this background that in July 2002 commonwealth and state ministers appointed the Committee of Eminent Persons, chaired by Mr Justice Ipp, formerly a justice of the Supreme Court of Western Australia and more recently a judge of the Court of Appeal in New South Wales. The committee also comprised Professor Peter Cane, associate Don Sheldon, and Mr Ian Macintosh. The Ipp committee prepared an interim report and in September last year delivered its final report. The report proposed modifications to the law of negligence in a number of significant respects. This bill will greatly enlarge the Wrongs Act of South Australia, which will be renamed the Civil Liability Act. The title, in fact, will more accurately reflect the content of this legislation.

With the able assistance of the Hon. Robert Lawson of the other place (the Liberal opposition shadow Attorney-General), who has comprehensively provided some summary in relation to the general principles of the law of negligence, I indicate as follows. Largely, this area was based on common law, that being the judgments made by laws derived from the decisions of courts over a long period of time. The principles derived from those court decisions—namely precedents—have been modified by statute in this state by the Wrongs Act in a number of respects. In general terms, as the Hon. Robert Lawson has outlined, there are four primary questions that face a court of law dealing with a claim of damages based on negligence.

The first question is: did the defendant owe a duty of care to the plaintiff? So, the first issue is the duty of care. The defendant owes a duty of care to a plaintiff if the defendant can be reasonably expected to have foreseen that there existed a risk and that, if the defendant did not take care to avoid that risk, the plaintiff would suffer injury or death. This raises the question of foreseeability of the risk materialising. I am very glad that the Hon. Robert Lawson has provided this information, because I have to say that I do remember there being a snail in a ginger beer bottle some time ago but my extent of knowledge of the law of negligence—and I hasten to add that I did pass it in law school—has not been a main area of practice!

The second issue relates to the standard of care. If the defendant does owe a duty of care, did the defendant fail to discharge that duty of care? Put another way, did the defendant meet the required standard of care? The second issue also raises the question of foreseeability. The defendant will have failed to discharge a duty of care if the defendant does not take reasonable precautions to prevent harm. The High Court has held that a defendant is not obliged to take precautions against risks that are 'far-fetched or fanciful',

language frequently used in Australian courts in relation to the law of negligence, deriving from the judgment of Mr Justice Mason in Wyong Shire Council v Shirt.

The corollary of the principle I have just stated is also true, namely, that the defendant is liable if reasonable precautions are not taken against all risks that are not far-fetched or fanciful. The legislation we are considering today will seek to change that particular test. The third important primary question is the question of causation: was the plaintiff's injury caused by the defendant's failure to meet the standard of care? Once again, this legislation makes some alteration to the law of causation. The fourth important question in an action of damages for negligence is the question of damages and, in particular, whether or not the damage suffered by the plaintiff is too remote. This question is called the remoteness of damage question.

Briefly, it can be stated in this way: was the damage suffered by the plaintiff directly related to the defendant's failure or was that damage too remote? There is a body of case law that establishes rules to determine whether or not damages are too remote. The notions of standard of care and foreseeability are mentioned in the first two elements that I have just outlined. Once the court finds that the risk in question was foreseeable, there is a framework for deciding what precautions a reasonable person would have taken to avoid the harm. This is the so-called negligence calculus, and it requires the court to examine four issues: first, the probability that harm would occur if care had not been taken; secondly, the likely seriousness of the harm; thirdly, the difficulty in taking precautions to avoid the harm; and, fourthly, the social utility of the risk-creating activities.

Each of these issues has generated a vast amount of literature and a body of jurisprudence that cannot easily be summarised. However, it is important to note that the Ipp committee did not propose radical change to these essential principles; rather, what the committee proposed and what this bill seeks to do is make marginal adjustments to some of the concepts that I have just mentioned. In order to appreciate why the opposition has decided to support the principle of this legislation, it is appropriate that I mention some of those provisions. One of the changes sought to be wrought by this bill is a reduction in the standard of care. This is something that the medical profession, in particular, has been keen to promote and which the Ipp committee agreed was appropriate.

Under the present law, the standard of care required of a person professing a special skill is determined by the court after hearing expert evidence on all sides of the issue. Professionals, especially doctors, believe that the medical profession, not lawyers and judges, should set the relevant standards to be observed by medical practitioners. The Ipp committee proposed and this bill provides that a professional person may defend a negligence action by proving that there was a widely accepted professional opinion to the effect that action taken in a particular case was a competent professional action. This is referred to in clause 27, the proposed new section 31 of the bill. Under this new rule a defendant—say, a doctor—will have to prove on the balance of probability that there is in Australia a substantial body of professional opinion that supports the doctor's action or inaction in a particular case.

The fact that there is contrary opinion held in, for example America, another country, university circles or even by other medical practitioners in Australia, will not mean that the defendant will be liable. In this case, the defendant will have to show that there is a substantial body of professional opinion that supports the doctor's action or inaction. The new rule will allow a court to reject medical opinions that are deemed by the court to be irrational even if they are widely held by respected practitioners. It is fair to say that use of the term 'irrational' has been the subject of some debate and comment. It is not a term that has been particularly judicial or had any legal connotation. Nevertheless, it is certainly clear from reading the debates in another place that the government has established a case to continue to use the word 'irrational', novel as it may be, because it was supported in the Ipp report, but that to use a wider term of acceptance such as 'unreasonable' may in fact not be appropriate and, accordingly, they have not recommended it.

So, the government has followed that and, with its explanations, that has been accepted by the Liberal opposition. In this context, though, it is interesting to see that the New South Wales and Queensland legislation to implement Ipp incorporates similar provisions. However, the Western Australian act does not. The Victorian government has chosen not to enact legislation which adopts much of the Ipp report and certainly not any of the proposals relating to the adjustment of the standard of care or the law of negligence generally.

I think it is fair to say that in Victoria there is a very significant and politically strong group in the legal profession that seems to have exercised some clout in relation to the Victorian government not introducing measures of this kind at all. Nevertheless, it may well be seen that, with the advent of time, the Victorian government may realise that the measures proposed by the Ipp committee and taken up by this government will be of some benefit in dealing with future cases of negligence. It is interesting that the Australian Plaintiff Lawyers Association, who now call themselves the Lawyers for the People, do not support this.

I move next to the second proposed change to the law of negligence, and that is the prohibition on the use of hindsight. It is believed that under the present law there is a tendency for the court to set a standard of care based on the current standards and practices, even where the allegedly negligent conduct occurred years before the trial. Accordingly, the Ipp recommendation recommended that hindsight should not be permitted. The bill adopts this suggestion and includes a new provision that will provide that, in an action against a person professing a particular skill, the standard of care should be that which could reasonably be expected of a person professing that skill in all the circumstances at that time.

The third change is one which has agitated the attention of plaintiff lawyers and, indeed, a number of submissions have been received, I have no doubt to the government but certainly to the opposition. That relates to the removal of the duty to warn of obvious risks. The failure to warn a person of a risk is one of the major elements in many negligence actions already. Very often it is asserted that a person who is injured voluntarily assumes the risk of a certain adverse occurrence. Common examples of the application of the duty to give a warning include failure to put warning lights on barriers around an open trench alongside a footpath and failure to warn of slippery conditions caused by the spillage of liquid that is not clearly visible on a supermarket floor. We all know of plenty of those cases—even I have done some of those. More problematic is the question of whether a failure to warn of a sandbar in a sea or a submerged log in a river constitutes a breach of the ordinary duty of care. In order to address this issue, the Ipp committee recommended that the law specifically state that there is no liability for failure to

warn of obvious risks. In one sense, this is probably the existing law as it stands, namely, that there is no duty to warn of that which is quite obviously obvious. However, there is some question about the definition of obvious risks, and I note that there was some further discussion of this in another place and some amendment was made, to which I will refer in debate.

The fourth element in the reform package is the restriction on the concept of foreseeable risks. Under the concept of forseeability, all risks are deemed foreseeable unless they are far-fetched or fanciful. If a risk is not foreseeable—that is, if it is far-fetched or fanciful—there is no duty to take action to reduce or avoid such a risk. As mentioned earlier, the terminology 'far-fetched or fanciful', derives from the decision of the High Court in Wyong Shire Council v Shirt. Ipp proposed to modify the law by narrowing the concept of forseeability to risks which are not insignificant, an interesting double negative concept. This is intended to set a lower standard of care than the present far-fetched or fanciful rule and therefore to make it harder for a plaintiff to recover. The corollary, of course, it that it is easier for the defendant to defend an action. This proposal has been adopted in other states. The affect it will have on plaintiffs remains to be seen, and what changes it might bring to insurance premiums is questionable. Once again, we are in a situation where states apart from Victoria are adopting this new rule.

The bill next seeks to codify the rules of causation. In some cases, a major issue is whether the defendant's action or inaction caused the harm. The courts seek to apply commonsense reasoning, rather than a philosophical or logical test—I say, that is novel! I well remember, prompted by the Hon. Rob Lawson, a question that was often asked of law students in relation to what caused a particular outcome, and the question would be posed to the law students to highlight some of the issues and difficulties that arise.

Assume for a moment a case where a truck driver fails to properly secure his load and a brick falls onto the road. The driver of the car following, travelling at 90 km/h in a 60 km/h zone—I think we will have to change that model now to 50 kilometres an hour zone, but this was the example—swerves to avoid the brick and is injured when his car crashes into a bobcat driven by a third party which is reversing illegally onto the road. The driver of the ambulance taking the injured driver to hospital drives through a red light and crashes into a car being driven by another person across the intersection at 75 km/h, contrary to the law. The person in the ambulance then suffers a heart attack while waiting for another ambulance. At the hospital an overworked intern is not properly supervised and mistakenly amputates the arm of the driver.

The question is: who caused the driver's loss? Was it the truck driver, who failed to secure the load? Was it the driver travelling at 90 km/h in a 60 km/h zone (or, as we have amended for this example, at 50 km/h zone), who swerved to avoid the brick? Was it the driver of the bobcat, who backed illegally onto the road? Was it the driver of the ambulance who drove through the red light and crashed into the car? Was it the driver of the car into which the ambulance crashed? Or, was it the overworked intern in the hospital? This hypothetical case illustrates that it can sometimes be difficult to determine who caused the injury. A more contemporary example of this is the AAMI advertisements which seem rather comical in a sense but which are tragic in light of the events that can occur in these situations. This bill adopts the recommendation of the Ipp committee that the law on this topic should be codified in a statute, and the law should consider the position of each defendant individually, and we support that.

The sixth amendment is to introduce uniform tests for contributory negligence. This has certainly always been a difficult area in the law. A plaintiff who is injured is said to be guilty of contributory negligence if the plaintiff has failed to meet the standard of care required for his or her own protection and where that failure is a contributing cause to the plaintiff's injury. The bill provides, in effect, that the same rules apply to determine whether a plaintiff was guilty of contributory negligence as applied to determine whether or not the defendant was guilty of the negligence. So, the same rules apply for both. This is probably a reinstatement of the existing common law, but it has now been codified and supported by the recommendations as indicated.

The seventh alteration to the law relates to the concept of voluntary assumption of risk. This arises where, for example, a passenger willingly agrees to travel in a vehicle to be driven by a driver who, to the knowledge of the passenger, is so drunk as to be incapable of exercising proper control.

In a case such as that, the passenger is said to have assumed the risk of harm and the passenger cannot sue the driver—probably, that sounds like commonsense. This defence, I might say, rarely succeeds in court, because the court usually finds that the injured plaintiff was not aware of and therefore did not assume the particular risk that eventuated. There are other technical approaches that the court has adopted to undermine the concept of voluntary assumption of risk. Again, this is an area taken up by the recommendations of the Ipp Report. This bill seeks to make it easier to establish the defence of voluntary assumption of risk and place back some responsibility on the plaintiff. First, the plaintiff will be deemed to know the obvious risks. I suppose it is hard to imagine how one would not see it as obvious if someone was clearly under the influence of alcohol (especially in a serious way), unless, of course, the plaintiff himself or herself is in a similar state. Secondly, in any event, the defendant will not have to prove that the plaintiff knew of the precise nature of the risk.

The eighth area of reform relates to restrictions on the liability for mental harm. A person who is not physically present at the scene of an accident may suffer mental shock when later informed that a family member has been injured. Similarly, a person may actually witness an accident and suffer mental shock. In both cases, the courts have ruled that the person suffering the shock can never recover damages. The bill, again, adopts the recommendations of the Ipp committee that the existing common law be restated in the act with a modification requiring proof of a recognised psychiatric illness for those seeking damages for economic loss.

The ninth area of reform relates to the liability of public authorities, usually in relation to road works. In this respect the states have rather gone in different directions. The South Australian provisions restate the existing common law position, and they are supported by the Liberal opposition. The other proposals—for example, the policy defence adopted elsewhere—have not been adopted here. I will refer a little later to some valuable contribution from debates in another place. The matter of time limits for commencing legal actions has been a major issue, especially in relation to medical negligence claims. The general rule is that an action for personal injury must be commenced within three years, and the three years begins to run from the time of the injury.

However, the principle at common law is that time does not run against an infant. Therefore, in the case of a child, the

three years begins to run when the child attains the majority of 18. Therefore, in relation to medical negligence claims arising from the allegedly negligent delivery of a child, that is, at their birth, the medical practitioner faces a wait of up to 21 years before an action can be commenced because, of course, the three year time limit will commence once the child turns 18; and, of course, they have until they are 21 to lodge their claim.

This has created major difficulties for the insurers of medical practitioners, not least for the medical practitioners themselves. In addition, under the existing Limitation of Actions Act, the court does have power to extend the time for bringing an action if the plaintiff can show that a new material fact was discovered after the expiration of the original period of limitation, whatever that was at the time. So, in practice, it can be fairly easy to create a material fact to obtain an extension of time. One can understand that insurance funds do have to charge high premiums and keep high reserves to meet the contingency of what is called the 'long-tail' claims—those claims that might come 20 years later, for example, or even after a practitioner has retired.

The Ipp committee suggested a complex revision of this area of law. New South Wales and Victoria did accept that recommendation. Both states introduced a general three year limitation period from the date the injury was discoverable and not the date on which the injury occurred. They also introduced a long-stock limitation period of 12 years. Western Australia did not adopt this approach. Queensland adopted a different approach, and the South Australian bill has in fact gone down another track. Under this bill, the Limitation of Actions Act is amended in three respects: first, it makes it harder to obtain an extension of time by limiting such extensions to those cases where the applicant can show that the newly discovered fact forms an essential element of the claim and would have major significance on the assessment of damages.

So, two things must be established: first, the new fact has to be an essential element; and, secondly, there has to be major significance in the assessment of the damages. Secondly, in the case where an injury is sustained by a child under the age of 15, no medical or legal costs incurred before proceedings actually commence will be recoverable unless the parents give notice of the claim within six years of the injury. This notice provision is designed to encourage early notification of claims. I suppose that it uses as much a stick as a carrot to achieve that objective. Thirdly, a defendant who is given notice of claim (for example, a medical defendant) on behalf of a child can require the plaintiff to institute proceedings to resolve the issue of liability of the defendant.

In this case, it is accepted that the quantum of damages can be deferred until the child reaches adulthood. So, they can have a hearing at an early stage to determine whether or not there is any liability and, if there is, the question of how much damage is sustained can wait many years later. However, at least it can effectively dispose of the liability issue because, of course, there is a finding at that early stage. If there is no liability then, of course, the balance becomes irrelevant and all the parties concerned can get on with their lives. There was extensive consultation between the Australian Medical Association and the Law Society of South Australia in relation to this aspect.

South Australia really has come up with a peculiarly South Australian solution to this issue, and it is one that the Liberal opposition will support. Lastly, there is the question of the law relating to damages. Some of the Ipp recommendations relating to damages—for example, the caps and thresholds, which were implemented in 2002 with the passage of amendments to the Wrongs Act—have been referred to, but one change is made to the Motor Vehicles Act dealing with compulsory third party insurance. Again, consistent with the Ipp committee recommendations, the bill amends the Motor Vehicles Act to exclude coverage from the compulsory third party claims by participants who are injured in road races or rallies.

Interestingly, here in South Australia we have a rather unusual situation where you can participate in this type of activity—dangerous though it might be seen on the face of it—and, if you are injured, you still have the benefit of CTP funds. Compulsory third party will continue, though, to cover spectators injured by a driver's negligence, although in such cases the Motor Accident Commission will have the right of recovery back against the race owners to recover funds in circumstances where the race organisers are found to be liable. It should be noted that, in relation to the adoption of South Australia's approach, this has also been supported by the fact that New South Wales adopted practically all the recommendations of the Ipp report, and its Civil Liability (Personal Responsibility) Act 2000 was passed in November 2002. Queensland passed the Civil Liability Bill in 2003, and it adopts most of the recommendations on liability.

The Queensland bill also introduces measures similar to those passed in our parliament in 2002—and I referred to those measures earlier today. In Western Australia I understand that the civil liability bill introduced and argued there—I am not certain of the outcome—did not incorporate provisions relating to the liability of professionals. Lastly, Victoria has not adopted measures relating to the changes in the law of negligence, but it did introduce a Wrongs and Limitations of Actions Acts (Insurance Reform) Act, which contains some of the capping measures to which I have referred and which this parliament dealt with in 2002. The Victorian legislation deals with proportionate liability and limitation of claims. Curiously, this South Australian legislation does not deal with the question of proportionate liability, nor does it in fact deal with the professional standards recommendations that came out of the Ipp report. It is my understanding that there has been an indication by the Treasurer—and he may wish to confirm in response—that this is an issue, particularly in relation to professional standards, in which he has given indication there will be legislation to come in that regard.

The Hon. Paul Holloway in another place has indicated on the Treasurer's behalf that, notwithstanding some concern raised by proportionate liability issues not being dealt with, that is something which is being considered by the government, and there has been an indication by the Hon. Paul Holloway that it will be introduced, from memory, in this autumn session. We will look forward to reviewing those, because the Liberal Party certainly considers that it is something that needs to be incorporated if we are genuinely to take up the Ipp recommendations in relation to dealing with negligence law reform. I propose to deal with the insurance aspect in a moment.

I will refer to another matter which has been introduced, which was not in the original bill but which arises out of the effect of the High Court decision in Cattanach v Melchior, which was a decision last year by the High Court. By a majority of four judges to three it was resolved in Australia that it is possible to recover damages for the upkeep of a child born following some negligent act; in other words, if there

had been some sterilisation procedure undertaken on a female, she had conceived a child subsequent to that and it was deemed to be a negligent act on behalf of the medical practitioner. That slim majority found that it was possible to recover damages. This case caused considerable furore and public debate. The minority judges, namely, the Chief Justice (Justice Murray Gleeson) and Justices Heydon and Cullinan, ruled against the recovery of damages in cases of this kind, but the majority prevailed. In that respect they followed a decision of the House of Lords in the United Kingdom in 2000 and also the approach adopted in most states of America where, I understand, there are only two states where damages of this kind are allowed.

The case highlights the fact that rules of this kind made by an unelected High Court by narrow majority do not necessarily reflect community standards or expectations. Certainly, we in the Liberal Party believe in the approach adopted by the minority judges which decided that it was inappropriate in law to put a monetary value on the life of a child and then set it off against the cost of the upkeep of that child. We believe that, where parents of a child introduced into a family give the child presents, send it on excursions and the like during its minority, they should pay for those things rather than expect that a doctor will reimburse them for expenses of that kind. In fact, we believe it is quite obnoxious in legal philosophy to place a value of this kind on the life of a child. Accordingly, this form of damages should not be recoverable, and we commend the government for introducing this measure into the bill. I indicate that we will be supporting the same.

There have been considerable submissions, as I indicated, in the preparatory period prior to this bill being introduced. I think it is important to acknowledge, as has been done by the Hon. Ian Gilfillan in another place when dealing with new section 31, which deals with the question of the new defining and codifying of the question of standard of care, that we take into account that the Law Society has brought to attention the definition of intoxication. New section 31 provides that the reasonable person in the defendant's position will be taken to be sober unless in certain circumstances they are either intoxicated or taking medication (drugs) under prescription under instruction from a medical practitioner and complying with those instructions.

In the circumstances now incorporated in clause 27, this question of intoxication should be clarified in relation to the reference to a drug to make it clear that it is other than a drug taken for therapeutic purposes in accordance with the directions of a medical practitioner. This allows for the very common case where a person suffers an unexpected and adverse reaction to a prescribed medication. That is a small but relatively important matter that has been brought to our attention, and we commend the government for supporting it.

Other aspects in relation to intoxication are dealt with in terms of new section 39A. Those aspects have also been incorporated and I will not traverse the detail. I might say at this point that it has been valuable to read the debate in the other place (such as the contributions made by the Hon. Robert Lawson and the Hon. Nick Xenophon) and to receive the submissions of other representatives in this matter, because this is an issue not without considerable controversy. Nevertheless, there have been some rather long speeches and long submissions made. I am not suggesting that the sentiment has not been well expressed and well intended, but some aspects of the question of obvious risk were raised. I have pointed out the support that the Liberal opposition gives to the government in dealing with this issue but, nevertheless, the question of obvious risk needed to be tidied up a little. In fairness, I think the amendments presented to us today give some comfort in that regard. I note that the government has readily embraced the issues.

Then there is the issue of the transitional provision, and I will refer to the least controversial of the last two requirements. It provides:

> As soon as practicable after the expiration of three years from the commencement of this schedule, the Economic and Finance Committee must investigate and report to the parliament on the effect of this act on the availability and cost of insurance to persons.

It is very important that that provision be noted. Clearly, there is no doubt that the reason why this legislation—as good as much of it is, and its need for other reasons—is being debated in 2004 is clearly the groundswell of difficulty that faced a number of people in being able to access affordable insurance. It is fair to say that other reviews will be conducted around the country. The ACCC has a brief from the commonwealth government to prepare six monthly reports over two years, detailing trends and public liability, and professional indemnity insurance premiums and costs, including the impact of state and territory tort law reforms on those trends. That has already been established and is under way. This is an important check relating to a factor which clearly precipitated debate on these matters.

The last matter relating to the bill to which I wish to refer and which I think is important and helpful is the provision to revive the highway indemnity common law rule in statute form and for which we have indicated our support. Proposed new section 42 will expire on the second anniversary of its commencement. Other members may wish to make a contribution on this aspect, but I think it is important, if we are going to start to tighten up and seriously address the question of personal responsibility in the interrelationship between people when dealing with the law of negligence and consequential liabilities that may flow from that for individuals, that this should be for a period of two years.

Structures relating to road and road maintenance standards are usually handled by the different levels of government and, whilst we agree to the highway rule being re-established, it will be for a period of two years and clearly on the basis that the government will ensure that there will be sufficient practices, assessment and the undertaking of necessary works to ensure that those who are responsible will be responsible and will be able to implement it. Two years will provide sufficient time for the government to ensure this happens. Effectively, we are bringing back the highway indemnity provision and providing adequate time to deal with that so that it will be managed better in the future. I appreciate the position that governments would face if they were forced to continue to overturn the common law protection that they enjoyed up until 2001.

I want to make some comments relating to other parts of this legislation, because I think I should define why the Liberal opposition supports some of these very good recommendations. This is not to be confused with some of the more frenzied comments which have been made in relation to this legislation but, on the face of it, I think these matters deserve particular attention. The Australian Plaintiff Lawyers Association (the Lawyers for the People), the Law Society of Australia, the Hon. Nick Xenophon, the Hon. Andrew Evans and many others have claimed a number of things in relation to this bill. They say that it is draconian; that it will only

benefit the rich and overseas-owned insurance companies at the expense of injured plaintiffs; that it will not lead to lower premiums; that it will further line the pockets of insurance companies that it does not provide any guarantee of lower premiums or greater availability of insurance; and that it is based on the fiction that there is an insurance crisis. Indeed, some of them state that there is no insurance crisis at all.

From the Liberal Party's point of view, the insurance crisis is a reality, not a figment of the imagination. I, for one have—and, I am sure, a number of colleagues on both sides of the house would have—received a number of complaints, concerns and urgent pleas from small businesses such as tour operators, event organisers, sporting bodies, show societies, historic rail groups, and country obstetricians, etc. They are clearly suffering and have told us loudly and clearly over the past two or three years that this has been a major impost not only to obtaining insurance but at an affordable level. It is important to note, in relation to the Trowbridge consulting report, which is often cited by the opponents of reform, that it confirms that there has been a crisis. I will read briefly some reference to that report when in the conclusion it states:

> There is a crisis today in public liability. The crisis is that there are many people seeking insurance who either can find it only at very high prices, compared to the prices during the last five years, or cannot find it at all. The nature of the crisis is that there are fewer insurers than ever before accepting the business and these insurers are generally charging much higher prices than previously and they are also being very selective in their acceptance of risks.

It goes on to say, in relation to the increasing costs of claims and the insurance market crisis:

> We can now see clearly that insurers underpriced the business during most of the 1990s. Insurers are generally not comfortable with this business due to the difficulty of assessing risks and estimating future claims costs at the time they quote for the business. Insurers are now determined, in the interests of their shareholders, not to underprice or insure risks that do not meet their criteria. Prices in 2002 are likely to average 30 per cent more than 2001—

and we have had real evidence of that—

> and with many individual premiums several times higher than last year.

So there is a crisis, but the Liberal Party is not suffering from the delusion that premiums will immediately fall or that insurance cover will immediately materialise after this bill is passed. We believe the benefits of the proposed changes will be long-term. In particular, we believe that, unless there is some statutory modification of the law of negligence, the continued expansion by the courts of the concept of negligence will jeopardise the continued existence of common law rights in this area. Put another way, the current tendency to a system of Rolls Royce recovery will bring down the whole system. We support a system that is reasonable, fair and equitable. The system that results from this bill meets those criteria.

I am a little concerned that we are debating this type of reform in an environment of the frenzy in relation to the insurance issue, which we do not have any confidence will grant relief to those who have been adversely affected. As for the lining of pockets of insurance companies, it is also important to record that the now collapsed medical insurer, United Medical Protection—a new South Wales fund—was not a rapacious foreign insurance giant but an Australian mutual fund. HIH was not overseas owned and it was not making big profits.

The Liberal Party did not support those reforms because it wants to help insurers make large profits, for the reasons I have outlined. However, we want them to stay in the market and they will not stay if the law of negligence makes them the indemnifier of every possible harm or injury that people inflict on themselves or others. We say that essentially this new law as such is not draconian: it is a measured response to a 'crisis'; it is based on an expert report; it has been adopted in other states, except Victoria; it modifies the law; and, it still allows reasonable recoveries.

It will force the courts to retreat from the precipice reflected in findings, just to give an example of how far we have come, and perhaps these examples justify the necessity for reform. How appropriate is it that a basketball association is found to be negligent in failing to warn an empire that running backwards is dangerous? How appropriate is it that a national park was liable to hikers injured by the falling branches from a dead tree? How appropriate has it been that in medical negligence cases a single academic can condemn as negligent a medical procedure that is widely accepted as reasonable by the rest of the medical profession? These are just a few of the many examples which appropriately have brought this matter to the fore and resulted in the legislation we now have before us today, and I indicate support.

Mrs REDMOND (Heysen): I, too, wish to make a contribution on the Law Reform (Ipp Recommendations) Bill. As my colleague the member for Bragg has suggested, there are those around who suggest that there is not an insurance crisis in our community, but I believe there is. It was the topic of my maiden speech in this place and, indeed, as recently as the middle of last year, the hospital on which I have served as a board member in Stirling for the last 20 years came within four days of having to close its doors and remove its patients because of an inability to obtain insurance, notwithstanding that it had a no claims history, a very good facility and excellent doctors. It did not actually employ doctors but had excellent doctors with their own insurance who practised through the hospital, and we ended up in a situation where we had to go to London and Malta in order to obtain insurance, which we eventually did obtain—

The Hon. M.J. Atkinson interjecting:

Mrs REDMOND: The attorney indicates that he has just been to Malta, and I congratulate him on having had the time to do that. The insurance was eventually obtained at a considerably higher premium than previously and the hospital, because it has been a financially viable hospital for many years, was able to meet that increase in the insurance. However, whilst I agree with many of the comments made by the member for Bragg and many of the attitudes expressed by her, I must indicate that, in large measure, I will not be supporting this bill. There are some elements which I am prepared to support and, if they are dealt with separately, I will be supporting them, but there are elements of this bill that I will not support, not because I think they are wrong or necessarily draconian (to use the term used by some other members) but simply because we have already put through one raft of legislation in this place aimed at reducing the insurance crisis.

I said at the time I spoke on that previous raft of reforms that, in my view, there was a genuine risk that what we would be doing would be helping the insurance companies to pay out less in fewer circumstances without having any appreciable benefit in terms of the insurance crisis; that is, without improving the situation for the availability of insurers to many groups or the premiums that were being charged. I would have to say that I—

The Hon. M.J. Atkinson interjecting:

The ACTING SPEAKER (Mr Snelling): Order!

Mrs REDMOND: —am satisfied, on the basis of what has occurred since we put through that original raft of alterations to the Wrongs Act, the Recreational Services (Limitation of Liability) Act and the other things that we put through in that first raft of amendments, that there has not been any appreciable improvement for the large number of community based organisations, not for profit organisations, charitable organisations and so on, nor for the average punter or the average business. The normal person seeking insurance has had no improvement and, to add insult to injury, I noticed that Suncorp Metway has announced a record profit. It is clear to me that, indeed, the insurance companies have improved their situation by virtue of our parliament's having provided that the circumstances in which we will find a defendant liable and therefore an insurance company likely to have to pay out have not increased but decreased. The amount of damages to be paid out to an injured party has decreased and the premiums have not come down, so the result is an equation where the insurance companies are paying out less in fewer circumstances and making more money, because they are still escalating their premiums at an incredibly rapid rate.

In general terms, that is my position on the bill. I will go through number of aspects of the bill because I want to deal with a number of the more technical aspects of the drafting of the bill, especially in the areas of negligence and the duty of care. One of my problems with the bill is the proposed amendment the insertion of Part 6—section 31, Standard of Care, and section 32, Precautions Against Risk. I have enough difficulty with double negatives, but when you get to the point where you have what I consider a quadruple negative, it becomes very hard to read. If we look at 32—Precautions against risk we see:

(1) A person is not negligent—

first negative—

in failing to take precautions—

second negative—

against a risk of harm unless—

third negative—

(b) the risk was not insignificant;

If a risk is not insignificant, surely it is significant. Why is it not simply expressed as 'the risk was significant'. Why do all these double, double, double negatives appear in the legislation? It makes it very hard to read and hard to understand the intention of this legislation. My next question relates to subsection (2), which states:

In determining whether a reasonable person would have taken precautions against the risk of harm, the court is to consider the following—

It then lists (a), (b), (c) and (d). I have no particular difficulty with those, but what does '(amongst other relevant things)' refer to, which appears after the words 'the court is to consider the following'? I find that a little peculiar, because I would have thought that it was an exhaustive list of the relevant matters that are taken into account by courts, and the intention of the legislation is to codify what are the accepted matters that courts do take into account. What is the likelihood of the harm occurring if the precautions are not taken? What is the likely seriousness of the harm which would result? What would be the likely cost of taking precautions against the harm and the social utility of the activity that creates the risk of harm? So, when closing the second reading debate perhaps the minister can say what is meant by 'amongst other relevant things' in that section.

In regard to 33—Mental harm—duty of care, this talks about a person of 'normal fortitude', and a suggestion was made by, I think the Hon. Nick Xenophon in another place, that if we proceed on the basis of only having a person of normal fortitude covered then the likely result is that a person who already suffers from some psychiatric illness, for example, will not be able to recover because of this provision. I note that subsection (3) states:

This section does not affect the duty of care of a person (*the defendant)* to another (*the plaintiff*) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

However, there are many circumstances where people of less than normal fortitude are out and about in the community and may be exposed to a risk of harm, and may not be able to recover because they happen to be of less than normal fortitude, but not obviously so to the casual observer. Unless the defendant has a relationship with that plaintiff that would lead them to know the fortitude of the person, then it seems that we are cutting out a particular group of people and that it is unnecessary to do so. I also note that under subsection (2) of the proposed section 33—Mental harm, there are four identifiers for pure mental harm; by that I take the definitions made earlier in the legislation to indicate that pure mental harm is, basically, where mental harm is the only cause of action being pursued. If you have a physical injury and a consequential depression, for instance, that is a consequential mental harm, but if you have a nervous shock, or some such thing, a pure, post traumatic stress disorder and no physical injury, that is what this clause applies to.

However, I am puzzled as to what is the difference in subsection (2) between placitums (iii) and (iv), which state:

(iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;

(iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant.

I am puzzled as to where there is a difference between those two.

I move on to the issue of causation which next appears in the bill. I note that, basically, the general principles are not unlike those that apply currently, that is, that there must be a reasonable nexus between the act, usually a negligent act, being complained of and the consequences that flow from it. The reference that is usually made is that of the butterfly flapping its wings in Africa, which can affect things across the world ultimately, but one would not expect that there is a causal nexus between the butterfly fluttering its wings and things that happen on the other side of the world.

I am happy with the idea that there must be a necessary factual causation, as it is defined, and I note that the bill states that the scope of the negligent person's liability must extend to the harm so caused. That is defined under the legislation as the scope of liability. Subsection (3) makes use of the term 'amongst other relevant things', when one is thinking about what is going to be included. More importantly, I am curious about what then follows. Having set out that the general principles involve these two elements of factual causation and the scope of liability, the next section, which deals with the burden of proof, states:

In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

That is as it always has been and it simply codifies what has always been the case anyway. I thought it was always reasonably codified, but it seems that, by implication, the bill having immediately before that stated that there are two elements—the factual causation and the scope of liability—to then say in the next section that it is up to the plaintiff to prove on the balance of probabilities the factual causation element, it follows that there is no requirement for the plaintiff to prove the scope of liability element, and it seems that that might be departing from what we have always understood to be the case.

The term 'assumption of risk' and the meaning of 'obvious risk' are always a bit dangerous. It is a bit like the old test, in a criminal case, even in civil cases, of the reasonable man. Can you really identify what the reasonable man would do? I believe that the reasonable person might say that the obvious risk does not need to be defined, and there are certain risks in defining it. We need to think very carefully about whether we might create more of a problem than we solve by inserting a definition of 'obvious risk'. I note that a risk might be obvious even though it is of low probability, and I assume that would be meant to apply to the case of the tourist who arrived at the weekend in Sydney and went for a walk on a cliff top and it collapsed underneath him. That might be a low probability but one that most people in Australia might consider to be obvious, that a cliff along the ocean front can collapse.

I was puzzled though, in having the legislation then set out this meaning of 'obvious risk'. Under 37—Injured persons presumed to be aware of obvious risks, it states:

> If, in an action for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised by the defendant. . .

In other words, with the voluntary assumption of risk, the defendant says, 'Well, this person voluntarily assumed this risk in undertaking this particular activity and therefore I am not liable for any harm that the plaintiff has suffered.' So, it states that if this assumption of risk:

> . . . is raised by the defendant and the risk is an obvious risk, the plaintiff if taken to have been aware of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not actually aware of the risk.

So it does not appear to require, in the wording of the section, that the defendant actually proved that the risk was an obvious risk. According to my reading of that section, the defendant can simply raise the defence of volenti and then say it was an obvious risk. There is no actual legislative requirement to say that that obvious risk is obvious and that the defendant has to prove that that is an obvious risk. There seems to be an apparent assumption that if it is so obvious it does not even have to be asserted and proven by the defence. It seems to me that there are some dangers in proceeding down that path.

As I said, there are some sections of this bill which, if they are separated when it is time to debate them, I will be prepared to support. One of those is section 41, relating to the standard of care for professionals, which provides:

> A person who provides a professional service incurs no liability and negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession. . .

I think that is reasonable and I do not see that my support of that will actually help the insurance companies to the detriment of others. I am puzzled about what will be the definition of 'professionals', because no definition currently appears in the legislation. I would be somewhat concerned if, for instance, certain people who are alternative health practitioners were to be classified as professionals for the purpose of this section. Therefore, I suggest that it might be appropriate to insert into the legislation some sort of definition of professionals; perhaps, along the lines of people who are recognised providers for Medicare or some other such thing. Under that clause, I was puzzled by subsection 2 which provides:

> However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.

I have yet to see a circumstance, after all my years in court, where a court considers that an opinion is irrational and then relies on it. Why one would need to put that into the legislation is simply beyond me. I note that clause goes on to provide that an 'opinion does not have to be universally accepted to be considered widely accepted', for the purposes of this section, but I do puzzle about the effect of that.

I am going to skip over the liability of road authorities to the next one that I am prepared to actually agree with at this time, and that is section 43—Exclusion of liability for criminal conduct. It seems to me that there is a community expectation that the law needs to be adjusted. We have had a couple of cases that have become quite prominent in the media of people who have been engaged in what are clearly criminal activities and yet, in the circumstances of their injury, they have been able to turn around and become the recipient of money from insurance companies when bringing an action against the person who perhaps had simply defended their premises or tried to prevent the illegal action from being brought against them.

So, it seems to me that there is a reasonable community expectation that that is something of an anomaly in the law and it is one that we should be prepared to move towards as soon as possible. Again, I am a bit puzzled about where and why there might be exceptions to the rule. Essentially, this section says that, if the court is satisfied beyond reasonable doubt that the person was engaged in committing an indictable offence, and their activity in that regard contributed materially to them sustaining the injury, then they are not going to be able to claim damages.

That is fine, but I just wonder about the idea that there might be cases where the circumstances are exceptional or where to deny that person compensation would be harsh or unjust. It seems to me that if, for instance, someone was committing some indictable offence (but nevertheless one at the lower end of the scale) and suffered a significant injury, such as quadriplegia or something that would dramatically affect them, this clause seems to open the way for a person engaged in that activity to then obtain compensation. Quite frankly, I am a bit of a hardliner when it comes to this issue. I think that if someone is engaged in something that is an indictable offence, bearing in mind that it has to be proven beyond reasonable doubt, they should not be able get the benefit and the exception.

Time expired.

The Hon. M.J. ATKINSON (Attorney-General): I support the bill. The Treasurer has explained its provisions and I will not repeat him. I direct my remarks chiefly to two aspects of the bill that have proved controversial. They are the proposed offence for professionals, including doctors, when they have done what is widely held in the profession to

be proper; and the new provisions about obvious risks. The bill provides a defence for a professional who is sued for malpractice. If the professional proves that what he or she did is widely held in the Australian profession to be competent practice, then the professional is not negligent. The test has its origins in the 1957 English case of Bolam v Friern Hospital, but those who claim that the bill simply restores the test in that case do not understand it.

The Ipp committee criticised the Bolam test. It is thought that under that test it was all too easy for the negligent defendant to rely on the evidence of a few mates to escape liability. It also thought that the Bolam case failed to allow for the possibility that from time to time the judgment of a whole profession or a large part of it might go off the rails. For this reason, the Ipp committee did not recommend restoring the Bolam test. Instead, it devised a modified test that would overcome these criticisms. That test draws on the reasoning of the House of Lords in the 1998 case of Bolitho v City and Hackney Health Authority. In that case, a child suffering from intermittent breathing difficulties was not intubated. The question was whether he should have been. Many learned doctors were called as expert witnesses. Some said that intubation was indicated, others said that it was not.

The court, although having no medical learning of its own, was asked to say which of these two groups of experts was right. The court declined to do so. It held that in such circumstances the court should not find negligence unless the expert opinion relied on by the defendant was irrational; that is, the doctor is entitled to rely on a widely held professional opinion about what is proper treatment, even if other opinions exist. To do so is not negligence. I think that answers the member for Heysen's point about why irrationality is used in this proposal. That is the test proposed by the bill. It acknowledges the reality that in a learned profession there will be different schools of thought. So there should be. The dialogue among them generates new ideas, informs research and advances learning.

It is not, then, the place of the courts to determine that one widely accepted opinion is right and the other is wrong. Hence, a professional who has acted in accordance with what is widely held in the profession to be competent conduct is not negligent. This is so even if some members of the profession do not agree with the widely held view, and even if some are prepared to say that it is negligent.

The exception is where the widely held view is irrational. The Ipp committee acknowledges that the judgment of a profession, like any other human institution, can occasionally go off the rails. An example might be the case of the National Women's Hospital in Auckland in regard to the matters leading to the Cartwright inquiry. It was the practice of that hospital for some years not to offer treatment to women with abnormal smear test results. This was because the hospital was interested in finding out how many of them would go on to develop cervical cancer. Several doctors both within and outside the hospital were prepared to defend this practice. Nonetheless, the Cartwright inquiry denounced it. If there were to be a medical negligence case by a patient in similar circumstances, the bill permits the court to find that the view of the profession was irrational and that the hospital concerned was negligent. This provision is not a mate's defence. It is not carte blanche for professions to disregard proper care. It simply means that, in cases where the alleged negligence is in the choice of one procedure or approach over another, as long as the profession does what is widely held to be proper and that widely held opinion has some logical foundation, there is a defence.

When the outcome of a professional procedure is adverse, it is all too easy to jump to the conclusion that someone must have been negligent. The temptation is particularly strong in the medical field, because much is at stake, technology is advanced, and there is a tendency to think that results should be perfect. This is an error. No profession can promise that the results of any procedure will be perfect. Things can and do go wrong through no-one's fault. The law does not require perfection: it requires reasonable care. This provision intends to reinforce that.

The bill also deals with obvious risks. The chief provision is quite simple. It says that there is no duty to warn someone about a risk that should be obvious to him. Despite the consternation that this proposal has caused to some, the government thinks that this is both commonsense and the common law. For example, in the Romeo case, in which a woman stepped over a cliff and was injured, the High Court found that the Northern Territory Conservation Commission did not owe a duty to warn the public about the dangers of stepping over a cliff. Justice Kirby said:

> . . . where a risk is obvious to a person exercising reasonable care for his or her own safety, the notion that the occupier must warn the entrant about that risk is neither reasonable nor just.

The reason for a statutory provision is, however, to make the principle quite clear, because cases are still coming before the courts in which plaintiffs quite seriously argue that they are entitled to compensation for injuries that a reasonable person might think were their own fault. For example, in the case of Franklin's Self-Serve Bozanowksa, a 1998 New South Wales case, the plaintiff was a supermarket patron who wanted an item from the top shelf, which she could not reach. She saw on the floor a nearby wire basket—

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: A basket case! She decided to stand on the basket to reach the item. She fell and was injured. She sued the supermarket and, indeed, at first instance, she won.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: Yes. The member for Bragg is lighting votive candles to the New South Wales Court of Appeal. The trial judge thought that her injury was the fault of the supermarket, which should have prevented it by putting up warning signs. That decision was, however, reversed on appeal. The appeal court considered whether there should have been a sign. It speculated that the sign might say, 'Don't stand on the basket. It is dangerous and might not support your weight.' One judge observed:

> Surely this was to re-state in written form that which was, or ought to have been, clearly apparent to all but the most short-sighted or stupid customers.

Likewise in the case of Woods v Multi-Sport Holdings, an indoor cricket player sued the cricket arena for, among other things, failing to warn him that players could get hit by cricket balls. Not surprisingly, he lost. What is surprising is that the case went all the way to the High Court. Even there it was decided by a majority. Two judges thought that the law did oblige cricket arenas to put up signs warning players of this danger.

An honourable member interjecting:

The Hon. M.J. ATKINSON: Perhaps the member for Mitchell will address these two cases and tell the house how he might have decided them.

The Hon. R.B. Such: Ban cricket.

The Hon. M.J. ATKINSON: I certainly invite him to. He is suggesting banning cricket and, his being from the Greens Party, I would take him at his word.

Members interjecting:

Mr HANNA: I rise on a point of order. That is not a matter of debate, Mr Acting Speaker. That is a slur and I request an apology.

The ACTING SPEAKER (Mr Snelling): Sorry. What is the slur, the allegation?

The Hon. R.B. Such: That the member wanted to ban cricket.

Mr HANNA: The Attorney-General has explicitly made the statement that I want to ban cricket. That is so far from the truth that it is actually misleading parliament. But, rather, deal with it by substantive motion, I invite the Attorney to apologise.

The ACTING SPEAKER: For the good conduct of the house, I am sure the Attorney will correct the record.

The Hon. M.J. ATKINSON: If I may explain myself, Mr Acting Speaker, I was explaining the indoor cricket case of Woods v Multi-Sport Holdings, and I invited the member for Mitchell to explain how he would have decided that case, indeed two cases, if he were the judge, whereupon he interjected, 'Ban cricket'.

Mr Hanna: I did not interject 'ban cricket'.

The ACTING SPEAKER: Order! I think it was actually the member for Fisher who made that interjection.

The Hon. M.J. ATKINSON: Oh, I do humbly withdraw, sir. It was the member for Fisher, sitting next to the member for Mitchell. I do withdraw and apologise unreservedly and abjectly to the member for Mitchell. They were sitting together, so it was hard to tell who was taunting me.

The Hon. R.B. Such: Very good ventriloquism.

The Hon. M.J. ATKINSON: Yes, very good ventriloquism by the member for Fisher on the humourless member for Mitchell. Much the same thing happened in the case of Hoyts v Burns, in which a cinema patron sued for injuries sustained when she sat down on a seat that was not there. She said that she had no idea that cinema seats retracted when not in use, even though she had successfully sat down on the same seat shortly before. She claimed that the cinema should have put up signs warning her that the seats retracted. Once again, the parties had to incur the expense of going all the way to the High Court to establish that such a warning was not required. Again, I am interested in the member for Mitchell's and the Greens Party's solution to this case. In the Romeo case, which I have mentioned, the plaintiff sued because she had stepped over a cliff while intoxicated. She said that it was the Conservation Commission's fault for not warning her. That case went to the High Court too. Again, I am interested in the member for Mitchell's solution.

The ultimate results in these cases seem to me to be just and commonsense. Alas, that does not establish that the law is working properly in this area and needs no amendment. Evidently, the present state of the law is such that lawyers feel bound to advise their clients in such cases that it is worth a try—indeed, that it is worth trying all the way up to the High Court. In this case, perhaps the law is not as clear as it should be. Thus, even if this provision does just restate the common law, it is well worth doing, because it could save people thousands of dollars in useless litigation. Moreover, there are occasions where such claims succeed. For example, in the Queensland case of Mount Isa Basketball Association v Anderson, the plaintiff netball player was acting temporarily as a referee. She ran backwards across the court, fell over and was hurt. The basketball association was held liable for failing to warn her that it was dangerous to run backwards. Again, I would like to hear the attitude of the member for Mitchell and the Greens to that case.

The other thing that the bill does in this context is make it somewhat easier to establish the defence of voluntary assumption of risk. It presumes, in the case of an obvious risk, that the plaintiff knew about the risk. If the plaintiff did not know, he or she would have to give that evidence. It also makes clear that one can know about the risk for the purposes of the defence even if one does not know exactly how it will happen. Again, this is a modest measure. Therefore, there is nothing radical in presuming that a person knows about a risk that is obvious. They nearly always will but if, in fact, they do not, they can say so. There is nothing radical in saying that one can know enough about a risk to take account of it, even if one does not know the precise manner in which it will eventuate. The netball referee may not have known whether she would lose her footing and fall or whether she would collide with a player or a stationary object, but she surely knew that by running backwards she could get hurt. Under this bill she would not be able to complain when that happened.

It is right and proper that we can sue for damages if the accident is truly the fault of someone else who has failed to take reasonable care. It is wrong, however, if the law allows us to blame others for what is really our own fault. First, it conflicts with our fundamental moral duty to take responsibility for our own actions. Secondly, it makes nonsense of the law in the eyes of ordinary people and so brings it into disrepute. Thirdly, eventually, it has practical consequences because insurance becomes unaffordable or unavailable. I am sure, Mr Acting Speaker, that the member for Mitchell will take issue with me on all those three principles.

As a result, many valuable activities that bring people together, build communities and enhance our enjoyment of life will disappear. We have seen that happen around Australia in the last two years. The law of negligence imposes duties on everyone. It governs us when we drive our cars, when we invite guests into our homes, and in many aspects of everyday life. Ordinary people are expected to order their lives by this law and it, in turn, must be based on what the ordinary reasonable person would think and do. The law of negligence must accord with commonsense. Its results should be predictable and unsurprising and they should strike ordinary people as fair, otherwise how can we know where our legal duty lies? The law is not fair unless it reliably compensates those who are wrongfully harmed. Equally, it is not fair unless it reliably exonerates those who are not at fault. The bill adjusts the law of negligence so that it will better deliver those results. I commend the bill to the house.

Mr RAU (Enfield): I, of course, being a member of the government, will ultimately vote for this measure, but I will do so with considerable unease and in circumstances where I would like to compliment the Attorney on his remarks, because he has gone some considerable way—in fact, further than I have heard anyone else in this place—to make a silk purse out of a sow's ear.

With respect to the remarks of the Attorney, again, I commend him. He has manfully defended what he is obliged to do. It is a shame that he has the carriage of it here at this time when, of course, the negotiations and the preparation of this matter has been dealt with by Treasury. I make no criticism of the Treasurer. In fact, in this particular instance,

the Treasurer has made a great effort to consult with all interested parties; and, in the course of my remarks, I would like formally to commend him for the way in which he has consulted not only in the community but also within the government party.

He has tolerated endless correspondence from me, endless discussions with me, all quite cheerfully, and, unfortunately, mostly to no avail. But, nonetheless, I give him 10 out of 10 for his efforts in consultation. It is something that should be held up as a beacon to all ministers if they wish to see how the job can be done in a superlative way. But I digress. I would like to take a few moments to return to where this business all started. Of course, this is another example of Canberra sitting down and formulating a solution. The edict then goes out to the four corners of the commonwealth: 'Go forth, do as yee are told', spaketh us in Canberra.

I am sure that my olde English is wrong, but there you are—or middle English, should I say. In any event, my point is that this is not an indigenous bill. This is not something that evolved because the people of South Australia have been coming to the Attorney or to the Treasurer and saying, 'Attorney' or 'Treasurer, we need these changes.' This has evolved from the top and it has been imposed from the centre. It is, in effect, a knee-jerk reaction—this committee report I am talking about, Ipp I am talking about, not this bill. The Ipp business is a knee-jerk reaction in circumstances of extreme pressure, contrived by the insurance industry, to squeeze from government all the concessions it has been looking for for years, and what a magnificent success it has made of that. I congratulate them.

I mention the way in which it manipulated the media with the frenzy of threatening to stop trains from puffing up and down the Pichi Richi Pass and the mums and dads who cannot take their children swimming any more—the industry absolutely did a magnificent job. I give the public relations people 10 out of 10: they have done a magnificent job. But the one thing we did not hear anything about during the course of this manufactured crisis is their behaviour. We did not hear anything about the prudential vandalism carried on by insurers over decades in Australia, where they have made inadequate provision for calls on their policies.

We did not hear anything about the prudential vandalism associated with insurance companies effectively going to the casino with policyholders' money and blowing the lot by stupid investment decisions which were prudentially irresponsible and which placed them in a position of being non-liquid. We did not hear anything about that; nor did we hear anything about the unsustainable price war in which the insurers engaged for years—artificially depressing premiums when modest and incremental premium rises might have meant there was going to be a change for the better of an evolutionary nature rather than the revolutionary nature of these proposals.

We have heard nothing about that, because it does not suit the insurers to talk about it. It suits them to talk about the greedy plaintiff, the stupid judge and the greedy quadriplegic sitting there sucking Akta-Vite through a straw. These are the people who have been set up as the demons. What people do not seem to understand is that the individual sitting there sucking Akta-Vite through a straw does not do that of choice. They actually do not like being quadriplegics. I have met a number of them, unfortunately, and none enjoys their condition. The reason they get large awards of damages is not because they are able to sit there and have every flavour of Akta-Vite for the rest their life and feel happy: it is because the public no longer supports these people in institutions capable of looking after them for the rest of their life.

It is because medical science has advanced to the point where these people can be maintained, and it is because they have to pay for it. They have to have full-time nursing, expensive equipment and people who relieve their parents or the long-suffering carers of these people. Some of the material is obscene which has appeared in the newspapers which suggests, effectively, that these individuals are somehow skimming the system. It is nonsense. It is obscene.

The facts are these. The insurance companies managed to get themselves into a huge mess. I will not deny that there were some instances when the courts went overboard and decisions which, on reflection, should not have been made, were made; in his eloquent address, the Attorney has touched on a number of those. In fact, the Attorney's researchers and those who advise him have pulled out almost every case on which you could possibly press that button. I congratulate him. Excellent research, Mr Attorney!

The Hon. M.J. Atkinson interjecting:

Mr RAU: That is true; the Attorney did resist mentioning Rottnest Island, which is to his credit. As I said, I commend the Attorney on his speech. He has made a silk purse out of a sow's ear.

I have talked about the great consultation in which the Treasurer engaged and I have talked about the irrelevance of the Ipp committee. It is not as though this came down from Mount Sinai carved on tablets of basalt. This came down from a hurriedly collected group of panicking individuals in Canberra—and out went the message to the four corners of Australia: 'Get to work. Do this!'

What are we actually being asked to do? I have explored this to some degree. According to those who advise the government, a large proportion consists of codification of the common law. They assure me and others that what we are seeing is the common law simply being codified. I ask the reason for codifying the common law. What is the reason? It has gone perfectly well for hundreds of years. Why does it need to be codified? Of course, the answer is that it does not need to be codified, because everybody knows what the common law is now and everybody can follow it.

However, I promise you that, as certainly as night follows day (and I invite everyone here to take note of this), as soon as the so-called codification of the common law becomes law, there will be an orgy of litigation as lawyers explore the nuances of every new word that has been inserted into the legislation. Lawyers love nuance and they love words.

The Hon. M.J. Atkinson: It's their bread and butter.

Mr RAU: It is their bread and butter. Quite frankly, looking at this legislation, I think of what a marvellous time one could have at the bar exploring all the nuances of this codification done for no apparent reason—and I stress 'for no apparent reason'. The codification is there simply as a codification, but there it is. Apparently, it—

The Hon. K.O. Foley interjecting:

Mr RAU: No; I am supporting your bill. Because the Treasurer was not here before, I say that I am supporting his bill. I am speaking strangely about it, but I am supporting it. I have also supported his magnificent contribution to consultation which, as I have said, is an example and a beacon for all. It is magnificent.

Mr Hanna: What was it you said about demonising injured workers?

Mr RAU: I did not mention that. I have not got anywhere near that yet. Just dealing with the bulk of this bill, which

apparently is codification, my point simply is this: it does not need to be codified. When you go through the exercise of codification, you open up opportunities, you give the lawyers and the courts an opportunity to litigate and you create uncertainty. With the greatest of respect to the Attorney, it does not create certainty; it makes it more difficult.

Ultimately, the litigation will pass its climax and some certainty will return to the law. However, it could easily be avoided by not having the codification in the first place. That then brings us back to the two points in the bill which are really points of interest—points of friction, one might say—and the first is the question of obvious risk. All I say about that is that this provision needs to be looked at very carefully. It may produce unintended consequences, and I will give one example.

It may be an obvious risk that being in a boat exposes somebody to the risk of drowning. It may be obvious that riding a horse exposes you to the risk of falling off and hurting yourself. Those things are obvious; or, at least, so one would think. But is it obvious that the owner of the boat will leave a hole in the boat when you take the boat out; is that obvious? Is the fact that you are on a boat anyway sufficient, however it happens to be that you drown? You are on a boat, you drown, end of story—obvious risk. Or, it does not matter why you fall off a horse; you have actually got something that was supposed to be at a rodeo—you are told that it is a Clydesdale but you do not know a Clydesdale from a rodeo horse—so you hop on it and away you go, and you are thrown off. Is it because they have not bothered to do the saddle up? Again, if that is why you fall off is that an obvious—

The Hon. K.O. Foley: What about a camel?

Mr RAU: Or a camel! A magnificent example. I am covering as many animals as I can. But the point is that what is obvious risk is not obvious: in fact, it is far from obvious. This legislation will produce anomalous outcomes which will be difficult to explain for all concerned—for the courts and for the parliament.

The other area that is a real concern is the professional standards, and much has been said about this. It has been said that in circumstances where the boys' club get together and try to look after their mates and it is all too much, we can deal with it because of the provision about irrationality. The legislation says, in draft:

> However, professional opinion cannot be relied upon if the court considers the opinion is irrational.

I make the point that in the law the concept of 'irrational' is about the highest standard you can get. It is just short of impossible, and I would like both the advisers to start nodding, if they could, so that everyone can see that what I am saying is right.

The point is that irrational is a very high standard indeed, and it is not much of a relief. As I said in my opening remarks—and I do not want to go over the issues because I have said most of what I wanted to say—I will be supporting the bill. I support the Treasurer's efforts. He has been handed a loud, ticking parcel by these boffins in Canberra, and he has been given the unenviable job of selling it to his own party in the parliament. He has done a magnificent job and, of course, the Attorney has also done an exemplary job of making a silk purse out of a sow's ear. I congratulate both of them on their efforts. I am going to vote for it, because I respect their efforts so much and I do not think that they should go unrewarded. It is not because I think the legislation has much intrinsic merit, particularly the codification of what need not ever be codified.

The last point I will finish on is the magic pudding, which is my favourite ending point. There is no such thing as a magic pudding. If you do not compensate these individuals through the insurance system, they do not disappear, they do not go away, they do not stop sipping their Akta-Vite. They need to be looked after by somebody, and the person they get looked after by is the taxpayer.

Mr Scalzi: Not the insurance companies.

Mr RAU: Not the insurers: the taxpayer.

Mr SCALZI secured the adjournment of the debate.

ADJOURNMENT

At 5.59 p.m. the house adjourned until Tuesday 24 February at 2 p.m.