HOUSE OF ASSEMBLY

Wednesday 9 November 2005

The SPEAKER (Hon. R.B. Such) took the chair at 2 p.m. and read prayers.

SITTINGS AND BUSINESS

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

That the sitting of the house be continued during the conference with the Legislative Council on the Statutes Amendment and Repeal (Aggravated Offences) Bill.

Motion carried.

ASSENT TO BILLS

Her Excellency, the Governor, by message, assented to the following bills:

Broken Hill Proprietary Company's Steel Works Indenture (Environmental Authorisation) Amendment,

Carers Recognition,

Defamation,

Electrical Products (Expiation Fees) Amendment,

Maritime Services (Access) (Functions of Commission) Amendment,

Occupational Therapy Practice,

Pitjantjatjara Land Rights (Miscellaneous) Amendment,

Statutes Amendment (Intervention Programs and Sentencing Procedures),

Statutes Amendment (Transport Portfolio).

VISITORS TO PARLIAMENT

The SPEAKER: Order! We welcome today visitors from the Probus Club of West Lakes, and their local member is Hon. Michael Wright, member for Lee; Hillcrest Primary School, their local member is Mrs Robyn Geraghty, member for Torrens; Kings Baptist Grammar School, their local member is Ms Jennifer Rankine, member for Wright; Pembroke School, their local member is Mr Joe Scalzi, member for Hartley; and Mercedes College, and their local member is Mr Martin Hamilton-Smith, member for Waite. We welcome those visiting today and trust that their visit is educational and informative.

RAPE, SEXUAL ASSAULT AND DOMESTIC VIOLENCE LAW REFORM

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

Leave granted.

The Hon. M.D. RANN: Since coming to government, we have implemented an ambitious program of reform of our criminal law. Our reforms have assisted in redressing the imbalance in the criminal justice system between the interests of the victim and those of the accused. There have been some significant changes approved by the government in relation to sexual offences that will be implemented over the next year. These changes include:

- require courts to make special arrangements for victims of sex offences giving evidence;
- provide for even more special arrangements that a court can offer vulnerable witnesses, including victims of sex offences;
- stop unrepresented defendants personally cross-examining the alleged victim;
- clarify what questions should be considered improper for a witness to be asked and require courts to prevent lawyers asking them;
- prevent defendants having unrestricted access to prosecution material that is sensitive or interferes with the victim's privacy, such as certain photos;
- allow a transcript of witness evidence to be admitted at a retrial, eliminating any need for the victim to endure giving evidence on the same topic again;
- allow the court to admit hearsay evidence of out-of-court statements of victims who are children, mentally disabled or intellectually impaired without the victims having to come to court to give oral evidence.

These changes represent an important development in the criminal law. Much more can be done, however, and should be done. The law relating to rape, sexual offences and domestic violence has moved ahead in other jurisdictions.

In South Australia the conviction rate in rape cases that go to trial is unacceptably low. That issue is currently being considered by the Parliamentary Legislative Review Committee. The committee has published information which suggests that the rate of conviction for reported rape cases in 2002 was 1.8 per cent. In the same year, the Office of Crime Statistics and Research reports that only 17.6 per cent of rape cases which were referred to a court resulted in a conviction. So, these are appallingly low figures in terms of only 1.8 per cent of reported rapes actually ending up in a conviction.

The committee has taken evidence on and considered a broad range of issues that may affect conviction rates. It is now time to overhaul and reform rape laws in South Australia. This is a ghastly, evil, cowardly crime. It is now time that our laws were comprehensively reappraised and updated to reflect current views and knowledge. The police, prosecution services and victim support services do an outstanding job. I want to make sure that we have the right laws in place to help them do an even better job. I have asked the Attorney-General, in conjunction with the Minister for the Status of Women, to investigate the law relating to rape, sexual offences and domestic violence, and make urgent recommendations for changes. What the government wants to see are laws which make women and other victims of sexual offences confident that their cases will be considered fairly and compassionately, and that the investigation and trial will not further traumatise them.

There is a significant body of research and knowledge—interstate and local—that can be drawn on to inform the investigation and the recommendations. I anticipate that the work of the Legislative Review Committee will provide an important body of knowledge. The government expects recommendations in a number of areas, including:

- The treatment of victims of sexual offences in the criminal justice system, including their experience of investigative, prosecution and trial procedures;
- Changes to the criminal law with respect to the elements of sexual offences, the joinder and severance of charges, the admissibility of evidence, including similar fact and hearsay evidence.
- Prescribing or proscribing judicial directions to the jury by statute to reflect more contemporary community standards.

- Changes to legislation and/or administrative arrangements considered desirable to enhance the treatment of victims of sexual offences in the criminal justice system.
- The power to remove an alleged perpetrator of domestic violence from the victim's home to prevent ongoing abuse.
- Escalating the sanctions against perpetrators of domestic violence where there have been repeated breaches of restraint orders.
- Statutory recognition of cumulative breaches of a domestic violence restraining order and increased consequences.

The investigation will also assess the need for a community-based public awareness program on domestic violence laws and the legal boundaries of sexual behaviour. The proposals for legislative and procedural changes will be developed over the next three months. I propose to announce detailed changes to the law early next year. Legislation will be introduced as a priority following the election in March 2006.

The key point is that, with the reforms to the criminal law, we are trying to tilt the balance in favour of the victims, to tilt balance in favour of the innocent, where, in the case of rape laws, it seems to be so weighted in favour of the accused, in favour of the rapist. We have had a big advance in detection through DNA testing. We now have to match that advance with a big overhaul of the criminal law in South Australia.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Health (Hon. J.D. Hill)—

Food Act 2001, Administration of—Report 2004-05.

AUSTRALIAN MINERAL SCIENCE RESEARCH INSTITUTE

The Hon. K.A. MAYWALD (Minister for Science and Information Economy): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.A. MAYWALD: Members will be pleased to learn that today the Australian Mineral Science Research Institute (AMSRI) has been awarded $8.64 million through a federal Australian Research Council linkage grant scheme over a five-year period. The South Australian government financial commitment announced earlier this year has helped leverage federal funds and provided a strong case for locating the headquarters of this important organisation in South Australia. The grant is the largest ever awarded by the ARC under the linkage banner. With the additional $2.5 million of support from the South Australian government, $7.5 million from the industry and $4 million from our universities, the total cash value of the grant to AMSRI will be $22.64 million. Further matching in-kind support from the industry and universities could bring the total value of this grant up to $30 million. Professor John Ralston, head of Ian Wark Research Institute at the University of South Australia, will be the director of AMSRI.

AMSRI is a consortium of four major world-class Australian research centres together with a global network of 24 collaborators, and is coordinated by AMIRA International, the Australian Mineral Industries Research Association. Major companies include BHP Billiton, Rio Tinto, Anglo Platinum, Phelps Dodge, Orica and Xstrata Technology. This is a splendid example of collaboration between four research partners in AMSRI, three of whom are Australian Research Council special research centres.

The mission of AMSRI is to strengthen Australian technology and scientific leadership in particle science and engineering and supporting innovation areas. This will sustain the present and future contributions that the minerals and related industries make to the wellbeing of all Australians. The objectives of AMSRI are to act as the core centre for a national and international network of particle science and engineering research. It is also to attract and educate outstanding graduate students drawn from the international market for research and industry careers in Australia. The funding will support research in the four core research centres, including more than 30 PhD students and post-doctoral fellows, recruited worldwide.

ECONOMIC AND FINANCE COMMITTEE

Ms THOMPSON (Reynell): I bring up the 57th report of the committee entitled 'Crown Solicitor's Trust Account'.

Report received and ordered to be published.

LEGISLATIVE REVIEW COMMITTEE

Mr HANNA (Mitchell): I bring up the 29th report of the committee.

Report received.

Mr HANNA: I bring up the 30th report of the committee.

Report received and read.

PUBLIC WORKS COMMITTEE

Mr CAICA (Colton): I bring up the 229th report of the committee on City Central Tower One Office Accommodation Fitout.

Report received and ordered to be published.

Mr CAICA: I bring up the 230th report of the committee on the Queen Elizabeth Hospital Redevelopment Stage 2.

Report received and ordered to be published.

QUESTION TIME

ATTORNEY-GENERAL

The Hon. R.G. KERIN (Leader of the Opposition): Does the Premier have total confidence in the Attorney-General?

The Hon. M.D. RANN (Premier): Aye, aye, sir.

RURAL HEALTH SERVICES

Ms BREUER (Giles): My question is to the Minister for Health. What is being done to improve health services in country South Australia?

The Hon. K.O. Foley: Tell us some good news, Hilly.

The Hon. J.D. HILL (Minister for Health): I shall; I shall tell good news. I thank the member not only for her question but also her great interest in health issues in rural South Australia. I inform the house that the Strategic Infrastructure Plan, which was released a little while ago by the Minister for Infrastructure, contains $17.7 million for the upgrading of country hospitals. In September, the government announced $9.2 million for minor capital works and clinical equipment purchases in country hospitals. The government

also increased the budget for country health by $44 million (13.4 per cent) compared with last year. The government has boosted funding for regional hospitals and health services by more than $71.5 million over 4½ years, starting in December 2004. In addition, the government has introduced a $27.2 million recruitment and retention package to support country doctors.

This is vital. We need to get GPs operating and working in country areas. This package is a breakthrough in that goal. The package will mean increased on-call and other allowances, improved locum services for overworked doctors, increased training support, scholarships for country students and country-based hospital internships. I also take this opportunity to acknowledge and congratulate Dr Tony Lian-Lloyd from Quorn, who was awarded the inaugural Rural Doctor of the Year Award—a national award. Dr Lian-Lloyd, for many years, has practised in the Flinders Ranges and the Mid North and is active in training the next generation of rural doctors. I have tried to contact Dr Lian-Lloyd today, because I would like to meet him and congratulate him personally.

ATTORNEY-GENERAL

The Hon. R.G. KERIN (Leader of the Opposition): My question is to the Minister for Police. Did the member for Florey approach the police either formally or informally about matters concerning the Attorney-General?

The Hon. K.O. FOLEY (Minister for Police): That question was raised yesterday, and I said I would get an answer. In the context of what was asked yesterday, I am happy to get some information. I am not aware.

WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL

Ms RANKINE (Wright): My question is to the Minister for Industrial Relations. Has the government made a submission to the Senate inquiry into the Workplace Relations Amendment (Work Choices) Bill. If so, what are the main points being made? Will any further representations be made to the inquiry by the state government?

The Hon. M.J. WRIGHT (Minister for Industrial Relations): I thank the member for Wright for her question. I know that she has a very strong interest in this area. The government has made a submission. We think it is very important to do so. There has been much community concern about the proposed federal legislation, and we feel duty-bound to make representation to that Senate inquiry. I will not go through all of our submission, but I will give members of the house the flavour of what is in our submission.

We highlight our excellent record. South Australia has a great industrial relations record, and it has done so for a long time; it is something of which we can all be extremely proud. Some of the points that we make in regard to that are that South Australia has the lowest number of industrial disputes of any state; we have the most jobs in our history; and we say that our system gives South Australia a competitive advantage in attracting business investment to our state, and we simply do not want to lose that.

The other hallmark of South Australian industrial legislation is that it is simple and easy to read and use. That is something that has always been the hallmark of South Australian industrial legislation. If members look at the Fair Work Act, which is 153 pages long, compared with the proposed federal Liberal legislation of 687 pages, the Prime Minister tries to sell this as being simpler, yet it is 534 pages longer than the Fair Work Act. We also say in the submission that South Australian industrial law provides a decent safety net for families, which is something about which all South Australians can be proud. We call for this so-called work choices package to be scrapped. We also say that a large part of the stated justification for the federal legislation is simply false. What the Prime Minister argues—

Members interjecting:

The SPEAKER: Order! The minister will resume his seat. The house will come to order.

Members interjecting:

The SPEAKER: The Attorney has forgotten the rule in this place, and also the member for Mawson. The house will come to order! The Minister for Industrial Relations.

The Hon. M.J. WRIGHT: Thank you, sir. As I was saying, the stated justification for this federal legislation is simply false. The Prime Minister has argued that a national system for national employers is part of the reason for this legislation. However, we all know that, if national employers want to be in the federal system, they are already able to do so. We also say that 'work choices' takes away the ability of businesses and employees to choose our great system, and why would anyone want to do that when we have the record we have.

We also say in the submission that it will create an American-style class of working poor, where workers can work two jobs and still not make enough to make ends meet. What a devastating, depressing message that sends to families. The work choices legislation will be a cancer eating away at the Australian way of life—eating away at the treasured Australian culture of a fair go. Australians expect a fair go, and they will not get a fair go from this legislation. In the submission, we say that it will tear a gaping hole in our social fabric.

The Hon. DEAN BROWN: On a point of order, Mr Speaker. I appreciate that the minister is outlining what is in the submission, but there seems to be a fair bit of personal debate in between. I therefore draw your attention to standing order 98.

The SPEAKER: The minister is now starting to debate. The minister should restrict himself to the information.

The Hon. M.J. WRIGHT: Thank you, sir. They are some of the key points contained in the submission. I will not go into the full detail, because I am sure all members will study our submission with great care. In conclusion, I will be attending the Senate inquiry on Monday on behalf of the government and the taxpayers of South Australia, because what they want is a fair go for South Australians. I will be telling the Liberal government, 'Don't pick the pockets of working families.'

The Hon. R.G. KERIN (Leader of the Opposition): I have a supplementary question. Does the minister think it is fair on South Australian taxpayers that he has had a web site set up whereby people can register to have a government site send SPAM to federal members of parliament?

The Hon. M.J. WRIGHT: Yes, I do. We want South Australians to be able to have a say, because we know that John Howard will not give South Australians an opportunity to have a say about this stinking, rotten legislation. So, we will provide that very opportunity the Prime Minister will not provide, because he is scared to debate his rotten legislation.

Members interjecting:

The SPEAKER: Order! The house will come to order! The member for MacKillop will take his seat.

Members interjecting:

The SPEAKER: Order, the Minister for Transport! The Deputy Premier should not be setting a bad example—he should be setting a good one.

Members interjecting:

The SPEAKER: Order! The house will come to order! Ministers on my right should be setting an example of appropriate behaviour. The member for MacKillop.

Mr WILLIAMS (MacKillop): I have a further supplementary question. Minister, will you confirm—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order! The Attorney will be named in a minute if he keeps behaving like he is.

Mr WILLIAMS: Will the minister confirm to the house that the political staff employed in his ministerial office are employed under contracts and not under an award?

The Hon. M.J. WRIGHT: What I can confirm is that they are not—

Members interjecting:

The SPEAKER: Order! The house will come to order. I remind members that their contracts are being looked at on I think 18 March next year. The minister.

The Hon. M.J. WRIGHT: What I can confirm is that they are not AWAs, and they are not the Howard way of taking away and reducing workers' rights. That is the Howard way: an AWA that suppresses workers' rights.

Members interjecting:

The SPEAKER: Order! The minister is debating.

Members interjecting:

The SPEAKER: Order! Some members need to reach for the off button occasionally.

MINISTERS, DEFAMATION PROCEEDINGS

Mr SNELLING (Playford): Is the Attorney-General aware of any cases when the cabinet guidelines covering the representation of ministers in defamation proceedings have not been complied with and, if so, can he advise the house of the circumstances of these cases?

The Hon. M.J. ATKINSON (Attorney-General): I can, sir. The cabinet guidelines for representation for ministers in defamation proceedings provide among other things that assistance to defend defamation proceedings may be provided to a minister where the publication complained of reasonably arises from the performance of ministerial duties and that indemnity granted extends only to costs reasonably incurred. The cabinet guidelines also provide that the Attorney-General will determine for each case whether government assistance should be provided to the minister.

The government has not granted assistance to any of its ministers for defamation proceedings—that is this government; the government has, however, been required to pay for legal costs and damages for indemnities granted by the previous Liberal government to its ministers. I stress that these were obligations which were entered into by the previous government which this government was obliged to honour and legally bound to pay. I have reviewed the circumstances of two such cases. I have very serious concerns that the cabinet guidelines were not complied with and huge costs were incurred by the taxpayers of South Australia to fund a private liability on behalf of the former minister for minerals and energy, the member for Bright. I am also concerned that huge sums of money—

Mr BRINDAL: On a point of order, Mr Speaker, what responsibility has the Attorney-General for the actions of a previous government? This is a matter for another parliament, not this one.

The SPEAKER: Order! The Attorney is currently responsible for financial matters relating to his department.

The Hon. M.J. ATKINSON: I had to negotiate Lucas's $130 000 snatch of taxpayers money. I am also concerned that huge sums of money funded by the taxpayer were used to cover legal costs that were not reasonably incurred in proceedings issued against the then treasurer, the Hon. Robert Lucas. The former minister for minerals and energy (the member for Bright) sought assistance concerning a defamation action that was brought against him by the member for Mitchell. The previous Liberal government approved the payment by the government—that is, by the taxpayers—of the costs of legal representation in defending the action and any costs and damages awarded against the member for Bright in settlement of the matter. These decisions by cabinet—

The Hon. D.C. KOTZ: On a point of order, Mr Speaker, I refer to the standing order that deals with repetition. This is not the first time the Attorney has stood in this place and given this information to the house. Every time he feels toil and trouble, he steps into the gutter with his attacks.

The SPEAKER: Order! The member for Newland will take a seat. The chair could not ascertain on the spur of the moment whether it is word for word repetition, but I cannot recall this information being given to the house in recent times. The Attorney.

The Hon. M.J. ATKINSON: These decisions by cabinet, these decisions by the Liberal government to indemnify the member for Bright, were made despite legal advice from the Crown Solicitor to the then attorney-general that the alleged defamation did not arise from the performance of ministerial duties and therefore did not come within cabinet guidelines.

An honourable member interjecting:

The Hon. M.J. ATKINSON: The benefit—

The Hon. W.A. MATTHEW: On a point of order, Mr Speaker: the Attorney-General is wilfully and knowingly misleading this house. I ask you, sir, to draw him to account and ask him to sit down.

The SPEAKER: Order! The member has to do that by way of substantive motion.

Members interjecting:

Mr BRINDAL: On a further point of order, sir—

The SPEAKER: Accusations relating to misleading the house have to be done by substantive motion.

Mr BRINDAL: On a further point of order, sir, and on a most serious matter, you know that cabinet documents are sealed on a change of government. I ask how the Attorney-General purports to have information that should have been sealed.

Members interjecting:

The SPEAKER: Order! As I understand it, the Attorney does not have a cabinet document in front of him.

The Hon. M.J. ATKINSON: Certainly not. The Liberal government's payment to the member for Bright was of $163 858.60 by the taxpayers of South Australia to meet a private liability incurred by the member for Bright.

Members interjecting:

The Hon. M.J. ATKINSON: It was $163 000 of taxpayers' money, paid to a Liberal Party—

Members interjecting:

The SPEAKER: Order! The Attorney is being repetitious now.

The Hon. R.G. KERIN: On a point of order, sir: can I ask that the Attorney withdraw two statements that he has made. The first one was that he said, 'Lucas's grab of $130 000 of taxpayers' money'. That is totally misleading and inappropriate. The other one was where he just said 'payment to the member for Bright' of $160 000. No payment was made to the member for Bright; that is misleading.

The Hon. M.J. Atkinson: It was.

The Hon. R.G. KERIN: It is misleading; there was no payment to the member for Bright.

Members interjecting:

The SPEAKER: Order! Members need to be careful in not making allegations across the board. I think the Attorney has made his point.

The Hon. M.J. ATKINSON: I am answering the second part of the question, sir.

Members interjecting:

The Hon. R.G. KERIN: Point of order, sir: I insist that you ask the member to withdraw.

Members interjecting:

The Hon. M.J. ATKINSON: It was a private liability.

Members interjecting:

The SPEAKER: Order! I do not believe it comes in the category requiring a withdrawal—

Mr BRINDAL: On a point of order, sir: the Attorney's answer clearly shows the payment was for legal fees. The Leader of the Opposition is absolutely correct. He attributed the payment to the member for Bright and you should uphold the point of order, sir.

Members interjecting:

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

Members interjecting:

The SPEAKER: Order! The point in dispute is whether the cheque was paid personally to the member for Bright or whether it was paid to some other party.

The Hon. R.G. KERIN: Point of order, sir: I disagree with what you are saying, because it is actually not that case. It is a matter of—

Members interjecting:

The SPEAKER: Order!

The Hon. R.G. KERIN: The Attorney-General is claiming it was a personal liability. There was a cabinet decision, a decision which—

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The next member who challenges the chair will be named.

Mr Venning interjecting:

The SPEAKER: I name the member for Schubert. I warned him. I said the next member will be named. I named him; he has been named. Do you wish to stand and explain and apologise?

Mr VENNING (Schubert): Yes, sir, I do apologise. I did not hear your first warning. I do apologise and withdraw.

The SPEAKER: Members need to be very careful not to shout over the Speaker; they get excited, but they still have to abide by the rules of this place. We are not going to degenerate into some place that the public of South Australia cannot be proud of. The Attorney.

The Hon. M.J. ATKINSON: I will answer the second part of the question, but I will repeat that the Crown Solicitor—

The Hon. DEAN BROWN: On a point of order—

The SPEAKER: Order! The Attorney is deliberately repeating, and that is out of order.

The Hon. M.J. ATKINSON: I will move to the second part of the question.

The Hon. W.A. MATTHEW: On a point of order, I clearly heard the Attorney-General claim that the matter to which he is referring in my name was a private liability. That is incorrect. The Attorney knows it is incorrect and I ask him—

The SPEAKER: Order! The member for Bright will take his seat. These are debating points. The member for Bright has a right to respond. If the member for Bright disagrees, he has an opportunity to debate it.

The Hon. W.A. MATTHEW: On a point of order, Mr Speaker, as Speaker you are also the custodian of the responsibility to ensure that a member's privilege is not being breached. The direction the Attorney is now taking is heading in that direction, and it will put me in no position other than to rise on a matter of privilege and ask you to investigate whether the Attorney has abused his office in the house.

The SPEAKER: It is not a matter of privilege.

The Hon. W.A. MATTHEW: Indeed, sir, it is.

The SPEAKER: It is not a matter of privilege, it is a debating point. The Attorney should deal with the second part.

The Hon. M.J. ATKINSON: I was also concerned to see that the defamation proceedings issued against the Hon. Robert Lucas by the Hon. Nick Xenophon were considerably protracted by the intransigent and unreasonable behaviour of the Hon. Robert Lucas. After Mr Lucas had defamed Mr Xenophon in December 1998 he refused to provide an appropriate apology for his remarks, despite the advice of the Crown Solicitor to the then Attorney-General that the remarks were defamatory and that there were no defences to an action for defamation.

Mr BRINDAL: On a point order, questions made without notice may be addressed to ministers on those areas for which they are responsible to the house. I ask you quite clearly what responsibility the Attorney had for the actions of the previous attorney.

The Hon. M.J. Atkinson: I had to settle it.

The SPEAKER: It comes under the portfolio of the Attorney-General.

The Hon. M.J. ATKINSON: Mr Lucas' unreasonable behaviour in not providing an appropriate apology resulted in the settlement of the proceedings by consent with a cost to the taxpayer of $22 376. Not content with the damage caused to that point, Mr Lucas went on to make further defamatory remarks against Mr Xenophon, including a restatement of the original defamation, conduct for which the state had already paid. Mr Lucas' behaviour resulted in further legal proceedings against him by Mr Xenophon as well as challenges by Mr Xenophon to the decisions made by the previous (Liberal) government to provide indemnities to Mr Lucas. The second defamation action finally settled when I was Attorney-General in 2003, and I am responsible to the house for it.

In all these legal proceedings—the two defamation actions and the judicial review proceedings—Mr Lucas benefited from a taxpayer-funded safety net as his legal costs, borne by

the state's taxpayers, continued to escalate. Alas, the taxpayers of South Australia were obliged to honour the undertaking given by the previous (Liberal) government to meet Mr Lucas's costs. The taxpayers of South Australia had already paid out $22 376 as a result of Mr Lucas' refusal to apologise appropriately. The taxpayer has been required to pay a further $115 820.60 in damages and costs incurred by Rob Lucas' conduct for these defamation actions alone. Let me add it up, sir. Taxpayers had to pay for the Liberal Party's mates, $115 820.60 for Rob Lucas's second defamation. Taxpayers had to pay $22 376 for Rob Lucas's first defamation. Taxpayers of South Australia had to pay $163 858.60 for the member for Bright's personal defamation action.

The Hon. W.A. MATTHEW: Point of order, Mr Speaker: I again ask the Attorney to withdraw the allegation—

The Hon. M.J. Atkinson: No; it was true—

The Hon. W.A. MATTHEW: —that that was a personal defamation action.

The Hon. M.J. Atkinson: The Crown Solicitor said it was.

The Hon. W.A. MATTHEW: It is untrue. The court found that not to be the case. It is untrue, Attorney, and you are misleading this house. It is untrue.

Members interjecting:

The SPEAKER: Order! The Attorney is giving his view of the situation. The member for Bright has the right, at an appropriate time, to respond if he disagrees.

Members interjecting:

The Hon. W.A. Matthew: This is to try and take the heat off him over the Ashbourne affair.

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

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: Mr Speaker, the total cost to the taxpayer of the member for Bright and Rob Lucas's loose lips was $302 055.22. Imagine what could have been done with that money if it had not been used for their personal purposes.

Members interjecting:

The SPEAKER: Order! That is comment.

The Hon. G.M. GUNN (Stuart): I have a supplementary question. As the Attorney-General is so interested in telling the taxpayers how much has been spent on legal expenses, would he now inform the house how much the legal expenses were for the member for Playford's legal expenses when he was called to go to court, so that the public can see exactly what the costs involved?

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The Hon. M.J. ATKINSON: Well you voted for it.

Members interjecting:

The SPEAKER: Order!

The Hon. I.F. EVANS (Davenport): I have a supplementary question to the Attorney, Mr Speaker. Under the ministerial guidelines the Attorney just referred to, can ministers who deliberately defame someone gain access to taxpayer funded legal representation?

The Hon. M.J. ATKINSON: The guidelines are publicly available, and I suggest that the member for Davenport read them.

Members interjecting:

The SPEAKER: Order! The member for Bragg.

BULLYING ALLEGATIONS

Ms CHAPMAN (Bragg): My question is to the Premier. Whilst in Port Augusta on 24 October 2005, did the Premier receive a phone call from the member for Florey complaining about the Attorney-General?

The Hon. K.O. Foley: Can you repeat that; I didn't hear it.

Ms CHAPMAN: I am happy to repeat that. As the Premier did not hear that I am happy to repeat the question. Whilst in Port Augusta on 24 October 2005, did the Premier receive a phone call from the member for Florey complaining about the Attorney-General?

The Hon. M.D. RANN (Premier): I do not recall that at all.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The Hon. M.D. RANN: I just heard the member for Waite talking about people telling the truth. I was asked a question by the Leader of the Opposition about whether I had confidence in the Attorney-General. I have a lot more confidence in the Attorney-General than the member for Waite, Martin Hamilton-Smith, has in Rob Kerin.

Members interjecting:

The SPEAKER: Order! The house will come to order and settle down. Members on my left will get a question because the sequence got out of order earlier on. The member for Unley.

ASHBOURNE, CLARKE AND ATKINSON INQUIRY

Mr BRINDAL (Unley): I am a bit perplexed. I had a question for the member for Florey, but as she seems to have scuttled out, I wonder if you could get her to come back. Notwithstanding that, I will take this opportunity to ask a question of the Premier. Could the Premier tell this house how much his ill-advised, and the Deputy Premier's, actions cost the people of South Australia in respect of the trial of Randall Ashbourne; and could he also advise whether he is now going to fire the Attorney, because if he paid legal expenses from the Crown purse that were not in order he is guilty of malfeasance?

The Hon. K.O. Foley: What are you talking about?

Mr BRINDAL: You can't pay out public money if you don't think it should be paid out, and the Attorney just said that he did not think three hundred grand should have been paid out, fool.

The Hon. M.D. RANN (Premier): I think the Attorney's point was that there was clear legal advice, as I understand it, about the member for Bright's case, which said that it was a private matter, not a government matter, and therein lies the difference.

The SPEAKER: I point out to members that it is not acceptable to ask a question of another member unless that member is a minister, or has some other specific responsibility to the house—standing order 96. Members can also look at Erskine May.

Mr BRINDAL: On a point of order, Mr Speaker, standing order 96 authorises you to order any member to answer on any matter of public business. The dictionary which you

provide defines 'public' and it defines 'business'. If lying to this house is not a matter that is the province of this house, what then should this house be concerned with?

The SPEAKER: There is a difference between public interest, which people may have in something, and public business. The member for Florey is not responsible to the house.

Mr BRINDAL: The lies of the Premier are a matter of public interest.

The SPEAKER: Order! The member for Unley will be named if he tries to talk over the chair. He should know from his teaching experience that it is bad manners, apart from anything else.

The Hon. M.D. RANN: Point of order, sir. Did the member for Unley—the honourable member for Unley—just use the word 'lies'? Did you use the word 'lies' across the chamber? If you did, I expect an apology.

The SPEAKER: Order!

Mr BRINDAL: Absolutely I did, but I did not say that you were a liar. I said that lies could have been told in this house.

Members interjecting:

Mr BRINDAL: Don't tell me what I said, you goose.

The SPEAKER: Order! The Premier will take his seat. Accusations of that kind should not be made anyway. The difference is between applying something to an individual and a generalised comment.

Members interjecting:

The SPEAKER: The member for MacKillop and the Minister for Transport! I remind members to have a look at standing order 96, which precludes members from asking a question of a member unless they hold a position such as minister, chair of a committee, or something like that. Public business is not the same as public interest. The deputy leader.

The Hon. DEAN BROWN: I can recall, on that standing order—

Members interjecting:

The SPEAKER: Order! I cannot hear the deputy leader.

The Hon. DEAN BROWN: On that standing order, I can recall numerous questions being asked of members who were not ministers, but they had a choice as to whether or not they answered it. I wonder, therefore, why the standing orders appear to have been reinterpreted when, in fact, the practice of this house for many, many years has been that it was up to the individual as to whether they bothered to answer the question.

The Hon. P.F. Conlon interjecting:

The SPEAKER: Order! For the benefit of members, I advise that standing order 96 states:

1. Questions relating to public affairs may be put to Ministers, and

2. Questions may be put to other Members but only if such questions relate to any Bill, motion or other public business for which those Members, in the opinion of the Speaker, are responsible to the House.

The member for Florey is not responsible for the house.

Mr BRINDAL: Sir, could you help us? Is the matter of the possible misleading of this house a matter of public business?

The SPEAKER: That requires a substantive motion. The member for Taylor.

FLOODING

The Hon. P.L. WHITE (Taylor): My question about a matter of major importance to my electorate is to the Minister for Families and Communities. What are the latest developments in the flooding experienced overnight?

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I thank the honourable member for her question and I acknowledge the close interest that she has taken in this matter, given that some of the effects of this flooding have taken in parts of her constituency. Last night at about 10 o'clock the Gawler River burst its southern bank near Baker and Robinson roads. This was the result of large volumes of water entering from the North Para and South Para systems. At about 3 a.m., flood waters banked up and began to flow south to the northern fringe of Virginia. At 3.07 the State Coordinator appointed Sue Vardon as the Deputy State Coordinator (Recovery) pursuant to the Emergency Management Act 2004. By 3.45 the water levels began receding and moved away from the more populated areas towards horticultural land. A large area north of Virginia is currently inundated. Fortunately, as of this morning, there are no reports to the police of loss of life or injury. There has been no reported damage to livestock. However, we are expecting significant damage to horticultural properties, especially glasshouses.

This morning, the Minister for Emergency Services (Carmel Zollo) and I visited the flood-affected areas in Gawler and Virginia and witnessed first-hand the damage done. I am pleased to announce that Martin Breuker has been appointed as the coordinator of the Gawler and Virginia flood recovery process. As members might recall, Martin has done an outstanding job in the recovery effort after the Eyre Peninsula bushfires, and he is already working from the evacuation and recovery centre which has been set up at the Adelaide International Raceway at Virginia. This will be open from 8 a.m. to 8 p.m., and a range of government, non-government and community agencies will be offering their services from that site, including Children, Youth and Family Services, the Housing Trust, Red Cross and Centrelink. The centre will provide a centralised place where people who have been affected can get face-to-face help, support and advice.

As reported yesterday, the state government's flood hotline has been activated as a one-stop shop for people who have been affected. The number is 1300 764 489. It has received 165 calls since it was established yesterday. CYFS today is working very closely with the MFS and CFS to clean out houses that have been affected by the flooding. Grants are available to assist with temporary accommodation and clean-up and, for those people who may not have been insured, sums of up to $5 600 (on the basis of certain conditions) are also available.

Many of the people we met this morning were especially grateful for the work of the volunteer and community emergency service crews. I met a number of people who had been up all night. Many of them made quite significant personal sacrifices to come and help out. One couple I met had to leave their oldest child with the rest of the siblings to come and help with the flood relief effort, and they had been working all evening. It was gratifying to see members of the local community all pitching in, bagging sand and doing what they could to avert the worst of the flooding in the Virginia area. So our thoughts are with those who have been affected by the floods and we wish them all the best in the future. The government stands ready to support them.

FLOOD HOTLINE

Mrs HALL (Morialta): My question is to the Minister for Families and Communities. Given the answer that he has just given to the member for Taylor about the floods, will the minister inform the house what priorities should be taken by departmental staff given the task of providing information to assist flood victims who call the hotline that he announced yesterday and again today?

A distressed constituent from the electorate of Morialta called the hotline after her house suffered flooding yesterday morning. My constituent advised that she was informed by the operator that she could not be assisted because the operator was currently dealing with a domestic violence situation on the other line. Another two constituents have since rung my office and advised that when they called the hotline one was referred to Transport SA while the other was referred to Services SA, with neither agency in a position to give meaningful advice or assistance.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): We established this hotline at 11 a.m. yesterday. We have received 165 calls and many people have been assisted. I am sorry if there are some people who have not been assisted. If those people remain in a state where they need our assistance and the honourable member could hand me those details, I would be more than happy to see what we can do for them.

HOSPITALS, GAWLER

The Hon. M.R. BUCKBY (Light): Will the Minister for Health explain why there have been nights when no medical staff have been on call to give treatment in the casualty service at Gawler Hospital? I have received a copy of a letter from the GPs of Gawler. The minister has received the same letter, which states:

> At the time of writing there have been nights without medical staffing in recent months because of the shortage of available doctors and by the end of January the loss of regular medical staffers from the district will bring the system to crisis.

The Hon. J.D. HILL (Minister for Health): I am aware of the correspondence, which was sent to me, Tony Abbott, the member for Light, and a few other local people, but strangely enough the member for Finniss did not get a copy of this letter. It must be one of the few published in South Australia that he did not get. I have certainly had a look at the letter. The issue of the provision of services at the hospital is one of concern. The issue of the provision of GP services generally in outer metropolitan areas, as members know, is one of great concern.

Earlier this week, I met with Chris Cain and others from the AMA to talk through a range of measures that we may need to take at a state level to try to address some of these issues in the short to longer term. I have also said publicly that one of the things I need to do is to have urgent conversations with Tony Abbott about the availability of provider numbers so that we can get more doctors working in areas where they are required. In particular, in relation to this service, one of the things that the doctors reasonably have put in their request to me is that they be eligible for RHEP payments, which are rural incentive payments. I have been told that the Gawler Health Service doctors already receive, by special arrangement with the department, $160 000 per annum for the provision of services. I will not go through the detail of that, but I can provide it to the member if he wishes to know. This is a unique package that has been provided for Gawler.

They make the reasonable point that it is a country service, so why do they not get this other package when, for example, you get it in Victor Harbor or Mount Barker? I have not been in the job long enough to know the answer to that, although I have asked my department to investigate it as a matter of priority. As the member probably knows, I will be in Gawler on Monday with the community cabinet meeting and I have asked my office to make an appointment for me to meet with these doctors so that I can get a good understanding of their needs on the ground. I have directed my department to work through the issues that they have raised to see if we can come up with a speedy solution.

HOSPITALS, WUDINNA

Mrs PENFOLD (Flinders): Will the Minister for Health reiterate the undertaking given by the former minister for health to retain acute care services, including obstetrics, in the hospitals on Eyre Peninsula in the electorate of Flinders? I am advised that the meeting at Wudinna last night left the general public concerned that the hospital, which has already lost Dr De Toit, will not be retained other than as a nursing home funded by the federal government. This is despite 20 babies having been born in the district so far this year, with another eight expected soon, and a high level of road trauma risk because of the highway linking east and west that passes through the town. Other hospitals are over a golden hour away.

The Hon. J.D. HILL (Minister for Health): I thank the member for her question. I know that she has a passionate interest in hospitals in her region and I know that this issue of the Wudinna Hospital is of some concern. I made a statement yesterday in the house and I provided the house with a copy of the report that had been conducted into the concerns raised by the doctor the member mentioned at that hospital. The summation of the report, for the interest of the house, was that the review team did not believe that medical and nursing care met contemporary standards at that time, but that the situation was not serious enough to be placing lives at risk. In the time that the report was being produced, a number of recommendations have been made to the board of the hospital (12 in all) and those recommendations have already been implemented or are in the process of being implemented.

Last night, the report was made available to the community. I understand that there was a meeting of about 120 people at the meeting. The report was put to them and they were given a chance to read it and then there were a number of questions. My understanding is that the majority of people seem reasonably satisfied. However, a small group of about 20 people of that 120 still had deep concerns. The issues have been looked at. The other point I make is that a four-year accreditation was recently awarded by the Australian Council on Health Care Standards to the hospital, and the review of nursing systems by Clinical Nurse Consultant, Ceduna and the Chief Nurse, Department of Health—

Mrs PENFOLD: On a point of order, Mr Speaker. Although this is very interesting, my question was particularly to do with whether the minister will give me a guarantee that he will keep the 10 acute care hospitals on the Eyre Peninsula.

The SPEAKER: Order! This is becoming another question. Does the minister wish to add to the answer?

The Hon. J.D. HILL: I suppose what I was trying to do, in an indirect way, was to demonstrate to the member that the government and the board have been treating this hospital very seriously. We have talked to the local community, and we have decided to put a consultant nurse in there as a full-time position at the end of the year. The hospital has a four-year accreditation. So, there is every indication that that is a hospital that is back on its feet and will be supported. We have no intention of downgrading it.

In relation to the issue of obstetrics, I have spoken to my departmental officers today. I understand that there was an obstetrics service there for a relatively short period of time—some two or three years—but it has not been in place now for a year or so. There are difficulties getting midwives in country areas, as the member would know. However, in any event, insufficient births are occurring in that hospital—

Mrs Penfold interjecting:

The Hon. J.D. HILL: I could not understand what the member was saying, but she was interrupting what I was trying to say in a direct answer to her question. In relation to obstetrics, the advice I have had is that the number of births in the community is insufficient to have a safe obstetrics service at that hospital, anyway: you need a certain volume of births in order to have the range of birthing types for a safe service to be provided. However, the point I want to make is that there has been a review of the hospital. There was a discussion last night, and most people in the community the member represents were satisfied. The member is clearly not. Most people would be looking for a silver lining. Unfortunately, the member for Flinders finds a brown lining.

Mrs PENFOLD: My question is again to the Minister for Health. Will the minister provide an assurance that specific complaints or concerns about any particular—

Members interjecting:

The Hon. DEAN BROWN: On a point of order, Mr Speaker. Time after time, it has been drawn to your attention and that of the house about the way in which senior ministers sit here, using Christian names across the house, which is clearly in breach of standing orders. I have talked to you personally about it, and I ask again that you make sure—

The SPEAKER: Order! The member will take his seat.

The Hon. DEAN BROWN: —that the ministers are named if they continue the practice.

The SPEAKER: Order! The chair cannot always hear the banter across the chamber, and it is probably just as well that I cannot. The member for Flinders.

Mrs PENFOLD: Thank you, Mr Speaker. Will the Minister for Health provide an assurance that specific complaints or concerns about any particular individual given to the team reviewing the Wudinna Hospital will be pursued by the Department of Health, and when can complainants expect a response? People of the Eyre Peninsula believe that the clinical review of the Wudinna Hospital was restricted in its ability to address serious issues that were raised. I quote from the report:

> It is important to note that given the terms of reference under which the Team worked, any specific complaints or concerns about an individual's practice were referred through the appropriate channels to the Department of Health.

Ms Chapman: Caesar reviewing Caesar.

The Hon. J.D. HILL: The member for Bragg is such an insightful thinker, isn't she: Caesar reviewing Caesar! In fact, the review was conducted by a respected doctor—and I know the member for Finniss believes this—and a respected nurse, who have nothing whatsoever to do with that hospital.

In relation to the particular issues, I am not sure whether this is what the member is getting at because it was a general question, but there was some issue about a personal credit card that was commented on by the doctor to whom the member refers. That matter was referred to the police who undertook an investigation which was subsequently stopped as there was no evidence of fraud and no breach of law to answer. There was an issue to do with resignation, and that was investigated. The staff member involved had indicated that she wished to resign and the CEO at the time signed the resignation form on the staff member's behalf to enable payment of leave entitlements. The advice I have is that whilst that was not ideal it was done with the best intentions to enable that payment to be made.

Regarding some of the other questions asked by the honourable member earlier, I have found the note I was looking for. I am advised that last night at the meeting the government representative responded to questions about whether country hospitals would be closed or whether they would be turned into aged care centres: the point the honourable member made directly. The officer representing me said that it was government policy that no country hospitals would be forced to close and that the Generational Health Review had affirmed the importance of communities receiving health care as close as possible to where they live and that implementation of this review was resulting in more (not less) services to country hospitals.

Mrs PENFOLD: Mr Speaker, I rise on a point of order of relevance again. I still have not had an answer to the question about whether complaints or concerns about individual practices were referred through appropriate channels to the Department of Health and when we can expect a response.

The Hon. J.D. HILL: It is such a vague statement. There has been a review which looked at all these issues and the review has made recommendations. Support is going into the hospital. I refer the member to the report which I produced yesterday. I have asked the Department of Health to keep a watching brief on it. The issue to do with illegal behaviour has been looked at. If there is any bit of the honourable member's question that I have not answered, I will take it on notice and get more information for her, but my advice is that all the issues have been dealt with. If there is anything that I have not covered, I will make sure the member gets some further detail. If the member wishes, I can arrange for an officer from the Department of Health to go through the report with her, and she can get a proper briefing.

FLOOD MITIGATION

Mr HAMILTON-SMITH (Waite): My question is to the Premier. Why has the flood mitigation study for the Brownhill and Keswick Creeks, which was due in October/November this year, been delayed until March (after the state election), and will the delay now mean that the government will not have to make any funding commitment for engineering or mitigation works before the election? The flood mitigation study is to identify what engineering works are required to mitigate funding and what funding will be needed to construct these works, for which there appears to be no significant funding in either the state budget or the government infrastructure plan.

The Hon. P.F. CONLON (Minister for Infrastructure): This is another area where the member—

Mr Brokenshire interjecting:

The SPEAKER: Order! The member for Mawson should listen to the answer.

The Hon. P.F. CONLON: Billy Baxter. Insults are more effective when one can discern what he is trying to say. Can I assist the member for Mawson. I think he was trying to make fun of my rather generous proportions. The member for Mawson is already challenged but in a very different way—an intellectual way. I can go on a diet, but you can't put in what God left out. Don't fling insults around: that is my advice to the member for Mawson.

Once again the member for Waite has got it utterly wrong. He has been running around with this story for a couple of days that the Brownhill/Keswick Creek work has been put back to March. Not only is that not true but the first part of that work is finished, and a couple of days ago I signed off on the brochure and sent it to a couple of other ministers to look at before it goes out. So, it will be out there, I would say, within a week or two at the maximum.

Members interjecting:

The Hon. P.F. CONLON: The first part of it, including the first priority for works. Once again, the long-suffering member for Waite is struggling with his facts.

Members interjecting:

The Hon. P.F. CONLON: I have to say the board has confirmed the public works—you can say that all you like. I will give you the brochure next week. You can have the brochure. I am actually thinking of running for the leadership of the Liberal Party because I have got at least as many votes as he has got!

Members interjecting:

The SPEAKER: Order! I think the minister has answered the question. Member for Unley.

Mr BRINDAL (Unley): I have a supplementary question. Will the Minister for Infrastructure confirm his statements to the house, given that the chief executive of the board in the last week told me that the plans had been delayed?

The Hon. P.F. CONLON: They have been delayed, or they have been delayed until March. This is the mistruth they have been peddling. I can guarantee to you that I have signed off on a brochure to go out to report on the first stage of the plan. It is going out.

Members interjecting:

The Hon. P.F. CONLON: If the member for Waite was across this issue he would understand how we are dealing with stormwater infrastructure.

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: He is going to repeat it and repeat it until he believes it himself, but it is not going to help. 'I will be leader. I will be leader. I will be leader.'

Members interjecting:

The SPEAKER: Order! The member for Waite.

BROWNHILL AND KESWICK CREEK FLOOD PLAIN PLAN AMENDMENT REPORT

Mr HAMILTON-SMITH (Waite): My question is to the minister representing the Minister for Urban Development and Planning. What has been the impact of the government's decision in February this year to abandon its Brownhill and Keswick Creek Flood Plain Plan Amendment Report, and why did the government decide not to commission a new round of consultation with a view to developing a fairer, better consulted PAR?

The Hon. P.F. CONLON (Minister for Infrastructure): I actually have a memory of the member for Waite coming into this place and debating and urging—

The SPEAKER: Point of order, member for Mawson.

Mr BROKENSHIRE: Sit down for a minute and show some respect.

Members interjecting:

The SPEAKER: Order!

Mr BROKENSHIRE: Sir, you have allowed them to get away with this too long. Standing Order 98 is relevant. I did not think it was proper in this place for him to continue to carry on the way he does and he should be called to order.

Members interjecting:

The SPEAKER: Order! There has been offending against the standing orders on both sides. The behaviour today has been quite unacceptable and some of the senior members need to set an example.

The Hon. I.P. Lewis interjecting:

The Hon. P.F. CONLON: Oh, he's back too. Nine more days for him. Sir, to return to the question: the member for Waite asks why did we abandon the PAR. Perhaps we made the mistake of listening to the member for Waite, because I remember him coming in here in February—

The Hon. DEAN BROWN: On a point of order, this is just clear debate and is in contravention of standing order 98.

The SPEAKER: The minister is pretty close to debating it.

Members interjecting:

The SPEAKER: Order! The minister can make a point—

The Hon. K.O. FOLEY: The member for Mawson is clearly reflecting upon a decision of the chair, where he has asked you to show some leadership, sir. I ask the member for Mawson to apologise to the Speaker.

Members interjecting:

The SPEAKER: Order! As I said before, the chair cannot always hear the comments. I explain to members that the chair gets sound from an ambient microphone and from when someone has the call. The chair cannot always hear comment across the chamber. But if the member for Mawson has a dispute with the chair then he should take it up in the proper way and move to challenge the ruling of the chair. The minister needs to wrap up the answer quickly.

The Hon. P.F. CONLON: The member asked why we abandoned the PAR. Maybe I can ask him why he urged us to abandon the PAR. The simple truth is this: I know he may be confessing he was wrong, sir, but he did that and it is entirely relevant. He asked us why we did it. He asked us to do it. That is what he did.

Mr HAMILTON-SMITH: On a point of order, the minister's answer incorrectly reflects the question. The question asked why the government decided not to commission a new round of public consultation with a view to developing—

The SPEAKER: Order! A point of order is not a chance to ask another question. The minister has flexibility in answering.

PROTOCOLS, CARE OF CHILDREN

Mrs REDMOND (Heysen): My question is to the Minister for Families and Communities. What protocols are in place or will be put in place to ensure that children taken into custody when a parent is arrested will be handed over

only to an authorised and identified person? My office received anonymous advice from a public servant to the effect that, when a young woman was arrested and gaoled, police also took into custody her 11-month old daughter. After a CYFS officer authorised police to deliver the daughter to a family member, it was discovered that the person the police handed the baby over to was not a family member and CYFS subsequently was not able to locate the infant.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I will take that question on notice and bring back an answer to the house.

GRIEVANCE DEBATE

MINISTER'S COMMENTS

The Hon. W.A. MATTHEW (Bright): Today in this house we saw a disgraceful attempt by the Attorney-General to divert attention from his own political troubles, of which we are well aware there are many. The Attorney-General is the most accident-prone minister of this government, and what we saw was the Attorney-General stumble into it yet again. Today we saw the Attorney-General bring together half truth and innuendo to try to discredit decisions by the cabinet of the former (Liberal) government in relation to the legal representation and indemnity granted to the Hon. Robert Lucas from another place and to me. As members are well aware, the Hon. Robert Lucas is well capable of addressing matters and looking after himself, and I will leave that part of the exercise to his capable hands and confine my remarks to matters about me.

Today the Attorney gave the impression to the house that I had somehow received taxpayer funds that had been paid to me in relation to a legal matter. That is not the case. At no stage were any taxpayer funds paid to me. Taxpayer funds were paid to legal counsel and taxpayer funds were used in a matter of indemnity, but no funds at any stage were paid to me. The Attorney-General tried to tell the house that the matter in which legal representation was required involving me was a private representation. It was not.

Mr Koutsantonis interjecting:

The Hon. W.A. MATTHEW: For the benefit of the member for West Torrens, the court records establish and prove this fact. It was accepted by the judge in the matter and the record stands clear. The matter was in relation to a government issue, and I will come back to that shortly. The Attorney also claimed that moneys were paid as a consequence of 'the loose lips' of myself and the Hon. Rob Lucas. In relation to my case, no words were uttered. The matter was in relation to a media release: a media release issued in my name, which had words in it that were not authorised by me, a matter that was accepted in the court. Further, it was a media release that was sent out on the fax machine of the former premier, as the evidence presented to the court showed.

In this case I was afforded legal counsel and indemnity as the government's representative in this matter. For the Attorney-General to come in this house today and represent it as being something different is nothing short of disgraceful and tantamount to abuse of the high office that he supposedly holds in this parliament. He ought to resign over many things. He is the most accident prone, poorest performing member of this government in this chamber. He is but a carcass swinging in the breeze waiting to be cut down: the very comments uttered publicly by my colleague in the other place, the Hon. Rob Lucas, and clearly objected to by the Attorney-General because he feels the truth of the cutting words of my colleague in another place.

I am interested in the Attorney's desire to unfurl details appropriately to this house about expenditure of taxpayers' money. So, I call on the Attorney to tell this house exactly how much public money was expended on the legal representation and settlement involving the member for Playford—a member of this house of parliament, and a very close friend of the Attorney-General. Moneys were paid, and the Attorney can advise the house how much money was paid for the member for Playford.

Mr Koutsantonis: You agreed to it.

The Hon. W.A. MATTHEW: The member for West Torrens interjects that we agreed to it. Indeed, there are no hypocrites on this side—yes, sir, we did. There are no hypocrites on this side, but we invite the Attorney to reveal to the house the full cost of that action afforded to the member for Playford.

The SPEAKER: Order! The honourable member's time has expired. The member for Torrens.

The Hon. W.A. MATTHEW: Mr Speaker, I am not sure if something happened to the clock. It went from two minutes to zero.

Mrs GERAGHTY: No, it didn't. I watched it.

The SPEAKER: Order! I think the member might be thinking of the performance of his motor car.

INTELLECTUAL DISABILITY SERVICES COUNCIL VOLUNTEER SERVICE

Mrs GERAGHTY (Torrens): I take this opportunity to recognise the excellent work of the Intellectual Disability Services Council volunteer group, and pay tribute to the role that they play within my own electorate and the South Australian community. The Intellectual Disability Services Council volunteer service was established to assist staff and families at the Strathmont Centre improve the quality of life of residents, and has operated for some nine years with great success. I have spoken before of the contribution made by IDSC volunteers. However, it is certainly worth repeating that IDSC volunteers provide in excess of 6 000 hours of service per month and comprise one of the largest volunteer organisations in South Australia. IDSC volunteers operate within the framework established by Volunteering SA and provide a diverse and dynamic range of services and activities to the IDSC community.

The hard work of IDSC Volunteer Service Director, Annette Jones, in establishing and expanding the volunteer service is worthy of commendation. Annette has been the driving force behind the organisation which has grown from humble beginnings to approximately 180 volunteers strong. Notably, the organisation has expanded to offer services in regional South Australia through the establishment of the Mount Gambier branch of the volunteer service. I would also like to acknowledge the work of Eleanor Bator, who closely works with Annette, and plays an integral part in the smooth operation of the IDSC volunteer service. Without her efforts, many of the day-to-day tasks necessary for the operation of the service would simply not be done. On a personal note, I would like to add that both Annette and Eleanor are excep-

tional women in that they are not only community minded but extremely warm, generous and caring. They demonstrate an extraordinary level of focus and commitment, and it is a testament to their abilities that they have taken a small organisation and developed it into what could very reasonably be considered a volunteering tour de force.

The range of services provided by IDSC volunteers is wide and varied. These services include recreational activities such as walks, drama, art and craft, ten pin bowling, disco, pottery and games, to the provision of hairdressing services, vision services, grooming and relaxation, as well as aged care and companionship for clients over the age of 65. IDSC volunteers also assist clients with home maintenance, performing simple but necessary tasks like gardening, house painting, cleaning and shopping, thus allowing clients to live with relative independence within the community. The extension of these services to the Mount Gambier area is a significant step as it is the first time that such assistance has been readily available to regional cities and clients.

We all know that distance from service is one of the main difficulties that folk who live in regional areas face, and it is a real sign of the compassion and the dedication of the IDSC volunteers service leadership that this service has not only been established but is thriving. In the short space of a year, Mount Gambier IDSC volunteers have provided approximately 650 hours worth of service, which has directly translated into an improvement in the quality of life of regional clients.

The IDSC volunteer service is not content to rest on its laurels, however. Annette is looking into the future expansion of the service so that it provides greater metropolitan and regional coverage throughout Adelaide and South Australia. The next project is expanding services to clients in Kingston and, while this is presently a work in progress, the success of the existing service is certainly a cause for confidence. I think that it is important to acknowledge the excellent work that is occurring within our communities, particularly because it is often under the radar and out of media glare. The IDSC volunteer service provides assistance and support to folk within our community who are most in need, and the direct benefit of this support is incalculable. It is very easy to point to the economic benefits of volunteering and to rest the argument at that point. However, it is the social and emotional benefits to IDSC clients, indeed, to those in receipt of volunteer services generally, that are the real dividend. Volunteering and the assistance of those disadvantaged within our society are defining elements of human behaviour. They represent the best of what we are capable of as a community—

The SPEAKER: Order! The honourable member's time has expired.

Mrs GERAGHTY: —and the IDSC volunteering service plays a great role for these people.

The SPEAKER: I remind members that, when speaking, the chair allows them to complete a sentence, which I think is reasonable, but not to continue on endlessly. The member for Stuart.

PORT AUGUSTA, YACHT CLUB LAND

The Hon. G.M. GUNN (Stuart): I wish to raise a matter in relation to the land which is commonly known as the yacht club land at Port Augusta, which was subject to questions at the recent cabinet forum in Port Augusta. I refer to a press release put out by the City of Port Augusta entitled 'Port Augusta Mayor Joy Baluch & city manager hit back at state government's unfair claims'. It states:

> The public attack on the Port Augusta City Council by Treasurer Foley during last week's Community Cabinet Forum has been strongly criticised by the Port Augusta Mayor. . . and the city manager. . . who have labelled the attack unfair and inaccurate.
>
> Mr Foley attempted to blame the council for the sale of vacant land south of the yacht club to a developer who wants to use it for retail development, claiming the council did not approach the state government at the time of the sale and insists the land be used for residential development. He also claimed the council's zoning was incorrect.
>
> In response, the Mayor and the City Manager say the zoning was correct and appropriate—it was the state government's lack of consultation with the council during and prior to the deal being signed, that has caused the problems.
>
> 'Council has been in discussions with the State Government for nearly a decade about using this piece of land for a retirement/lifestyle village, so the government knew full well the Council's hopes and plans for this particular site'.

Another release is entitled 'Yacht sale club land sale advertising misleading'. I have personally viewed the sign that was put up on this piece of land, and I have a photo of it, clearly indicating that it is suitable for residential purposes.

Let us go back to the history of this, because my concern is that the decisions which are made in relation to this piece of land may have a very serious effect on the future of the City of Port Augusta and on the residents of that city. This is an ideal location for retirement-style accommodation. It is close to the centre of the city and most of the facilities. There is an urgent need for this type of development. The unfortunate thing is that, if someone has made a mistake—and it appears they have ignored previous advice to the council—it needs to be rectified. It is bad enough making one mistake, but it is foolish in the extreme to allow further mistakes to be made, because the consequences will be felt for years in the future. It is quite appropriate for the council and others to draw the government's attention to these matters.

I want to quote from a letter of the 26 June 1997 under the hand of the then city manager to the commonwealth Department of Transport and Urban Planning. It states:

> Having regard to the time frame in relation to meeting a final consensus on the transfer of the said land parcels (maps enclosed) to the Council, it is hereby agreed that the Corporation of the City of Port Augusta can receive the said parcel of land direct from the Commonwealth.

Unfortunately, most of the Australian National commonwealth railway land is in a poor state. There were not adequate titles, the boundaries were not known and it was an absolute disgrace that they actually did not know, in many cases, who owned what. Therefore, any transfer of this land was made most difficult. The commonwealth had to first transfer the land to the state government and a proper survey had to be carried out. Environmental action had to be taken to clean up certain forms of pollution before it could be transferred to the City of Port Augusta, which was, in my view, the rightful recipient of this land. I quote from another letter to the city manager, which states:

> While perhaps regrettable that it was not possible to include the transfer in the agreement, the current arrangements should not hinder the council's plans in the long run.

That is signed by the Assistant Secretary, Rail, commonwealth Department of Transport and Regional Development. Then there was further correspondence, and I quote from a letter signed on 20 October 2000. It states:

> The issue has been the subject of numerous items of correspondence, with an agreement being reached between the council and the minister that the land in question will be transferred to the City of

Port Augusta at the conclusion of the required remedial works. The agreement also allowed for issues associated with the future upgrade of the wharf (and responsibility for the cost of undertaking these upgrading works) to be resolved at a later date.

Time expired.

THEBARTON LIBRARY

Mr KOUTSANTONIS (West Torrens): I rise on an issue that is dear to my heart in my local community. About seven to 10 years ago, two councils in my electorate amalgamated. It might even be longer ago than that—it was definitely more than 10 years ago. They were the Thebarton council and the City of West Torrens. The city of Thebarton was a very tight-knit, close community, with a very established council—although of course it was very small and could not maintain the infrastructure that it needed so it had to amalgamate (and I support the amalgamation and think it was a good idea). However, certain promises were made when that amalgamation occurred.

One of the promises made to the residents of Thebarton, Torrensville and Mile End was that they would maintain the Thebarton library. The Thebarton library is, I think, in a heritage-listed building. It is a very beautiful building on the corner of South Road and Henley Beach Road at Torrensville, close to the United Firefighters Union office on the corner of Danby Street and South Road. It is a facility used by a number of organisations and groups, including the Thebarton Historical Society; the West Torrens Residents Association; my office; the local schools in the area, including St George College; parishioners from Queen of Angels in Thebarton; parishioners from St George Orthodox Church; and all the other local community groups in the area (Greek, Italian, Vietnamese, etc.).

I compliment the council on a wonderful development in the library at Hilton, but I was disturbed to hear that it then closed the Thebarton library. I was very disappointed at this decision, but I am glad to note that most of the local councillors supported keeping open the Thebarton library. However, I was stunned to find out that the local Liberal Party candidate for the seat of West Torrens, who is also a member of council, voted to close the library.

An honourable member: What's his name?

Mr KOUTSANTONIS: I am not going to give him the dignity of mentioning his name. One of his first actions as the local Liberal candidate was to vote against his community to close a local community icon. The Liberal Party is treating the western suburbs very badly. On one hand, they have endorsed a candidate for the adjoining seat who wants to see the Bakewell Bridge saved. He wants to see it heritage listed and says that all those people who died because of the bridge are incidental. They are not important—the bridge is more important than making it safe.

On the other hand, one of the first acts on council of the local Liberal candidate for the seat of West Torrens was to vote to close the local library. He then went on to complain in the Messenger about people ringing him at home to complain about the closure. I can say that, as a local member of parliament, I get called at home at all hours. People knock on my door at all hours, because I am local and they know where I live. People come to my office at all hours. I door knock. The job of a local member of parliament is to be accessible. I see members opposite nodding, saying, 'Yes, that's right'. Of course it is. When you want to lead in a community and set an example, you cannot then turn around and say, 'Please don't call me at home and complain'. I just could not believe that.

Last night, on another matter, a meeting was held by an action group set up in my constituency to fight Ion. Ion has been recently granted a new licence by the EPA after a protracted legal case, which gives residents basically what they were after. I produced about 5 000 fliers for this meeting for this local group. We did a letterbox drop. About 60 to 70 people attended last night for a three-hour meeting at the City of West Torrens. My opponent did not bother to attend. I was stuck here because I was in parliament, but I sent my staff along. This is a great example of the EPA, a new employer and the local residents working together to get satisfaction for a problem. The government has asked Ion to reduce its odour emissions from the unit level of 50 to two within a year (by 2007). That is a substantial decrease. I think that the local residents of this area need to be congratulated for their hard work, their vigilance and for never giving up.

Time expired.

WESTERN MOUNT LOFTY RANGES CATCHMENT

Mr GOLDSWORTHY (Kavel): I want to raise a couple of very important issues that have taken place recently in my electorate of Kavel. Both matters concern water resources. The Minister for Environment and Conservation announced two weeks ago that he had made the decision to prescribe the water resources in the Western Mount Lofty Ranges catchment area. I have spoken about this matter previously in the house. The process that has been undertaken by the minister and his departmental officers has caused a significant level of anxiety and stress amongst the people in my electorate and in the neighbouring electorate of Heysen who are directly affected by this decision. They are the farming families of the Adelaide Hills. The concerns raised with me have been so great that I thought it to be the correct course of action from a local member of parliament representing the views of his constituency to write a letter outlining those concerns expressed to me by members of my community to the local paper, being the *Mount Barker Courier*.

My letter was published in the *Courier* last week. Although there was some comment made by me in expressing my own opinions, the great percentage of the contents of that letter was a direct result of the communication and concerns raised with me by those farming families directly affected by this decision. I want to make that point quite clear, because what has appeared in the *Mount Barker Courier* today is a letter from the Minister for Environment and Conservation, the Hon. John Hill, basically refuting the statements I made. I do not mind. The minister can have a shot at me any time he likes. I have been elected to this place to represent the views and concerns of my electorate and I will continue to do that up until the very last day that I am a member elected to this place. However, he is actually having a cheap shot at the people in my electorate. I have only been representing the views of those people who have come to me with those concerns. The minister, in his letter to the local paper, is criticising, insulting and making inappropriate comments to those members of my community who are concerned with this process. It is an absolute disgrace.

In paraphrasing his letter, he says that there has been extensive consultation and the like over the past 12 months with the working committee, and so on. Well, it might be the case that he has been consulting with the working committee,

but I can tell members that the vast number of farmers in the Hills were not privy to some of the finer detail of this prescription process—hence the concerns they have raised with me. The letter the minister has put in the local paper is having a shot at me. That is fine; I do not mind. I am big enough, tough enough and ugly enough to handle it. However, what he is basically doing is insulting my constituents.

I will now move on to the other issue I want to speak about, that is, the recent flooding two nights ago in the business community of Verdun. We had a similar incident in August last year, when the Onkaparinga River burst its banks and flooded some businesses in that area. The flooding occurred at nightfall, at about 7.30 p.m. The Premier rolled up in his car. He was able to get some of those yellow pants worn by the SES and some rubber boots, and he waded through the flood waters, which was really good TV sort of stuff. He said to the business proprietors, 'We'll fix this.' What have we seen 12 months down the track? I asked a question of the Premier in the house yesterday, and he deflected it to the Minister for Infrastructure. What we have seen is nothing. It is clearly evident from the answer given yesterday by the Minister for Transport that all the government has been doing is talk, talk, talk and nothing else.

PEDARE CHRISTIAN COLLEGE

Ms RANKINE (Wright): On Tuesday 1 November, I had the privilege to join the Pedare Christian College community at the celebration of its 20th anniversary. It was a wonderful celebration. It was a celebration of the education the school has provided to the Golden Grove and surrounding communities for 20 years, and it was a celebration of the school's commitment to Christian values and to our children and, very importantly, it was a celebration of our community.

We are very privileged to live in a very vibrant community out in Golden Grove. It is a great place to live, work and go to school. At the very hub of our community, adding to the sense of community during its development, have been our schools. The campus on which Pedare is located has always been a shining example, not only to the rest of our state but also nationally and internationally, of how public and private education systems can work together and support one another—all for the benefit of our young people.

On that particular campus, we have two private Christian schools, that is, Pedare and Gleeson College, and one public school, the Golden Grove High School. Students are able to study across campus, and the schools are able to share the major resources. This was a great opportunity for these private schools to flourish and develop in a community where they might not otherwise have been able to do so—to have that strong infrastructure supported by the public school system.

Pedare College has grown from its very humble beginnings 20 years ago to the quite magnificent school it is today. This would not have happened if it were not for the incredible efforts of the leadership of the school. It was lovely to be there and to see the original principal, Mr Catford, giving some historical overview about the development of the school. He paid tribute to his wife, who played a very quiet behind-the-scenes role in supporting parents and giving them a sense of confidence in sending their children to what was a very tiny school in the beginning and in promoting a vision, much of which I do not think even he could have envisaged it would be today.

Currently, the school is enjoying the stewardship of Brian Savins. It has also developed as a result of the commitment and energy of parents who have contributed to the school in many ways, whether it be through the board of governors, fundraising activities, parents and friends, and the like, and both the state and federal governments have continued to play an important role in supporting Pedare.

It was a delight for me to open the new year 12 redevelopment at the school. We heard from Mr Reg Tolley. Members of this house may know that much of the land on which Golden Grove is located was once owned by the Tolley family. Indeed, the vineyards for Tolley's Pedare wines were situated on that site, and Mr Tolley was able to give some insight into his family and the history of the name of Pedare. Originally, a family boat was given that name by his father, who used the first two letters of the names of his three sons, Peter, David and Reginald. They then went on to use that name for the vineyard and some of the wine and, hence, Pedare Christian College. This is a wonderful school. It is thriving and it is developing young people with great values who I am sure will provide leadership in our community in the years to come. I congratulate all those involved in ensuring that we have this magnificent school.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. G.M. GUNN (Stuart) obtained leave and introduced a bill for an act to amend the Native Vegetation Act 1991. Read a first time.

The Hon. G.M. GUNN: I move:

That this bill be now read a second time.

I wish to explain to the house the need for this legislation. When the Native Vegetation Bill was originally brought into this parliament everyone expected and hoped that the act would be administered with commonsense while taking into account the competing interests of those who want to maintain native vegetation and those who, for various reasons, need to contain, control or clear it. What has happened since then is that people within certain elements of government with their own agenda have been hellbent on making life as difficult as they possibly can. They have acted without commonsense, endangered the public, been foolish in the extreme and, in some cases, less than truthful. Other members present can clearly support that.

This bill contains a number of measures that need to be urgently addressed. Let me say at the outset that any minister (no matter where they sit), any senior bureaucrat or middle-ranking person, or anyone involved in the administration of the act who continues to prevent the application of commonsense will have to pay a very heavy penalty if there is another disastrous bushfire, because the public will no longer accept the unreasonable attitude that is being displayed by some of these people who, when advising ministers of the government, are creating great difficulty for the Country Fire Service and other land managers. This will no longer be tolerated or accepted. Unfortunately, this minister has been completely hoodwinked by certain sections of the bureaucracy. There is an urgent need for hazard reduction and decent firebreaks.

I am pleased that the Chairperson of the Economic and Finance Committee is here, because the evidence given to the Economic and Finance Committee by Mr Euan Ferguson, the head of the Country Fire Service, on Wednesday 1 June, is clear and precise and there can be no misunderstanding or failure to properly interpret what Mr Ferguson had to say. Mr Ferguson was giving evidence to that committee and he was asked questions and he responded, and he clearly indicated the urgent need to amend the Native Vegetation Act to remove the definition of 'burning' as clearance, and other steps that need to be taken. If the government allows those people administering it to go around in circles, to delay and frustrate those pertinent issues brought to the attention of that committee by Mr Ferguson, they need to be removed.

When the next bushfire gets going it is no good them making any excuses, because if you do not reduce the fuel loads—I say to anyone, 'Go for a drive around rural South Australia.' Remember that you have people in that department going around measuring firebreaks after the Country Fire Service has extinguished fires. That is foolish and irresponsible. These same people with tape measures do not tell the truth. In answers which have been given in this parliament, they have given misleading and inaccurate information.

The parliament and the people of South Australia need to know the sort of people that they are dealing with, these ideologues, and they are not fit to be having any discretion or being involved in any administration because, at the end of the day, commonsense has got to apply. Until the introduction of this legislation farmers and land managers could apply commonsense in hazard reduction, put decent firebreaks in and put decent access tracks in. It is disgraceful to expect volunteers or any firefighters to go into areas which are on fire unless they have the ability to get out of those areas. There are few people left who have had the experience of large-scale burning-off operations.

I will explain to you other misinterpretations of the regulations. Most members would be aware that in rural South Australia the Department of Transport and councils dig burrow pits to get rubble to put on the roads. In the pastoral areas, now they have dug those burrow pits, they have filled up with water and because they are classified as a new watering point the kangaroos can drink out of them but the sheep can't, the emus can but the cattle can't, the rabbits and the birds can but the horses can't. This is how stupid and how foolish these bureaucrats have become, because they have misinterpreted it. It was never the intention of the Native Vegetation Act to interfere or have any influence over the Pastoral Act. Pastoralism is controlled and regulated under the Pastoral Act, controlled by the Pastoral Board. They have now said, 'You can't put a new pipeline in. It is clearance if you do. You've got to get permission.' That is the foolishness of these people and they need to be exposed for the nonsense they have been going on with.

They have caused great personal distress to the person who was recently the secretary of the Pastoral Board and I believe it to be a reason as to why he tendered his resignation. He understood it. These people he is dealing with do not understand anything but their own narrow point of view, which is interfering with responsible management practices. The Native Vegetation Act has not kept abreast of modern farming techniques. They have never heard of satellite guidance systems. There is nothing they or anyone else can do; it is going to be part of modern agriculture. There is greater efficiency, it saves overlapping, there is less chemical use and all those sorts of things. But you cannot have old trees; they have to be removed, and they will eventually die anyway.

It is a nonsense that you cannot burn a dead tree: it is all stupid stuff. You have public servants making statements that people cannot pick up a bit of dead wood on the side of the road or they are going to prosecute them. What a lot of nonsense! It is a bit like bronze-wing pigeons: these people have been protected for too long and they actually need to be confronted. One of the reasons is that they put in the wrong person as Chairman of the Native Vegetation Council. It was a bad decision and I do not care whether he likes it or not. He can think what he likes about me: it is a fact. The bill that I have brought to the parliament clearly indicates that the chairperson should be a practical farmer, and that there should be a practising pastoralist on the Native Vegetation Council, so that you have people with some commonsense.

It is no good putting in someone who comes from a locality that has never been involved in clearing. It is no good putting in someone from Yorke Peninsula, good people as they are, because they cleared all the land there. There is no native vegetation left there, but they were then sitting in judgment on people out in the west of South Australia, previously represented by me and the member for Giles, who have 40 or 50 per cent of the native vegetation still left there. They want decent, commonsense development, but they were having those people sit in judgment on them. I put it to you that it is a nonsense of the highest order. My prime objective in bringing this legislation to the parliament is to ensure that we take every step possible to protect the public: not only their lives and property, but also to prevent them from being engaged in having to spend huge amounts of money.

When you get a large bushfire burning in any community, it disrupts the whole community, therefore we should take all steps necessary to prevent that taking place. I have taken the trouble of bringing this important legislation to the parliament out of concern for what may take place, having listened to the evidence of the Director of the Country Fire Service. The Premier has been loud in his praise for the Director of the Country Fire Service, and he now has the opportunity to support him in his desire to take steps that will make his and the volunteers' job a lot easier. I am pleased that the Minister for Families and Communities is in the chamber, because when I gave notice of this measure he made some comments about my wanting to clear the last 10 per cent.

I say to the minister that that is not correct and that I am one of those who actually pays rates on a considerable amount of native vegetation, and the people on Eyre Peninsula are not the ones who have knocked off all the native vegetation. However, if there had not been large-scale clearance, you would not have the successful agricultural industry you have, which employs a very large number of people, which helped to build the economy of South Australia and which is providing ongoing revenue and helping us live in the great place we live in. It is in the interests of the people of South Australia that agricultural development took place, whether it was in what used to be the Ninety-Mile Desert or wherever else. The greatest thing in any of these matters is to apply commonsense and to have people who actually know what they are doing and have an involvement in the industry making the decisions.

They will make the right decisions, the fair and responsible decisions, because they will be based on knowledge, on wanting to see agriculture and commerce continue in a responsible way in the interests of all South Australians.

Clause 3 of this bill deals with interpretation. Clause 8 is the membership of the council, and that deals with an extra person being put on the council from the pastoral industry and the criterion to be chairperson of that organisation. Section 27 is amended to give some general defences, because currently people are at grave disadvantage and some of the things that have gone on and some of the misinformation given to the council and to the government of the day needs to be dealt with. People need to have a sensible defence mechanism when they are carrying out particular actions that are necessary to protect the public or as part of good, sound agricultural husbandry.

I commend the bill to the house and look forward to the government's responding. I look forward to the government's taking positive, sound action to alleviate my fears, to protect the public and to give people certainty, and to put into effect the concerns and recommendations of Mr Ferguson. What I am asking for is not a great deal, but I am taking every step open to me to ensure that the citizens of this state are protected, that commonsense applies and that the interests of people in this state are brought to the forefront. It is now in the hands of the government. If it fails to act, it then has to accept a very heavy responsibility when things go wrong as, unfortunately, they will. I commend the bill to the house.

Mrs GERAGHTY secured the adjournment of the debate.

SELECT COMMITTEE ON THE REGULATION OF THE TATTOOING AND BODY PIERCING INDUSTRIES

Mr RAU (Enfield): I move:

That the report be noted.

In so doing, I would like to briefly outline the history of this matter. This matter initially came before the house by way of a private member's bill, brought into the house in July of 2002 by me. It received a speedy passage through this house and then went to the other place. In the other place it was substantially amended. It sat there for some considerable time and eventually, after the parliament was prorogued and the bill was reinstated, it came back here. At that time, it was evident that a number of people had views that had some difference from the detail of the original bill and it was determined that a select committee might be the way forward.

Before going any further about that matter, I would like to thank the members who made contributions on that select committee, the honourable members for Stuart, Morialta, Wright and Napier, all of whose assistance and contributions I greatly value. The question that really drove this inquiry was the phenomenon that has been observed over recent years of what amounts to an explosion in the popularity—in our society at least—of the practices of tattooing and body piercing. These practices were, until comparatively recently, largely limited to the community of sailors, certain criminal elements, and certain sub-cultures in our society. They have, however, over recent times, exploded out of these relatively small cul de sacs into every corner of our community, to the point where people are sporting these adornments virtually every day, every where. These people are of all different ages, they are of all different socioeconomic groups, and it is clearly the case that this is something of a wave that is overtaking the community at the moment.

It is interesting, Mr Acting Speaker, to note that according to certain academic writers on the subject, body piercing—which is defined as the penetration of jewellery into openings made in the body such as eyebrows, lips, tongues, navels, nipples, or genitals—is a rapidly rising trend because it is considered to be a symbol of style. Other reasons for body piercing include rites of passage—whatever that might mean; religious purposes—which I can understand for particular groups; and sexual practices—which, of course, are matters for the individuals concerned. There is also some evidence that body piercing and tattooing, as practised by adolescents, seem to correspond with individuals who are higher up the list of risk takers than other individuals in their age group.

It is a fact, in my view, that despite attempts to argue to the contrary by those involved in the industry, there is nothing to suggest that the popularity of body piercing and tattooing is some sort of cultural awakening which has been lying latent for millennia. It has all of the hallmarks of a fashion fad, one which no doubt will pass as so many have throughout history. I ask honourable members a rhetorical question: what have mullet haircuts, hoola hoops, flared pants, witches britches, rap music and the current explosion in tattooing and body piercing all have in common?

The Hon. I.F. Evans: They are all from the Labor left!

Mr RAU: We don't accept that answer. The answer is that these are all transient expressions of what is euphemistically described as popular culture. The difference, of course, between tattooing, body piercing and the other ephemeral cultural artefacts to which I have just referred, is that a body piercing or a tattoo cannot be removed, returning the individual back to their original condition. The mullet hair cut, of course, is very simply rectified, as are flared pants, witches britches and rap music—which can be hopefully turned off indefinitely. The fact is that when the great vacuous wheel of fashion inevitably turns, those individuals who have participated in these practices will be left with a memento of their youth which they will be able to enjoy for the rest of their lives. The fact of the matter is that if everybody who had ever had a mullet hair cut had to wear it for the rest of their life, or everybody who had ever worn flared pants had to wear them for the rest of their life—witches britches, body shirts, and I could go on and on—there would be a lot of very, very unhappy people wandering around the streets. So, what drove this inquiry—in particular, in the case of young people who often get caught up with peer pressure or other fashion fads which they see in magazines and observe on the idiot box—is that they should have pause to consider what they are doing to themselves, and perhaps reflect on the wisdom of what they are to do.

The situation is that there are clear differences in the current legal position which distinguish tattooing and body piercing. It is presently a breach of the Summary Offences Act to tattoo a minor; however, the penalties are trivial. In fact, the maximum penalty is a $1 200 fine. There is no power for police to investigate this short of a specific complaint. There is no statutory offence dealing with body piercing with the possible exception of extreme cases which may breach the absolute statutory prohibition against female genital mutilation. In general terms, the common law of assault, with all of its subtleties and nuances, is all that regulates these practices.

This is so complex and arcane as to make it practically both unenforceable and incomprehensible, both for the individuals involved in the industry and for the police officers who unhappily have to enforce the law. Aside from legal issues, there are many practical differences between these two forms of body modification. Tattooing has effects which are generally permanent. Tattoos may be substantially removed

in some cases by means of expensive and rather painful laser treatment. This, however, does not necessarily return the skin to the previous condition, and it may still be very unsightly. Body piercing involves what amounts to minor surgery and it carries with it a far greater risk of medical complication. The extent of this risk and its nature vary according to the particular piercing in question. Tongue piercing, for example, carries with it immediate risks associated with infection and swelling, as well as the longer term inevitability of doing damage to oral structures, usually the teeth. Body piercing involves almost an infinite range of possibilities, some of which certainly shocked me and, I believe, some other members of the committee: from simple traditional ear piercing at one end of the spectrum right through to elaborate genital piercing at the other.

Given that the committee formed the view that there should continue to be a statutory prohibition on the tattooing of minors, it was considered sensible that this should not simply be an unenforceable and largely ignored paragraph in the Summary Offences Act. There are three major defects in the current provisions under that act, and I will briefly mention them. First, the police have no power to be proactive in seeking out breaches. They do not, for example, have the power to enter premises and request details of identity or ages from individuals. This means that the present law is entirely complaint driven. Presumably, those minors who seek to be tattooed are also unlikely to make a complaint about it. In fact, the whole rationale for a law prohibiting the tattooing of minors is to protect children and young people from their own foolishness. A law against selling tobacco or alcohol to minors would be useless if its enforcement were dependent only on the minors involved making a complaint. It is clear that the police need additional powers to effectively enforce the law.

Secondly, there is a problem with the current penalty under this law: it is ridiculously small. Compare a maximum penalty of a $1 200 fine for tattooing in a minor with a $100 000 fine or two years' gaol for harassing a marine mammal, and a $5 000 fine for selling a cigarette to a minor. The penalty needs to be substantially increased for it to have any deterrent value and to reflect community expectations. The third problem with the current law is that the defence of honest belief about the age of a minor is far too easy to make out. This needs to be tightened so as to approximate the law applied to the sale of liquor to minors.

The Hon. I.P. Lewis: They should have to count their annual rings.

Mr RAU: That's right. That is to say that a simple observation resulting in the belief or suspicion that a person over 18 is never enough. Proof of age must be sought, obtained and recorded. An additional area for consideration is individuals who, although aged over 18, lack the capacity to make an informed decision about tattooing. In particular, the committee has been advised that as many as 19 per cent of young men are tattooed whilst under the influence of alcohol or drugs.

The Hon. I.P. Lewis: Or both.

Mr RAU: Or both. Whilst this can never be entirely eliminated, steps to minimise this should be and can be taken. In my initial bill, I proposed a cooling off period of three days which, ultimately, did not find favour with the majority of the committee. But the committee did at least recommend restricted trading hours, hopefully to close these premises before people full of good cheer are likely to wander past them.

The other matter that came to the attention of the committee was that there must be licensing of these premises and the individual operators. The importance of licensing is that repeated breaches of regulations would result in a cancellation of licence, and vigorous prosecution with hefty penalties should apply to any unlicensed operators. This leads me to a further matter which was raised strongly by the health department but which, with the greatest respect to that agency, I am not entirely convinced about. This is the argument about backyard operators, which is wrapped up in the concept of 'harm minimisation'.

Leaving aside the particular circumstances occurring inside prisons, which I acknowledge are dreadful, there was absolutely no evidence whatsoever presented to offer support for the assertion that there is a serious backyard problem in South Australia. There is absolutely no evidence whatsoever to support an assertion that the backyard problem would emerge if stringent regulations of the type recommended by the committee were embraced. Furthermore, this argument defies commonsense. After all, how many individuals wanting to engage in an impulse tattoo are seriously going to hunt out a backyard operator at 2 or 3 o'clock in the morning?

As far as body piercing is concerned, the problems are very complex, having regard to the extreme range of activities involved. On balance, the committee came to the view that there were basically three categories of body piercing that needed to be considered. The first was simple, traditional ear piercing. The committee was of the view that the current arrangements are satisfactory. The second was the other end of the spectrum, which included genital piercing, tongue piercing, piercing of nipples and other fleshy, substantial parts of the body, if I can put it that way. That should be limited—

The Hon. M.J. Atkinson: Can you name them?

Mr RAU: I cannot name them, because the imagination of the individuals conducting these activities is far greater than mine. If I were to name them, I would be the way behind the game. The point is that these should be prohibited for anyone under the age of 18 full stop. That then leaves a range of other things like navels, noses and other such things, which might be a capable of being consented to, provided parental consent was obtained, and that was witnessed by an appropriate individual. I thank the honourable member for Stuart for that very helpful contribution to the ultimate recommendations of the committee.

In conclusion, I would like to say that I think the committee actually did some useful work. Personally, I would have liked to see some slightly different recommendations come from it, but I firmly believe that, if all the recommendations of the committee are picked up on and embraced by the parliament, we will make a substantial step forward. I sincerely thank all the members of the committee for their contributions and assistance. I would also like to express my thanks to Mr Rick Crump, who did a fantastic job in support of the committee, Dr Janice Duffy also provided some assistance, Mr David Peek QC provided valuable assistance, and all the contributors and witnesses. I urge the parliament to read the report, pick up its recommendations, and I hope that in the new parliament we will see legislation reflecting the thoughtful contributions of the members of the committee.

Mrs HALL secured the adjournment of the debate.

ECONOMIC AND FINANCE COMMITTEE: ANNUAL REPORT

Ms THOMPSON (Reynell): I move:

That the 55th report of the committee entitled 'Annual Report 2004-05' be noted.

I am pleased to present to the house the 55th report of the Economic and Finance Committee, the annual report for 2004-05. I take this opportunity to provide a brief summary of those activities undertaken by the Economic and Finance Committee over the past financial year. During 2004-05 the committee underwent two membership changes. In late July 2004 the member for Chaffey resigned from the committee after being appointed to cabinet, and was replaced in September 2004 by the member for Waite. In March 2005 the member for Napier resigned, and was replaced by the member for Taylor. I extend my congratulations to both those members who had to leave the committee on their appointment to higher office. The committee tabled three reports in 2004-05:the 50th report, Real Estate Industry Indemnity Fund; the 51st report, Annual Report 2003-04; and the 52nd report, Emergency Services Levy 2005-06.

The 50th report on the Real Estate Industry Indemnity Fund addressed the main issues to arise from the evidence, namely:

- the fund as one of last resort;
- the provision of financial assistance from the fund;
- splitting the fund; and
- spot audits on the fund.

The committee was of the opinion that the current process, although compliant with the act, operates in a manner that is perceived to be, or in some cases is, unfair to claimants and makes the fund too inaccessible to those who have a justifiable claim upon it. The committee recommended the following:

- replacing the test applied by the commission determining claimant eligibility;
- amending the act to enable the recovery of reasonable legal costs;
- a mandated case management process;
- regular performance audits of the fund;
- a memorandum of understanding between the Office of Consumer and Business Affairs, the Real Estate Institute of South Australia and the Australian Institute of Conveyancers regarding the aims and processes of the fund;
- professional development funding to the Society of Auctioneers and Appraisers; and
- splitting the fund.

The Minister for Consumer Affairs responded very promptly, I might say, in February 2005 and indicated her intention to provide for the reasonable legal costs of an applicant accrued as a direct result of a direction by the commissioner to be recoverable with the principal sum being claimed. Further, the minister indicated that, in response to committee recommendations:

- she has asked the commissioner to set in place regulations which provide for a clear case management process;
- there will be an expansion of the commissioner's reporting on the administration of the fund, with this data included in the commissioner's annual report, including information on the length of time taken to complete each claim and whether or why claims were refused;
- a memorandum of understanding between REISA, the AIC and OCBA will be drafted outlining the purposes and uses of the fund; and
- the minister will not follow the recommendation to split the fund but the provision of support from the fund to approved professional development for auctioneers will be considered by OCBA.

It is worth noting, with respect to this report, that the minister's response to the committee's recommendations underlines the importance of the issues explored and the value of the committee's proposals.

Regarding the 52nd report, Emergency Services Levy 2005-06, the committee noted that the effective levy remained unchanged and that total expenditure on emergency services for 2005-06 was projected to be $177.8 million. Of note for the committee was evidence indicating that greater integration between the CFS and the Department of Environment and Heritage is occurring in relation to the issue of controlled burning and the management of native vegetation. The committee supported this progress and the role of the CFS in encouraging and assisting the appropriate, effective and prudent management of native vegetation to achieve environmental, economic and fire safety objectives. The committee, in discussions, noticed that this was not always an easy matter to manage and that different people had different opinions about what was needed, but the witnesses did assure us that closer cooperation was occurring, so I hope that has continued.

As regards other ministerial responses to committee reports, in addition to the response to the 50th report, the committee received a response from the Treasurer to the 49th report into the Emergency Services Levy 2004-05. The committee had inquired of the Treasurer what the government's position was with regard to the accumulating cash reserves in the community emergency services fund, which the committee had noted in its consideration of the 2004-05 submission from the department. In his response, the Treasurer indicated that the fund administrators did not have a policy to seek increases in community emergency services fund cash balances and that past underestimations of capital growth that had led to some accumulation would probably be followed by modest overestimations which would effectively even out the cash balance position.

As regards its varied statutory obligations, the committee considered levy proposals from the state's catchment water management boards in April and May 2005, approving all proposals to the minister. The committee notes that, due to the commencement of the Natural Resources Management Act 2004, its responsibilities with respect to the catchment board ceases. This will make quite a bit more time available to future economic and finance committees and I know that they will be able to use it very well in the pursuit of better public accountability and accounts management.

The committee also considered a number of tender proposals forwarded from the Office of Public Transport under sections 39(2a), (b) and (c) of the Passenger Transport Act. The proposals related to bus services in the outer north and south, outer north-east metropolitan areas, the Tatiara District Council area and the eastern Riverland area. The committee had no objections to the proposals as presented.

In terms of inquiries completed during 2004-05, the committee dispatched its inquiry into training programs in August 2004 when a ministerial inquiry into the same issue was initiated. The committee referred all evidence compiled to that point to the ministerial inquiry. The committee further

completed its inquiry into the proposed reduction in poker machines in November 2004. The committee had tabled an interim report in June 2004 and had subsequently received supplementary evidence from government and industry representatives. New and ongoing inquiries during the 2004-05 period included matters such as the Construction Industry Training Board on which a report has been tabled, national competition policy—again, a report has since been tabled—and private school bus contracts on which a report has been tabled, as has a ministerial response to the committee's recommendations.

The committee also initiated an inquiry into the Crown Solicitor's Trust Account after evidence provided by the Auditor-General indicated funds within the Attorney-General's Department had been deposited in a specific account with the object of withholding them from the government's carryover process. The committee took evidence from 11 witnesses in addition to several submissions and at the completion of the reporting period was considering a draft report. The committee also initiated an inquiry into the cost and availability of public liability insurances in South Australia as mandated in the Recreational Services (Limitation of Liability) Act 2002 and Wrongs (Liability and Damages for Personal Injury) Amendment Act 2002. At the completion of the reporting period, the committee was still taking evidence from community, government and industry groups.

As Presiding Member, I attended both mid-term and biennial conferences of the Australasian Council of Public Accounts Committees—the peak body for public accounts committees in this nation. These meetings were held in Brisbane in August 2004 and February 2005. As Presiding Member, I presented a paper at the biennial conference in February on public liability issues. I was interested to hear of the development of public accounts committees in countries such as Papua New Guinea and South Africa and the role that these committees are playing, especially in the South African context, in fostering and reinforcing newly democratic governments and institutions. I was very impressed by the way that the South African delegates were taking their new democracy very seriously; they clearly value the democratic processes that they now have. It was also interesting to see the extent to which the parliament takes responsibility for training these new members of parliament, many of whom have varied backgrounds that do not necessarily relate to ready understanding of their new processes of democracy, particularly as many of the bodies that have been established in the new South Africa are quite different from those that existed before. I found that parliamentarians were really thinking through the value of the institutions that they have adopted from the Westminster form of government and were treating them with a lot more respect than we do unfortunately in our community at times.

The committee has had quite a busy year which has included the appointment of a new research officer in November 2004 who, with the secretary, has provided assistance to the committee. I thank Mr Andrew Blue, who is our new research officer, for the breadth and depth of the work he has done since coming to the committee. He has managed to get on top of some very complex evidence that has been part of the matters that the committee has considered recently and the fact that his knowledge is so thorough has been a great comfort to me and I think to other members of the committee. Dr Paul Lobban has continued in his excellent role as secretary in supporting the committee and, in particular, the Presiding Member in a variety of ways. I take this opportunity to thank the current members of the committee: the Hon. Graham Gunn, the Hon. Iain Evans, the Hon. Trish White, Mr Jack Snelling, Mr John Rau and Mr Martin Hamilton-Smith, as well as the previous members, namely the Hon. Karlene Maywald and Mr Michael O'Brien for their contributions to the committee's work during the year.

Mr HAMILTON-SMITH (Waite): I rise as a member of the committee to make a contribution on the subject of the annual report and acknowledge the remarks of the chair. On behalf of the opposition I pass on our thanks to the staff of the committee, who I think have done a sterling job. However, I want to raise some matters of concern in respect of the annual report. First, I think that the committee could have been a little more active during the year. The number of terms of references that we took on were few. I think that we could have been more energetic, in particular, in regard to that offshoot of the Economic and Finance Committee, namely the Industry Development Committee. I note that it really did not meet at all in that year of 2004-05, yet there have been quite considerable government investments in a range of enterprises—Griffin Press, OzJet, Carnegie Mellon, to name a few—all of which arguably should have come through the Industry Development Committee as part of the openness and accountability of the government process.

I, and others, have raised concerns during the course of the year about the way the committee has functioned. I have a concern that the committee has been interfered with to an extent by the government of the day. I know that an element of this is perhaps unavoidable, and I know that all governments take a keen interest in what goes on within parliamentary committees, but I think it has been brought to a new level in this particular committee. On one occasion, it was necessary to raise a matter of privilege in the house seeking the Speaker's prime facie ruling in respect of a possible constructive contempt by obstructing and intimidating members in the discharge of their duties or by tampering with witnesses. That was directed towards the Treasurer. There was quite a bit of concern about the extent to which the government might be taking too keen an interest in what was going on in the committee to the extent of interfering with its process.

I have a firm conviction that these parliamentary committees are committees of the house. They are responsible to you, Mr Speaker. They are there really for members in their own right, as part of the committee, to examine, explore, question and report back to the house. They are not there as devices or as organs of the government. For that reason, I think any government needs to tread very carefully to the extent to which it seeks to interfere with a committee and the due, fair and proper process.

I think that a number of terms of reference the committee has undertaken could have been handled better. I am particularly concerned about the way in which the so-called 'stashed cash' term of reference was dealt with (that is referred to in the annual report) and the process used for dealing with that. In particular, I think it drew attention to a number of shortcomings in the way in which the committee functions and, in fact, the way the act stands at present. For example, on 20 October, I recall the committee calling the Auditor-General as a witness without prior notice being given and without any members of the opposition being present. I was actually delivering my wife to the hospital; she was having a baby. I think one of the other members had approved leave. The

point is that we had a case where not only was a witness being called without notice—and even this morning we discussed the need for notice to be given before motions are moved by the committee—but no members of the opposition were present. Okay, there were reasons for that, but I think that, as a protocol, it would have been a good idea, from the point of view of the credibility of the committee, for opposition members to have been present.

On 25 October 2004, the Treasurer told the parliament about the discussions he had with the chair of the committee regarding having the Auditor attend before the committee, which, as I mentioned before, led to a matter of privilege. I do not believe it is appropriate for a minister of the Crown, in his office, to be involved with the operations of the committee. The committee must be seen to be independent, and it is a responsibility of the chair, on behalf of the Speaker, to ensure that that occurs.

On 11 November, the committee again called the Auditor-General as a witness, without the knowledge of non-government members at the time, when there was a matter of privilege under consideration by the Speaker of the house and the Speaker had ruled that the committee was not to pre-empt a matter of privilege before the house. Again, I think that was inappropriate.

On 7 December, the chair publicly released confidential details regarding the medical condition of Ms Kate Lennon, a future witness to appear before the committee. I am concerned about that in the light of the fact that we have had two suicides in the nation after people had been trawled through committees, and I am talking about the case of Energex CEO, Mr Greg Maddock, in 2004 in Queensland, and Ms Penny Easton in 1992 in Western Australia. These tragedies should serve to remind committees of the pressure persons caught up in a political row can feel when thrust into the public spotlight. Parliamentary committees need to be responsible and should be condemned for ruthlessly pursuing individuals for political purposes. In my view, particular care should be taken when a committee is made aware of special circumstances affecting a person, such as a medical condition in the case of Ms Lennon and illness of family members and financial pressures in the case of Mr Kym Pennifold.

On 7 December, we had an interesting transaction on radio, where there seemed to be a threat from the chair along the lines of, 'We can issue a summons.' Then, another quote, 'What happens if she still can't make it?' The chair said it could 'result in incarceration'. The chair also implied that standing orders and the act 'don't make provision for a sick certificate' and that the refusal to turn up to a committee could be 'a contempt of the parliament'. Ms Lennon had written to the committee on 12 November 2004 asking it to 'please treat my medical condition as confidential'. I believe this was disregarded by the chair, which I think is unfortunate. I know there were reasons for that, but I think we need to be sensitive to these issues. As members of parliament, we must adhere to a certain responsibility.

As members would be aware, I was so concerned about this issue of the need for non-government members to be present that, in February, I moved an amendment to the Parliamentary Committees Act 1991 that would require a member of the opposition to be present. I was disappointed that that was not agreed to, because I think it would add credibility to a committee if there is representation from both sides. As I mentioned earlier, I am particularly concerned about the term of reference into the Crown Solicitor's Trust Account. The report has now been tabled; it is on the record. The house would know that, in the context of this annual report, it has been mishandled by the committee. It was simply nothing more than a political witch-hunt.

The house is now aware, because the report has been tabled, that the opposition feels that only an independent judicial inquiry will find out the truth of the matter—an inquiry with the widest powers and broadest terms of reference possible. We feel that the majority report is very biased and tilted towards deflecting attention in regard to the matter away from the Attorney to Lennon and Pennifold and that the matter needs to be addressed through a judicial inquiry.

All these things are very relevant to the annual report because, if the committee is going to take on terms of reference that simply become so highly politicised that you eventually have government members putting in a majority report and opposition members having to put in a minority report, it detracts from the credibility of the final report. In regard to the way in which the committee then finds itself conducting its affairs, you finish up with a political beat-up by the government and responding political beat-up by the opposition. I remember that, during the last parliament, the present Treasurer and the present Minister for Infrastructure where experts at this, that is, beating things are in the Economic and Finance Committee.

I think the whole thing was terribly tragic. I do not think the committee has got to the truth of what happened in the stashed cash affair and that only a judicial inquiry will do that. We will debate that matter separately. I do not think the proceedings of the committee in respect of that inquiry have done it any credit at all. There is so much conflicting evidence, so much nonsense came out, and there was so much highly politicised activity during the course of the term of reference that it reflected very poorly on the credibility of the committee and the way it went about dealing with the matter. If the government moves terms of reference for such purposes, there will be a response from the opposition—and there was.

Mr CAICA secured the adjournment of the debate.

ECONOMIC AND FINANCE COMMITTEE: NATIONAL COMPETITION POLICY

Ms THOMPSON (Reynell): I move:

That the 54th report of the committee entitled National Competition Policy, be noted.

The Economic and Finance Committee has examined the legislative review processes applied by the National Competition Council and the impact of the withholding of national competition payments to South Australia. The committee notes that 178 South Australian acts were identified by the National Competition Council as containing competition restrictions that should be reviewed and, where warranted, reformed. Competition payments are not tied commonwealth grants; they represent the state's share in the dividends arising from competition reform and they recognise the fact that more of the benefits flowing from increased economic growth accrue to the commonwealth government through the taxation system.

The government's capacity to invest in the infrastructure and public service needs of the state is diminished by not accessing the full amount of competition payments available to it. It is alarming that in the last two financial years South Australia had almost $30 million in national competition

payments either penalised or suspended and a further $8 million to $10 million in penalties is earmarked for this financial year. These penalties have been applied by the National Competition Council which has judged that South Australia has not invested in a timely manner in the legislative review program.

The latest penalties are due to a perceived lack of progress on reviews pertaining to liquor retailing, ownership restrictions in health professions, and barley marketing. Accordingly, the committee took submissions from some key stakeholders in these disparate industry sectors to assess the situation for itself. The committee was told by the Australian Hotels Association that national competition findings that state restrictions on retail liquor licences are anti-competitive were wrong. They cite consumer surveys indicating evidence of price flexibility, consumer preferences as to how and where they purchased liquor, and retail responsiveness to consumer demand and convenience.

The South Australian Farmers Federation informed the committee that a rigid application of competition rules fails to appreciate the specific and significant issues faced by rural producers in a small market such as South Australia. The committee notes the Farmers Federation view that the effect of inflexible applications of policy is essentially anti-competitive as concentration occurs and duopolies or monopolise result with both consumers and farmers missing out. On the contentious issue pertaining to barley marketing, it was the considered view of the committee that the push by the National Competition Council to deregulate barley marketing overlooked the fact that much of the South Australian grains industry was still a networked industry.

With regard to the health professionals, the South Australian Pharmacy Guild told the committee that a community benefit is derived from pharmacies being owned by pharmacists. That view is also held by the federal government. However, the National Competition Council opposes restrictions imposed by the South Australian Pharmacy Act limiting the number of pharmacies owned by individual pharmacists or friendly societies. The guild supports the limitations and believes the current community approach mediated through the guild allows suppliers to operate as the first line of the health system where corporate chains would not because of their purely financial imperatives.

The committee also obtained the views of the South Australian Milk Vendors Association as it had publicly expressed reservations about changes to milk distribution and the potential abuse of market power by larger supermarket chains. The committee notes milk vendors' claims that processing companies are choosing to vary conditions and pricing unilaterally, and they hold fears that, if distribution to supermarkets is not done through the milk vendors, as larger supermarkets appear to want, then 50 per cent of vendors will become unviable.

The committee heard that, to date, $1.68 billion of federal government money has been spent on rationalisation of the wider dairy industry and an 11 per cent per litre levy on milk has been collected throughout Australia towards further industry restructuring, yet milk vendors have been left out of any rationalisation process. In such situations the committee notes the difficulty in separating out general structural change within various sectors from that which is caused directly by national competition policy, but still the work of the committee has detected a clear problem.

Whilst the benefits of competition reform are longer-term and spread more widely amongst the community, the costs of competition reforms are often concentrated in a particular area and can be borne immediately. The committee notes, therefore, that it is ultimately how society compensates and supports those affected by competition reforms which are the key issues yet to be satisfactorily resolved. The fact that some states have the financial resources to fund milk vendor industry rationalisation packages and others do not is also symptomatic of a flawed system. Industry groups such as milk vendors, pharmacists, hoteliers and farmers openly dispute the benefits to the community of enforced competition, yet without competition reforms the state can be held to ransom and penalised by way of competition penalty payments.

The committee has concluded that the legislative review process involves a misunderstanding of the nature and role of competition in the economy. It is also evident that the imposition of an agreement under which a national agency administers a comprehensive review of all state legislation and recommends the imposition of financial penalties, if it is dissatisfied with results, is inconsistent with the South Australian right to democratic self-government.

Approaches based on the dominance of a single objective, such as the promotion of competition, must be rejected and elements of compulsion must be removed from the process. The committee recommends that the effective presumption that the status quo is wrong, arising from current national competition principles, be reversed to put the onus on the advocates of change to make out their case. It is further recommended that the National Competition Council no longer be required to carry out legislative reviews and that governments, through COAG, undertake to agree broad systems and processes for reviews, including mechanisms for proper consideration of the submissions and views of any and all interested parties.

The Hon. I.F. EVANS (Davenport): My contribution to the debate is that the chair has accurately reflected the contents of the report.

The Hon. P.L. WHITE (Taylor): My contribution to the debate is firstly to concur with the member for Davenport on his contribution and to support the chair in her summation of the committee's view of the implementation of national competition policy for South Australia. The conclusion that the committee came to was essentially that we did not have so much a problem with the stated objectives of the NCC, as they would put forward and the Chamber of Commerce would put forward; however, the real problem was in the way the policy is implemented and with the way that state governments are compelled to review legislation from an assumption that there is something wrong with the industry sector operations at this point in time. It comes rather than—

The Hon. I.F. Evans interjecting:

The Hon. P.L. WHITE: It is. That is the assumption—that there is something wrong and the state government or the industry must prove that they are working appropriately. One of the criticisms that came forward from all the industry sectors that approached the committee—and it was the view formed by the committee—was that there was not sufficient credence paid to the public interest test. We had quite disparate industry sectors come before the committee and they all, in their various ways, had the same story to tell on that point.

Another problem with the way that NCP policy is being implemented in Australia is that there is not adequate consultation with the very industry sectors which are affected by it. It seems to involve a misunderstanding of the nature and role of competition in the economy. The single most important objective, it seems, is that it is aimed at promotion of competition above all other goals. Members of the committee were particularly concerned about the nature of the reform processes and, in many cases, evidence from various industry sectors pointed to the fact that there had been a lot of pain caused to the industry in the process of review, but that the outcome did not lead to a better or fairer market for their industry.

In supporting the chair's report to parliament, suffice to say that while national competition policy in some respects has led to many worthwhile changes in the Australian economy, there is a lot of pain often felt up-front pretty quickly by very small parts of an industry. At the end of the day, with all the expense and effort that particularly the state government is faced with in doing these theoretical reviews, we cannot always see the benefit and, indeed, some sectors of the industry bear quite a lot of pain up front and seemingly unfairly. With the recommendations of this report, the committee hopes that in future the federal government will take a different attitude, particularly towards its regime of penalties for perceived lack of progress on issues. As someone who has served as a minister in the current government and been involved in the oversight of some of those reviews, I think it is fair to say that they take an awful lot of resources but that the criteria against which the industry is judged do not always reflect the current potential of the industry.

A significant review by the federal government about the direction of this policy is worthwhile and, hopefully, a different attitude towards its implementation of penalties to the state, which do harm the ability to provide services in those industry sectors.

Motion carried.

PUBLIC WORKS COMMITTEE: GOLDSMITH DRIVE LAND DEVELOPMENT PROPOSAL—NOARLUNGA DOWNS

Mr CAICA (Colton): I move:

That the 228th report of the Public Works Committee, on the Goldsmith Drive Land Development Proposal—Noarlunga Downs be noted:

Before commencing my report proper, I would like to issue an apology. On every occasion since I have been the chair of the Public Works Committee and, I understand, beyond that time as well, the committee would always issue an invitation to the current local member either to attend a site inspection or to attend the hearing to provide that member's point of view. On this occasion, there was some confusion. The buck obviously stops with me because of the position I hold, and I am willing to accept that. On this occasion, inadvertently the member for Mawson was not invited, and I have since written to him to apologise for that fact, and I wanted that placed on the record.

The South Australian Housing Trust has a 15.252-hectare parcel of land located at Goldsmith Drive, Noarlunga, and is negotiating to purchase an additional 0.3 hectares to provide a total development site of 15.552 hectares. The Housing Trust is expanding its role in urban renewal, land development and affordable housing projects. Funds from house and land sales generate income that allows the trust to build a range of new energy efficient and adaptable public rental dwellings. This process is steadily replacing old, obsolete public housing, reducing operating and maintenance costs and reinvigorating neighbourhoods. The Goldsmith Drive project will provide 230 homes in a low to medium-density residential development of the land via a joint development arrangement between the Housing Trust and the private sector.

This arrangement will put the trust in a position of carrying only 50 per cent of the risk while maintaining an acceptable return on investment. The project budget is $7 million and the trust is responsible for 50 per cent of development costs. It expects a net cash surplus of $5.4 million as well as retaining land value at $2.9 million to construct 46 public rental houses. The development will include a range of allotment sizes to suit the private and public housing sectors, including villa, courtyard, town house, terrace, community titled and traditional lots. The project aims to demonstrate excellence in urban design, so a significant feature of the proposed joint development agreement will be the incorporation of a range of environmentally sustainable development principles.

The Housing Trust is also continuing to consult with the Office of Sustainability and further initiatives are under consideration, such as undertaking programs that promote zero waste initiatives. These initiatives will be further refined and developed when the joint venture partner is engaged, and that partner will be expected to enforce the guidelines to encourage excellence in urban development, energy efficiency and water conservation. The guidelines will also protect the rights of residents with respect to adjacent development. The committee is pleased to support the extensive integration of ESD features and philosophy in the design of the proposed project, particularly the focus on water reuse and energy efficiency.

The total development of the site, assuming that 230 homes are created, will lead to a total expenditure of approximately $35 million, including expenditure on the construction of private and public housing. On the basis of the Housing Industry Association's measurements and business multipliers, this four-year development could employ 223 workers and increase output elsewhere in the economy by approximately $65 million. Site works will commence in mid-2006 and the first land sales are expected to occur in December 2006. The committee has been assured that current market conditions in the building industry have been considered in setting this schedule. The Housing Trust is committed to maintaining 20 per cent of the allotments for public retail housing using profits from the development and sale of the remaining 80 per cent to offset the cost of building on these allotments.

The Public Works Committee supports the overall project but is concerned that the need to finance the trust's homes through sales of other properties will apply upward pressure on the cost of the remaining development that may price it out of the range of some new home buyers. The development complies with the legislative requirement for at least 12.5 per cent to be maintained as free space, but the committee is concerned that the legislation also allows councils to sell portions of the reserved free space land. The land to be developed appears to incorporate an Aboriginal burial site, and the committee is concerned that the legislation surrounding perpetuity of tenure of cemeteries does not appear to extend to indigenous interments.

Notwithstanding these concerns, the committee recognised the value of this initiative by the South Australia Housing Trust and, pursuant to section 12C of the Parliamentary Committees Act 1991, recommends the work to the parliament.

Motion carried.

CROWN LANDS (PRESCRIBED SHACK SITES) AMENDMENT BILL

Mr WILLIAMS (MacKillop) obtained leave and introduced a bill for an act to amend the Crown Lands Act 1929. Read a first time.

Mr WILLIAMS: I move:

That this bill be now read a second time.

The bill is in consequence of the defeat of the second reading of a bill introduced by my colleague the member for Mount Gambier recently in this house. I was disappointed that the house chose not to pass the bill at the second reading stage to allow us to move into committee, given that I had already indicated that I would move amendments to the bill which I believe would have been more acceptable to the house. Consequently, I now bring this bill to the house, which is basically the amendments that I was going to move to the other honourable member's bill to achieve a similar result.

The bill seeks to add a new clause to the Crown Lands Act to allow the lessees of at least two prescribed shack sites in South Australia to enter into a different scheme of tenure. Currently on the Glenelg River, in the South-East corner of the state—and I am sure that members are aware now that a vast majority of that river lies within Victoria and several small stretches of the river flow through South Australia—there are three shack sites on the South Australian section of that river.

An honourable member interjecting:

Mr WILLIAMS: It is beautiful, and that is what we are trying to fix up. There is another site at Milang where there is a similar situation with a number of shacks. On those four sites—the three on the Glenelg River and the one at Milang—the shack owners only have a very limited tenure, known as a life tenure, of the lease which expires on the death of the leaseholder. The problem that has been identified—certainly at the Glenelg River shack sites—is that, because of the tenuous nature of the tenure, the shack owners are very reticent to spend any money upgrading the shacks. One of the reasons that governments—not only the current government but also the previous government—have been reticent to issue other forms of tenure is because the environmental issues are such that it was very difficult to provide a decent, proper and efficient effluent disposal scheme. With new technology, the shack owners believe that they can now provide an efficient effluent disposal scheme, but they are very reticent to spend money on that in the knowledge that they could lose their tenure to the shack site at any time. I think that, currently, the minister has the option to cancel any shack lease with three months' notice. In any case, the tenure or ownership of the shack site will not go beyond the life of the current leaseholder.

In the case of the Glenelg River shacks, that has mitigated against the shack owners spending money not only on effluent disposal but also on general upgrade and maintenance of the shacks to bring them up to a much higher standard than they are. Consequently, we have shacks on site which, the owners fully accept in a number of cases, have fallen into a state of dilapidation and could be improved greatly. However, there is no impetus for the owners to spend that money.

On the Milang site, the owners have taken a different attitude to those on the Glenelg River. They have put in a common effluent scheme, they have fire rated their shacks, they have instituted considerable improvements to their shacks at great expense to the individual shack owners, and they have shown good faith and spent the money and upgraded their shacks. I think what has occurred at Milang would occur at the Glenelg River sites almost immediately if the shack owners had some form of tenure which they knew was going to allow the shacks to remain in their ownership or their family's ownership for a longer time.

The amendments that I want to put into the act would not give tenure immediately to the current shack site owners. It would vest ownership, via a lease, in the local council: the District Council of Grant in the case of the Glenelg River and the Alexandrina Council in the case of the Milang site. Both those councils are desirous that this happens, and are more than happy to manage the sites. The councils would actually manage the sites and issue subleases to the existing leaseholders, but those subleases would have transferability clauses in them and allow the leases to go on for a much longer period. The bill suggests that the head lease to the councils would be a 99-year lease. That would give security and would create an environment where the shack owners would spend considerable money upgrading their shacks, both environmentally and in other ways, including fire rating, etc.

A number of members, one in particular, have expressed an opinion that the general community wants these shacks removed. I remind the house that over 7 000 signatures have been presented to this house. There have been 7 500 signatures presented on petitions tabled in this house from the people of Mount Gambier and the surrounding districts supporting the very measure that the member for Mount Gambier and I are trying to make happen. I expect that, before this matter is debated by members in a couple of weeks, we will have letters of support not only from the local Grant District Council but also from the Glenelg Hopkins Shire, which is the council over the border in the Victorian sector opposite the Grant council. I expect that we will also have a letter of support from the Nelson Ratepayers Association or community association. Nelson is the township upstream from the mouth of the Glenelg River. I expect that we will have letters of support from a number of other organisations in the local area.

I urge anybody who does not want to support this particular measure to bring to the parliament evidence of people who are opposed to this, because I have been unable to find any evidence of such people, apart from the minister and those members who basically represent seats in metropolitan Adelaide. When I was speaking to the member for Mount Gambier's bill, I said that the problem with the Labor Party is that its members have a philosophical problem with people actually owning property. They accept that people can own their principal place of residence, but they do not like people owning a second property, notwithstanding that many government members own second properties and investment properties, but they do not like the common man owning a second property, in particular holiday property. They just do not like it; they have a philosophical problem with that.

I have briefly discussed this particular matter with one of my colleagues, the member for Hammond, who has raised the issue of public access to these sites. I explained to him that

it was my understanding that both councils involved—the Alexandrina Council and the Grant Council—were desirous of having public access to the waters, both at Milang and on the Glenelg River. I have given an undertaking to him to ensure that that does happen and, if necessary, I will move an amendment to ensure that it happens. So, I may move an amendment in committee if I can get support for the second reading in a couple of weeks' time in order to put that into effect.

Basically, through this measure, we want to give the decision making back to the local community. I also point out that the minister's and the government's position is 'Why would we want to alienate some crown land?' The reality is that in 1836 all of South Australia was crown land. Every bit of it was crown land, and we have alienated most of it from the Crown. We have sold freehold title to most of it. A number of members of the government own freehold title to property on the waterfront down on the metropolitan coastline, but those same people would deny the people in rural South Australia the opportunity of having a property on the waterfront. They would deny it. There are a number of people here who would deny it.

I want members of the government to understand that this is a tiny little piece of South Australia. In many other instances across the state, members of the population have been allowed to purchase and own land. Generally, we see that the perpetual leases through which a large amount of this land has been owned have now been converted to freehold title all over South Australia, including up and down the River Murray. There is freehold title all along the River Murray. I think it would be very difficult to make a sustained argument that we should not allow a transferable title to be given to these shacks sites because it alienates a tiny little bit of crown land.

One of the other arguments the minister puts forward is that this prevents access to that piece of waterfront by the general public. I speak about the case of the Glenelg River shack sites. If the shacks were not there, the public would not get near the river. It is only because the shacks have been put there that people have actually opened up access across that piece of crown land to the river at those sites. I am more than happy to have this bill oblige the local council to ensure that there is public access to the river along those sites and also at Milang. I am quite happy for that. I do not have a problem with public access to any part of South Australia.

A fair bit of the debate has already been put to the house in relation to the previous bill, as I said, which was brought to the house by the member for Mount Gambier. It is the same debate and argument. It is just the method that I want to achieve at the end that is slightly different to what the member for Mount Gambier presented to the house. Over the next week or two—because I suspect that we will not get back to this debate at least until either Wednesday the 23rd or 30th at the earliest—I am hoping to sit down with a number of members, go though exactly what we are trying to achieve with this and assure those members that the local communities do want this to happen, if passed by this house and comes into effect.

The other thing I point out is that, in the case of the Glenelg River—on the other side of the river, that is, portions of the river that are in Victoria—there are a number of boat sheds which will be there in perpetuity, because the Victorian government does not have this nonsensical philosophical view about citizens owning property or even owning a second piece of property. We have the problem in South Australia, but not across the border. I commend the bill to the house and hope that over the next couple of weeks it will be supported by this house. I inform the house that, simultaneously, the bill will be introduced into the upper house and, hopefully, it will get support in that house also and be enacted into law by the end of this year.

The Hon. R.J. McEWEN secured the adjournment of the debate.

ECONOMIC AND FINANCE COMMITTEE: CONSTRUCTION INDUSTRY TRAINING BOARD

Ms THOMPSON (Reynell): I move:

That the Fifty-Sixth Report of the committee entitled 'Construction Industry Training Fund' be noted.

The Economic and Finance Committee has conducted an investigation into the role and effectiveness of the Construction Industry Training Board. The Construction Industry Training Act 1993 was enacted to establish the CITB as the overarching body responsible for administering the imposition and collection of a levy for the purpose of coordinating appropriate industry training. The levy and its associated fund operate with the aim of improving the level of skills of new entrants and existing employees in the industry, with a resultant increase in productive efficiency within the industry.

The CITB told the committee that the training levy funds over 24 000 training places at a cost of $3.3 million each year. As at June 2004, there were 1 382 group training apprentices supported by board funding, and 1 061 apprentices in receipt of tuition funding, at an all-up cost of $4.5 million. Against the background of the imminent retirement of large numbers of qualified trades workers in the next few years, the committee's inquiry has been timely, as the identification of skill shortages was a recurring theme in committee hearings. Many of the witnesses expressed the view that it was the role of the board to address skill shortages. However, the board told the committee its charter was not to focus on skill shortages, as this would divert resources from areas where a greater marginal impact can be achieved per dollar investment.

The committee accepts the issue of skill shortages is a nuanced one, compounded by the specialist subcontracting and cyclical nature of the industry but, nonetheless, believes the objects of the act need to be amended to indicate that the CITB's primary role is to provide training in the areas of skill shortages. The committee also heard a divergence of opinion existed in the industry, with many suggesting entry level training was the most important aspect of training because it represents the best form of investment to ensure a sustainable flow of new entrants to the industry. However, training for the existing work force was also widely acknowledged to be important because it allows the more rapid response to skills areas that are in demand.

The committee acknowledges training across the whole spectrum of the industry is important. However, it is the considered view of the committee that the best outcome from limited funds is to direct them to entry level training through group apprenticeship schemes or group pre-vocational schemes and individually indentured apprentices. To this effect, the CITB may need also to develop a policy in regard to traineeships and the role traineeships may play in the training of new entrants in the industry. The committee also recommends a key stakeholder forum could assist in reaching consensus on how best to maximise outcomes from the levy

and to ascertain the best approach to ensuring more apprentices come through the system.

The hearings also revealed a few concerns about whether the CITB is controlled by those with conflicting interests, and questions were raised about whether members are sufficiently independent from the recipients of CITB funding. The committee notes, however, that, whilst questions about the merits of the board structure and operational system that potentially conditions negative attitudes across industry groups were evident during the hearings, no viable alternative model was forthcoming. The committee recommends, therefore, that the CITB develop a widespread communication strategy to clearly explain the rationale for its training agenda and funding allocations in order to address any negative industry perceptions.

The committee also heard of anomalies in the allocation of training funds. Under the current interpretation of the act, certain trades in kitchen and bathroom areas do not fall into any category for CITB funding. The committee is of the view that a positive direction needs to be taken by the CITB in order to have a consistent approach to its system of funding. Specifically, the committee suggests that the act be amended so that the definition as to what the fund can be applied to is amended so as to include employees and contractors in the installation of kitchen, bathroom and furnishing industries. The reservation of some witnesses in this area was that it is hard to distinguish between the manufacturing of some of the fittings in a home and the installation, and the eventual consideration of the committee was that the fund should apply to those involved in the installation only of these fittings.

By its very fragmented nature, the industry has lost significant capacity to support traditional employment and apprenticeship arrangements and, as mentioned earlier, against the background of the imminent retirement of large numbers of qualified tradesmen in the next few years, it is critical that the CITB maximises outcomes from the levy. By and large, stakeholders agreed the levy spend was best directed by an industry-led board. The hearings pointed to wide endorsement for a legislated levy, and the majority of witnesses considered that the industry was better off with a CITB than without one.

The committee also commends the CITB on working towards Australian Quality Framework Standards, and it has established key performance indicators for group training schemes and had put in place funding requirements not to lay off apprentices. However, it was also evident that there was some sense of urgency amongst stakeholders and committee members for the CITB to be continually looking at finding more flexible ways and responsive training packages in the industry. One of the case studies cited of such a flexible and responsive package was the Doorways to Construction scheme, which is operating very successfully in a number of high schools, including the Morphett Vale High School in my electorate. I have been able to see for myself the way this program, which is sponsored by the CITB, allows young people to assess whether the building industry is where their future lies. It enables them to try various trades and skills to get a feel for what it is like to work on a building site, to get a feel for working cooperatively and for the type of maths that is required in the building industry. It has been very successful in the case of Morphett Vale High School, which I believe is reflected in all other Doorways to Construction programs, in attracting young people to take up places in the construction industry.

The committee recommends that the act be amended so that the CITB submits its training plan to the Economic and Finance Committee of the parliament each year. So many differing views were expressed by witnesses about the need to focus on different areas that it was considered that one way of ensuring that this funding is made publicly accountable, and not just accountable to participants within the industry, is to have this important training plan reviewed by the Economic and Finance Committee so that there is public accountability in relation to the activities of this important board as it is a key area for our economy. This would ensure that the results achieved compare to the improved plan so that they can be judged and, hopefully, this would act as a positive stimulus for further action and more accountability. Furthermore, the committee believes that the commissioning of regular reviews of the CITB, the training it provides and regular quantitative and qualitative analysis of that training is another way to keep the creative pressure on the CITB to perform. The committee noted that a review has recently been undertaken at the behest of the minister and that this has already resulted in some changes being made and greater recognition of the important role the board plays.

The CITB is tasked with a tough job, but the overriding concern for the committee is that more lateral options need to be developed to increase apprenticeship and traineeship numbers. The committee acknowledges that interpretations about funding allocations are often secular and frequently draw criticism, but still the committee urges the CITB to take on the future challenges for the building and construction industry with more strategic planning and intent than is currently seen by some of the participants within the industry. It is for this reason that the committee welcomes any future opportunities to assist the CITB in their endeavours, and it commends this report to the parliament.

The Hon. I.F. EVANS (Davenport): I rise to speak to this report. In the committee, I moved for this term of reference to be undertaken by the committee. The parliament is aware that I have a background in the building industry prior to my entering parliament, and the operation of the Construction Industry Training Board has always concerned me, especially the way it operates the fund. My main concern, as can be seen in the report and from the evidence given, was that the fund is used to provide a lot of what the experts call upskilling training and not as much entry-level training as I would prefer. In other words, they would provide training for people to undertake occupational health and safety training like elevated platform training, which is a legal obligation of the employer anyway, rather than spend the money actually getting people into the industry as apprentices or trainees.

It seems to me that if the employer already had the obligation to provide OH&S training, there is no need for the Construction Industry Training Board to tax builders and their clients to subsidise training that is already legally required when there are skill shortages right throughout the industry. I am pleased that the committee finally agreed to the principle that the Construction Industry Training Fund should be primarily used for entry-level training. I know that has strong support within some sections of the housing industry. Mr Bob Day from Homestead Homes gave evidence to that effect. When he was asked how much of the money he would want for entry-level training, he suggested 100 per cent of it. I think we all acknowledge that Bob Day is one of Australia's biggest builders. I think that he builds in every state of Australia, so he knows the industry well. I am glad the

committee signed off on that particular recommendation, because it is important that we try to get more people into the building trades to sustain the industry. Therefore, the money should primarily go towards areas of skill shortage or getting people into entry-level training rather than training that is required by law anyway.

The second issue is the recommendation that the objects of the act be amended to indicate that the board's primary role is to provide training in the areas of skill shortage in the industry—that is to say its primary role, not its sole role. We had evidence from the board that it did not necessarily target areas of skills shortage with its funding. It seemed and still does seem a nonsense to me that we have a construction industry training levy and we know that there are skills shortages in the building industry, and we do not target the funding to meet the skills shortages. It seems to me that it is logical that you would address the funding you have to your skills shortages, but, currently, they do not do that. I am pleased that the committee accepted my recommendation that the objects of the act be amended to indicate that the board's primary role is to provide training in the areas of skills shortages in the industry.

I know that the board would argue that the industry is cyclical to some extent and that you cannot pick what the skills shortages will be in 10 years' time, but I disagree with that to an extent. I think that the associations are pretty good at picking where the skills shortages will be in two, three and four years' time. They have age profiles for their industry, and they know, through the licensing numbers, etc., the numbers of people who are in the industry and who are likely to retire through age, etc., and they can monitor that pretty accurately these days. So, there is absolutely no reason why the money should not be targeted to areas of skills shortages.

To a similar extent, in relation to trying to broaden the use of the fund, it was put to us by the building industry that those people who install cupboards and that sort of thing into houses are not able to obtain funding. So, an apprentice cabinet fitter, for instance, would not be able to obtain funding under the act because they are excluded. I am pleased the committee accepted my recommendation to change the eligibility criteria so that employees and contractors who install kitchen and bathroom furnishings into a home can have access to the fund. The fund charges the levy based on the value of the work done in the home, anyway. So, if the public are paying a tax on the value of the work, it seems only fair that the people who install the work are able to access training through the fund.

We also got a recommendation through the committee that the board policy be changed so that, as market conditions allow, the majority of the Construction Industry Training Fund's training expenditure is directed to entry level training or to workers who have left the industry and want to re-enter. My focus for the Construction Industry Training Fund is all about getting people in at entry level—to get them into the system—and, once they are in, my view is that the system will look after the other training, as it is obligated to do under the law, anyway. The chair of the committee has talked to some of the other recommendations, and I do not plan to go—

The Hon. J.W. Weatherill: And John Howard should look after the rest.

The Hon. I.F. EVANS: The member for Cheltenham says that John Howard should look after the rest. Even the member for Cheltenham would admit that Australia's unemployment figures are the best they have been for the last 28 years and that, for 9½ years of that time, Mr Howard has been Prime Minister. That might be a fluke, but the reality is that, after 9½ years of the Howard government, we have the best employment figures and the lowest unemployment figures for 28 years. Maybe the member for Cheltenham can explain how that has occurred.

The committee has also recommended that the act be amended so that every year the Construction Industry Training Board is required to bring its training plan before the Economic and Finance Committee. The reason we seek to do that is so that the Economic and Finance Committee can make sure that the Construction Industry Training Board's training plan is indeed addressing the areas that need to be addressed. The Economic and Finance Committee used to do this with the water catchment boards in relation to their annual plans. We see no reason why it would not hurt the Construction Industry Training Board to put its training plan before the Economic and Finance Committee. It is not an approval or rejection process; it is simply for us to ask questions and gain information and to hold that board to account, rather than have it slip through to the minister behind the scenes.

I have also put in a minority report with three or four recommendations that I believe would make the operation of the fund better. Those recommendations are that the act be amended so that the training levy is charged on the cost of projects net of GST. Currently, we have a tax on a tax. I think we are now economically wealthy enough on this particular issue to change that. I think the board veto should be deleted. There is a veto so that, if one of the groups on the board does not agree with the board decision, the decision is simply not made, which I believe is not in the long-term interest of either the board or the industry. There is segmentation in the fund from the housing sector and the commercial sector, and I have made a recommendation that the segmentation of the fund be maintained.

Further, some in the housing industry, when they pay the levy, want to the able to direct which type of training it goes to. As a Liberal who believes in choice, I support that principle. Having been in the housing industry, I know there is a danger with these schemes that only those associations that run training organisations end up on the board and that those small builders who are not well off or are not high up in the MBA or the HIA find it very difficult to access some of the training. I think that their being able to direct the money they pay into the fund to training they want in order to employ people is the right principle. I have included some minority recommendations into the report but, in general, I support the principle of the report. I thank the committee for taking on the reference.

Mr SCALZI (Hartley): I will be brief, because the member for Davenport has clearly outlined some of the concerns and also the recommendations. There is no question that the Construction Industry Training Fund has an important role to play in the building industry, as outlined by the member for Davenport, and it also has a responsibility to address our concerns in relation to skills shortages.

As many members would be aware, the fund was established in 1993 under the CITF act. The training board was set up to administer the imposition and collection of a levy for the purpose of funding and coordinating appropriate training and for other purposes. It is a tripartite group consisting of the government, employees, and employee representatives, and so it should be: the board should reflect the industry. It is important to note that the levy is .25 per cent of the value of

building and construction work in excess of $15 000, which in 1999 was increased from the original $5 000 threshold.

I agree with the concerns expressed by the member for Davenport that some training has been done in the area of occupational health and safety, which should be a legal obligation of any employer. I agree that that should be understood and funded by any employer. As the honourable member rightly said, the funds should go towards supporting entry into the trades and doing something about skill shortages.

The committee's recommendations are commendable. I believe they will address some of the concerns of people in the industry, but we have to focus on skill shortages. That should be reflected in the recommendation to support entry into the building industry, which I think is of utmost importance. However, that in itself will not address all our skill shortages, because a lot of it is to do with the way in which we perceive the trades. I think it is about time that our education system elevated the value of trades. A lot of good things have taken place in recent years. I refer to the focus by federal and state governments on skill shortages. There has been support for VET programs in schools and, as I said, training colleges have focused on the fact that we have a problem. However, if we do not value the trades in our schools, if we do not support young people to make a choice at a young age to go into a trade, no matter what recommendations emanate from these types of boards and other areas we will always have skill shortages. Sadly, young people are not given the opportunity to choose a trade. I come from a family of small businessmen. One of my brothers is a builder. I spent a lot of my youth putting up ceilings of fibrous plaster and doing straight stopping.

Ms Thompson: Did you wear a mask?

Mr SCALZI: Did I wear a mask? Sadly, I did not. In those days we were not as conscious of the risks. I used to install insulation in roofs, and I did not take the precautions that are taken today. I commend the lifting of those standards. Nevertheless, as the member for Davenport said, those obligations should be a given for any business and we should concentrate on how we can increase the number of people going into the trades.

An honourable member interjecting:

Mr SCALZI: I have mixed cement. In those days it was 12 parts of gravel, six of sand and 2½ of cement. I learnt a lot working in the building industry. We should elevate the importance of these occupations, because they play a very important role in our community. We need smart plumbers, carpenters and bricklayers. The assumption that those vocational occupations are not as important as other areas of employment is a sad reality which causes a lot of skill shortages. We do not value our trades as we should.

A lot of young people, if they were given an opportunity to become involved in a trade and if trades were valued by the general community and there were no imposts on small businesses, which make it difficult to employ young people and take on apprentices, we would have more people involved in the trades. My brother always used to have two or three young people working for him; now he works on his own. Thankfully, his sons are in the trade, so they work together in a family business. However, there should be opportunities to get more people entering into the trades—and that is what the original purpose of this was all about, to encourage people to enter trades. That should be the prime focus.

I support the recommendations. I commend the member for Davenport for his comments on the shift of emphasis, because there are a lot of good builders who would employ a lot more people if they were not faced with the imposts of red tape and regulations. The government claims that we are out of time when we have the lowest unemployment rate in 20 years, and it is true that the employment figures are good, but let us not forget that is the result of a national economy, because there has been a injection of investment into the general economy and there has been stability, thanks to the Howard government. But the youth unemployment in South Australia is one of the highest in the nation. There are concerns about long-term unemployment for the mature aged and they must be addressed if we really are to provide opportunities.

Mrs GERAGHTY (Torrens): Thank you, sir. I have not had the opportunity, at this stage, to read the whole report or the minority report of the member for Davenport, so I certainly intend to take the opportunity to do that. One of the points raised during the debate today was about where funds should go and who should decide where those funds go.

Debate adjourned.

TERRORISM (PREVENTATIVE DETENTION) BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to authorise temporary detention in order to prevent the occurrence of a terrorist act or preserve evidence of, or relating to, a recent terrorist act; and for other purposes. Read a first time.

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

That this bill be now read a second time.

The Council of Australian Governments held a special meeting on counter-terrorism on 27 September 2005. The communique contained many policy announcements. Some of the most urgent of these were pledges to change the law on counter-terrorism. This part of the communique reads:

> COAG considered the evolving security environment in the context of the terrorist attacks in London in July 2005 and agreed that there is a clear case for Australia's counter-terrorism laws to be strengthened. Leaders agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism and contain appropriate safeguards against abuse, such as parliamentary and judicial review, and be exercised in a way that is evidence-based, intelligence-led and proportionate. Leaders also agreed that COAG would review the new laws after five years and that they would sunset after 10 years.
>
> COAG agreed to the Commonwealth Criminal Code being amended to enable Australia better to deter and prevent potential acts of terrorism and prosecute where these occur. This includes amendments to provide for control orders and preventative detention for up to 48 hours to restrict the movement of those who pose a terrorist risk to the public. The commonwealth's ability to proscribe terrorist organisations will be expanded to include organisations that advocate terrorism. Other improvements will be made, including improvements to offences about the financing of terrorism.
>
> State and territory leaders agreed to enact legislation to give effect to measures which, because of constitutional constraints, the commonwealth could not enact, including preventative detention for up to 14 days and stop, question and search powers in areas such as transport hubs and places of mass gatherings. COAG noted that most states and territories already had or had announced stop, question and search powers.

Commitment to that part of the communique which deals with strengthening counter-terrorism laws obliges states and territories, including South Australia, to legislate in three

general areas of criminal law and police powers. These areas are:

- special police powers to stop and search people, places and things;
- special police powers to search items carried or possessed by people at or entering places of mass gatherings and transport hubs; and
- preventative detention laws which 'top up' commonwealth proposals where there is advice that the commonwealth (but not the states) lacks constitutional power to legislate.

The first two of those three commitments are in the Terrorism (Police Powers) Bill 2005, which we debated last night. This bill deals solely with the third of those pledges, preventative detention. I seek leave to incorporate the remainder of my second reading speech in *Hansard* without my reading it.

Leave granted.

The COAG communiqué lacked detail, for practical reasons. After the COAG agreement, Commonwealth, State and Territory officers went to work on draft provisions, exploring every detail of a possible draft Bill, the results of which the Prime Minister wanted before the Australian Parliament by November 1, 2005. South Australia had, as we all know, a very particular problem. With so few sitting weeks before the break and then an election looming, there was little legislative time and space in which to accomplish the pledge—unless it was to be delayed for months. As the world knows, a first draft was produced in early October. The world also knows it because Chief Minister Stanhope of the ACT put it on his website. The Commonwealth was not amused. But the complexity of the task ahead was revealed for all to see.

The pledge of the States and Territories was about only one part (albeit an important part) of the draft Bill. That part was the provisions on preventative detention. Put another way, perhaps to the comfort of all States and Territories, they were not called upon to enact State or Territory versions of control orders or sedition offences, nor the extension of the notions of terrorist act and terrorist organization. Those matters were left solely to the Commonwealth.

However, the Commonwealth determined to enact a regime of preventative detention modelled on that in the United Kingdom. The object of a preventative detention order is that a person is to be detained without charge, trial or any other official reason for a short period to either (a) prevent an imminent terrorist attack occurring or (b) preserve evidence of, or relating to, a recent terrorist attack. The Commonwealth had advice that it could not constitutionally legislate for the preventative detention of a person for more than 48 hours. The primary reason for this lay in the provisions of Chapter III of the Commonwealth *Constitution* and its interpretation by the High Court. Stripped of technicalities, the effect of the advice was that the High Court was likely to uphold preventative detention for the purposes outlined for a short period, but the longer the period the more likely that it would be held to be punitive rather than preventative—and hence unconstitutional as authorising the use of judicial power to punish without the benefit of judicial due process as required by Chapter III. Forty-eight hours was a rough guess of where the High Court might put the boundary. However, the Commonwealth wanted detention for 14 days to be possible (as was so in the United Kingdom) and hence the communiqué obliged the States and Territories to take up the slack. It is fair to say, in general terms, that the States do not suffer under quite the same constitutional strictures as the Commonwealth in this respect, although the extent to which this is so is conjectural and one result of this legislation may be a detailed exploration of that proposition. Constitutionally, though, this State Bill makes it quite clear that a Supreme Court Judge acts in his or her personal capacity only, not as a court, and always with that person's continuing consent to act.

This Bill, the *Terrorism (Preventative Detention) Bill 2005*, has been drafted with close reference to successive Commonwealth drafts of its Bill, called (to date) the *Anti-Terrorism Bill 2005*. The reasons for this are clear and compelling. Although it is true that the decision was made early in the process that the States and Territories should enact free-standing preventative-detention legislation that did not require Commonwealth detention as a pre-condition for State detention, that eventuality could not be ruled out. Indeed, it may be regarded as probable that Commonwealth detainees could well become State detainees. Not only would it make no sense at all for the States and Territories to have differently operating regimes, but it would also be nonsense for each State and the Commonwealth to have different regimes. That does not mean word-for-word transcription. The States require some legal changes—for example, complaints against police are made to the Ombudsman in the Commonwealth but to the Police Complaints Authority in South Australia. Judicial review processes are different, as are the jurisdictions of courts. Constitutional requirements are different (as already remarked), and so on. In addition, house-drafting styles differ and some Commonwealth refinements are unnecessary at a State level. Most important of all, though, was that it was necessary to bear steadily in mind that detention of this kind for 14 days was a different proposition than detention for a comparatively mere 48 hours at most.

The Premiers collectively fought for and won concessions to civil liberties in the State version of the Bill. These included, most importantly, judicial review, a sunset clause and reversal of the Commonwealth position on what became known as the "shoot to kill" power."

The Bill proposes the enactment of a free-standing State preventative-detention regime. The Bill contemplates that either a senior police officer or a Judge of the Supreme Court or District Court, a retired Judge of the Supreme Court or District Court, may make a preventative detention order but severely restricts the occasions on which a senior police officer may do so. The policy of the Bill is that, so far as is reasonably practical, all applications should be issued by an officer of judicial rank. That officer is an officer who acts in his or her personal capacity and by written consent and does not act as a Court or as a Judge of a Court. The occasions on which a police officer of or above the rank of Assistant Commissioner can make an order are if (a) there is an urgent need for the order; and (b) it is not reasonably practicable in the circumstances to have the application for the order dealt with by a Judge. Even so, such a police issued order is limited to 24 hours.

There are two grounds on which an order can be made. These might helpfully be thought of as orders of a preventive type and orders of a reactive type. The first (preventive order) is that the issuing authority or officer:

(a) suspects on reasonable grounds that the person—

(i) will engage in a terrorist act; or

(ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(iii) has done an act in preparation for, or planning, a terrorist act; and

(b) is satisfied on reasonable grounds that making the order would substantially assist in preventing a terrorist act occurring; and

(c) is satisfied on reasonable grounds that detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose; and

in addition, the terrorist act must be one that is imminent; and must be one that is expected to occur, in any event, at some time in the next 14 days.

The second type (reactive order) can be issued if:

(a) a terrorist act has occurred within the last 28 days; and

(b) the issuing authority or officer is satisfied on reasonable grounds that it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and

(c) the issuing authority or officer is satisfied on reasonable grounds that detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to.

The order may be made for any period by a judicial officer up to a limit of 14 days. There are detailed provisions designed to ensure that orders cannot be piggy-backed onto other orders to by-pass this essential restriction. What is more, the 14 days includes any time spent in preventative detention under any corresponding Commonwealth or State preventative detention law. The 14 days cannot be extended by jurisdiction hopping either. There are close restrictions placed on the capacity of the detaining authorities to question the detainee. Obviously, it is not possible to prohibit all questioning. The question "would you like access to your rights?" would seem, in most cases at least, innocuous enough and there has to be scope for it. However, if police want to question (in the legal sense) a suspect who is being held in preventative detention, they can take that suspect out of preventative detention and treat that person as an ordinary suspect, in which case the ordinary rules apply. If that happens, investigative time elapsed counts as time in preventative detention. That includes time counting as investigative time under

ASIO legislation. If the Commonwealth authorities want to invoke that power at any time, they can do so and time continues to run.

The Bill contains things called prohibited-contact orders. These are orders that are ancillary to preventative detention orders and are made in the same way. The effect of the order is that the person named in the order is prohibited from making contact with a person or persons named in the order for the currency of the order (which runs with the accompanying preventative detention order). The prohibited contact order cannot run for longer than the preventative detention order to which it relates. The purpose of such an order (and other disclosure offences, detailed below) is obvious. It is to prevent communication between a cabal that it has been rumbled.

After detailed negotiation with the Commonwealth, and other States and Territories, there has been agreement that the drastic nature of the consequences of a successful application under this statute should be leavened by as effective a provision for formal judicial oversight as possible. There is a general provision preserving existing general rights of action at law. In addition, a Part of the Bill has been included which requires that as soon as possible after a preventative detention order is made, the police officer detaining the subject must bring him or her before the Supreme Court acting in its full judicial capacity for review of the order. This review process can be expedited by audio or video-link. The Court is given wide ranging powers to make any orders about the detention that it thinks fit. It is intended that this be a full inter partes review of the order. It should not escape notice that, in order to aid this process, the detaining authority is obliged to provide the detainee with a copy of the detention order and a summary of the grounds on which the order is made. In addition, the detainee must be informed of the existence of this review procedure.

During the course of this heated debate, necessarily constrained by time, there has been controversy over the authorisation of the use of force in enforcing a preventative-detention order. The Bill contains a careful provision about this. There was much said about shoot-to-kill. Whatever may be so about the Commonwealth Bill (and that matter is not addressed here at all), the State Bill is consistent with the pledge made by the Premier. There is an injunction about the use of force generally confining it to that which is necessary and reasonable, and reference to the lawful use of force in self-defence and defence of another. That is designed as reference to the existing and much debated provisions on the *Criminal Law Consolidation Act* that have been considered by Parliament more than once since 1991. Whatever the newly-drafted Commonwealth provisions might mean, it is intended that the State provisions be clear. The existing State law of self-defence and defence of another applies to a police officer as it does now. The existing State law of the use of force in making an arrest applies to a police officer as it does now. The enforcement of a State detention order under this Bill is not, in and of itself, the making of an arrest. It is a general State offence to resist or hinder a State police officer in the execution of his or her duty. That will continue to be so. That offence can be enforced—as now. The existing law prevails.

These general provisions are supplemented by much detail. This is a complicated measure. The detail is helpfully outlined in the clause notes. What follows is a general indication of topics which may be of interest or otherwise attract attention.

- There are special provisions for people under the age of 16 and 18 years of age. It is true that any age is in that sense arbitrary. The Bill tries to take a principled and consistent position about it.
- There are various and very detailed provisions about what must be in applications for, and in orders made as a result of those applications. All have been carefully thought about for the protection of the person the subject of the orders.
- There are relevant and limited authority to enforce the provisions, including power to demand identification, searches and the power to break and enter premises.
- Safeguards include the requirement to explain a lengthy range of matters to the person detained, the period of detention and any other extension of the order, the supply of a copy of the order, the requirement of humane treatment, the right to contact family members, a lawyer and the Police Complaints Authority, and serious offences of breaching the protections inhering to the detainee under the Bill.
- On the other hand, it cannot be denied that there are severe offences attached to the unauthorised disclosure of information about the fact of detention (and its character) that is not within the ambit of the protections offered by the Bill. There are serious attempts within these offences to provide a measure of protection to the legitimate interests of the person detained given the hurdles that have already been jumped to authorise such an extraordinary detention.
- There is a serious attempt to give an annual report meaningful content and the legislation sunsets after 10 years.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Object

The object of the measure is to allow a person to be taken into custody and detained for a short period of time in order to—

- prevent an imminent terrorist act occurring; or
- preserve evidence of, or relating to, a recent terrorist act.

A terrorist act is defined by reference to Part 5.3 of the Criminal Code of the Commonwealth.

3—Interpretation

Definitions necessary for the measure are set out in this clause.

4—Issuing authorities and limitation on powers

The issuing authority for a preventative detention order is—

- a Supreme Court or District Court Judge, or retired Supreme Court or District Court Judge, appointed by the Minister with consent;
- the Police Commissioner, Deputy Police Commissioner or an Assistant Commissioner, but only if—
- there is an urgent need for the order; and
- it is not reasonably practicable in the circumstances to have the application for a preventative detention order dealt with by a Judge.

The powers of a senior police officer are limited:

- the officer may only authorise detention up to a maximum period of detention ending 24 hours after the subject is first taken into custody under the order;
- the officer may not exercise, in relation to the subject, any other power conferred on an issuing authority under the measure after the end of the maximum detention period except the power to revoke an order.

5—Police officer detaining person under a preventative detention order

This clause places responsibility on the most senior of a number of police officers involved in the detention of a person under a preventative detention order.

Part 2—Preventative detention orders

6—Basis for applying for, and making, preventative detention orders

There are 2 grounds for an application for and the making of a preventative detention order:

- the police officer and issuing authority—
- must suspect on reasonable grounds that the subject—
- will engage in an imminent terrorist act; or
- possesses a thing that is connected with the preparation for, or the engagement of a person in, an imminent terrorist act; or
- has done an act in preparation for, or planning, an imminent terrorist act; and

(An imminent terrorist act must also be one that is expected to occur, in any event, at some time in the next 14 days.)

- must be satisfied on reasonable grounds that—
- making the order would substantially assist in preventing an imminent terrorist act occurring; and
- detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for that purpose; or
- if a terrorist act has occurred within the last 28 days, the police officer and issuing authority must be satisfied on reasonable grounds that—
- it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and
- detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for that purpose.

7—No preventative detention order in relation to person under 16 years of age

An order cannot be made in relation to a child under 16 and, if a police officer who is detaining a person under an order

is satisfied on reasonable grounds that the person is under 16, the person must be released.

8—Restrictions on multiple preventative detention orders

Only 1 order for detention of a particular person may be made to prevent the same terrorist act within a particular period. A further order may be made to prevent a different terrorist act, but only if relevant information became available to put before an issuing authority after the making of the earlier order.

Only 1 order for detention of a particular person may be made to preserve evidence of or relating to the same terrorist act.

The period for which a person may be detained under a preventative detention order may not be extended by using a combination of orders from different jurisdictions.

9—Application for preventative detention order

This clause sets out what must be in an application for an order and requires the information in the application to be sworn or affirmed by the police officer.

10—Making of preventative detention order

A preventative detention order is an order that a specified person be taken into custody and detained for a specified period. If the order is issued by a Judge, the period may be up to 14 days. If the order is issued by a senior police officer, the period may be up to 24 hours.

11—Duration of preventative detention order

A person may only be taken into custody under an order within 48 hours of the making of the order.

12—Extension of preventative detention order

If an order is issued by a senior police officer for a period of custody that is less than 24 hours or an order is issued by a Judge for a period of custody that is less than 14 days, the order for detention may be extended by an issuing authority on application if the issuing authority is satisfied on reasonable grounds that is reasonably necessary for the purposes of the order.

The order must still cease to have effect—

- if the extension is granted by a senior police officer—no later than 24 hours after the person is first taken into custody;
- if the extension is granted by a Judge—no later than 14 days after the person is first taken into custody.

13—Prohibited contact order (person in relation to whom preventative detention order is being sought)

A prohibited contact order may be applied for and made in conjunction with a preventative detention order if the issuing authority is satisfied on reasonable grounds that it will assist in achieving the purpose of the preventative detention order. The order prohibits the detainee, while being detained, from contacting a specified person.

14—Prohibited contact order (person in relation to whom preventative detention order is already in force)

A prohibited contact order may also be sought subsequent to the making of a preventative detention order.

15—Revocation of preventative detention order or prohibited contact order

This clause provides for revocation of an order if the grounds on which the order was made cease to exist.

16—Status of person making preventative detention order

An issuing authority is given the same protection and immunity as a Judge of the Supreme Court.

Functions conferred on a judge are conferred on the judge in a personal capacity and not as a court or a member of a court.

Part 3—Review of preventative detention orders

17—Review of preventative detention order

As soon as practicable after a person is detained under a preventative detention order, the police officer detaining the person must bring him or her before the Supreme Court for a review of the order.

The Supreme Court may, however, relieve the police officer from the obligation to bring the subject before the Court and conduct the review proceedings by audio/videolink or audiolink if satisfied that is it appropriate in the circumstances to do so.

On a review the Supreme Court may exercise any of the following powers:

- it may quash the order and release the subject from detention;
- it may remit the matter to the issuing authority with a direction to reduce the period of detention under the order or not to extend the period of detention beyond a specified limitation;
- it may award compensation against the Crown if satisfied that the subject has been improperly detained;
- it may give directions about the issue of further preventative detention orders against the subject.

18—Review not to affect extension etc of preventative detention order

Subject to any direction made in the review proceedings by the Supreme Court, an issuing authority may, during the course of those proceedings, exercise powers under this Act—

- to extend or further extend the preventative detention order; or
- to revoke the order.

Subject to any direction made in the review proceedings by the Supreme Court, the police officer detaining the subject may exercise powers under this Act to release the subject from detention during the course of the review proceedings.

Part 4—Carrying out preventative detention orders

19—Power to detain person under preventative detention order

Any police officer may take a person into custody and detain the person under a preventative detention order.

When a preventative detention order is made, the Commissioner of Police must nominate a senior police officer to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.

The detainee, the detainee's lawyer, and a parent/guardian or other person with whom a detainee who is a child or is incapable of managing his or her affairs has had contact, may make representations to the nominated senior police officer.

20—Endorsement of order with date and time person taken into custody

The order must be endorsed with the date and time when the person is first taken into custody.

21—Requirement to provide name etc

A police officer may require a person who the police officer believes on reasonable grounds may be able to assist in executing a preventative detention order to provide his or her name and address.

22—Power to enter premises

A police officer may enter premises using necessary and reasonable force to search for a person to be detained under an order if the police officer believes on reasonable grounds that the person is on the premises.

However, a dwelling house may not be entered between 9pm and 6am unless the police officer believes on reasonable grounds that—

- it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or
- it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

23—Use of force

This clause limits the police officer in respect of the force used or the extent to which the person is subjected to indignity, but recognises that it may be necessary to use force in self-defence or defence of another.

24—Power to conduct a frisk search

A police officer may conduct a frisk search of a person taken into custody under a preventative detention order if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items.

A frisk search is—

- a search of a person conducted by quickly running the hands over the person's outer garments; and
- an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

A seizable item is anything that—

- would present a danger to a person; or
- could be used to assist a person to escape from lawful custody; or
- could be used to contact another person or to operate a device remotely.

25—Power to conduct an ordinary search

A police officer may conduct an ordinary search of a person taken into custody under a preventative detention order if the police officer suspects on reasonable grounds that the person is carrying evidence of, or relating to, a terrorist act or a seizable item.

An ordinary search is a search of a person or of articles in the possession of a person that may include—

- requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
- an examination of those items.

26—Warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979*

A police officer detaining a person under a preventative detention order must take steps as necessary (including temporarily releasing the person from detention) to ensure that the person may be dealt with in accordance with a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979*.

27—Release of person from preventative detention

A police officer detaining a person under a preventative detention order may release the person from detention. Written notice of the release must be given to the person unless the person is to be dealt with under an ASIO warrant or for a suspected offence. If the period of detention has not expired, the person may be taken back into custody under the order after being released (ie the release can be temporary).

28—Arrangement for detainee to be held in prison or remand centre

A senior police officer may arrange for a detainee to be detained at a prison or remand centre.

Part 5—Informing person detained about preventative detention order

29—Effect of preventative detention order to be explained to person detained

This clause sets out matters that must be explained by a police officer to a person being taken into custody under an order.

It is enough if the police officer informs the person in substance of these matters. An interpreter must be provided if the police officer has reasonable grounds to believe that the person is unable to communicate with reasonable fluency in the English language.

30—Person being detained to be informed of extension of preventative detention order

A police officer detaining a person under an order must inform the person of any extension of the order.

31—Compliance with obligations to inform

A police officer need not comply with the requirements to inform a person detained under an order if the actions of the detainee make it impracticable to do so.

32—Copy of preventative detention order and summary of grounds

A detainee is to be given a copy of the order, a summary of the grounds on which the order is made and of any extension of the order and can request that a copy be given to a lawyer. There is no requirement to provide a copy of a prohibited contact order.

Part 6—Treatment of person detained

33—Humane treatment of person being detained

A person being taken into custody, or being detained, under a preventative detention order—

- must be treated with humanity and with respect for human dignity; and
- must not be subjected to cruel, inhuman or degrading treatment,

by anyone exercising authority under the order or implementing or enforcing the order.

34—Restriction on contact with other people

Except as set out in the measure, while a person is being detained under a preventative detention order, the person—

- is not entitled to contact another person; and
- may be prevented from contacting another person.

35—Contacting family members etc

The person being detained is entitled to contact—

- 1 of his or her family members; and
- if he or she—
- lives with another person and that other person is not a family member of the person being detained; or
- lives with other people and those other people are not family members of the person being detained, that other person or 1 of those other people; and
- if he or she is employed—his or her employer; and
- if he or she employs people in a business—1 of the people he or she employs in that business; and
- if he or she engages in a business together with another person or other people—that other person or 1 of those other people; and
- if the police officer detaining the person agrees to

the person contacting another person—that other person, by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being.

A prohibited contact order may override this entitlement in relation to particular family members.

36—Contacting Police Complaints Authority

The person being detained is entitled to contact the Police Complaints Authority in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

37—Contacting lawyer

The person being detained is entitled to contact a lawyer but solely for the purpose of—

- obtaining advice from the lawyer about the person's legal rights in relation to—
- the preventative detention order; or
- the treatment of the person in connection with the person's detention under the order; or
- arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the review of the preventative detention order by the Supreme Court; or
- arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a court for a remedy relating to—
- the preventative detention order; or
- the treatment of the person in connection with the person's detention under the order; or
- arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Police Complaints Authority under the *Police (Complaints and Disciplinary Proceedings) Act 1985* in relation to—
- the application for, or the making of, the preventative detention order; or
- the treatment of the person by a police officer in connection with the person's detention under the order; or
- arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.

Certain assistance must be provided in relation to choosing a lawyer. A prohibited contact order may override this entitlement in relation to a particular lawyer.

38—Monitoring contact with family members etc or lawyer

Contact with family members or a lawyer must be monitored by a police officer. The contact may only be in a language other than English if an interpreter is present.

39—Special contact rules for person under 18 or incapable of managing own affairs

A child or person who is incapable of managing his or her affairs is entitled to have contact with—

- a parent or guardian of the person; or
- another person who—
- is able to represent the person's interests; and
- is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and
- is not a police officer; and
- is not employed in duties related to the administration of the police force; and
- is not a member (however described) of a police force of the Commonwealth, another State or a Territory; and
- is not an officer or employee of the Australian Security Intelligence Organisation.

In this case the person is not limited to telling the parent etc that he or she is safe and unable to be contacted but may inform the parent etc about the order and the period for which the person is detained. In addition the contact may be through a visit of up to 2 hours each day or such longer period as is specified in the order. A prohibited contact order may override this entitlement.

40—Entitlement to contact subject to prohibited contact order

A prohibited contact order may override the entitlements to contact particular family members or particular lawyers.

41—Disclosure offences

Offences are established in relation to intentional disclosure of matters relating to preventative detention orders. Detainees, lawyers, parents/guardians and interpreters are all obliged not to disclose information relating to preventative detention orders. Police officers who monitor contact with a lawyer are obliged not to disclose information communicated in the course of the contact.

42—Questioning of person prohibited while person is detained

The only questioning that can take place during detention is questioning for the purposes of—

- determining whether the person is the person specified in the order; or
- ensuring the safety and well being of the person being detained; or
- allowing the police officer to comply with a requirement of the measure in relation to the person's detention under the order.

43—Taking identification material

Identification material may be taken from a detainee who is over 18 years of age and capable of managing his or her affairs if the person consents.

Identification material may be taken from a detainee who is under 18 years of age and capable of managing his or her affairs if—

- the person consents to the taking of identification material and either—
  - a parent, guardian or other appropriate person as defined consents; or
  - a Magistrate so orders; or
  - a parent, guardian or other appropriate person as defined consents and a Magistrate so orders.

Identification material may be taken by a sergeant or police officer of higher rank from a detainee who is under 18 years of age or is incapable of managing his or her affairs if the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order and a Magistrate so orders, but then only in the presence of a parent or guardian or another appropriate person.

Identification material may be taken by a sergeant or police officer of higher rank from a detainee who is over 18 years of age and capable of managing his or her affairs without the detainee's consent if the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.

44—Use of identification material

The identification material may be used only for the purpose of determining whether the person is the person specified in the order. The material must be destroyed after 12 months if not then required for specified purposes.

45—Offences of contravening safeguards

An intentional contravention of the listed provisions is an offence.

Part 7—Miscellaneous

46—Nature of functions of Magistrate

The functions of a Magistrate in relation to the taking of identification material are conferred on the Magistrate in a personal capacity and not as a court or a member of a court. The Magistrate is given the same protection and immunity as if the function were performed as, or as a member of, the Magistrates Court.

47—Supreme Court to establish procedures for ensuring secrecy of proceedings under this Act while terrorist threat exists

Despite any rule or practice to the contrary, proceedings under the measure are not to be conducted in public nor publicised in any public list of the Supreme Court's business. The Supreme Court must establish appropriate procedures to ensure that information about—

- the Court's proceedings on review of a preventative detention order under the measure; and
- any other proceedings brought before the Court in relation to a preventative detention order or a prohibited contact order;

is confined within the narrowest possible limits.

The Court is not, however, required to suppress the publication of information if—

- the Minister authorises its publication; or
- the Court determines that the publication of the information could not conceivably prejudice national security and that its publication should be authorised in the public interest.

48—Annual report

An annual report is required in relation to the following:

- the number of preventative detention orders made during the year;
- whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;
- particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to—
  - the Police Complaints Authority; or
  - the internal investigation division of the police force;
- the number of prohibited contact orders made during the year.

49—Police Complaints Authority's functions and powers not limited

The measure does not derogate from a function or power of the Police Complaints Authority under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

50—Law relating to legal professional privilege not affected

The measure does not affect the law relating to legal professional privilege.

51—Legal proceedings in relation to preventative detention orders

Proceedings may be brought in a court for a remedy in relation to—

- a preventative detention order; or
- the treatment of a person in connection with the person's detention under such an order.

52—Sunset provision

A preventative detention order, or a prohibited contact order, that is in force at the end of 10 years after the day on which the measure commences ceases to be in force at that time.

A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after the end of 10 years after the day on which the measure commences.

The Hon. DEAN BROWN secured the adjournment of the debate.

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

TRANSPLANTATION & ANATOMY (POST-MORTEM EXAMINATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 April. Page 2150.)

The Hon. DEAN BROWN (Deputy Leader of the Opposition): These amendments bring back to me very vividly indeed the events of June 2001, when, as the then minister for human services in charge of the health portfolio, I came to learn through the persistence of a mother who had lost a baby, and who wanted details about any body parts,

organs, slides, etc., that such may have been retained. I sent that mother what I believed were honest answers because they were the answers provided to me as minister. The person persisted and persisted, and I am glad that she did, and she showed enormous courage. In persisting, I was provided with some information which suggested that the answer that I had been given by the Women's and Children's Hospital had not been honest.

I immediately sent a very senior member of the department and my chief of staff out to investigate. They came back and reported that there was clear evidence that the information that had been provided to the minister was not accurate, that clearly the minister had been misled and that the department had been misled on what organs and tissues, slides, etc., had been retained over a very extensive period of time for a considerable number of dead babies.

As a result of that, I ordered a full investigation, and I took the matter immediately to cabinet, and cabinet agreed with my position. I insisted that there needed to be a thorough investigation, and that people needed to be told what practices had been going on over many years—and by that I am talking about a 30, 40, 50 year period, and probably even worse practices that may have occurred before that. To me it was a very moving time, and a rather traumatic time, because I saw the anguish in the hearts and on the faces of literally hundreds and hundreds of different people—families, mothers, fathers, grandparents and children who had lost brothers and sisters—who were very disturbed to hear of the body parts that had been retained without authority.

As a result of that, we put a counselling service in place immediately. I met with the counselling team, and I went out and visited them, I think, on about three occasions as they worked through the literally hundreds and hundreds of telephone calls. I remember being stopped in the streets by people who said, 'I would like to briefly share with you my experience.' I remember visiting a kindergarten in my electorate and someone in that kindergarten immediately wanted to sit down and spend ten or fifteen minutes with me telling of her experience. It had a huge impact on the people who were directly involved.

I know that there was some public debate at the time. A few people argued that it would have been better if I had not revealed the truth. I am afraid that I would never have taken that stance, and I believe that the stance I took was the only one I could take. However, it did help a huge number of families, particularly mothers, who felt it more than anyone else, although I certainly want to stress that in many cases there were phone calls from fathers or other family members. However, a huge number of women had never been given appropriate closure and counselling on the loss of a baby and, as a result of that, there were many silent scars within our community.

I remember the church service held in 2002, which was very moving, which provided a chance for families to come together and grieve and, equally, help obtain closure, and to acknowledge and appreciate the work of the people who had been involved in the counselling service. Tonight I would like to particularly acknowledge the work done by those counsellors, who I think did an incredible job. There was a very significant team of them because there were so many phone calls. I think at one stage we had seven or eight people, or even more, just answering phone calls. That gives some idea of the magnitude of the number of calls that came in.

South Australia was not the only state where it had occurred. It also occurred in other countries as well as other states of Australia. As a result, it was discussed at the ministerial council meeting and it was determined that we should establish national standards as quickly as possible. This legislation comes out of the ministerial decisions that were made. It concerns me that it has taken this long to get to the parliament, because it is now almost 4½ years since the events of 2001. We have the legislation before us, and I want to commend those who have worked hard to bring this to fruition. I know the former minister also felt very strongly about this issue. She was minister at the time of the church service. On several occasions, she and I had discussions about it. I want to commend the people within the department, the staff who were particularly involved in the counselling, and also those who worked on these amendments to bring them to fruition and, in particular, the committee that I know has been established by people who have given advice on these matters to the department and to the minister.

Before I come specifically to the bill that we have before us, I should also mention that certain other matters were raised by Kevin Naughton, then an ABC journalist. I think he raised matters that highlighted that perhaps there was even ongoing retention that had not been fully authorised. Those matters were investigated by Brad Selway QC, the then solicitor-general, and we had the Selway report. Again, I remember going through some of the recommendations in that report in some detail with Brad Selway. They specifically related to consent.

We now come to the bill which, in conjunction with the original act, effectively establishes three different types of autopsies: autopsies in hospitals; coronial autopsies; and now, for the first time, a ministerial authorised autopsy. I would like to start at that point and tell the minister that I am surprised that there is the need for a ministerial autopsy, in other words, an autopsy done with the authority of the minister. I note that there are certain safeguards that it has to be done in the name of public interest and public health.

On a number of occasions, I spoke to the former coroner about autopsies and issues relating to them. I highlighted to him the times when families came to me and asked that perhaps the coroner should look at the particular circumstances surrounding a death, and I always found the former coroner very helpful and very constructive and willing to investigate such matters. At that stage I would then leave it up to him. He would order an investigation or the collection of information and make his own decision. At least he was very willing, even where it was not a minister but a shadow minister, or just an ordinary member of parliament, to listen to any argument that could be put to him as to why there should be a coronial autopsy or a coronial investigation.

I am prepared to listen to the arguments put by the minister. At this stage, I am not proposing to oppose ministerial authorised autopsies, but I would like to hear the justification, because I do not believe that the justification exists. From the way that I have noticed him carry out his duties—and I think it is probably fair to say successive coroners have done that—I believe that the Coroner, if requested by the health minister to carry out an autopsy, would in fact do so. I would be extremely surprised, and I would like to know, if there are any circumstances in which a coroner, who I understand and appreciate is independent, would not carry out an autopsy if there was such a request from the Minister for Health. I believe that would be the case and, therefore, I would like to hear the justification. That advice will determine what stance the Liberal Party takes in another place in supporting an autopsy authorised by the Minister for Health.

Now I come to the issue of consent and consent forms. I think that the minister would agree that at the heart of this legislation tonight is consent for the retention of body parts. That is the whole purpose of this legislation, and that is because of the events that were exposed in 2001 but which went back over 50 years. I have a real difficulty because the consent form is not here. We are establishing a framework of legislation, but I have been given no consent form, and, really, the heart of what this is about is in that consent form. Therefore, if I agree to this legislation without seeing the consent form, I am agreeing to something that is almost like signing a blank cheque, because we do not know how effective the consent form is going to be. I understand that the advisory committee has seen that consent form, and that consent form, I understand—

The Hon. J.D. Hill interjecting:

The Hon. DEAN BROWN: Yes; but I have not been shown a copy of it; it has not been made available. The minister waves one around, but I have not seen it. I believe that the consent form should become a schedule to the act. I ask the minister for the opportunity to see the consent form. We will then consider whether it is appropriate that that consent form be made an amendment to become a schedule of the act. At this stage, I cannot move to insert an amendment to that effect, because I do not know what is in that consent form. To move such an amendment, to make it a schedule to the act, I need to know the specific content. I understand some of the arguments. One of the arguments against making it a schedule to the act is that, every time we want to change some words in the consent form, we would have to come back and change the act. I understand that.

This is such a fundamental issue for this whole piece of legislation that I believe it is appropriate to enshrine that consent form in the legislation itself rather than allow—as I understand the government has agreed to—for it to be now done by way of regulation.

Originally, when the bill was introduced, it was not to be done by way of regulation but it was just to be a consent form approved by the minister. I understand that the government is willing to amend it to do it by way of regulation but, even with a regulation, it means that this parliament agrees to the legislation on trust and then, finally, we see the regulation which is the consent form. However, even if we saw the consent form beforehand, it allows the consent form to be amended by way of regulation. We know that this parliament, unless it disallows the regulation, has no ability whatsoever to amend that regulation and therefore its powers are extremely limited.

All a parliament can do is disallow a regulation. If it does so, then of course there is no regulation, and that means there is no consent form, and that throws you from what might be something that is partially unacceptable into a situation which is totally unacceptable because there would be no consent form at all once the regulation was disallowed, until the government reintroduced that regulation. So, the parliament does not have the ability to debate, consider and amend a consent form if it is done by way of regulation, whereas if it is done by way of a schedule to the act we do have that ability to argue, to amend, to debate and to ensure that it has parliamentary authority, which I think is very important indeed.

I hope the minister can give me answers to these questions as well. The second point I am concerned about is that, as I understand it, no consent form has been drafted for the retention of body parts as a result of a coronial autopsy. I understood from members of the advisory committee that they had requested to see the consent form for any body parts from a coronial autopsy, but in fact that consent form has not been delivered. I am going back now more than four years, so I am relying on my memory, but my recollection is that I did have an opportunity, when talking to Brad Selway, to actually see the consent form as used by the then coroner, and I remember reading it and thinking that it was a consent form, and it was a reasonable consent form, but I wondered whether it met the sort of standards that are now required, and I had my doubts about that. So, equally, I would like to see enshrined in the legislation a consent form where body parts are retained after a coronial autopsy.

I understand that after a coronial autopsy there is the obligation for court cases and other such purposes to retain some organs, slides or blocks, and that is a very important part of not only the coronial autopsy but also it may be part of further legal investigation and possibly evidence in a trial. Therefore, I understand that there may be a need for retention, at least for a period, but I still come back to the point that it is equally important that the friends, relatives and families understand what is being retained, why it is being retained and the period for which it will be retained, and then have the opportunity to make a choice at the end of that period.

So, I understand that there is a consent form that the coroner had put together—and I might be wrong, but my recollection is that Brad Selway told me that there is a consent form and the coroner would sit down after the autopsy and work through with the family what tissues may be retained (as I said, they may be organs, blocks or slides) and for how long they are likely to be retained, and acknowledging that the coroner has the authority to do that. At least there is an understanding reached with the family about those particular tissues.

The third area is the consent form in the case of a ministerial authorised autopsy. I have not seen the regulation, a draft regulation or a consent form, so therefore I do not know whether the consent form that has been drafted covers only hospital based autopsies or whether they are hospital and ministerial authorised autopsies. It may be that it covers both, but I am having to work in the dark, simply because that information has not been provided.

Another issue that concerns me is the level of penalty, and I see that the original act was passed in 1983 and many of the penalties involved are, in monetary terms today, very low indeed. For instance, the majority of penalties, particularly in terms of professional people carrying out inappropriate retention or removal of tissues, still remain at $5 000. That is a paltry sum considering the inflation that would have occurred since 1983 when the principal act was introduced. So, I propose that those penalties be increased, in most cases, fourfold.

In two cases I am recommending less than that. In one I have recommended a doubling in terms of a donor making a false statement. I think it is important here to have a high enough penalty so that professional people do not in any way attempt to trade in organs—which is possible, and there is a penalty for that but it is only $5 000—but also so that it is an offence for those persons who remove tissues or other blood from the body of a living person for other purposes. It may not necessarily be a professional person; it may be a non-professional person who trades in organs. I am also talking about deceased people and section 38 of the principal act, so I am proposing that there be an increase in those penalties to $20 000 to make it a worthwhile penalty, remembering that

these are maximum penalties and, unless it is a repeat offence, it is unlikely that the maximum penalty would even be imposed. I think that highlights even further how paltry a maximum penalty of $5 000 is, as covered in the principal act at present.

I understand that the standard is based on the National Pathology Accreditation and Advisory Council standard, which is a national code amongst pathologists. I do not have a copy of that and I would appreciate if the minister could provide it to this parliament before the matter is debated in another place. I understand that this standard is the code which will give us some understanding of the basis under which the consent form has been drafted, because I think we need that code to be able to make a judgment on the consent form. That is very important, indeed.

I wish to pick up another issue. I believe that there ought to be at least two consent forms. One would cover ministerial authorised autopsies and hospital authorised autopsies. The second one would cover a coronial autopsy. I can understand why you would have a difference in the consent forms between the first two and the coronial one, because they are quite different scenarios. I would like to make sure that we are effectively covering blocks and slides in those consent forms, especially in the one for the hospital authorised and ministerial authorised autopsies. I say that because initially there was an attitude, particularly within the medical profession, when it came to blocks and slides—slides in particular. The attitude was that, because they were small pieces of tissue, they need not worry about them. I think that that is an unfair assumption. Certainly, if you talk to relatives who have been through this process, they would argue very strongly that a block or slide is a very important part of the deceased loved one and that they would like to make sure that they were told of any retentions of blocks and slides and to give appropriate authorisation for that as well.

I want to stress that I support the bill. After all, I was the one who advocated back in 2001 to the ministerial conference that this type of national standard be adopted and implemented as quickly as possible. So, I support the bill, but I believe that we need more information before we can make a meaningful decision as to whether this bill provides the protection and reassurance that families want. I know that there is a very high expectation, because of the events that have gone on in this state over many years where inappropriate retention without authorisation of body parts has occurred. I could tell this house some very interesting stories about what occurred in 2001. I will not, but it was very disturbing to hear the attitude of some of the people involved and their view that nothing wrong or illegal had occurred, therefore, it was morally justified and they could go ahead and do it and need not bother to tell people.

I think we are drawing a line in the sand with this legislation. I believe we drew that line in the sand publicly with the medical profession, in particular, and other professional people involved in the community, back in 2001. We drew it there as a standard that had to be complied with. Tonight we are trying to put through the legislation in the lower house to make sure that that is now bound by law and I think that it is very important to be done thoroughly. I ask the minister to release the details of the consent form so that we can consider if it is appropriate to make any further amendments—I have amendments in terms of the penalties—to make the consent form an attachment to the bill. I support the second reading.

Mr HANNA (Mitchell): This bill which has a long history. Many people remember the scandal many years ago when it was discovered that many practitioners within hospitals were dealing with corpses as they pleased without the consent of the next of kin. Some people were very disturbed by those practices. This is a highly sensitive area, because it is often associated with the grief attached to the loss of a loved one. It is also a test of how civilised we are in society, because I think it is a mark of civilisation that human beings are treated with dignity in life and in death.

The bill brought in by the government is a very positive measure, and it addresses a lot of the concerns that have been raised with me about the treatment of bodies and parts of bodies after death. The difficult and unavoidable issue is a situation where a coronial inquest is required. In those cases, there is a balancing of the rights and expectations of the next of kin with the interests of the state investigating health conditions and homicide. For those reasons and for the sake of the whole community, we do need to give considerable powers to the Coroner to deal with bodies. There is much that can be done to bring in the next of kin as much as possible, and it is very pleasing to see the proposals for consent forms which are brought in with his bill.

I had some particular concerns as a result of submissions put to me about the bill and about consent forms in particular. The preceding speaker, the Deputy Leader of the Opposition, has raised those issues, so I will not canvass them again. However, I want to draw attention to one related issue, that is, the identification of bodies after death. New regulations brought in this year have somewhat improved the situation. In years gone by, it has been the practice to mark bodies with large blue lettering on the calves of the person. This can be highly distressing when the next of kin view the body unexpectedly for identification purposes or as part of death rites, and they see this indelible blue ink scrawled all over the leg. I can only hope that future practice will carry with it a degree of discretion and decorum on the part of those who are required to identify bodies in that way.

In summary, I support the legislation. I will listen closely to the response given by the Minister for Health in relation to the issues raised by the deputy leader. I have considered the amendments put forward by the deputy leader and, with respect, I find them unnecessary. I do not think there is an established case for significantly increasing penalties in this area. We do not have evidence of widespread trade in body parts in South Australia such that there would be a need for vastly increased penalties. I am content with the legislation as it is. It is important that this legislation is passed to give closure to many people who have been distressed in the past at the practices in relation to bodies. I support the measure.

Mr SNELLING (Playford): I rise to support the bill and, in doing so, I pay tribute to my constituent Mrs Pina Arcangeli, who I think was the driving force behind this legislation. She came to see me some years ago, during the life of the previous government, because in the 1980s her young daughter, who had been killed in a road accident, had had her organs removed without Mrs Arcangeli's knowledge and certainly without her consent.

Over the years, pathologists and doctors have run roughshod over the rights of relatives—in particular, the rights of parents. I think this was done partly out of a misguided paternalism—that is, they did not want to unnecessarily upset people—but I also think it was done for somewhat darker motives, and bodies were treated without the

respect they deserved. I believe this legislation will stop that from happening in the future.

In conclusion, I again pay tribute to Frank and, in particular, Pina Arcangeli, who has been incredibly persistent in making sure that this legislation is brought into being.

Ms BREUER (Giles): This is a particularly important piece of legislation, and I want to speak from the human side of it. I was pleased to hear the comments made by the member for Playford; he certainly spoke from a personal perspective. I recall the distress of a young woman who came to see me some years ago. Her young baby daughter had died shortly after birth. At that time, there was an autopsy, the child was buried and they went through the grieving process. I think it was about two years later, a parcel arrived in the post one day.

The young woman did not understand what this parcel was. When she opened it, she was appalled to find body tissue. This is an incredible and unbelievable story, but it is true. It happened some time ago. The woman was distraught. She is not having counselling, but she is still upset by these memories. This was an appalling situation for this young woman, to find parts of her child had been kept for so long and then just sent to her. I think there was an inquiry at the time. I will not go into that any further, but I hope this will never happen to any other person.

I also recently received a letter from a woman in my electorate. I will not name her, because I do not have permission to do so. I was particularly touched by this woman's letter. Once again, it depicts the pain of parents when something like this happens. She wrote to me regarding the bill and said:

> To understand my involvement with this new code, let me firstly provide some background on myself and my family and the reason for our interest. My daughter Caitlin was born on 31 August 1991. Caitlin was gravely ill when delivered and despite intensive postnatal care, she died on 5 September 1991. Caitlin was buried on 13 September 1991.
>
> I am in receipt of a letter dated 21 November 2001 from the Department of Human Services confirming that, following an autopsy conducted to determine Caitlin's cause of death, Caitlin's brain was retained for further examination. To complete the examination, it was necessary to remove the brain tissue and place it in a special solution and in some instances this could take up to four weeks. Once these tests had been completed, her brain was disposed of surgically. I was also advised that very small tissue samples were taken for microscopic analysis and these samples were forwarded to us and subsequently buried with Caitlin.
>
> I have been involved in discussions that have resulted in the National Code of Ethical Autopsy Practice printed in 2002.

I believe she had some dealings with the opposition health spokesman (Hon. Dean Brown) at the time. She says:

> People experiencing emotional duress, such as that experienced by my husband and myself, do not always understand what they are signing when they are presented with notification of death documents. If organs are not going to be buried with the body, then this should be clearly explained.

I think that is really important. When you are going through distress like that with the loss of a beautiful child you really are not thinking straight. You do not understand when the professionals give you information. You really do not understand what you are doing and what you are signing for. She goes on to say:

> It is taken for granted by health professionals that the ordinary person in the street will understand what is involved with an autopsy and that organs may need to be kept and later disposed of surgically.

My constituent is very distressed about the fact that, at the time, they had no understanding and she believes others do not understand what they are signing for and do not understand what 'disposed of surgically' means. She also says:

> Why has it taken three years to bring the code to Parliament to legislate on it! Maybe it is not a topic that is likely to win a lot of votes, yet at some stage it could affect every Australian citizen. In regard to my daughter's case, at no time were my husband and I advised that what we now know eventuated was considered 'normal practice'. We are actually more fortunate than those poor souls who had their loved ones organs stolen from them.

Again, the personal side of this comes out. I was concerned for the fact that it has taken so long for this legislation to come through. Three years is a long time. I certainly do not believe that this delay has been in any way political. I acknowledge the compassion shown by the shadow minister, and I understand the impact this has had on him and how strongly he feels about this. From my discussions with the minister I understand that the consultation process has been very extensive. This is a very detailed and complex issue, and that is why it has taken so long for this legislation to come before the house. My constituent finishes by saying to me:

> Lyn, please ensure that the National Code of Practice of Ethical Autopsy Practice is given a smooth and swift passage through Parliament. . . to become law. Do not let another Australian suffer the feelings of sadness, helplessness, deception and regret that have been experienced by not only myself and my husband but also thousands of other Australians. The eyes of Australia are on you, don't let us down.

I think that is a particularly moving comment by this woman. It shows how much families have been affected. I give my full support to this legislation. I hope that as members of parliament we think about this and realise that what we do in this place can have a major impact on people's lives.

The Hon. J.D. HILL (Minister for Health): I thank all members who have contributed to the debate in a very sensible and, in some ways, moving way. This is obviously a very sensitive issue for many people. I know people who have been greatly distressed upon finding out subsequently that when a loved one was buried they were not buried complete and that there was a part of the body (usually the brain) in storage somewhere. So, I understand exactly the feelings expressed by all members who have spoken in this debate, and I acknowledge particularly the member for Giles' correspondent who expressed her views very strongly.

I appreciate the support indicated by members of the opposition and other members. I would also like to acknowledge the role in the development of this legislation by the two former ministers for health. The Hon. Lea Stevens really got the legislation into this shape, and I am just enacting her work. I also acknowledge the work done by the member for Finniss when he was the minister, and the great interest that the deputy leader has had generally in bringing this legislation to public attention.

I will go through some of the questions raised by the deputy leader. I think I can answer most of them, but I may have to give some of the detail in committee when I have an adviser closer to me. This legislation has taken a long time to get to this stage. The reason for that is that there has been an enormous amount of consultation on the shape of the legislation, with the member for Playford's constituents, the ones he named in particular, playing a strong role. There has been consultation with various church leaders and of course with the medical profession and the legal profession and so on. So, it has taken a lot of discussion to get this right.

The deputy leader raised the issue of a ministerial power in relation to autopsy and the reason why that is there, and asked me to explain it. I understand it is based on the notion of public health interest. There could be some examples, in a hospital setting, where a patient may have died and the hospital is not entirely sure why. The hospital may wish to know that because they might be suspicious that the death is part of a potential pandemic, for example. The person who died may have had avian flu, or something of a similar ilk, or they may have had AIDS, and the hospital needs to know in order to take the correct precautionary procedures within the hospital or, more generally, within the community. In those circumstances it is not a reportable death, so you cannot get the Coroner to do it. If the family will not allow it—

The Hon. Dean Brown interjecting:

The Hon. J.D. HILL: But you would not know what caused the death, you see. They might have died of something—

The Hon. Dean Brown interjecting:

The Hon. J.D. HILL: We might get into that, but—

The Hon. Dean Brown interjecting:

The Hon. J.D. HILL: Yes, we can have a talk about that. But, in any event, they are the reasons. In terms of the consent form, the member has asked for a copy of the draft form and I am happy to give it to him. I thought for the benefit of the house I would just table it and then it can be photocopied and distributed. I point out it is a reasonably complex form. Interestingly enough the note says on the bottom it was endorsed in July 2001, from the Department of Health, and it was reviewed in October 2005. I would be surprised if the former minister had not seen it at some stage. I table this report. The deputy leader says that he would prefer it to be in an annexure as a schedule to the act. That is not the government's view. It would be unduly restrictive on the capacity of government to change the form in minor detail from time to time. If an error were discovered or new issues were raised it would become a fairly onerous task. We think regulation is the right way to go. The member asks if they can trust us. Well, yes, you can; you can trust us. This is what we are planning to do. We are still negotiating it. There is still some final revision of it, but that is the direction it is going. I table that, Mr Speaker. This, I point out, is the non-coronial autopsy examinations. In relation to—

The Hon. Dean Brown interjecting:

The Hon. J.D. HILL: No. In relation to coronial autopsies, none, as I understand it, has yet been drafted, but we are going through the process of discussion on that. In relation to the regulations the member said he has not seen regulations. It is normal practice not to draft the regulations. Sometimes it happens, but generally the legislation is introduced and the regulations come after, but we will make sure they are consulted.

The deputy leader raised the issue about the fines. We acknowledge that the fines are low. It had been the intention to review the bill subsequently to upgrade all the fines, but we will accept all of his amendments because they seem reasonable in the circumstances. We will eventually review the bill, anyway, and if we are not happy with particular amounts we can review them subsequently, so we accept all those amendments. The member asked for the National Pathology Code. I have a copy here. I will just pass it over rather than table it. If anybody wants a copy we can provide a copy for them.

The Hon. Dean Brown interjecting:

The Hon. J.D. HILL: I will seek advice on that. In relation to blocks and slides I do not think I have fully got my head around that. I will wait until I have an adviser here, so you might ask me that question then. I appreciate your support of the bill and I also thank the other members for their contribution to the debate. I think that covers pretty well everything except for those couple of issues I mentioned. I commend the bill to the house.

Bill read a second time.

In committee.

Clause 1.

The CHAIRMAN: I point out to members that there is a clerical amendment. It incorrectly says 2004 on the bill instead of 2005. That will be fixed by the chair.

Clause passed.

Clause 2.

The Hon. J.D. HILL: I move:

Page 2, lines 5 to 8—Delete the clause and substitute:

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

This is consequential, I understand, because we are removing the schedule; so it is reasonably straightforward.

Amendment carried; clause as amended passed.

Clauses 3 and 4 passed.

Clause 5.

The Hon. DEAN BROWN: This is probably the best clause on which to ask a number of questions, the first of which relates to the consent form for a ministerial-authorised autopsy. The minister did not touch on that. We have a consent form that the minister has tabled for the hospital-authorised autopsy. We do not have one for a ministerial-authorised one and I would like to come to the coronial one afterwards.

The Hon. J.D. HILL: As I understand it, the consent forms other than the one that I have tabled have not yet been created and discussion is going on as to the shape they should be in. Between the houses I will be happy to provide a detailed briefing for the deputy leader on what is envisaged, if that would assist him, but there is no form yet that we can show him.

The Hon. DEAN BROWN: I want to ask about the circumstances that differentiate between a hospital autopsy, a coronial autopsy and a ministerial autopsy. My understanding is that every death in a hospital has to be reported to the Coroner at any rate, so potentially the Coroner can authorise an autopsy. If a minister went to the Coroner and asked for an autopsy for a death in a hospital, then the Coroner has the right immediately to ask for that autopsy. The Coroner has to be convinced, but my understanding is that every death in a hospital or any other institution has to be at least potentially reported to the Coroner but that the Coroner carries out an autopsy in only a very small number of those, about 20 per cent or so.

I ask for clarification on that point, because we then get to the point where we have deaths outside the hospital that are not automatically reportable to a Coroner. Is that the circumstance under which a ministerial autopsy may be required, if the death occurred outside a hospital or any other public institution?

The Hon. J.D. HILL: Section 3 of the Coroners Act provides:

'**reportable death**' means the state death of a person—

(a) by unexpected, unnatural, unusual, violent or unknown cause; or

(b) on an aircraft. . .
(c) in custody; or—

and this is the relevant bit—

(d) that occurs during or as a result, or within 24 hours, of
(i) the carrying out of a surgical procedure or an invasive medical or diagnostic procedure; or
(ii) the administration of an anaesthetic for the purposes of carrying out such a procedure,

A patient might be in hospital for a week and die at the end of that week, and that would not be a reportable death. It goes on to say 'not being a procedure specified by the regulations'. In other words, a person could die in a hospital from, say, a heart attack and the hospital might suspect that the person had avian flu or something that was highly contagious and needed to know from a safety point of view. That would not be a reportable death because the person may not have had a procedure or anaesthetic, so the hospital has nowhere else to go other than a minister. That is the reason for having it. The other point is that, if a person were to die outside of the hospital and it was not a reportable death, then the ministerial discretion would also apply there.

The Hon. DEAN BROWN: I understand that, but I come back to the first point, that is, a death that is unexpected, unnatural, unusual, violent or of unknown cause. That is a very wide clause alone.

The Hon. J.D. HILL: This is not a power that would be used a lot, but it is for exceptional circumstances.

The Hon. DEAN BROWN: I understand, but my experience is, and I have raised and discussed with the Coroner cases where someone went into hospital, was in hospital, and suddenly died, and the relatives came to me and asked for a coronial investigation to be carried out. The relatives found that the hospital did not report that to the Coroner because the hospital put a different interpretation on it, and that is why they raised it with me. I went to the Coroner and discussed the matter—I stress, not as a minister, but as a non-minister—and found that the Coroner, in those instances, was only too willing to say, 'Right, in that circumstance, I will immediately ask for an investigation to be carried out.'

The Hon. J.D. HILL: That is where the family wanted something to happen: we are talking about where the family does not want something to happen.

The Hon. DEAN BROWN: I understand, but the point I am making is that it does not necessarily have to be the family, and I am sure that, if the Minister for Health asked the Coroner and put a case, I believe that under paragraph (a) that is extremely wide. If a minister went to the Coroner and said, 'Look, there is an unexpected death, or there is a death from a potentially unknown source, and we want an autopsy carried out because we believe that it is Avian flu,' then I am sure that the Coroner would immediately authorise an autopsy to be done. The point that I am making is that these are very special powers—to do an autopsy, I think these are very unusual powers indeed—particularly if it is not done with the consent of the family. I believe that something like that power should rest with an independent authority like the Coroner. That is why I am asking.

I would like to know the justification and I will consider that, but it seems to me that the provision relating to reportable death, particularly, is so wide that the Coroner would in fact carry out an autopsy if requested by the Minister for Health in the public interest because of those circumstances. That is why I want to know if there are any other circumstances besides that where the Minister for Health might think that the Coroner would not carry out an investigation, therefore, to give this unusual new power—because it is a new power that has not existed previously—where the minister can make the authorisation.

The Hon. J.D. HILL: I have a few things to say in relation to this. We are setting up a process which makes it very clear who has powers under what circumstances, and the discretion that is provided under the legislation to the minister is a very narrow discretion. It only occurs when the autopsy is required for a death which is not being considered by the Coroner, so that reduces the number of deaths. It only can apply when a member of the family has refused and where there is a suspicion that there is some public health or public interest for doing it. So, it is a very narrow discretion indeed. The question is, could the Coroner do it? I just asked advice about why we were not legislating to give that power and discretion to the Coroner, and the advice I have is that the Coroner said that he did not want to have that discretion. He said, in his view, that it ought to be ministerial, so we are going ahead with his advice. I suppose we could impose it upon him and I have not sought his detailed justification for that but, no doubt, he had good reasons.

Particularly given the constraints that are being placed on the Coroner as well as others in relation to what can happen to organs and other tissue, he would be less likely under this new regime to say, 'Okay, I can exercise that power because the legislation is so broad.' He would be risking his professionalism by doing that because the new legislation is explicitly establishing a regime to deny that discretion to public officers in circumstances where there is not clear permission given by the family. This is a very narrow discretion that is being given under exceptional circumstances, and the decision has been elevated to the minister who would obviously seek appropriate advice at a departmental level before doing it, so that there would be a thorough analysis.

The other point that I should make is that the Attorney-General has suggested that this should be in the legislation to make it absolutely clear. Now, the member for Finniss might try and interpret the legislation in a way that he thinks is reasonable but we are just taking advice from a legal office. I have also been advised that the Coroner stated that it should not be in his jurisdiction, the public interest need was not linked with the cause of death, and he does not have the power and, I guess, the capacity to exercise that power. The other thing in this legislation is that, if the minister is to exercise that power, he must attempt to gain the family consent, so he must try and engage them and get their authority. I think it is a very narrow power. It is used only in exceptional circumstances, and it is constrained even after those circumstances are reached. I do not think it is such a big deal and I do not think that there have been any objections to it anywhere along the track.

Mr SNELLING: I just want to speculate, or offer a possible reason, why the Coroner might view that that power would better vested in the minister rather than himself, and that is, if the autopsy was being sought because of public health reasons, the minister would have advice being offered to him or her from his department about what those health reasons might be. For example, the public health officials and the department might believe that a person has died of a contagious disease and seek to conduct an autopsy in order to determine whether we have an outbreak of a contagious disease. That is not a role that would normally be filled by the Coroner; rather, the responsibility for that would lie with

officials in the Department of Health, and that advice would be given to the minister.

It is not normally the Coroner's role. The Coroner has a more narrow role, not a broad-reaching role which involves public health issues. It seems sensible that, in cases where it was suspected that there may be public health implications because of a death, and where it might be necessary to determine the cause of death, the minister would have available to him advice on that in order to make a determination as to whether an autopsy needed to occur and whether the objections of the next of kin had to be overridden because of the public health implications of not conducting an autopsy.

Perhaps I have not made myself clear. My point is that with those sorts of public health issues—an outbreak of a contagious disease, and so on—the Coroner's role is generally far more narrow. However, the minister, and in particular, the department have a broader role in those sorts of issues. So, in making a determination to override an objection of a next of kin, it would seem that that function would be far better rested in the minister rather than the Coroner who has a far more narrow focus.

The Hon. DEAN BROWN: Let me assure the minister that a number of people have raised concerns with this matter, including people who have been involved in this sort of area. I appreciate the minister has been there for only a short period. I want to stress that it is not just me raising the issue; I am raising it on behalf of others, but I share their concern, and that is why I asked for the justification of it. The way I see it is that the Coroner has certain obligations and already carries out a large number of autopsies. Another possible way of handling that, of course, would be to amend the Coroners Act in terms of what is a reportable death, and to put a clause in there that would allow the Minister for Health to go the Coroner and argue the case in terms of the public interest.

The one thing that concerns me is that, in this area, the minister is effectively accountable to no-one in making this judgment because it is a ministerial judgment alone. If the minister had to justify the case to the Coroner by an amendment to the Coroners Act then at least you would have someone who could see the substantial evidence presented by the minister and say, 'Well, I think we need an opinion from the public health branch of the department', or something like that. I am here at least looking at some of the other options that could be considered, but I still have some concerns. I stress the fact that I do not believe the arguments put forward so far entirely satisfy me in this regard, but I will move on if I may.

I move on to the issue of consent. Where you have a ministerial autopsy, why could the consent form not be almost identical to that which is already prepared? Now that I have a copy of the consent form I am delighted to see it. You may recall that it was in June 2001 when I raised the issue. I said the most important and first thing that had to be done was to draft a consent form. I am interested to see that the consent form that was then drafted and endorsed by the department in July 2001 (within a month) has stood the test of time and is still a consent form. I wonder why virtually the same consent form could not be retained for that. I guess the other issue is that the consent form that is done for the Coroner's autopsy could be the same consent form as for the minister's autopsy, and it might be appropriate that that be the same.

The other matter that the minister might like to comment on is that it is my recollection that the Coroner had a consent form and an explanation form. I think it is referred to, but I cannot be certain. I thought it might have been referred to in Brad Selway QC's report, or I at least discussed it with Brad Selway at the time he did his report, but I remember going through the consent form. If I remember rightly, the Coroner's consent form was more an acknowledgment of what tissues were being retained, so the family and next of kin, etc. would have something explained to them, it would be there in writing, and there would almost be a written acknowledgment that these tissues were being retained, not so much under a consent form but an acknowledgment form because the authorisation, of course, has been given by the Coroner.

I understand why there has to be a difference in form: one is consent by the family and the other is an authorisation effectively by the Coroner. I guess the same would be an authorisation by the minister for retention but, again, in many ways, that highlights the need to link a ministerial autopsy together with a coronial autopsy in terms of what that form is so that you have someone like the Coroner almost being a guardian, if you like, of any body parts that are retained. I believe the Coroner is an appropriate person to do that in the same way for either a coronial inquest, a ministerial inquest or an autopsy.

The Hon. J.D. HILL: Dealing with the leader's questions in reverse order, the advice I have is that there is some sort of explanation form which the Coroner has, but we are not sure whether it is a consent form. We will obtain a copy between the houses so you can look at it.

The Hon. DEAN BROWN: It is not a consent form but an acknowledgment form.

The Hon. J.D. HILL: Yes, something like that. We think that is right. In relation to the ministerial consent form, it is highly likely that it will be very similar to the first part of the form that I have just tabled (that is the advice I have been given), but it is still being developed.

In terms of the other options, the member himself might like to consider the amendments between this house and the other house. I am reasonably open about how we should deal with it but I would like to seek advice from the Attorney-General's Department and the Coroner. I suggest that the member might like to draft something and let me look at it and we might be able to get agreement. I would rather have agreement than not, but all the advice I have is that this is the correct way to proceed. The member might be worried about accountability, and this has to be done quickly.

We do not want a long chain of connections. I guess the doctor could say, 'I'm a bit worried about that' and he would go to the administrator (the head of the hospital), it would go to somewhere in the department and eventually to the minister. Then it might go from the minister to the Coroner, and you would have a chain of actions. From the family's point of view, and also the public health point of view, you would want it to happen quickly. One option might be that if the minister exercises this power he might be required to table the reasons—after the event, not seeking consent—with the Social Development Committee of the parliament or some other body like that.

The Hon. DEAN BROWN: Or perhaps the Coroner.

The Hon. J.D. HILL: Yes, or the Coroner. So, if the member wants to consider an amendment along those lines, I am happy to work with him.

The Hon. DEAN BROWN: I appreciate the minister's working through that, because I think we have looked at a number of different options. It may be that the most appropri-

ate thing is, in the case of a ministerial autopsy, that within a reasonable period that has to be reported to the Coroner. I can understand that time might be absolutely crucial, but it may be that the Coroner at some stage is forced to become involved because it was a ministerial authorised autopsy, so I would be happy to look at that. Mr Chairman, I think that covers the issues I wanted to raise, and I am happy to now deal with my amendments.

Clause passed.

New clauses 5A to 5E.

The Hon. DEAN BROWN: I move:

Page 8, after line 40—Insert:

5A—Amendment of section 35—Certain contracts to be void

(1) Section 35(2)—delete 'and liable to a penalty not exceeding five thousand dollars' and substitute:

Maximum penalty: $20 000.

(2) Section 35(7)—delete the penalty provision and substitute:

Maximum penalty: $20 000.

5B—Amendment of section 38—Offences in relation to removal of tissue

(1) Section 38(1)—delete the penalty provision and substitute:

Maximum penalty: $20 000.

(2) Section 38(2)—delete 'and is liable to a penalty not exceeding two thousand dollars' and substitute:

Maximum penalty: $5 000.

5C—Amendment of section 38A—Offence to provide false or misleading information in relation to donation of blood or semen

Section 38A(1)—delete the penalty provision and substitute:

Maximum penalty: $20 000.

5D—Amendment of section 39—Disclosure of information

Section 39(1)—delete the penalty provision and substitute:

Maximum penalty: $20 000.

5E—Amendment of section 41—Regulations

Section 41(2)(b)—delete 'one thousand dollars' and substitute: $2 500

I will quickly run through them. The majority of the existing penalties are $5 000. I did a quick calculation in terms of inflation since 1983, and on an inflation value it would take it to at least $20 000 or perhaps a bit more. We are looking at a period of over 22 years. People say that monetary values generally double every seven to 10 years and, if you look at it on that basis, it would be somewhere between two and three times. If it doubled in the first seven years it would go from $5 000 to $10 000; if it doubled in the second 10 years it would go from $10 000 to $20 000. It was on that basis that I suggested a maximum penalty of $20 000.

However, there was one penalty that I did not quadruple, and that was for a donor who supplies false or misleading information in relation to the donation of blood or semen. I have simply doubled that. I personally believe that is not as serious an offence as the other offences. I find the retention of body organs by a professional, particularly a pathologist if it was ever to occur, is totally unacceptable. They are on big salaries, and the penalty has to match their income.

In regard to the other one, the trading of tissues, can I explain why I think that needs to be done? There are countries around the world that commercially sell body parts, and transplants are on the increase, as we know, throughout the world, and I think it is very important indeed that we do not allow the less appropriate practices of some countries of trading in body parts to ever come to this country. I think that we have to ensure that it does not. As the practice of transplants becomes more and more common through advances in medical technology, I think it is important that we ensure that we maintain the standards that we have in this country, which I think have served this country extremely well indeed, and we do not allow people to start trading body parts on a commercial basis. Let us put in a reasonable penalty to ensure it does not occur.

I am not suggesting in any way that it is occurring, but the fact that it has not occurred until now does not mean that it may not occur, because I believe the commercial incentive is there, particularly when you look overseas and realise that people will pay many times the size of this penalty to buy some of those body organs. I think we have to make sure that there is no opportunity for people to start trading in body organs, even from inside this country to outside the country. I think there has been one attempt to do so but it was cut off. I believe there was an attempt by someone in Australia offering to sell a kidney, I think it might have been, to people overseas, and therefore do a transaction. I think we need to ensure it is well and truly discouraged in this country. I have therefore moved these amendments to increase the penalties.

The Hon. J.D. HILL: The government supports the amendments. I gave my reasons previously, so I will not go through them again.

New clauses inserted.

Clause 6.

The Hon. J.D. HILL: I move:

Page 9, lines 1 to 4—

Delete Part 3 and substitute:

6—Amendment of section 41—Regulations

Section 41(2)—after paragraph (a) insert:

(ab) prescribe the form in which any consent or authority under this Act is to be obtained;

This amendment creates the power to have a regulation so that we can put the form into regulations. As the deputy leader said, the original draft of the bill envisaged the form being a bureaucratic device which could be changed at the will of the minister or the department. This goes a step further to ensure that it is approved through a parliamentary process by regulation. It may not be quite as far as the deputy leader would wish, but I think that it substantially addresses the concerns that one might have about a form which does not properly consider all the issues that have led up to this piece of legislation.

The Hon. DEAN BROWN: I support this amendment. It is an improvement on what is in the bill because it makes it by way of regulation. I reserve the right on behalf of the Liberal Party to make further amendments in the upper house after consideration and the chance to study the form in detail. I studied this and questioned whether there is a drafting mistake here. I hope not. We are deleting Part 3 and substituting Part 6—Amendment of section 41—Regulations. I can understand that, but we are deleting Schedule, Part 14, clauses 20 and 21. I am not a parliamentary draftsperson, so I ask them to check whether that is correct. It did not make sense to me when I looked at it. It appears to me that you would certainly want to put in the second part, but the deletion did not seem to make sense.

The Hon. J.D. HILL: As I understand it, when this was originally drafted and introduced, the old coroner's act applied and these items refer to that act. Subsequently, a new Coroner's Act came in and, therefore, they were redundant. I am assured that this is the right way, but I will get the legal officers to explain to you perhaps better than I can.

The Hon. DEAN BROWN: I can understand that. If it was a change in the Coroner's Act, I can understand why it was done. On my reading, and assuming there had not been a change in the Coroner's Act when I went back to check against the Coroner's Act, I could not understand why you

would want to delete those parts. However, if that is the case that it is because there is a change in the Coroner's Act, it may make sense. I still ask the minister to check that, because when I went back and checked, I only had one copy of the Coroner's Act and there may have been a previous change that I was unaware of.

The Hon. J.D. HILL: We will certainly check it. The advice I have is that it is okay, but we will check it.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments.

The Hon. J.D. HILL (Minister for Health): I move:

That this bill be now read a third time.

I thank the deputy leader for his support for the legislation and his amendments, which have strengthened the penalties in the bill. I am happy to work with him on the issues that he raised before the legislation goes to the other place. We will seek, and I hope that we can reach, agreement on that. I also thank the departmental officer who has been working on this for a long time, Gillian Lewis Coles, and parliamentary counsel Rita Bogna, Aimee Travers and Shirley Fisher.

Bill read a third time and passed.

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 3790.)

Mrs REDMOND (Heysen): Mr Deputy Speaker, as you are aware, I was part way through my comments when we adjourned on the previous occasion. I will not run over ground that I have already covered, but I still want to put a fair bit on the record in relation to this bill. As I indicated previously, this is a bill which is dear to my heart because of work that I did in the area of the retirement villages legislation when I was in practice. It became extremely obvious to me that often people who were quite vulnerable, because they are older, sometimes they are frail and their health is not always the strongest, and lot of the time their financial resources are limited, become quite distressed because of the behaviour of administering authorities. As I have already indicated, we welcome the introduction of the government's bill. The opposition supports the bill. However, having said that, in my view, there are still a number of issues we will subsequently still need to address to iron out some of the problems.

Because of the matters that have been put to me, I intend to continue my comments on the issues as I see them in relation to the bill, but I will also make a couple of comments on behalf of the member for Mawson, who is unable to be here but who has asked me to put on the record some of his concerns about the bill. I also want to refer to a number of letters I have received from various residents of retirement villages, who have raised numerous issues over a period of years.

When we last addressed this bill, I was talking about section 6(9). This section makes it an offence not to comply with the provisions of section 6, which is the section that deals with the instruments the resident has to be provided with, including the contract and the detailed financial information about the village, a report about the condition, and so on. It is an offence not to comply with all those provisions. As I read the change, although it is a rewording, it is exactly as the act provides at present, including the maximum penalty of $35 000.

Some of the residents to whom I have spoken feel that the $35 000 penalty is not adequate and that it should be increased. However, before even looking at that, I ask the minister if he could make some attempt to find out, either in response to me or perhaps before the matter is considered in the upper house, how many prosecutions there have been and the nature of the penalties that have been provided. Certainly, there is a perception out in the community that the act is rarely enforced and that breaches of the act are seldom actioned by the department or by anyone on behalf of the government. Any action under the legislation appears to be taken by disgruntled residents, who often pay a significant price in terms of the financial burden, the impact on their health, their stress levels and everything else.

The next substantive change is in clause 10, which amends section 8, which relates to the repayment of the premium in circumstances where a prospective resident does not enter into occupation. At present, the act provides that repayment of moneys will be in accordance with the terms of the contract. If the failure to enter into residence is due to the administrative authority's failure, any interest earned on that money must be paid to the prospective resident. However, if it not because of the administrative authority's failure, the administrative authority gets to keep any interest that has been earned on the money. That essentially stays in place, except that the change demands that the repayment of money must be within 10 business days of the prospective purchaser giving the administrative authority notice that they are not going to move in. I think there are provisions in there for it to be constructive notice because they have died or whatever. Whilst that would seem a small change, it is important in addressing all these issues under this legislation to make sure that administering authorities are obliged to comply with the legislation within quite strict time limits.

I have had dozens, if not hundreds, of complaints in relation to administering authorities who, even though they might have an acknowledged liability to pay or repay an amount of money to a resident or a former resident, simply fail to do so. In my experience, no amount of jumping up and down and screaming at them, whether by the resident or by their solicitor, would make the administering authority take the action of paying the money. You would end up getting to the point of threatening or even commencing new legal proceedings in order to get the money. So, although it seems a small—

The Hon. I.P. Lewis: It is a widespread problem.

Mrs REDMOND: I can but agree with the member for Hammond. As I have said, I have had literally many dozens of people raise that very issue with me, and that is just one aspect of what appear to be small amendments. Nevertheless, those amendments should have quite a significant impact in trying to put some of the balance back into the relationship between the residents and the administering authorities.

The next substantive change is in clause 14, which adds a new provision which specifically deals with a situation where a person leaves the village to enter a residential care facility for which that person has to pay an accommodation bond. On my reading of it, this is a new provision and, again, it is quite a sensible one. The section essentially provides that, if a resident who is moving into an aged care facility has to pay an accommodation bond—if they have an entitlement to a refund from the administering authority but they need their funds to pay that accommodation bond and they might

otherwise have to pay for the administering authority to pay them the bond—they can apply to obtain a repayment of the amount they need to secure their place in the other accommodation.

As long as it is only up to the amount to which they are absolutely entitled, the administering authority has to pay that amount. There is a potential problem with that wording. The administering authority within 60 days has to pay up to an amount that is a reasonable assessment of the amount to which the resident would be entitled in any event. I am sure that everyone in this chamber would think that is a very sensible proposition, but the difficulty is that I know many administering authorities whose assessment of a reasonable amount would be something else. They pay that amount and the resident is stuck with having to institute proceedings and engage in a fight over what the administering authority thinks is reasonable.

In reality, it should be as simple as the resident being entitled to, for instance, $180 000 return on the money they pay to go into the village. They seek an accommodation bond of $100 000. The administering authority clearly will have to pay them more than that. If they need an accommodation bond of $100 000 they will get that from the administering society within 60 days and be able to pay the bond and move into the new accommodation in the aged care facility.

That sounds simple, but what does the resident do if, using those imaginary figures again, they are entitled to $180 000 ultimately, they need $100 000 to go into the new accommodation in an aged care facility, and the administering authority says that it is aware that the resident has savings of $40 000, so it will only give the resident $60 000, because that is all the resident needs to get into the facility. There are administering authorities that would do that and hold the money and the resident would have to take action. There is no provision for who gets the interest on the money, or the costs of the action, and so forth. This has happened so frequently in this jurisdiction that it is a real problem.

The next issue is very significant. I refer to clause 16—general matters. This is a tiny amendment, but it is important. Section 10(7) at the moment provides that residents have to have a reasonable opportunity to put questions to the administering authority. It then cites two situations. Questions can be answered if possible in reasonable detail at the meeting or, if that is not possible, as soon as is reasonably practicable after the meeting by presentation of detailed written answers. The government proposes to make a tiny but very important change so that, instead of the administering authority being required to provide their answers as soon as is reasonably practicable after the meeting, they will now be required to provide their answers within 14 days in writing.

That makes a huge difference, because I am aware of numerous occasions where information has been requested either before the meeting in writing or at the meeting by the residents in person. The administering authority's representative at the meeting is unable to provide that information but promises to get it to the residents as soon as is reasonably practicable. It is left to the administering authority's discretion, and they simply fail to provide the information in spite of repeated written requests from residents. So, this is an excellent amendment. The administering authority will have to comply within 14 days and provide the answers in writing.

I have tabled an amendment which I am hopeful the government will consider and accept which will catch another little loophole in this section. Where questions are asked and answered at a meeting, there is no requirement for the answer to be put in writing. As expected, administering authorities will use every loophole that is available to them, so if they do not have to comply in writing they don't. My proposal is that we close that loophole, because I am aware of instances where administering authorities have used that loophole. They provide a verbal response, which may be totally inadequate but which they say is adequate, and the residents have little room to move because the administering society has not put in writing what they have said and it is up to the residents to take action in the Residential Tenancies Tribunal to try to resolve the matter. I welcome the minister's proposal, and I hope the minister will look at my amendment. There is one further change and that is to clause 16(2), which simply clarifies that votes are to be decided by a simple majority. That goes hand-in-hand with existing clause 10(12).

The next matter of significance is the interim financial report. I am a little concerned about that. Under the current legislation, as I understand it, the residents can request an interim report that incorporates all of a series of options that are set out—(a) to (e) I think it is. The proposal is that the administering authority must provide a report that incorporates one or more of those options of (a) to (e). So I have a little concern and I would like that clarified in response perhaps at the end of the second reading contributions.

The real improvement in this section and the thing I welcome most of all is the fact that the proposal by the minister actually makes a significant change. Again, it does not appear to be all that significant, but it is this: if requested by the residents, the administering authority has to supply copies of invoices to substantiate what is asserted by the administering authority in their financial reports. The importance of this is that again, on dozens, if not more than a hundred occasions, I have had situations where the administering authority simply puts out their financial report saying, 'This is the amount we are liable for, for land tax, or for council rates'—and I am not talking about the individual resident's rates and taxes; each of the residents knows that they are going to pay a certain amount for their own dwelling that they have within the village—but, in addition to the individual dwellings, there will be basically a common area and that common area will be subject to things like council rates and land tax and so on.

The residents, as a whole, jointly pay those bills. That is part of the financial stuff that is put in the budget that they are expected to contribute to on an equitable basis when those bills come in. The difficulty has been that up until now the administering authority has not been obliged to present any of the accounts to substantiate what they are charging the residents. For instance, yesterday I had some people tell me about a situation where the bill for the council rates was $22 000. When they inquired of the council, although they could not get a copy of the account, they were told that in fact the bill for the council rates was $14 000. So there was a very strong suspicion that the administering authority was actually creaming $8 000 on top of what was the legitimate amount of the bill. Similarly, with Sevenoaks up in Stirling at the moment—and I name that village quite deliberately because of the number of problems I have had with it—I have to say that I am quite concerned that the administering authority up there has charged land tax. They were requested to provide a copy for the common property essentially.

The Hon. J.W. Weatherill: I didn't think you were allowed to pass it on.

Mrs REDMOND: They are.

The Hon. J.W. Weatherill: Under the Land Tax Act?

Mrs REDMOND: Well, they are passing it on, and that is part of the problem, but we want to see the bill. The residents, first of all, asked for a copy of the bill for the land tax and they were denied that. They then asked for a copy of it again, formally in writing; no, they were denied that. I then made a freedom of information application from Revenue SA; I was denied that. I then sought a review of that FOI application, internal review; I was denied that. It has now gone to external review and we are still part-way through that process, when it should be a lay down misere. If these people are being required to pay the amount then it should be absolutely obligatory for the person requiring them to pay the amount to provide them with a copy of the invoice. If it had just happened once or twice I would say, 'Oh well, there could be some reason why there has been a bit of a hiccup.' But I have had so many complaints of this nature from so many different villages that I have a real suspicion that what is happening is that, because the administering authorities up until now have not had to supply a copy of the invoice, they can simply put this bill out without substantiating what it is for and they are just creaming money off the residents by adding and padding on to that bill. So I do welcome that particular provision and I believe that although, again, it looks a small provision, it will go a long way to solving a lot of the problems that have been voiced to me by various members in various villages.

The new provision that is put into the bill about consultation about village redevelopment is also really a step in the right direction. It looks innocent enough, but if I could just take the worst case scenario: the administrative authority decides to redevelop; it sends a written notice of a meeting, giving 14 days' notice; it holds a meeting and it presents plans; it answers questions—it answers only reasonable questions, of course, and there is a whole question about what is a reasonable question; it gives due consideration to the residents' rights, and then it simply decides to go ahead. In other words, whatever it has already decided to do, it simply decides to go ahead.

On that scenario there is no breach, so section 10AA(B)(4) is not relevant. It seems to me, that notwithstanding I accept that the minister is trying to address a lot of the issues, it is just that I have had so many dealings with so many bad administering authorities I can tell you that they will find a way around everything you do. As I said, in spite of the fact that what the section is trying to do in inserting this provision that they have to consult about the village redevelopment, they will just walk away and do whatever they want, if they comply with these things of saying, 'We've made a decision to redevelop. We'll send out a notice. We hold the meeting. We present the plans. We answer the questions. We have given due consideration and we're going to go ahead and do it.' The minister may be looking for something that I am about to come to, and that is that certain taxes and fees must not be charged to residents. What this new provision makes clear is that a resident cannot be liable to pay costs incurred by an administering authority in obtaining legal advice or undertaking legal proceedings unless the residents, by special resolution, approve it.

I think that is an excellent provision. I have had more than one occasion on which I took actions on behalf of residents of Sevenoaks in the Residential Tenancies Tribunal, and the tribunal found in favour of the resident I had represented, sometimes to quite significant amounts of money. On one occasion, the administering authority owed my residents nearly $50 000. Not only does this legislation make no provision for those people then to recover their reasonable costs at the appropriate costs scale, which would be that of the District Court, but the administering authority, having incurred a legal bill of $30 000—which, by the way, was three times what my people were charged by me—and having lost the case because it was in the wrong, turned round and told the residents that they had to pay the $30 000.

The Hon. J.W. Weatherill: It's a racket.

Mrs REDMOND: As the minister says, it is a racket, and they would do that time and again. In a period of six months, 19 matters in this state went to the Residential Tenancies Tribunal under the Retirement Villages Act and 13 of them came from that village. On virtually every occasion the administering authority was in the wrong, but members can imagine the costs it ran up in that process, and it simply added that to its administration fees that the residents of the village had to pay. That is simply outrageous. I welcome the fact that this is being addressed by the provision, but it does not actually address that other problem that I touched on, that is, the fact that the residents do not get their costs back. That is another issue that we need to address, because it is a significant imposition.

I think I had a $10 000 bill out of it, which was pretty minimal for the preparation I had had to do for a five-day trial and all the preparation, but ultimately we were able to argue that, under the discretion in the Residential Tenancies Act, there was discretion to award costs. We argued that they should be on the District Court scale but the person hearing the matter ultimately decided that costs would be ordered only on the Magistrates Court scale, so the people ended up $7 500 out of pocket having won their case. That is simply not reasonable and is another area we need to address. I appreciate that it is not in this bill. Maybe we need to consider putting something into this bill to override the provisions of the Residential Tenancies Act.

In relation to the documents to be supplied to residents, which are set out in section 12, the key change is that there is a change of the obligation imposed on the administering authority from 'shall at the request of a resident' provide certain documents to 'must at the request of a resident' provide free of charge copies of certain items that are listed, which include the contracts, the rules and the amount refundable on the person's departure. There is also a new obligation to provide information about the manager to the residents and to provide information about residents' committees. As I said, those are my general comments in relation to this bill.

I do want to place on record on behalf of the member for Mawson a few things that he is concerned about, and I also want to place on the record some matters that have been raised by various people, which I may not have covered in the earlier part of my address. The first thing that the member for Mawson is concerned about is that he believes that there should be a process of accreditation. The minister may be aware that in dealing with hostels, hospitals, nursing homes and the like, and certainly aged care facilities generally, accreditation is a process that most of those places have to undergo. They are required to do so because they will not get commonwealth funding if they do not meet the accreditation standards.

Accreditation can occur on a yearly basis or, if a place is really up to speed, it may be granted for three or four years at a time, but the member for Mawson believes that consideration should be given to introducing a system of accreditation for retirement villages. He is also concerned that the issue of

a sinking fund for maintenance needs to have much tighter controls and more accountability. There is a problem of using those funds for other purposes. For instance, I was talking to some people earlier this week who came to see me about this legislation, who indicated that they had moved into a village that was still under construction and were paying maintenance fees and paying for the services of a maintenance person. They were able to observe that this maintenance person was actually being used to complete the construction of uncompleted units within the village, thus the maintenance fees that they were paying were clearly being used for improper purposes, yet there was no way to make the administering authority account for what it was doing with those maintenance moneys it was disbursing in that way.

The third thing that the member for Mawson wanted me to address on his behalf was the tightening up of contractual arrangements. I think that is mentioned in one of the letters that I will read out. Although I will not read the letters in their entirety, I will read some of the salient points. Certainly, there have been numerous occasions on which administering authorities or owners of retirement villages, particularly those under construction, have made assertions and representations as to what would be supplied to the residents of the village, whether that be a community bus, a community hall or even a swimming pool. Because that is just asserted in advertising material and does not form part of the contractual documentation, there is a real problem.

It is easy enough for those of us who are lawyers to say that there is other legislation under which one can pursue those rights, but if you are 80 years old and you have just sold your home and moved into a retirement village, then you really are not wanting to have to take legal action in any jurisdiction, least of all something as big and frightening as the trade practices area or into the District or Supreme Court. Like the rest of the opposition, the member for Mawson is happy to support what is there, but he does agree that a lot more still needs to be done.

We are welcoming of the changes and we will promote the bill through the house as quickly as it can pass, because we are hopeful that once it gets through both houses it will be commenced as quickly as possible and there may be some redress for some of the issues that have been raised by some of the people. I just want to turn to some of those now. I will go through them in the order that I have them here.

One relates to the issue of rebates and concessions which some people residing in retirement villages miss out on. That comes about because in certain circumstances—particularly some retirement villages which are operated by not-for-profit organisations who own retirement villages—people moving in do not get any refundable equity, nor do they get ownership in the unit, and because of that, they do not meet the criteria set out by other government organisations. I appreciate that the minister may not be in a position to answer this, and it may not be an issue which comes strictly under this legislation but, nevertheless, it is an issue that I think we should be alive to because it is a problem for people moving from their own homes into this situation where they have been entitled to, and in my view probably should be entitled to, the concession. They certainly are no better off financially than when they were in their own homes but because they do not get a refundable equity, nor do they get ownership of a unit—and that is typically the case, they do not get ownership of a unit, they get a licence to occupy—the result is that they miss out then on the criteria by which their entitlement or concession will be judged. So, that is one of them.

The next one is actually in relation to the selling costs of the unit and basically there are problems with the way in which those selling costs are assessed. I know that the legislation sets out with some more clarity a requirement for the administering authorities to provide more detailed information about what the selling costs might be. I have a fear that hidden amongst that, administering authorities can still charge advertising. Whilst we all know that if we are selling a house we may negotiate with an agent to spend a certain amount on advertising, or to have various other options, what is happening in some of these villages—and I can tell you again about Sevenoaks and some of the things that they did—when residents sold a unit, they had a provision that advertising had to be paid. The retirement village did their own advertising, both internally and outside of the village, and they had a little board up in the shopping centre and they put their advertisement for that particular unit in that little closed, glass-fronted board in the shopping centre. They classified that as advertising, and they charged a fee to the residents for doing that, even though it was not advertising in any traditional sense—but where did the residents go to fight against that particular problem?

I will run through a couple of things that were put to me by some people at another village, one in particular in the member for Mawson's electorate. I had a meeting with them, and some of them had been there for nearly ten years. Some people discovered at the AGM that costs being charged to the residents were not correct, and it relates to that issue that I referred to before. Now, they had to take it to the tribunal and they ultimately recovered $19 000, but the issue is that they should not have to take it to the tribunal. They should be entitled to see the accounts, be able to substantiate whether the costs are correct or not, and to not have to go to not only the trouble and expense but also the extreme stress on elderly and frail people of having to pursue those issues. In that particular village, they advised that the buildings were half finished and poorly finished; they did not have a sinking fund for maintenance or capital replacement even though the documents said that there would be one; and when they leave 5 per cent of the outgoing price of their unit is to be paid into a capital replacement fund. That is what the documentation says, but there is no actual documentation that spells out when that is going to happen. Unless you are an administering authority who is preying on these vulnerable people, you do not think of all these twists and turns, but administering authorities clearly do. So, they would say, 'Yes, we will pay it into a sinking fund, at some time when we need a sinking fund, but at the moment we will have the benefit of that money and we will use it to our own purposes.'

One of the other issues raised by these particular residents was that of the provision regarding certain persons who are not to be involved in the administration of a retirement village, and they were questioning what is an offence involving dishonesty. If someone gets a two month suspended gaol sentence, is that an offence involving dishonesty? Even if this is an offence involving dishonesty, there is no actual remedial course of action provided in section 18 of the legislation as it presently stands, and I do not think it is amended by the government's proposal. That really reflects a lot of the problem—that there is a tremendous inequity between the capacity of the residents and the capacity of administering authorities. It should not be up to the residents to have to take action about issues like that. One of letters that I have refers to something that I had not been aware of, and I have not investigated it as yet. The letter writer suggests that

in Victoria they have introduced a points demerit system. I do not know exactly what that means as yet, but I imagine that it must operate something like a licence points demerit system whereby if you have certain offences you will lose one point or two points, and when you lose a certain number of points then you are not going to be allowed to hold a licence for a village any more, so that you might start to actually weed out some of these people who are not actually committing a criminal offence but are behaving in a way which is so improper that they should not be able to run retirement villages. They also made a complaint from that village that the administering authority considered that simply letterboxing the residents about what they wanted to do was consultation with the residents. So, no discussion—they just put a note in the letterbox to say, 'This is what we are about to do, and you will just like it or lump it.'

Several residents never even had a contract in spite of having lived in the village for three or four months and having paid their money, and there was no requirement for the owner of the village to declare what the earlier contracts provide. It happens a lot that, as the administering authorities discover problems in particular contracts, they will get new contract drawn, and they simply rely on that new contract without telling people what the earlier contract said, so you find villages where there are five, six, seven or eight different contracts. Then you are stuck with trying to interpret what the changes and differences are when you go into the Residential Tenancies Tribunal.

I mentioned to the minister in conversation last night a question about the provisions of section 4 of the act, which relates to whom the act actually applies. That section provides:

(1) Subject to this section-
(a) this Act applies to retirement villages—

But people do not necessarily declare themselves a retirement village.

—established either before or after the commencement of this Act;

That is fine. It continues:

(b) this Act binds the Crown in right of this State—

and so far as it is able to—

—the Crown in any other capacity.

(2) The Minister may, by notice published in the Gazette, confer exemptions from this Act or specified provisions of this Act-
(a) on specified religious or charitable organisations or religious or charitable organisations of a specified class; or
(b) in relation to specified retirement villages or retirement villages of a specified class.

I have never had any dealings with that section of the act, but it was put to me by some residents that, in fact, they are disadvantaged because, if their village is run by a specified religious or charitable organisation which has been granted an exemption under section 4(2)(a), they miss out on the benefits of the protection that this act gives. I can see no reason why one would exempt any organisation. If they are in the business of running a retirement village, why should the residents of that village have fewer rights than the residents of any other village?

I could understand perhaps if it was people providing a charitable situation, if they were actually acting as a charity in the provision of the accommodation and people were not paying to go into the village. That clause potentially exempts a whole range of organisations, which classify as specified religious or charitable organisations, from being bound at all by the provisions of the legislation. Clearly, that is something that needs to be addressed.

The next matter again refers to the problems of disclosure statements as they currently exist and the contracts. I recognise that the legislation seeks to address some of these issues in terms of what has to be provided, but I will just put this problem on the record. I will quote from a letter from these people. It states:

The problem that we are facing here is that decisions re account allocation are being made that go against the information issued to residents. . . In effect, 'double dipping', is occurring as we are paying 12.5 per cent of our budget into the contingency fund as well as paying for items that fall into the category of 'irregular, infrequent and unbudgeted expenses' from our maintenance fund. Similarly, we are paying for repairs (eg major repairs totalling over $3000 to a road) from our maintenance fund when it should be charged to the capital replacement fund.

. . . the effect of these policies is that the capital replacement fund and the contingency fund balances are inflated at our expense.

I have only a couple more to go, the minister will be pleased to know, but I do want to address a couple of these things. I have another fairly lengthy letter, and I do not intend to read all of it, but I want to put on the record some of the examples raised in it. Those examples relate to the Forest Place Lifestyle Village at Happy Valley which is part of Lifestyle SA Pty Ltd. The letter states:

On seeking information from this group they provide you with a document which gives preliminary information. . . At that point they are very reluctant to make available the licence agreement. . . they do not wish such a document to come into the hands of other persons. The document contains basic information, some of which is contained in the PID [Public Information Document] and some enticements which are excluded from the PID. Examples follow. . . The document states on the back page that the contribution is calculated at 1 per cent per year of the original lease purchase fee.

The contribution is what is commonly called the retention amount, that is, the amount that they are going to keep when you leave the village. The letter points out that the 1 per cent is not actually stated in the formal documents, and actually then appears only as 'Example: 1 per cent of lease premium received'. So when they provide examples they base it on 1 per cent but they do not actually give a guarantee that 1 per cent is what will be deducted. What is not stated in the public information document is that 10 per cent of the operating expenses will be placed as a credit into the fund, and that fund is then taken out of the maintenance fund and paid for by residents. So they are actually paying a lot more than they expected. The letter continues:

Ongoing monthly fee.

Among other things the document states 'Following the establishment of the monthly fee by management after the first full year of total occupancy, the annual increase will be restricted to CPI movement.'

Of course, that is what people expect when they go into the village and if they get legal advice before they go into the village. The legal advice would be to the effect that you will have to pay whatever the fee is increased annually by CPI. But, in fact, when you read the detail of the formal documents, it states:

. . . the administering authority will fix the maintenance fee for the 2005-06 financial year and each later financial year by reference to the budget, the various types of residences in the village and any increase in the amount of the maintenance fee must be in accordance with the act.

They show the provision of section 10(8) of the act as a footnote, but, in their formal documents, therefore, there is no reference to it being by CPI, yet in the promotional material they are stating that it is CPI increases. Again, there

is the problem of the cost when one leaves—the repayment on termination or surrender of a lease. It states that if specific advertising is required then the outgoing resident is required to pay for the additional advertising, but there is no obligation to report the costs to the residents. So, there are a lot of problems with that.

This letter asserts that some prospective residents have had to pull out of entering into the village, even after selling their own home, because they cannot afford to pay an increase in price that has come about after they have been to see the village. They give the prospective residents what they call an indicative premium cost. In this chap's case it was $282 000 plus or minus $2 000. The premium was written on the document given to them and they paid a deposit. What they were ultimately required to pay was $298 860. That is a big increase. Some residents have sold their own homes in anticipation of moving into a village based on the indicative cost that has been given to them, and then face the fact that they cannot afford to move into the village and they are stuck because they have sold their home and have nowhere to go. It is very expensive, yet the administering authority bears no responsibility.

They also complain about the administering authority having the right to alter the existing rules even when the new rules have the effect of changing the contractual arrangements as provided in the documentation. The minister and I both know that unilaterally you cannot change the terms of a contract. Residents in villages do not necessarily know that but, even if they do and even if they seek to enforce it, they have a major uphill battle in getting the matter before the Residential Tenancies Tribunal, getting it heard and decided, and getting their entitlement, and that may be that the administering authority cannot alter the rules in the way that they are planning. Again, there are significant problems for the resident and a significant imbalance between what the residents are able to do because of their limited resources, older age, frailty and other problems. Again, they make reference to the fact that there have been numerous situations where the administering authority cannot or will not provide a facility that it has contracted to provide and the fact that people should be entitled to compensation in relation to that.

One example has come from the office of the member for Waite, and I will quote briefly from the letter sent to the member. It states:

> We know that most, if not all, the villages are experiencing inequitable treatment for the paying residents.

That is the impression from a lot of the letters that I have received: they are all under the impression that most of the villages have problems. My experience has not been that. In fact, I am aware of quite a number of villages where there have not been problems, and maybe it is just that they do not rise to the surface and their heads do not come above water so no-one is aware of them but, clearly, the impression in the community amongst retirees in these villages is that there is an ongoing problem and most people feel that there is inequitable treatment. I quote again from the letter:

> Such situations have led to ill health, worry and mental anguish for people who should be enjoying their retirement years. Fear, and even intimidation, of some elderly people, with consequential growing disrepute for the so-called industry.

I have had a number of complaints about threats and intimidation, and I do not think that the act as it stands, or the bill, adequately addresses that issue, but I have even had a situation referred to me where someone was threatened, because they had tried to assert their right—which is their legitimate right under the act and the contractual arrangements—with not being able to move to the next stage of the aged care accommodation within the complex, even though it was their turn, because they had become troublemakers. There certainly has been quite a lot of intimidation going on.

One of the things they suggest in this letter is giving the state government greater power to investigate breaches of the law by administering authorities, and I raise that again because that is another area where there is a consistent level of complaint that it should not be up to the residents to have to deal with this. In some areas, it should be the responsibility of the government or people appointed on behalf of the minister to investigate and maybe even have power to impose fines. Rather than having to go through these long processes, they could make a determination and have the power to impose fines, because a lot of times there is simply nothing that can be done by a resident and the government itself seems powerless to act.

They want to see (and I believe that the bill does this) reinforcement of the principles of disclosure and residents' involvement in matters that significantly affect their financial affairs, amenities and way of life. There is some difficulty with some of their proposals in that they want the act to apply retrospectively to existing contracts, and I do not think that is viable. They also suggest that the government could implement a uniform contract agreement for retirement villages. Again, there is such a vast array of levels and types of retirement villages that I think there would be some difficulty with that, although it might be worth considering having some sort of pro forma to use for the contractual documentation. In the Acts Incorporation Act, there is a model constitution for any organisation that wants to set up under that act, and it might be worth considering introducing that sort of thing.

One of the things that could flow from that concerns the fact that most of the documentation is written in legal jargon. It is certainly drawn up by lawyers. It is often the case—and, in fact, I am astonished that it could happen—that the administering authority refers them to none other than the lawyers who have drawn up the contracts for them. I can understand that the administering authority does not understand the law in that regard, but how the lawyers do not come to the conclusion very quickly that they have a conflict of interest and should not be advising those people and should be referring them elsewhere is simply beyond me.

Nevertheless, sufficient cases have been referred to me where that has happened for me to know that it is quite a regular practice. Again, they refer to the things about the administering authority denying explicit items of the contract disclosure statement, claiming that their legal advice states that they are entitled by other clauses of the actual contract to override whatever is in the disclosure statement. They refer to the sorts of threats that go on. They talk about the chairman publicly denouncing, by name, people who would speak against a resolution. Any post-voting discussion attempted was gagged by intimidatory heckling and abusive outcries; so, they certainly had some problems.

Mr Goldsworthy: Very shabby treatment.

Mrs REDMOND: It is. Finally, I want to refer to some issues that were raised in a number of letters that I received via the member for Kavel in relation to—

Mrs Geraghty: He doesn't even know what you're talking about.

Mrs REDMOND: He does. I will go through the main problems raised in this letter, which is one of several from

this particular person. He talks about the false and misleading advertising 'asserting that increases in maintenance charges are adjusted in line with cost of living. . . increases.'—that is not the case at all—'stating that the owners pay for rates, the emergency services levy, house insurance and water rates'. In fact, these are paid by the residents and not the owners. People often confuse owners because the owners are the owners of the village, not the residents; as I said, the residents mostly only own a licence to occupy. They talk about occupation of units as an issue because section 6(2) of the act provides that before a person enters into a residence contract, the person has to be given a copy of the contract. This letter states:

> . . . no residents were presented with the document at the time of occupation. . . there should have been [a] joint inspection with a view to reaching agreement about the condition of the premises.

I have come across situations where prospective residents have said that they would like a building inspection. The response of the administering authority has been that because they are not prospective purchasers of the real estate, they cannot have a building inspection. The reality is that if they have to agree to the premises' condition, they should automatically be entitled to have a building inspection, if they wish. They even had residents in this village that they are referring to who had been in occupation for up to 10 months and no premises condition reports had been completed. In some cases, in some other villages, they say that people have been in residence for much longer and no such reports have ever been completed.

I referred earlier to this other instance where they talk about the administering authority having been known to classify uncompleted building construction work as maintenance for which the residents then pay from their regular payments for maintenance. Complaints are ignored, undertakings which have been given verbally are subsequently simply ignored and never honoured. Assertions contravened the relevant sections of the disclosure document and they were powerless to do anything about it. They seek access to invoices and, as I have already said, that is one of the good things that this bill does. They believe that obligations for administering authorities, when preparing financial statements, must be more clearly defined. In their view, that is the problem of most concern to residents in all retirement villages. This letter states:

> It is routine for many owners and administering authorities not to reply in writing to requests, complaints or other communications submitted by residents or residents' committees in writing.

I have already indicated to the minister that I will be moving an amendment in committee to deal with that because I think that it is necessary to put in an obligation for them, if requested, as it may not always be necessary, to put the answers in writing.

Mr Goldsworthy interjecting:

Mrs REDMOND: The member for Kavel reminds me about the application of bills that do not even relate to the village. Where you have an administering authority that might run several different operations—they might run a hostel, a nursing home, the retirement village and so on—they put them all under the same umbrella; in fact, some of the people that the member for Kavel and I met with this week indicated that not only were they paying bills that had been presented to them without the account to substantiate it, and they then discovered they were paying potentially electricity and all sorts of other things for these other entities which were under the same umbrella of operation with no ability to even check it let alone do anything about it.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I move:

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

Motion carried.

Mrs REDMOND: The last issue I want to raise out of this letter is that of the inequity of the positions of the residents vis-a-vis the administering authority. It is clearly a fundamental issue that people who are in retirement villages are the Davids to the administering authority's Goliath, and it is simply unfair to expect elderly, sometimes frail, and certainly unversed most of the time, people to have to take legal action. Often they have never been near a lawyer's office in their life and suddenly they are confronted with all the stress and trauma of having to take actions under this legislation.

The administering authority has enormous funds and enormous resources at its disposal, and the residents have only themselves. They suggest that there be some sort of provision for legal advice. When I met with these people, I expressed the view that I did not think it was appropriate to expect that the Crown Solicitor's Office would provide legal advice. However, I do think we need to bolster up the extent to which either the Office for the Ageing or the registrar's office, or someone else, can take action on behalf of a group of residents, rather than simply leaving it to the individual resident to have to redress their individual wrongs one at a time. The complaint should not be addressed as an issue involving the misbehaviour of the administering authority; it should be addressed by government rather than by the individual.

With those comments, I conclude my remarks. I indicate that we will need to go into committee, because I will be moving an amendment. Having had some discussions with the minister about this legislation, I know that he appreciates that, whilst the opposition supports the legislation and we want to see its speedy passage through both houses, there is still work to be done in relation to it. Hopefully, we will be able to deal with this further at some other time. However, in the meantime, we will make some significant changes to the legislation with the bill as proposed and, hopefully, with my small amendment, we will see a significant improvement in the management of the Retirement Villages Act.

Mrs GERAGHTY secured the adjournment of the debate.

ADJOURNMENT

At 10.02 p.m. the house adjourned until Thursday 10 November at 10.30 a.m.