HOUSE OF ASSEMBLY

Thursday 10 September 2009

The SPEAKER (Hon. J.J. Snelling) took the chair at 10:30 and read prayers.

SITTINGS AND BUSINESS

Private Members Business/Bills—Notice of Motion No. 1—Mr Hanna to move:

That he have leave to introduce a bill for an act to amend the Casino Act 1997 and the Gaming Machines Act 1992.

Mr HANNA (Mitchell) (10:31): Mr Speaker, may I compliment you on your fresh and relaxed demeanour this morning, and I must say that during prayers I particularly took note of the element of the Lord's Prayer about forgiveness. So, I am sorry for testing your patience last night; and I seek that this item be postponed until the next Thursday of sitting.

Motion carried.

GRAFFITI CONTROL (MISCELLANEOUS) AMENDMENT BILL

The Hon. R.B. SUCH (Fisher) (10:33): Obtained leave and introduced a bill for an act to amend the Graffiti Control Act 2001. Read a first time.

The Hon. R.B. SUCH (Fisher) (10:33): I move:

That this bill be now read a second time.

Members would be well aware that this has been one of my longstanding hobby-horses. I have tried in this new bill to take into account the opinions expressed to me by the government and others—and I have consulted very widely—and I think this is a reasonable approach to what is still a very costly scourge in our community. Graffiti costs ratepayers and taxpayers millions of dollars, as well as causing inconvenience and not just making areas of Adelaide look untidy but also making people who live in those areas feel uncomfortable.

This bill will require those who sell graffiti items (namely cans, in particular) to be licensed. Persons purchasing such items will have to show ID and details of that information will be kept. The other key provision is that there is written into the bill a requirement that people who deface property through graffiti can be required and, in most cases, will be required, to pay compensation and also be required to clean off graffiti.

There have been some programs in this state that have involved people cleaning off graffiti, but nowhere near to the extent that is needed and certainly not to the extent that is carried out in other states. Victoria, for example, has a very extensive graffiti clean-off program. I have always argued that one of the most effective ways of dealing with graffiti is for offenders to understand the harm and cost they inflict on others and to require offenders to clean off graffiti, not necessarily their own, although that would be ideal, because it might be in a dangerous location. There is plenty of graffiti out there that could be cleaned off by properly supervised groups.

The City of Onkaparinga, in my electorate, spends half a million dollars a year cleaning off graffiti, and we have hundreds of volunteers throughout the state spending their time cleaning off graffiti and the offenders are not required to do it. I do not see the logic in that. So, my bill will address that particular issue.

The bill also provides for issuing an expiation fine because, in some cases, offenders do not get any penalty. I think it is reasonable that, if someone is carrying a graffiti implement in an area that is prescribed by this bill, they can incur an on-the-spot expiation fine of $160.

The last time I tried to introduce what is called a prescribed area, the government said that it was a bit tough because it went beyond schools and railway tracks. Well, I have narrowed it down to school and railway tracks. If someone is close to a railway track—and the distance and all that is specified—or on school grounds between 10pm and 6am carrying graffiti implements, the police will have greater power to search them and any vehicle and also will be able to take action against the offenders for being in those places during those hours. You would have to ask why someone would be carrying graffiti implements on school grounds or on or near a railway track between 10pm and 6am if they do not have anything other than ill-intent directed towards that property or the community.

Those hours have been carefully chosen, based on advice from the New South Wales police. The measures in here have also been canvassed with the Police Association in this state. Anyone who has a legitimate reason to be carrying a can home from a paint shop or supermarket would be well and truly home by 10pm and, in any event, they would not be on a school property or on or near a railway track. This bill also gives the police added search powers in relation to those prescribed areas, and I think that is appropriate because we do not want the police to have their hands tied. Obviously, you need a balance between reasonable search powers and not going over the top in terms of civil liberties.

In essence, the bill is targeting the purchase point to try to eliminate those who have no reasonable or justifiable need for a spray can. It requires provision of ID. It sets out prescribed areas where anyone carrying graffiti implements between 10pm and 6am will be deemed to be committing an offence. It requires the courts to look at the issue of clean-off by offenders and also paying compensation.

The measures up until now have not worked. The police are incredibly frustrated and the community is still angry about what is happening to public and private property. To reinforce the clean-off aspect, a recent article in the *Herald Sun* reports that graffiti removed under their removal program involving offenders is equal to 25 times the area of the Melbourne Cricket Ground. In the past four years, vandals have been required to clean up graffiti which would cover the Melbourne Cricket Ground 25 times. If they can do it—and it carries a photograph of someone cleaning off graffiti—I believe we should be able to do it here.

Some 178,000 hours have been put in by offenders in Victoria since 2005 in cleaning off graffiti. The saving to the taxpayer just from the clean-off has been in the order of $12.5 million. My question is: if Victoria can do it—and I am not saying they have a perfect system—we should be able to do it here. It is time we stopped allowing this nonsense where people deface and destroy. If they want to graffiti their own property or vehicle, that is up to them, but they should not be allowed to damage community property which is costing us millions of dollars—money that could be spent on facilities for young people and other age groups instead of this silly activity.

If people have an artistic talent, then display it and get approval to do it legitimately. I am not against billboards specifically set aside for people who have talent with aerosol art, but I am strongly against having to use taxpayers' and ratepayers' money to clean off trains and other community property that are covered in graffiti. I commend the bill to the house and urge members to give it their support.

Debate adjourned on motion of Hon. I.F. Evans.

ROAD TRAFFIC (CONSUMPTION OF ALCOHOL WHILE DRIVING) AMENDMENT BILL

The Hon. R.B. SUCH (Fisher) (10:42): Obtained leave and introduced a bill for an act to amend the Road Traffic Act 1961. Read a first time.

The Hon. R.B. SUCH (Fisher) (10:42): I move:

That this bill be now read a second time.

When I raised this issue publicly, it received quite wide coverage, because many members of the public, and I suspect many members of parliament, believed that it was already an offence to consume alcohol when in charge of a vehicle. That is not the case in South Australia; it is not illegal to drink alcohol as you drive. In my view, it makes a mockery of drinking and driving as an activity, where we try to separate the two.

Currently, Victoria and South Australia are the only two jurisdictions that have this anomaly, and I understand that Victoria will move to close it off soon as well. Some people have wondered what is wrong with what is called a 'roadie'—that is, a drink or a can as you drive along the road. My argument is: what is wrong with pulling over and stopping for five minutes or having it at your workplace or the pub?

The point is that it sends a very bad message if you are in a car with children or young teenagers and you pull up only to see someone drinking alcohol while in charge of a vehicle. Naturally, children or young teenagers will ask why you can drink alcohol and drive at the same time. I think we should be sending a message that the two things do not—and should not—mix.

Western Australia's provisions are a lot more extensive and tougher than those I am proposing. Their law prohibits anyone from drinking in public places and that includes drinking

alcohol on any road in the metropolitan area, including a parked car or a moving vehicle. My provision does not go that far. The bill provides:

> A person must not consume alcohol while driving a vehicle or attempting to put a vehicle in motion.

It carries an expiation penalty of $300 if the vehicle is a motor vehicle and $60 if it is not a motor vehicle. My provision does not go as far as Western Australia. New South Wales, under its Road Traffic Rules, rule 298-1 provides that a person must not consume alcohol while driving. In New South Wales it is also a penalty offence, attracting a $243 traffic infringement notice with a loss of three demerit points. In Queensland, under its Transport Operations (Road Use Management—Road Rules) Regulations 1999, it provides that a driver of a vehicle must not drink liquor while driving a vehicle. The maximum penalty is up to $1,500 and it attracts a fine of $300 and $100 if a person is riding a bike while consuming alcohol; so it is more extensive and much tougher in terms of penalty than what I have in my proposal.

The provision is also much more extensive in Tasmania. Under its Road Safety (Alcohol and Drugs) Act 1970, section 7 provides that no person shall drive a vehicle while he or she is consuming intoxicating liquor, and it also bans passengers from consuming alcohol. I am not proposing that; I think that is probably taking the issue further than is necessary. The penalty is up to $1,200 or imprisonment for up to six months, plus disqualification for up to three years. I am not proposing anything as draconian as that, but I think we need some deterrent.

Some would argue that under current law a police officer could issue a penalty to a person driving without due care—and that could include drinking iced coffee. I believe that is possible, but I think there is a distinction, particularly in relation to the message we are trying to get out about drinking alcohol while driving, and a significant difference between consuming iced coffee and drinking alcohol as one travels along or attempts to drive a vehicle.

In South Australia under the Passenger Transport Act 1994 it is an offence to consume alcohol in a passenger vehicle (a bus) or at a station or bus stop unless it is consumed in a prescribed area specifically set aside for that purpose. Police could charge someone with driving without due care or inattentive driving. We see plenty examples of people putting on make-up, cleaning their teeth or having a shave—all sorts of inappropriate things as they drive along. I do not believe that people will be drunk after one can of beer, although if we allow people to drink while they are driving it could well happen that by the time they have had three or four roadies (as they are called) they might not be in a suitable condition to drive.

My main intent is to make clear to the public that there is a distinction between driving and consuming alcohol. Some people do not think it is an issue, but I have heard reports of people doing just that and, in a sense, thumbing their nose at the community. I am not suggesting that the shearers on Kangaroo Island are doing that, but some people think it is quite smart to drive in places, such as Glenelg, flashing the can while they drink. It sends a very bad message, particularly to young people.

I commend the bill to the house. It is a simple bill which closes an anomaly which some people did not realise existed. It will bring us into line with most of Australia, and I understand Victoria will also move shortly to close off this loophole. I commend the bill to the house.

Debate adjourned on motion of Mrs Geraghty.

TOBACCO PRODUCTS REGULATION (BAN ON CHILDREN SMOKING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 June 2009. Page 3052.)

The Hon. L. STEVENS (Little Para) (10:50): This amendment seeks to criminalise children by the imposition of a fine on children who are caught smoking.

The Hon. I.F. Evans interjecting:

The Hon. L. STEVENS: The opposition should listen to the argument. The government opposes the bill. No-one would dispute the harmful effects of tobacco smoking. The evidence is indisputable. We know that tobacco kills around 15,000 Australians a year, more than the combined death toll from road accidents, alcohol, illicit drugs, all homicide, HIV, diabetes, skin cancer, and more. Tobacco smoking is the biggest single preventable cause of both cancer and heart disease—our two leading causes of early death—and is linked to the seven diseases causing most deaths in the Australian community.

It has been estimated that the effects of tobacco smoking cost more than $31 billion a year to the Australian community; and that is a 2004-05 cost value. Reducing tobacco smoking has been, and still is, a very significant health measure which has been adopted right across the country. There is both a national tobacco strategy and a state tobacco strategy.

The 2008 figures for South Australia in relation to the current smoking rates are as follows. Of all people over 15 years of age, the level of tobacco smoking is 19.9 per cent. Of those aged 15 to 29 years, the level of tobacco smoking is 23.2 per cent. The state plan targets a reduction in the level of smoking for those in the 15 to 29 year age group and aims to achieve a target of 17 per cent by 2014. Interestingly, the group with the highest prevalence of smoking is the 30 to 44 year age group, at 26.2 per cent. This is an important target for action, because people in that group are often the parents of young children.

So, what does the research say about the best way to address demand and supply reduction in terms of tobacco smoking? A number of studies have been undertaken in relation to changes in youth smoking. A handful of empirical studies have related changes in youth smoking to popular laws that penalise tobacco possession, use and purchase.

A 2003 paper by Wakefield and Giovino entitled 'Teen penalties for tobacco possession, use and purchase: evidence and issues', reviews the literature and outlines reasons why these laws are unlikely to reduce youth smoking significantly at the population level. The authors said that these laws lack important features required for punishment to be effective in changing behaviour. They continued:

> In practical terms [these] transgressions seem difficult to detect. Conceptually, there is potential for [these] laws to undermine conventional avenues of discipline, such as the parent-child relationship and the school environment.

They further stated:

> Strategically [these] laws may divert policy attention from effective control strategies, relieve the tobacco industry of responsibility for its marketing practices and reinforce the tobacco industry's espoused position that smoking is for adults only.

In contrast to this we know that, in terms of the 2007 National Drug Strategy household survey of about 25,000 Australians aged 12 and over, there was very strong support in the Australian community (and there is increasing public support) for measures to reduce problems caused by smoking. This survey established the following results: 90.1 per cent of those surveyed supported stricter enforcement of laws against illegal tobacco sales to minors; 87.5 per cent supported stricter penalties for the sale of tobacco products to minors; 82 per cent supported banning smoking in the workplace; 77 per cent supported banning smoking in pubs and clubs; 73.6 per cent wanted bans on retail display of tobacco products; 71.6 per cent supported the implementation of a licensing scheme for tobacco retailers; 68.6 per cent supported increasing tax on tobacco to contribute to treatment costs; 67.1 per cent supported increasing this tax to pay for health education and 65.7 per cent supported using this to discourage smoking; and 66.4 per cent wanted to make it harder to buy tobacco in shops. There was no mention in any of that research in terms of support for penalising children.

The strategies that studies, experience and evidence have shown to be effective in reducing the uptake of tobacco smoking is pricing, social marketing that denormalises smoking, cessation programs for all people (and that is the sort of thing that Quit does through various mechanisms) and enforcement laws that target adults who provide cigarettes for children. These strategies that have that public support—the ones that are based on best practice evidence—are what is being done in this state and in all states, territories and jurisdictions in Australia.

Government strategies are based on best practice evidence and comprehensive tobacco control measures in accordance with the National Tobacco Strategy and the South Australian Tobacco Control Strategy. A whole range of those have been introduced in this state, particularly over recent years—in 2004 in a major bill, and a number of other bills that have followed more recently in a range of areas that specifically target the uptake of smoking with respect to young people.

Those things include, for example, the promotion and display of tobacco products from temporary stalls, which was banned in 2009. These stores are often present at youth-oriented events, such as the Big Day Out, and were seen as a means of selling and promoting tobacco products to young people. This has been particularly successful. Bans on the display of fruit and confectionary flavoured cigarettes were implemented in April 2008. There are now penalties for

retailers in relation to the sale of cigarettes to minors, in addition to a number of other issues in relation to environmental tobacco smoke.

The government does not support this. It believes that to go down the path suggested by the member for Davenport is simply wrong-headed, it is already discredited, and it is a distraction from the real task.

Mr VENNING (Schubert) (11:00): I understand the member for Davenport is very keen on implementing his legislation to ban smoking, and I agree. Smoking is unhealthy, and the associated illnesses and diseases resulting from smoking place an unnecessary strain on the medical system. We support this motion and the member for Davenport—and, certainly, I do. I am surprised at the government stance of not supporting this. I cannot believe that, firstly, it does not recognise there is a problem. I am amazed when I go about my duties to see young people thinking it is groovy, hip, or whatever the term is, to smoke. I think it is a dirty, rotten, filthy habit. As I said to my children, it is habit-forming. Once you are hooked, it is very difficult to get rid of it.

According to the report regarding the cost of tobacco, alcohol and illicit drug abuse to Australian society in 2004-05, 14,901 Australians died because of smoking. Based on South Australia being 8 per cent of the population, 1,200 South Australians died from smoking in one year, and smokers took up to 60,240 hospital beds in South Australia in 2004-05. The bill seeks to make it an offence for minors (those under 18 years of age) to smoke in a public area. If enacted, any minor caught smoking in a public place will receive an expiation notice of $315, but they will not receive a criminal conviction.

Currently, there is no penalty or offence for under-age persons smoking. There is no disincentive at all. There are only offences for selling or supplying to minors. The minor commits no offence by smoking. In my own personal experience as a student, we all tried the fag behind the shed. We smoked anything we could get our hands on because we were experimenting. Young people always will do that.

The Hon. I.F. Evans: Smoking behind the shed, I think you are doing the wrong thing.

Mr VENNING: I was doing the wrong thing. Even in my college days, it was trendy when we got on the train to go home for the exeat weekends to get stuck into cigarettes. But, half way home, we got off at Bowmans and we got into the Chasers so that mum and dad did not smell it. Of course, we forgot about our clothes and they would have known. Luckily, our parents spoke about the issue and, when it came time to consider whether we were going to be smokers, we were told, 'If you continue this habit, you are going to get hooked and you are going to have it for life.' Likewise, throughout my Army days in national service, it annoyed me that every hour it was always smoko time and you knocked off and everyone else lit up. What did I do? Because I did not smoke, I just had a biscuit, or something. That is part of the problem I have now, I suppose. This is the problem of the habit in the workplace: what do you do with your hands? Recreational smoking becomes habitual and kills.

I say this to the member for Davenport: as always, he has a very good feel for the issues on the street, and I think he is dead right. I just cannot understand why the government would not support this.

The Hon. I.F. EVANS (Davenport) (11:03): I thank the member for Schubert for his personal support and I thank the government for its comments in relation to this bill, even though I disagree with them. If you want to see why the government is wrong about this particular bill, you only need to look at the first line of the government speaker's address to the house where the member said this bill seeks to criminalise the issue. Any fair reading of the bill will show that is a false statement. What this bill simply seeks to do is introduce a system of expiation notices for underage smokers for smoking in public. Is that such a radical new idea? The answer is: no. Underage drinkers can get expiation notices. Drivers who are under the age of 18 years can get expiation notices. Under 18 years olds who litter can get expiation notices. People under the age of 18 years who do not pay train, tram and bus fares can get expiation notices.

The Hon. M.J. Atkinson: What does 'expiate' mean?

The Hon. I.F. EVANS: 'Expiation' means you get fined, and then you pay the fine. It is as simple as that. The reality is this: the member for Elizabeth, quite rightly, says that 1,200—

The Hon. M.J. Atkinson: Little Para.

The Hon. I.F. EVANS: The member for Little Para, quite rightly, says that 1,200 South Australians a year die of smoking. So, for every one person who is dying on the South Australian roads, 12 are keeling over because of smoking. The government's great response to the smoking issue has been a broad strategy; and the member for Little Para, as a former minister, has taken action in relation to smoking. I congratulate her for that and I do not criticise her for that. However, I make this point: the government took the very courageous decision of banning lolly cigarettes but will not do anything about real cigarettes for minors.

It becomes an issue of personal responsibility. What message do you want to give a 15, 16 or 17 year old in relation to smoking? We give them the message in relation to drinking. If you are caught under-age drinking, you will be dealt with by the law, but we do not do it for under-age smoking. I have been in the parliament for a couple of years and we have dealt with a lot of legislation about driving down the road toll, and it has dropped from about 375 in the 1970s to 100.

So, why would the parliament be so reluctant to simply extend the system of expiation notices to smoking in a public place for minors as a way of sending a message to that group that you are 12 times more likely to die of smoking than you are in a car accident? 12 times! Every time the media says, 'There was a terrible crash today and someone was killed,' I say to myself: that is very sad and I feel for the families, but 12 people die of smoking compared to one person dying in a road accident. Every day, three people. Today, three people in South Australia will die due to smoking diseases. This bill is not a radical idea—

The Hon. L. Stevens interjecting:

The Hon. I.F. EVANS: The member for Little Para says that it is the wrong idea. Then the member for Little Para needs to explain why we have expiation notices for under-age drinking. Why is that such a wrong idea? If you send the message that under-age drinking is wrong and you will get an expiation notice or a fine, why not smoking? This is not a radical idea: this is simply sending the message to young South Australians that the parliament does not want them to be one of the 1,200 who die from smoking every year. If 1,200 people were dying from car accidents every year, the parliament, quite rightly, would be outraged.

I thank members for their comments. I understand I will lose the vote on the numbers. I think the government has made a mistake and the premise for its position is wrong: this bill does not criminalise the action.

Second reading negatived.

TOBACCO PRODUCTS REGULATION (PRESCRIBED SMOKING AGE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 June 2009. Page 3054.)

The Hon. L. STEVENS (Little Para) (11:09): I have to inform the member for Davenport that this is another bill that the government opposes. This amendment seeks to increase progressively the age at which people can smoke and purchase tobacco products, making it illegal for anyone born after 1 January 1993. The government opposes the bill. It is not an effective or practical way to achieve a reduction in smoking.

Tobacco products are a legal commodity in South Australia, as they are in the rest of Australia and almost all the world. It would be impractical for one jurisdiction to introduce this type of legislation without all other jurisdictions in Australia and generally doing likewise. Even if they did, tobacco prohibition, just like alcohol prohibition, would set off a whole range of unintended and unwanted consequences—and we all know what happened in relation to alcohol prohibition. The unfortunate fact is that, when you have drugs that are so embedded in a society, the prohibition route is just not viable. The only—

Ms Fox: Counterproductive.

The Hon. L. STEVENS: And counterproductive is the better word, thank you, member for Bright. My advice is that the only example of banning tobacco outright is in the Kingdom of Bhutan.

The Hon. A. Koutsantonis: And the Taliban.

The Hon. L. STEVENS: I do not know about the Taliban, but, anyway, I will stick to the Kingdom of Bhutan because I have been provided with some information on that. It is north of India and south of China. In December 2004, the sale and public use of tobacco was officially banned. As a consequence, a flourishing black market has arisen. There has been a sixfold mark-up on the

price of cigarettes smuggled around Bhutan, with people engaging in smuggling and criminal activity.

The World Health Organisation's Framework Convention on Tobacco Control (to which Australia is a signatory) includes measures to reduce demand for tobacco, and those measures, largely, are the ones to which I have referred in the previous debate. It focuses on the regulation of tobacco products rather than banning such products. Making tobacco progressively illegal would not only lead to a growth in the trade of illicit tobacco, thereby resulting in an increase in crime through the trading of black market tobacco, but it would also make the regulation of tobacco products more difficult—practically impossible. Regulating the contents of tobacco products would not be possible. There would be no possibility of measures to reduce the toxicity and to minimise the harms of tobacco smoking.

The proposed bill is also inconsistent with the government's approach to reducing smoking in Australia and in South Australia. The government's strategies are based on best practice evidence and comprehensive tobacco control measures, which I have mentioned before, in accordance with the National Tobacco Strategy 2004-09 and the South Australian Tobacco Control Strategy 2005-10. The formulation of these strategies has been a robust process based on examination of this best available evidence and consultation with experts in the area. Each measure fits together to create a complementary larger strategy.

If tobacco became an illegal product, it would result in greater stigmatisation of smokers and could lead to smokers being reluctant to seek support to quit smoking, which, of course, is one of the major strategies employed to control and reduce tobacco smoking. The smoking cessation support services we provide have a proven track record and have demonstrated the importance of providing smokers with counselling support services, as well as other aids to assist their quit attempt.

The proposal contained in this bill would place considerable burden on tobacco retailers. In fact, I would say it is completely unworkable. I would be very keen to hear any other comments the member might make on how he expects this to work in practice. Currently, retailers are required to ask to see identification of anyone they suspect could be under 18 years of age. This bill would require retailers to seek verification of age from a changing age range. Employers would also need to keep their staff trained in identifying an increasingly ageing group of people to whom they cannot sell tobacco products.

The government has introduced a range of measures designed to reduce smoking prevalence, particularly among young people—and I mentioned some of those before. I mentioned previously that, in January 2009, the display and promotion of tobacco products from all temporary stores was prohibited. These stores were seen as a means of selling and promoting tobacco products to young people. Earlier, in 2004, advertising was banned and a number of other measures were introduced.

Other recent initiatives include: banning the inclusion of tobacco purchases in customer loyalty and reward schemes (that was in 2008); prohibiting the display of fruit and confectionary flavoured cigarettes (which I mentioned before); and requiring all cigarette vending machines to be operated via intervention by a staff member.

The government continues to invest in effective quit smoking media campaigns. First, as I mentioned before, price signals. Pricing is known to be the most effective deterrent for taking up smoking. It is a very effective strategy. The second one is the media campaigns. These campaigns are important because they encourage smokers to think about how smoking affects their health and encourages them to quit. The campaigns also discourage non-smokers from starting to smoke. These strategies, combined with a comprehensive enforcement program and support for quit smoking services, are all part of the government's effort and, indeed, the effort of all jurisdictions in Australia.

I add that these jurisdictions, whether they have been Labor or Liberal governments, have all committed over recent years to this same set of evidence-based proven strategies for tobacco control. I think there is no doubt that this is impractical and wrongheaded and deserves no support whatsoever.

The Hon. R.B. SUCH (Fisher) (11:16): I intended to speak on the previous bill, but parliament moves so quickly these days that it caught me by surprise and the previous bill has been dealt with.

Some years ago, I put forward the proposal that, rather than going in harshly on young people, they incur only a modest expiation penalty if they refused to hand over tobacco products they had in their possession. Importantly, they would be required to attend a health awareness program so that they learned about the dangers of smoking. We have the anomaly now that young people can smoke happily outside a tobacco shop but they are not meant to buy the products inside.

One of the issues I am sure the member for Davenport seeks (apart from trying to eliminate smoking for the welfare of our people) is to have some sort of accountability in respect of this issue, particularly as it relates to young people. Whilst the percentage of people who smoke has dropped, still far too many smoke. We know that tobacco is a highly addictive substance, but I think that greater effort needs to be made to help people give it up. I have written to members of parliament whom I know smoke, and I have great—

Mrs Geraghty: And to some who don't smoke.

The Hon. R.B. SUCH: Well, it is good if they do not smoke.

Mrs Geraghty: I was greatly offended.

The Hon. R.B. SUCH: I am sorry; I did not say in my letter that you were a smoker. I suggested that if people were smokers they should try some of these registered hypnotherapists because I have been told that they work. I do not know because I have never been a smoker and have not used one. I apologise if the member thought I had the wrong target.

Mrs Geraghty: I am reformed.

The Hon. R.B. SUCH: You are a reformed smoker. I could ask the member whether she was reformed in other areas, but I will not go there. I am particularly keen that people be given the information so that they can give up smoking. It is no good to keep preaching; they feel bad anyway and know that they should not be smoking. The issue is: how do they give up the habit and stop? I am told that some of the programs (there is one in New South Wales, but I cannot recall its name at the moment) using hypnotherapy work, but not in all cases.

It is important that we talk about this issue and that we keep the message out there. It is vital to try to avoid young people taking up the habit of smoking because once they are hooked they are well and truly hooked. Anyone who has been a smoker and given it up will tell you that it is often not an easy thing to do. I know that the member for Davenport is well intentioned, and I look forward to the day when we do not see people suffering horrendously from smoking in this state.

Mr VENNING (Schubert) (11:20): I note the comments made by the member for Fisher. Again, this bill, introduced by the member for Davenport, is aimed at phasing out smoking, and it is very similar to the previous bill. It seeks to phase out smoking over 70 to 100 years by gradually increasing the age at which people can smoke, so it is not an instant measure. Again, I commend him for his endeavour to stop this insidious disease—because that is what it is or how it ends up.

The Hon. A. Koutsantonis: What about alcohol?

Mr VENNING: The minister is right. Alcohol abuse is certainly—

The Hon. A. Koutsantonis interjecting:

The ACTING SPEAKER (Mr Pengilly): Order!

Mr VENNING: Certainly, alcohol abuse is the same as cigarette abuse. Anything in moderation, and I am lucky because in my case alcohol is not as addictive as cigarette smoking—and thank goodness for that.

Mrs Geraghty interjecting:

Mr VENNING: It can be. There is no doubt about it, and I am very much aware of that. I say to anybody, whether they smoke or whether they drink: if you have to have a smoke or if you have to have a drink, you have a problem and it needs to be addressed before it is too late. So, this is a continuation of the previous bill that was defeated and the government would not support, and I am quite surprised that there was no encouragement at all.

The proposal is that people born after 1 January 1993—that is, turning 18 in 2011—will not be able to smoke. They will not receive a criminal conviction if they smoke illegally but, rather, a very simple expiation notice of $315, which is quite consistent with that. Under this system, the age when people can legally smoke increases by one year each year; in other words, it follows a

generation. You can predict what is going to happen; you can see it happening; it is not put in by stealth, it is happening.

All existing smokers can continue to smoke legally, no problem. No existing legal smoker has their right to smoke taken away. Those who are already hooked are addicted—and that includes the minister. There is no problem with his smoking; that is his right. These bills only affect future generations of smokers and not today's legal smokers. The minister, I am sure, would probably prefer not to smoke, if he could, but that is his leisure activity, it is his choice, it is a free country.

Visitors to the state have one year to comply, so it will impact on tourists and they will need to abide by the normal smoking bans. If smoking did not exist today and for the first time a business approach was applied by government to a smoking product that causes the number of deaths and diseases that smoking causes, it would not be licensed. This being the case, why should we continue to license a product for future generations? Why do we have to help people who have a self-inflicted illness?

Again, I commend the member for Davenport. The point he makes that 12 people die to every one road fatality is a very salutary point indeed. I cannot believe the government's position, particularly that of the member for Little Para, whose record on smoking is very good. I commend the bill to the house and I hope that the government will support it.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Correctional Services, Minister for Gambling, Minister for Youth, Minister for Volunteers, Minister Assisting the Minister for Multicultural Affairs) (11:23): I understand the honourable member's intent: he wishes to minimise the harm of smoking on young South Australians. That is a view which I think we all share, but the government has a very different approach to the matter. The government's approach is one of education in conjunction with regressive taxation on cigarettes—

An honourable member: You don't control taxation on cigarettes.

The Hon. A. KOUTSANTONIS: In conjunction with the federal government. However, what the member for Davenport wishes to do is to criminalise the ownership of tobacco by people born after a certain date, thereby creating two classes of citizens. This sort of prohibition has been tried by governments in the past and it has failed miserably. Progressive governments have worked out that the way to end cigarette smoking is through education programs, making sure that people are aware of the risks of smoking, and of course making it unattractive, unsociable, socially unacceptable—

Ms Fox: Smelly.

The Hon. A. KOUTSANTONIS: —smelly—and banning it in places where there is social interaction, such as restaurants and some gaming areas. It was banned in gaming areas because it was realised that there is a link between smoking and addiction to gambling, those two types of addictions are similar. So, I think what the member for Davenport is doing is well-intentioned but ill-conceived.

I think it is better to educate and make smoking so socially unacceptable that no-one chooses to do it. If these bills were to succeed, they would be almost impossible to enforce. I think the honourable member knows that and is indulging in a bit of mischief with these two bills. I find it interesting that when the federal government introduced measures to increase taxation on alcopops (which are designed to target young people specifically) to stop young people from drinking those products, it was the member for Davenport's party that opposed those measures. The Liberal Party opposed them because it is the party of free choice, as he likes to say—the party of the individual, as he always wants to lecture us—and now he is in here seeking to ban items that are legally available.

I think the member for Davenport is a little confused. He is confused about a number of issues. he is confused about whether he wants to be in this parliament and he is confused about his stance on alcohol taxation in terms of alcopops that are designed to target young Australians into drinking in larger quantities. All the evidence shows that when you mix alcohol with fizzy drinks it makes them more attractive to younger people, especially younger women. The alcohol in these drinks is almost undetectable by taste, and they consume more, yet the Liberal Party, supported by the member for Davenport, opposed the Rudd government's taxation measures, and now he comes in here and wishes to impose prohibition.

The member for Davenport, whilst well-intentioned, is playing funny buggers with us all. He would be better off supporting the government's harm minimisation programs and making smoking socially unacceptable, as I am sure he does personally. I am sure he talks to young people, because he is a very good shadow minister, someone whose worth is not really acknowledged by his own party, but I know he does a good job. However, whilst well-intentioned, these measures will not work.

The Hon. I.F. EVANS (Davenport) (11:28): I close the debate and I thank members for their comments.

Second reading negatived.

FRANCHISE CODE OF CONDUCT

Mr PICCOLO (Light) (11:31): I seek leave to move this motion in an amended form in order to correct a grammatical error in paragraph (d).

Leave granted.

Mr PICCOLO: I move:

That this house—

(a) notes that the reports of the Western Australian government, the Economic and Finance Committee of the South Australian parliament and the federal Parliamentary Joint Committee on Corporations and Financial Services into Franchising in Australia make a range of recommendations to reform the Franchise Code of Conduct;

(b) welcomes the announcement by the federal Minister for Small Business, the Hon. Dr Craig Emerson MP, that he proposes to release a paper that outlines a range of options to address concerns raised by these reports;

(c) calls on the federal minister to undertake a reform of the franchise code as a matter of urgency and such reforms should be broadly consistent with the recommendations made by the two parliamentary reports and be implemented forthwith; and

(d) while it acknowledges that reform is best undertaken at the federal level, will closely monitor the progress of action and consider state-based legislation in the absence of any real progress within a reasonable time period.

The Hon. I.F. Evans interjecting:

Mr PICCOLO: Well, it does to me; so that's why it is important. I seek the house's support for this motion. I strongly believe that the time has now come for the federal government to tackle this very important issue for both economic and justice reasons. I will seek to elaborate on why I believe the federal government needs to act by explaining each part of the motion, which I understand will receive the support of the opposition.

The issue of reform of the Franchise Code of Conduct has been addressed by three separate inquiries. One is the inquiry undertaken by the government of Western Australia, which was a ministerial inquiry; the second is an inquiry undertaken by the Economic and Finance Committee of this parliament; and, thirdly, the inquiry by the federal Parliamentary Joint Committee on Corporations and Financial Services.

Each inquiry reached similar conclusions. While all three inquiries acknowledged the importance of franchising to the Australian economy and that it is important that we do not interfere with the industry in the sense of stifling that industry, they all concluded that there were weaknesses in the current code of conduct, and that it needed to be reformed. Again, all three inquiries reached the conclusion that those weaknesses in the current code could be addressed without any significant increase in compliance costs or any negative impact on competition. Indeed, most of the inquiries concluded that it would improve competition by increasing transparency in the franchise industry and, importantly, deliver better price outcomes to consumers and, importantly, on the issue of justice, that the reforms would provide mum and dad investors with a reasonable level of protection against unscrupulous operators in the franchise industry.

As I have mentioned in this place on previous occasions, at the moment, people who can invest up to $400,000 or $500,000 in a franchise (often your typical mum and dad investors) have less protection than a person who invests $20 on the stock market, yet they can actually put their whole livelihood at risk.

The balance to be found in these inquiries and the reform can be demonstrated by looking at the various titles of the reports. The federal inquiry, for example, was entitled 'Opportunity not

Opportunism: Improving the Conduct of Australian Franchising'. Again, the report acknowledges the focus of reform on providing a level playing field; in other words, improving competition. The federal parliamentary magazine, when reporting on the federal inquiry, entitled its article 'Hook, Line and Stinker: MPs tackle franchises gone wrong'. Again, the whole emphasis on reform is to improve the industry. It is not to bog the industry down in unnecessary regulation but to have a program of reforms that improve competition and also help innovation in the industry.

Earlier this year, the federal Minister for Small Business, the Hon. Dr Craig Emerson MP, announced that he would issue an options paper which would hopefully recommend some actions to be implemented. It saddens me to say that, when that options paper was released, it was not what I thought it would be. It is really a rehash of the federal inquiry report and did not outline what options the government was looking at or possible options to be actioned, and it called for further consultation. While consultation is important, there have been three inquiries into this industry in the last 18 months, so there is not much more to be inquired into.

The importance of this motion is to communicate to the federal minister that the time for consultation and discussion is over and that it is now time to act. I receive on a regular basis emails and phone calls from people in the industry about whole chains of franchises that have collapsed and left a trail of destruction behind, and I am sure every MP in this chamber has heard a horror story about the failure of a franchising chain. I do not particularly want those today in this place, not only because it may impact a whole range of legal actions but also hurt those people the reform is trying to support.

Within my own electorate, I am aware of ongoing legal actions by franchisees against franchisors who have done the wrong thing. One of the major problems with the current code is that there is no real mechanism to address disputes.

I think the house is right to call on the federal minister to act on this matter as a matter of urgency, and such a reform should be broad and consistent with the recommendations made by the various parliamentary reports.

It is urgent because, as I said, the number of franchise chains which are failing and leaving a trail of destruction is increasing. As we go through the global financial crisis and people lose work, the worst situation would be for people to use their redundancy payments to 'buy a job'; the franchise industry likes to promote itself as a way of buying your own job. It would be a tragedy for a person not only to lose their job but also to lose their redundancy payment and savings in a franchise that has gone bad.

The focus of reform has never been on regulating the industry to protect people who make bad decisions. You cannot stop people from making poor choices, and that would be a level of regulation that would be counterproductive. It is about creating a level playing field and transparency; it is about having processes so that, when disputes occur, there is a level playing field for dispute resolution.

I want to highlight the body of evidence which now supports the need for reform. When the then minister for small business, Margaret Quirk, of the Western Australian inquiry announced the findings of those—

Mr Pengilly interjecting:

Mr PICCOLO: Not that I am aware of. When the minister announced the inquiry, she said that the franchise inquiry found that the state of franchising in WA was in good health but there was room for improvement. She outlined the need for several measures, including the improvement of disclosure and education for would-be franchisors; mandatory dispute resolution; and transparency and accountability in end-of-agreement arrangements. This inquiry did not go as far in terms of its proposed reforms as the South Australian inquiry or the federal inquiry but, to different degrees, all three inquiries made it clear that reform was required in order to ensure that we protect the industry itself from those who wish to make a fast buck and damage the industry.

The South Australian inquiry made a range of recommendations but the important ones, as I see it, were those dealing with penalties for breaching the code. For example, at the moment, there are no financial penalties if a franchisor breaches the code; however, if a franchisee breaches the code or a contract, the franchisor just closes them down. The inquiry also indicated that the dispute resolution needed to be strengthened and that the current process of mediation is quite ineffective.

Given that recent research has shown that about 30 per cent of franchisors report a dispute with their franchisee—and you could imagine that there would be level of underreporting because it is not in the interests of franchisors to report a dispute—the level of disputation is quite high. Given the mechanisms available, invariably most franchisees get the bad end of the deal because there is an imbalance in power between the franchisee and the franchisor, mainly because most franchisees have borrowed heavily to start up the business and they know they cannot outspend the franchisor in the courts to protect themselves.

One of the more contentious but equally important recommendations of both the state and federal inquiries is that the franchisees and franchisors deal with each other in good faith and fair dealing. The courts have already found that there is an implied requirement to deal in good faith and fair dealing, but it is proposed to make that quite explicit. Given that it is implied in law already, I am at a loss to understand why the Franchise Council of Australia, which generally speaks on behalf of the franchisors, is opposed to this. This proposal would create a much more level playing field, so it would certainly be supportive.

Importantly, the provision of a good faith and fair dealing provision in the code is ALP policy, and it is a policy which the now federal Labor government took to the last federal election. In fact, the policy statement announced on 24 October 2007 states that Labor supports improved franchisor disclosure, and Labor believes that the franchise code should include good faith obligations as long as the scope of this obligation is well defined. Clearly, the Labor Party has made a commitment to this sort of reform, so I am at a loss to know why the federal minister has now been viewed as dragging the chain on this reform.

The other important reform required, which would also help the industry, is that it be a requirement in any franchise agreement to detail how an agreement is terminated and under what conditions, particularly around goodwill. This would remove a lot of the disputes at the termination of a contract because, at the moment, there is no requirement to do so, and often most agreements have no provision and, therefore, disputes occur.

Interestingly, the federal inquiry's recommendations mirrored what the South Australian inquiry found. I represented our parliamentary committee at the inquiry. Recommendation 5, which is about the franchising code being amended to require franchisors to disclose (before a franchise agreement is entered into) what process will apply in determining the end of the terms of arrangements, which is very important. Again, they also highlight the need for dispute resolution mechanisms.

Also very importantly, recommendation 6 on the standard of conduct states that franchisors, franchisees and prospective franchisees shall act in good faith in relation to all aspects of a franchise agreement. One would assume that would be good practice and a good way to behave in a civil society; so, again, I am at a loss to know why both the Franchise Council of Australia opposed that and why the federal minister is reluctant to amend the code to incorporate that. Again, the federal inquiry supported the South Australian position regarding introducing penalties for breach of the code.

The reason I have brought this motion to the house's attention is because the federal report was tabled in the federal parliament on 1 December last year. While the minister has made some moves on this decision, he has not moved enough, and I think we need to send a clear message to the federal parliament and the federal minister that, in the absence of any real action to reform the code, this parliament itself will consider introducing reform at a state level.

I acknowledge that is the less desirable position but, given the choice of complete inaction versus some reform at the state level, I will certainly be supporting reform at the state level. Hopefully, I will get the support of the opposition and minor parties. I urge members of this house to support this motion.

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (11:45): I rise today to indicate the opposition's support for the motion. The member for Light and I are members of the Economic and Finance Committee, and an investigation by that committee into franchises was eye opening for me. Many of my colleagues involved in that committee had the opportunity to hear from both sides of the situation as to what is truly occurring out there. Sadly, many people invest all their money and possessions into a franchise operation but, because the code needs to be tightened up, no matter how hard they work it appears that sometimes there is not an opportunity to resolve disputes that occur.

The member for Light forewarned me about this motion some months ago. I immediately contacted the federal shadow minister for consumer services (Hon. Stephen Ciobo) to find out from a federal opposition perspective about the motion. He told me quite categorically that it is important that we support it. It is interesting that a government member in South Australia is frustrated by the slowness of developments by his own party within the federal sphere.

I know the member for Light has been heavily involved in this issue and I recognise the time he has taken, on behalf of this state's Economic and Finance Committee, to present a submission to a Western Australian inquiry and, also, to the federal inquiry.

The submissions received by the South Australian Economic and Finance Committee indicate that it is obvious there is an enormous number of sad cases out there. As a result of reading the evidence and submissions we received, it is obvious the code of conduct should be improved to ensure dispute resolution opportunities are available and information is provided (as it should be) to any intending franchisee. That should be one of the first basic concepts of how the association works.

I think it is sad that so many people have invested an enormous amount and lost it. We heard stories about the tension and issues it creates within relationships and family structures. We know that there is some level of churn within franchise operations, which is also frustrating because it appears that in those cases, where a relationship between the franchisor and franchisee does not exist, there is a focus on the profitability of the franchisor rather than the long-term viability of the franchisee.

Small business is a difficult industry in which to work. South Australia's economy is based upon it to a very large extent. Thousands of people have committed generations of effort to build up a small business opportunity. As the member for Light said, there is an increasing trend for people to buy a job when they are retrenched or receive a voluntary redundancy package from an existing work opportunity. People are using that as an opportunity to set themselves up for future; and they look at franchises as that chance. They have seen the great advertising that occurs about it and they have heard the good stories about people who have been successful. Franchising is occurring in a great diversity of areas these days.

The motion is quite sound and I confirm that the opposition supports it. We note that, because the federal opposition has spoken in support of similar efforts, it is rather frustrating that the federal government has been somewhat slow on this matter. If the federal government wanted to support more small business opportunities in Australia it would do all it could to ensure that the code of conduct which controls the relationship between the franchisee and franchisor was improved. There is an opportunity now to do it. Reports have been done in two states and federally. Let us ensure that the recommendations from all those reports are acted upon so that we get a vastly improved system in place as soon as possible.

Motion carried.

PREVENTATIVE HEALTH AGENCY

The Hon. R.B. SUCH (Fisher) (11:50): I move:

That this house congratulates the federal government on establishing the preventative health agency which will work with federal and state agencies to promote better health outcomes for all Australians.

I take the view that if a minister, irrespective of his or her party, has done or is doing good things they should be applauded. In this case it is Nicola Roxon (federal Minister for Health and Ageing) so when I congratulate the federal government I am really congratulating Nicola Roxon on what she is doing and seeking to do in relation to preventative health.

On 9 April 2008 the Hon. Nicola Roxon, Minister for Health and Ageing, established a preventative health task force which had a range of duties. I will not go into those, but the end result is that within the next week or so the minister will be introducing legislation to the federal parliament to establish a national preventative health agency, initially with administrative funding of $17.6 million and then additional money for specific advertising campaigns and other programs.

An amount of $17.6 million is literally peanuts but it is a first step and a great investment, not simply in terms of reducing the costs on our current health system for illnesses which are preventable but, more importantly, reducing the suffering of our fellow Australians.

I have been arguing for a long time that a lot more needs to be done in respect of preventative health. It is fair to say that in South Australia, under both the present government and

previous governments, efforts have been made to improve the health of people and try to ensure they have a healthy lifestyle.

Mr Pengilly: Not with this mob in the country; they've been shutting them all down on us—

The Hon. R.B. SUCH: The member for Finniss points out that country people are suffering. Country people are suffering in a lot of ways, because they do not have access to the medical services they need and they have higher rates of cancer, for example. So, I agree that in that sense that country people are not getting a fair go, and one would hope that this agency will help to address that situation.

I have mentioned in this house before that some councils—the City of Marion and the City of Onkaparinga, to name two—operate preventative health programs for their employees, including assessment for cholesterol, blood sugar, blood pressure, body mass index, nutrition score, vision screening, stress profile, back fitness, care risk rating and cardiac risk rating. That is a fantastic initiative by local government, and it is funded through the Local Government Association Workers Compensation Scheme.

Other employers are doing good things. The ANZ Bank, Foster's brewery and the Victorian police also conduct workplace health checks. I recently spoke to our police commissioner and I asked him whether the police here receive in situ workplace checks. He said that they cannot afford to check all employees but they are trying to do that for some of them. I think that every government employee (and, indeed, private employees) should have the opportunity for what is a fundamental aspect of preventative health, and that is an in situ workplace assessment. Not only will it save lives and trauma but it will also save dollars at the end of the day.

Indeed, a recent study by Wesley Corporate Health found that if you reduce health risk factors by 2.9 per cent per employee in an organisation of 1,000 employees on an average salary of $50,000 a year, the productivity gains for that organisation would be equivalent to $3.48 million per year. If one looks at the situation for Australians in terms of their health, over one million Australians have diabetes but half do not even know that they have it, and over two million are at risk of developing diabetes. A health check was carried out on employees at the Abbotsford brewery in Melbourne (all of which were men, because of the nature of that industry, but that will change over time) and 35 per cent had high blood pressure, 10 per cent had high cholesterol, 11 per cent had mental health issues and 6 per cent had a high blood glucose reading.

If one looks at a study in any area of the population, one will find statistics that are quite alarming and, as I said before, the statistics are often worse for country people. What the federal agency can do (and, obviously, it is not the total answer, and no-one is suggesting it is) is make people aware of some of the risk factors leading to some of those illnesses to which I referred and also reduce, in some cases, the likelihood of people getting some of the cancers, of which there are many different types. The federal agency will be targeting, amongst other things, excessive alcohol consumption, obesity, the need for exercise—all the usual things—and will be promoting healthy eating and all of those related aspects.

At the local level, this week I had informal discussions with the minister responsible for work safety and the Minister for Health to see whether here the charter, if you like, of WorkSafe could include an educational focus on home safety, because the cost to our hospital system and medical system as a result of injuries and other activities in the home is enormous.

If we look at things such as do-it-yourself activities, at the moment people can go into one of the large hardware stores and buy a motorised chainsaw for $129. I know of two people who have had their throat cut and died as a result of inappropriate use of a chainsaw in a domestic situation, working around the home and unwisely cutting above their head. The chainsaw comes down and cuts their throat and that is the end of them. Another example is large angle grinders. A nine inch angle grinder is an incredibly dangerous tool. Employees at some workplaces are not allowed to use them now; they have been replaced by a reciprocating saw. However, do-it-yourself Joe Bloggs can go to Bunnings today and buy one for less than $100. A nine inch angle grinder will take off your leg in two seconds.

The point is that it is not only things like that. It is also children being scalded in the home and children drinking poisons. People have ladders at home that are dangerous—and one of our former colleagues has suffered significantly as a result of falling from a ladder. When people told me of his situation and what happened to him, the inference was that he had fallen from a two-storey building. However, he had fallen from only part-way up a ladder. Because of the way he

fell, he snapped his leg and landed in the compost heap. His leg became infected and had to be amputated. His suffering is enormous, as is the cost to the medical system.

What I am saying is that, in terms of preventative health, we have to go beyond simply the conventional focus, and I am pleased by the initial reaction of the Hon. Paul Caica and the Hon. John Hill in relation to exploring this avenue of extending the charter of, say, SafeWork SA—not to be inspectorial or to have penalties but to educate people about risks to themselves and children and slippery bathroom floors, and so on, for the elderly in the domestic setting.

Some of the simple things that can be done in terms of preventative health would be to reduce the amount of salt, sugar and saturated fat in takeaway foods. On Monday night I was at the launch of Prostate Cancer Awareness for the month of September, at which the Premier officiated. I was talking to one of the female professors of medicine at the Adelaide University and she was telling me the amount of salt in what we eat is ridiculously high and quite unnecessary.

Other things such as proper labelling could help. We still do not have adequate labelling. If you go into a bakery you have no idea what they put in the product, and they do not have to tell you. You are sold things in Australia which, in other countries, are not allowed to be sold in terms of additives, and so on. It is only recently that one of the manufacturers of children's lollies has decided, after many years, that in Australia they will not use the artificial colourings that have been banned for a long time in the United Kingdom. So, there are a lot of things that can be done.

I mentioned before in situ workplace screening. I think it should happen in this place, also. We do it in a limited way in terms of flu injections, but we could go a lot further. I think the whole of the Public Service and large corporations should be doing it as well. I would like to see a return to regular health screening in the school environment. It used to happen and it is a good way of picking up problems. You do it, obviously, with regard to privacy and no embarrassment. Issues such as whether the spine is developing properly and whether the child is showing indications of mental illness (particularly at the secondary school level) all can be picked up. Some people say it is a big expense for picking up a few people who might have scoliosis, or some other thing, but I argue that it is effective.

We have a similar debate currently that young women should not get ready access to breast screening because the incidence of breast cancer is low amongst young women, and likewise with some cancers in young men. Apart from that being a pretty callous approach, it is important that we pick up these things early because, if you pick them up early, you can nearly always treat them much more effectively and, in some cases, you can cure them.

So, I am absolutely thrilled that the federal minister, Nicola Roxon, is doing this. The bill she has had developed, hopefully, will be introduced within the next week or so, as I indicated earlier. I would have thought you do not have to be a medical expert to realise that, if you can tackle some of these issues early on, you are less likely to have enormous pain, suffering and cost later in the health system. A lot of what happens in our hospitals and the costs imposed are preventable. What we will see in the very near future with the national preventative health agency is a small step, but I would like to see a situation where we see the fruits of that reflected in, importantly, less pain and suffering to people but, also importantly, less cost to the hospital system.

We cannot keep going with this open-ended approach to hospital and medical expenses and just say, 'Whatever the demand, we are going to meet it.' We cannot keep doing that. We have to tackle things at the front end, get people living in a healthy way, getting proper assessment, going to see their GP early on and getting children screened.

An initiative that the Hon. Lea Stevens brought in, which I commend her for, is the home-based visit for newborns, but I think that needs to be extended to two year olds, three year olds, and so on. If you get onto these things early, which is what preventative health is about, you can change outcomes and people's lives.

I was chatting to the head of one of our important government agencies, and I will not name him, and I asked, 'Do you have all your employees checked health-wise?' and he said, 'No,' and he had not been to a doctor for, I think, 30 years. That is tempting fate, and I know of too many sad cases where things have been picked up too late, for instance, cases of breast cancer. A guy living near me got onto a prostate cancer issue too late and he ended up committing suicide by driving into a truck near Murray Bridge and that truck driver has never worked since. That is the consequence of a failure to get onto issues early.

So, I commend what the federal minister Nicola Roxon is doing. I welcome the initiative of this national preventative health agency, and look forward to Australians having better health outcomes as a result.

Ms BEDFORD (Florey) (12:05): In light of my contribution yesterday extolling the virtues of broccoli, it will be no surprise to the house that I rise to support the honourable member's motion. The South Australian Health Care Plan recognises the importance of prevention of illness in order to improve the health of all South Australians, particularly those with the poorest health outcomes.

Ms Chapman: Watch out, Bob: you are going to have to eat broccoli. We will have to pass a private member's bill to make it compulsory for breakfast.

Ms BEDFORD: And this chamber is green: it is a very spooky place for me. Much of the burden of disease is preventable—conditions such as diabetes, cardiovascular disease, certain cancers and high blood pressure; and other common risk factors, including smoking, poor diet, physical inactivity, excess weight and alcohol misuse.

The National Partnership Agreement on Preventative Health involves an allocation by the Australian government of $448.1 million over four years and $872.1 million over six years from 2009-10 for 11 subprograms of activity. This includes major investment in supporting healthy children and healthy workers; extending to the Measure Up social marketing campaign and the national tobacco campaign; funding community programs for non-working adults; and conducting a national risk factor survey. Our South Australian allocation for healthy children will assist the rollout of the OPAL initiative to up to 20 communities.

One important new component is the allocation of $17.6 million for the establishment of the Australian national preventative health agency, which will:

- have responsibility for providing evidence-based policy advice to health and other ministers interested in preventative health;
- be tasked with administering social marketing programs and other national preventative health programs which it may be tasked with by health ministers;
- be responsible for overseeing surveillance and research activities of a national nature; and
- have responsibility for stakeholder consultation.

With the growth of effort in prevention, there is an important role for this type of national preventative agency that can support all jurisdictions to implement effective prevention-related policies and programs and, importantly, ensure that jurisdictions do not duplicate effort in research, data collection, social marketing and other prevention programs.

In running the national social marketing program, the agency will be able to implement campaigns without some of the delays incurred through government approval processes. The agency will also have a research funding pool of $13 million to commission or support research on key topics and to meet gaps in our knowledge. It will also be responsible for a workforce audit and workforce planning. Just as we need to plan for ensuring we have doctors and nurses to meet health care needs, we need to ensure we have sufficient numbers of types of workers in the right locations to support individuals and communities to promote good health and to prevent chronic disease.

Prevention requires efforts by a range of sectors and this agency is charged with the responsibility to provide independent advice to health ministers and other ministers with a role to improving health and wellbeing, such as education, sport and recreation, transport and local government ministers. In particular, the challenge posed by obesity to mobilise stakeholders and resources across jurisdictions, across portfolios within jurisdictions, and across the community and industry sectors, suggest the need for a new mechanism in commonwealth-state coordination.

The agency will assist all jurisdictional ministers in providing strategic leadership of the preventative health agenda, translating broad policy intent into evidence-based strategies and leveraging policy and practice changes such as through national companies that can support staff to be healthy and improve productivity at the same time. It should also assist in the implementation of interventions which are best delivered on a national capacity such as national risk factor surveys. It will complement our efforts in South Australia rather than duplicating them. The agency will:

- be an independent statutory authority under its own enabling legislation and conforming with the Financial Management and Accountability Act 1997;
- have a chief executive officer and an advisory council appointed by the commonwealth Minister for Health and Ageing, consulting with the AHMC;
- task under triennial strategic and annual operating plans prepared by the CEO consulting with the advisory council and agreed by the AHMC; and
- report to the AHMC on strategic matters and to the Australian government ministers on financial matters.

All in all, it is a marvellous initiative. I am sure everyone in this house commends it.

As broccoli is the first of at least 20 vegetables that will be served up in a super capacity, we can only look forward to improved health outcomes not only by people eating the super broccoli but by the awareness program that super broccoli will trigger in all forms of eating vegetables and fruit. So, the 2&5 program will receive a fillip from this as well. We commend the member and the motion.

Motion carried.

Mr VENNING: Madam Deputy Speaker, I draw your attention to the state of the house.

A quorum having been formed:

GENEVA CONVENTIONS

Adjourned debate on the motion of Hon. M.J. Atkinson:

That this house—

(a) notes the 60th anniversary of the Four Geneva Conventions of 1949;

(b) congratulates the International Red Cross and Red Crescent Movement on its continuous fostering of the principles of international humanitarian law to limit human suffering in times of armed conflict and to prevent atrocities, especially against civilian populations, the wounded and prisoners of war;

(c) recalls Australia's ratification of the conventions and of the two additional protocols of 1977;

(d) affirms all parliamentary measures taken in support of such ratification at the national level with cross-party support;

(e) encourages the fullest implementation of the conventions and additional protocols by the military forces and civilian organisations of all nations;

(f) encourages ratification by all nations of the conventions and additional protocols;

(g) notes that Red Cross was formed in Australia in 1914 and that Australian Red Cross is represented on the governing board of the International Federation of Red Cross and Red Crescent societies; and

(h) recognises the extraordinary contribution made by many individual Australians, including Australian Red Cross members, volunteers and staff in the state of South Australia, for the practical carrying into effect of the humanitarian ideals and legal principles expressed in the conventions and additional protocols.

(Continued from 16 July 2009. Page 3595.)

Ms CICCARELLO (Norwood) (12:13): I support the motion put forward by the Attorney-General. Victor Hugo once said: 'Greater than the tread of mighty armies is an idea whose time has come.' And the power of the great idea was no more evident than on 24 June 1859 (150 years ago) when a single man witnessed the carnage near the town of Solferino between the Franco-Sardinian and Austrian forces during the Italian War of Unification. It appalled but ultimately inspired Henry Dunant to publish a slim volume entitled 'A memory of Solferino'. In it, he described the battle, the devastation and the futile efforts of the few helpers on hand, including himself, who strove to aid the suffering.

However, it was the two fundamental questions that he posed at the end of his book that would enshrine his legacy for generations to come. Henry Dunant's first question asked:

Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers?

His second asked:

Would it not be desirable...to formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in the different European countries?

The answers to these questions were, respectively yes and yes. The Red Cross and the Geneva conventions were born. Today, as we celebrate and honour these two great icons that embody the true spirit of humanitarianism and helping others, we should never forget the idea of a man who wanted to make a difference and the lives of so many millions needlessly lost under the march of mighty armies.

Last month marked the 60th anniversary of the Four Geneva Conventions, which were last revised in 1949 but the origins of which go back almost a century earlier. As I previously mentioned, the genesis of these conventions was *A Memory of Solferino*. One year after its publication, a prominent citizen named Gustave Moynier, who also happened to be chairman of the Geneva Public Welfare Society, showed Dunant's book to his colleagues. Appalled by what they read, they immediately established a five member committee called the International Committee for Relief to the Wounded to study in depth the proposals that Dunant had put forward.

This committee met for the first time on 17 February 1863. Six months later, the international committee convened a conference in Geneva, which adopted the 10 resolutions which made provision, inter alia, for the establishment of societies for relief to wounded soldiers. Realising, however, that resolutions were not enough and did not actually legally bind any country, the committee convened a diplomatic conference the following year to hopefully formalise legal obligations.

On 22 August 1864, 12 countries signed the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The convention also provided for the first official recognition of the Red Cross symbol as a means of identifying persons and equipment covered by the agreement. This marked the beginning of modern international humanitarian law and the formal role of the Red Cross on the global stage.

Time constrains me from detailing the rich history of the conventions and their passage through further diplomatic conferences and arduous negotiations to where we are today, 60 years after the adoption of what are now known as the Four Geneva Conventions. But, in short, the experience of history and, in particular, the two world wars and the rapidly changing strategy of battle, led to the necessity for the original convention to be revised and ultimately expanded so as to encompass these changes. On 12 August 1949, the following conventions were approved:

- One—for the amelioration of the condition of the wounded and sick in armed forces in the field;
- Two—for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea;
- Three—relative to the treatment of prisoners of war; and
- Four—relative to the protection of civilian persons in time of war.

The significance and value of these conventions is certainly now recognised worldwide as being integral as the backbone of international humanitarian law. Australia signed the conventions in 1950 and ratified them on 14 October 1958, enacting the Geneva Conventions Act 1957 to duly incorporate them into domestic law. In 2006, the last two countries, Nauru and Montenegro, brought the total that had signed to 194. This was a historic achievement and the first time in modern history that an international treaty had been signed by all states.

In addition to the Four Geneva Conventions, two additional amendment protocols were adopted in 1977 dealing with the protection of victims of international and non-international armed conflicts. I am pleased that Australia signed these the following year and ratified them in 1991. A further protocol was passed in 2005 relating to the adoption of an additional distinctive emblem, the red crescent. Australia signed this in 2006 and recently passed the Defence Legislation (Miscellaneous Amendments) Act 2009 to implement it. I understand that ratification of this third protocol is imminent.

I applaud Australia for being a party to the four conventions and the three additional protocols. We have always been a strong advocate of justice and human rights, and our reputation on the world stage as a leader in these pursuits is unquestioned. However, I note that more than

30 countries are yet to ratify the 1977 protocols and more than 150 yet to do so for the 2005 protocol. I urge these countries to ratify them as soon as possible.

Universal application of the protocols and, consequently, a uniform understanding of how civilians and combatants throughout the world must be treated in times of war and occupation, is a goal to which the world must aspire. Symbiotic with the history of the Geneva Convention is, of course, the Red Cross. In fact, as I indicated earlier, the beginning of the Red Cross actually predates the conventions.

It is truly inspiring to reflect upon the fact that a simple idea forged in the chaotic aftermath of Solferino, an idea that began as a rudimentary five member committee, has now become an unstoppable force of aid and compassion throughout the world. History is truly a mirror of what a vision can achieve when it is backed by compassion and determination for what probably seemed an unattainable pipedream 136 years ago and is now the International Red Cross and Red Crescent movement. And what a movement it has evolved into: 186 national societies; 100 million volunteers worldwide; 60,000 volunteers in Australia; and a peerless reputation for providing help to those in need.

It is important also to note that the movement has evolved from an organisation dealing principally with wartime situations into one which now also strives to improve the situation of all vulnerable people throughout the world. This includes giving assistance to victims of natural and technological disasters to refugees and in health emergencies. This peacetime humanitarian assistance is coordinated by the International Federation of Red Cross and Red Crescent Societies, of which Australia is a proud and deserving member.

Australia has a long and rich history with the Red Cross. The Australian Red Cross was founded on 13 August 1914 (as a branch of the British Red Cross in accordance with the 1906 conventions) by Lady Helen Munro-Ferguson, the wife of the then governor-general. In 1928 it was recognised by the international committee as a part of the movement, but it took until 1941 to make it truly independent, when it was incorporated as a society by royal charter, making it no longer a branch of the British Red Cross.

Whatever its status throughout those years, the Australian Red Cross quickly asserted itself in making a real difference internationally and here at home. On the world stage, the Australian Red Cross supports its overseas counterparts in disaster management and development, emergency relief, overseas aid and the promotion of the principles of the Geneva Conventions.

One only has to look at the Australian Red Cross website (under the category of 'operations by countries') to witness the enormous list of projects that it is committed to and actively involved in. The work that the Red Cross does overseas is truly inspirational, and I wonder how many people are aware that it was the recipient of the 1987 United Nations Peace Messenger Award.

At home, its list of activities is just as impressive. It would take me hours to detail all the activities of the Australian Red Cross, but a few of these are as follows: more than 60 local community services across Australia; disaster and emergency relief; programs supporting indigenous communities; the international tracing, refugee and asylum seeker services; and perhaps its most well known program, the Red Cross Australian Blood Service.

This year marks the 80th anniversary of the first Australian Red Cross Blood Service, which was founded in Victoria by Dr Lucy Bryce and, as this year is also the Year of the Blood Donor, it is fitting for me to say a few words about this incredible service. As an ambassador for the Red Cross Australian Blood Service, I, together with 514,000 other Australian donors, know all too well how important it is to give blood. I recently gave my 100th blood donation and was enormously satisfied when I realised that I had been part of saving the lives of at least 300 people and had contributed to the making up of 2,000 different life saving products.

The statistics in Australia are sobering. One in three of you will need blood at some stage of your life, yet only one in 30 of you will ever give blood. The discrepancy is obvious even now and, as our population expands and grows ever older, that chasm will only yawn wider. It is imperative, therefore, that we get the message out there and encourage as many people as we can to become active blood donors.

The Australian Red Cross is a wonderful organisation. At the risk of sounding somewhat sappy, I am enormously proud to be a part of it in my own small way. I would like to thank the many Australians who make the Red Cross what it is today.

Ms CHAPMAN (Bragg) (12:23): In June this year the Australian Red Cross forwarded information to a number of parliaments in Australia about the 60th anniversary this year of the signing of the Geneva Conventions. Consistent with that, the opposition indicates its support for the motion.

The Attorney and the then shadow attorney received a request from the Australian Red Cross to join in the celebrations and, in recognition of this important event, to support a motion in our parliament. I understand this is happening at the national level and in other state jurisdictions, and I expect that it will have unanimous support across the country. So, it is with pleasure that I indicate that this measure will be supported by the opposition.

Truly great men and women have served in this organisation. In Australia, I think of the late Lady Elizabeth Wilson, formerly Elizabeth Bonython, who was, I think, a state president here for many years, possibly even decades. She was a very strong believer in the importance of community contribution, everything from blood donation, as the member for Norwood has referred to, to other services within our community.

However, today we celebrate, at the international level, the signing of the Geneva Conventions and the additional protocols of 1977 updating the Geneva Conventions. The four treaties cover the amelioration of the condition of the wounded and sick armed forces in the field; the amelioration of the wounded and sick and shipwrecked members of armed forces at sea; the treatment of prisoners of war; and, fourthly, the protection of civilian persons in time of war.

Only a few years ago, I attended one of the events sponsored by the Australian Red Cross. As I recall, information was provided to us about the civilian casualties of war. During World War I (the Great War, as it is described), between 1914 and 1918, there was enormous carnage, particularly of the sons of Australia, but only 5 per cent of casualties were civilians. The information we received progressed through to World War II, the Korean War and the Vietnam War. By the time we got to the Vietnam War, the civilian casualties in war was something like 50 per cent. As we progressed further, we got to the war in Rwanda, where civilians made up over 90 per cent of the casualties in that war.

The profile of the victims of war, in the sense of those who died, has very significantly changed over the last 100 years. Arguably, one of the safest positions to be in during a war is to be a member of an armed force, as distinct from civilians in the sense of the percentage of causalities. However, that does not in any way diminish the fact that those members of the armed services serving in areas of armed conflict are fighting for their life and our freedom and security.

The point I want to make today is that it has become increasingly important that Australia is and remains a participant in the Geneva Convention, because so often civilians are caught up in a war. Civilians are not only killed but can be victims of torture, imprisonment and abuse. There have been war crimes against women, particularly civilian women.

I think back to the recent conflict between Serbia and Croatia and the disgraceful stories that came out of that conflict in respect of women, as were subsequently confirmed by the trials, who were deliberately raped and impregnated by soldiers of the other side, so that it forced these women to bear children who were fathered by soldiers from the other side. This is the type of event that we need to make sure does not happen, that we protect civilians during wartime and ensure that we act responsibly to protect them. That is the purpose of our celebrating this anniversary and recognising the importance of being involved in this.

I recently had the privilege of attending an address by the Hon. Robert Hill, who has served in the Australian parliament as the minister for defence, and in other portfolios. He has more recently returned to Australia after three years of service as Australia's delegate to the United Nations. He provided an update about what is happening there, and one of the most encouraging things that he reported to those gathered was that the International Criminal Court, which is the second phase of these conventions, will not only set out the rules but will also provide a structure that will ensure their enforcement.

It is important that countries not only sign up to these conventions, but also that they ensure they provide funding, support and commitment to what the rules are; and they must follow through to ensure that there is enforcement, policing of and prosecution of those in the international

community, who not only breach their obligations but fail to act in a humanitarian way. This is terribly important because we can have all the rules in the world but it is not much good unless they are enforced.

Sadly, one of the great criticisms of the efforts of the international community, who are willing to sign up to commitment, is that there are so many other countries that are blatantly abusing their own civilians that refuse to sign up and refuse to participate in the protection of those who are the subject of these conventions. It is concerning that there are so many who are not prepared to sign up. This is always the big international dilemma as to how these countries are brought to heel and, flowing from that, is the very difficult question internationally for good countries who protect their civilians and whether they should intervene in the domestic affairs of other countries.

We always have this vexed situation. I can remember, as many members would, America being under severe criticism for failing to act to protect the people of Rwanda when their civilians were slaughtered in the most disgusting manner. It was probably one of the very early genocides that we started to see on our screens. John Howard, former prime minister, was criticised by some when he said that he would not accept what was happening in Timor when he took Australian defence forces into that region to ensure that the people of Timor were freed.

It does not seem to matter what countries do or do not do; they will always be criticised by some. What is important in this motion is that we recognise our support and commend the Australian Red Cross for being such an ardent supporter of the protection of civilians. Also, we must reinforce the need to sign up and the need to enforce protections, and the fact that they action their commitment under the banner of the power of humanity in the work that they do every day.

I commend the motion to the house and I indicate the opposition's support for those who work so hard internationally to protect those in the world who cannot protect themselves. They do more than just sign up to this convention; they are a strong and courageous player in enforcement of humanitarian protections across the world.

Mr KENYON (Newland) (12:34): I rise to support the motion because I cannot see how it would be possible to oppose it. The Red Cross—as many members, including the members for Norwood and Bragg have pointed out—is a particularly good and useful organisation. It has a long history of humanitarian assistance and, as the member for Bragg has stated, assistance to civilians—not just in times of war, and I will come to that later.

The first time I heard about the Red Cross was after the 1983 Ash Wednesday bushfires, when they flooded the Hills area where I lived and took over the behind-the-scenes operation of keeping people moving and hydrated with water, tea, sandwiches and the like—the logistics of keeping firefighters fighting fires. A large part in that was played by the Red Cross and continues to be played by the Red Cross.

In fact, it is getting more professional. It has units set up to do it. It is a very effective organisation in its civil defence role in terms of supporting those involved in civil defence. Again, it was the same in the Victorian fires this year. We saw the role the Red Cross played in those fires. My cousins, who live in Kilmore near where the Kilmore East fire started, visited last weekend and explained the role the Red Cross played in providing food and water and rest to firefighters who were bone weary as a result of 12 hour shifts. Often they were quite distressed after being involved in some of the scenes and with some of the trauma. At the time the Red Cross catered for not only their physical needs but also the emotional and mental needs of the firefighters.

It has raised huge amounts of money in an ongoing effort which has continued until now. It raised huge amounts of money after the bushfires, and it has been involved in earthquake zones around the world. It was one of the biggest organisations involved in reconstruction in Indonesia and on large chunks of the Indian Ocean after the Boxing Day tsunami in 2005.

I recently read a book about the Battle of Fromelles in 1916 on the Western Front. Australians were involved in a battle against the Germans. There was a diversionary attack and Australia suffered severe casualties. Of course, the story is about a man who was trying to track down the bodies of people who had been buried but whose names had not been recorded anywhere—so they thought—certainly not by the Australian military or the Commonwealth War Graves Commission.

This man (whose name I cannot remember) had been trying to track down the names and eventually he found these records. They were a combination of German war records and Red Cross records in Geneva. Since 1916 they had managed to maintain records (where they could) of who had died, names and locations of where they were buried. It was an amazing thing. After almost 95 years the Red Cross is continuing to play a role in events that occurred so long ago.

Of course, during the First World War and the Second World War the Red Cross was the trusted third party, the neutral party that would exchange information between countries. A country that had taken captives would provide the names to the Red Cross and the Red Cross would provide them to the opposing country. It is a role that it has been trusted to play for a very long time—and, of course, continues to play today.

The member for Bragg pointed out the changing nature of warfare and its increasing impact on civilians. In some ways one could say—not maliciously—that the Red Cross is fighting a losing battle in its efforts to protect civilians in the changing nature of war. It is becoming far less civilised. There are fewer rules and more 'anything goes', and one could make the case that the Red Cross is fighting a losing battle.

The key issue is not how it is but how it could be if the Red Cross was not there. That is an interesting question. All members in this chamber would agree that the fate of a massive number of civilians would be infinitely worse without the existence and actions of the Red Cross.

The member for Bragg made some interesting points about civilians. I think I agree with her (if I have understood her correctly), in that there is less of a willingness, particularly with respect to western nations, to involve themselves in the protection of individuals, particularly civilians and the area of human rights. In my view (and I may be somewhat biased) western European nations, in particular, are more and more unwilling to play any sort of role in the protection of civilians, especially when there is the potential for their soldiers or their nationals to be killed or wounded in the process.

It is slightly ironic that that is the case, because Western Europe is one of the biggest beneficiaries of the willingness of the United States, in particular, but also England and other countries, to sacrifice their men and women in pursuit of its freedom and liberty. It always slightly gets up my nose to see the very restrictive rules of engagement imposed upon NATO troops—European troops—in places such as Afghanistan. They are not prepared to send combat troops or to protect in any meaningful way civilian lives if it looks like they may suffer casualties in the process.

They have reasons for that, and it is really a decision for them to make. However, I cannot help but observe (and I think I am agreeing with the member for Bragg) that a lot of countries could be pulling their weight more with respect to the protection of civilian lives to contribute to achieving the objectives of the Red Cross—and, really, they are objectives that all of us would share. They could be doing more and they are not, and they choose continuously not to do so. At the same time, they are large beneficiaries of people's willingness to make the sacrifices necessary to ensure that they received those things.

I have strayed somewhat from the Red Cross, but it is easy to say that the Red Cross is the embodiment of what we hope will be recognised—that perhaps war and conflict is an unavoidable part of human existence (it has been with us as long as we have been around), but we must try to ensure that it is carried out in such a way (and this is going against the very nature of war, I suppose) that causes the least amount of damage and that the point of the exercise to settle some argument, or whatever it is, is that it be carried out in a way that does not leave us unable to recover.

As this century, in particular, has gone on that as become a much more difficult job for the Red Cross to do, and it still continues to do it admirably. It is still doing as much as it can. It is still rallying behind Geneva conventions and trying to amend Geneva conventions. Someone needs to do that and, in this case, it is the Red Cross. This motion by the Attorney-General is an excellent opportunity for us to reflect on the fact that someone needs to be doing it, and we should support those who are doing it. Quite clearly, the Red Cross is doing it, and we should support it. I certainly support it, as does, I think, this house.

Ms SIMMONS (Morialta) (12:43): I also rise in support of this motion. I think it is a particularly important motion that has been moved in this house and I cannot understand why anyone would not support it. The work that the International Red Cross and Red Crescent movement do is phenomenal. It is the world's largest humanitarian network.

The fact that the movement is neutral and impartial and provides protection and assistance to people affected by disasters and conflicts is well known throughout the world. I think it is this neutrality and impartiality that has made it so well respected throughout the world: everywhere you go it is held in the highest esteem.

The movement is made up of almost 97 million volunteers, supporters and staff in 186 countries. We in South Australia pride ourselves as being the state with the most volunteers, and I know that quite a lot of our volunteers in this state volunteer locally for our Red Cross here in South Australia (and I will talk a bit more about that later on).

The Red Cross movement is made up of three main components, which are the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, and the 186 member Red Cross and Red Crescent societies. It is the fact that they make partnerships that is important. As partners, the different members of the movement support communities in becoming stronger and safer through a variety of development projects and humanitarian activities.

They concentrate on working with those communities so that they can take control when they are more stable and can help themselves. We know from long experience that communities are much more likely to be self-sustaining and able to pick up from where they were before a disaster struck if they are involved in becoming stronger and safer themselves. The movement also works in cooperation with governments, donors and other aid organisations to assist vulnerable people around the world.

One of the things that they are probably most famous for is their disaster management and responding to disasters, as has been said by previous speakers. They work when a disaster impacts on entire communities. The immediate effects often include loss of life and damage to property—and also infrastructure, which is sometimes an element of these disasters that is forgotten, but it is very hard to get aid to people when infrastructure has been damaged. When roads no longer exist, bridges have fallen down in floods or earthquakes have totally disrupted rail and road facilities, trucks and lorries cannot get the aid that is required to communities. They have expertise, in particular, for laying down temporary roads which can then be used by these trucks.

We often see on the TV their work with the survivors, some of whom may have been injured in a disaster, but also those who are totally traumatised by their experience and that period of uncertainty of what the future holds for them. They may have no home, children may have no school, and the hospital may be damaged or overrun, and they cannot see how this period in their lives is going to end. The trauma of those disasters is such that people lose hope. They lose the vision to be able to see what is going to happen in their lives after the immediate disaster has gone.

The Red Cross and Red Crescent societies are particularly skilled in helping people, both practically and philosophically, during those periods of their life. People during that time find themselves extremely vulnerable and are not able to provide for their own welfare in the short term, and that makes them realise their own vulnerability even more. The practical help that Red Cross and Red Crescent are able to give during that time sees people through that immediate trauma until they can get back on their feet themselves.

Often people are left without adequate shelter, food, water and other necessities to sustain life. Rapid action is required if further loss of life is to be prevented. In particular, we know that, once a water supply has been damaged by some sort of disaster, disease follows very quickly, and if we are to prevent even further loss of life because of waterborne diseases then it is really important for the Red Cross or Red Crescent volunteers to get into the area and change the situation as quickly as possible, particularly when dealing with the water supply.

Because they are so respected worldwide, they are able to mobilise resources, and resources are often people, as well as money and other assets. Many Red Cross volunteers are continually on call. They live in their homes and get on with their own jobs, but they have specific skills which, during periods of crisis, come to the fore and they are mobilised quickly to a disaster area by the Red Cross. It is using this network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met that is the true strength of the Red Cross in international disaster situations.

We know that the social, economic and political consequences of disasters are frequently extremely complex. For instance, the disaster may disrupt vital community self-help networks, further increasing these people's vulnerability. They disrupt markets over a wide area, reducing the availability of food and opportunities for income generation. They also destroy essential health

infrastructure such as hospitals, resulting in a lack of emergency and longer term medical care for the affected population. When you have a situation such as earthquakes, as we recently had in Italy, it is the aftershock that is often even more terrifying for the community involved.

I will also say a few words about local Red Cross activities, because they are very good at modernising themselves and bringing themselves up to date with what is occurring. For example, at Schoolies Week in Victor Harbor, they have a save-a-mate organisation whereby they train young people to look after other young people in what might be a very vulnerable circumstance. During the heatwave, which we had earlier in the year, it was the Red Cross which made thousands of phone calls to vulnerable people in our community in South Australia and which checked that they were all right and provided services for those who were perceived to be suffering extremely from the unseasonable weather conditions. I think the house will join with me in congratulating the work of this important organisation both locally and internationally.

Ms BEDFORD (Florey) (12:54): I, too, along with everyone, I am sure, commend this motion to the house. I see in the body of the motion that the Australian Red Cross was formed in 1914—of course, at the time of the First World War. It reminded me that a South Australian woman whom I am researching and who has played a great role in many important social justice issues, Muriel Matters, was involved in taking a delegation of women from London to a peace conference at which she spoke passionately about the importance of world peace. I think this is a term that is bandied around a lot, but the actual implication of world peace is something on which we should keep our mind and address as often as we can.

It is perhaps not as well known that in her later life Muriel was still speaking about world peace at the time of the nuclear bombs at the end of the Second World War, which is of course around the time when the Geneva Conventions we are talking about were introduced. The notion of these terrible conflicts is still with us and was the topic of her paper, The False Mysticism of War, in which she elaborated on the futility of war and the damage and destruction it causes to so many people, and this is another area in which Red Cross plays such an important and vital role.

In any conflict, Red Cross is perhaps the first group of people to go behind the war front. In another quite remarkable coincidence, one of the few examples of Muriel Matters' handwriting is a poignant letter to the British Red Cross thanking it for locating the body of her brother, Charles, who died at Gallipoli in August just after the landing.

As the member for Newland mentioned, these sorts of war records have played a prominent role in settling the concerns of families who did not know where their loved ones ended up, and we saw an example in Adelaide this week with the funeral of Flying Officer Michael Herbert. His family would have written to the Red Cross, amongst many other organisations, when he was first lost in action, and we know the importance of knowing what has happened to your loved ones in theatres of war.

Amongst the capacity building functions of the Red Cross is the importance of highlighting gender issues when managing programs, ensuring that the social and biological differences between men and women are taken into account and dealt with in their core programs. We all know the terrible harm that comes to women in warfare when they are raped, and the problems they encounter for the rest of their life as result of such atrocities are never-ending. The Red Cross plays a very important part in that, too.

Locally, in our electorate we have a branch of the Red Cross Blood Bank. As we know, there is never enough blood or blood by-products around, and everyone who can should become a blood donor and donate blood as often as possible. Mrs Jean Tilley ran our local branch of the Red Cross for many years. She was a tireless worker and always ensured that large groups of people went out for the annual Red Cross Calling collection. It was too hard to say no to June, so everybody I knew collected for her. It was a very important part of our social fabric each year to be involved in the Red Cross Calling.

Sadly, it looks as though the role of the International Red Cross will continue to become more important as we see no end to conflicts around the world. We know the enormous damage being inflicted on civilians in current theatres of war, and we know, too, that the Red Cross is operating in places where there is civil unrest, and it is working very hard to ensure that people involved have basic needs, such as water and the barest of rations to get by. The Red Cross is doing its very best to make sure that medical equipment and drugs go into the areas where they are needed.

We should do everything we can to underline the role of the Red Cross in our community and involve people in its volunteer work. I think it is very important that everybody has first aid as part of their knowledge so that they can be useful at any time. In Australia, we are very lucky that we do not have the sorts of natural disasters in which thousands of people die. However, as we saw with the recent fires and floods, we know how important it is for us all to get together in times of trouble, and I think that is something the Red Cross epitomises. I commend the motion to the house.

The DEPUTY SPEAKER: You will not have long, member for Light, but I call you so that you have the call when we return.

Mr PICCOLO (Light) (12:59): Thank you, Madam Deputy Speaker. I rise in support of this motion.

Debate adjourned.

[Sitting suspended from 13:00 to 14:00]

PAPERS

The following papers were laid on the table:

By the Speaker—

House of Assembly, Members of Parliament Travel Entitlements—Report 2008-09

By the Premier (Hon. M.D. Rann)—

Government Boards and Committees Information—Listing by Portfolio as at 30 June 2009

By the Minister for Families and Communities (Hon. J.M. Rankine)—

Local Council By-Laws—
District Council of the Copper Coast—By-law No. 6—Cats

By the Minister for Gambling (Hon. A. Koutsantonis)—

Codes under the following Acts—
Gaming Machines Act 1992—
Code Alteration (Responsible Gambling) Notice 2009—No. 1
Code Alteration (Responsible Gambling) Notice 2009—No. 2

BUSHFIRE TASK FORCE

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:02): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: The Victorian bushfires in February this year have rightly been described as Australia's worst natural disaster. They destroyed entire communities and devastated countless lives. The date 7 February 2009 will be remembered as one of the darkest days in Australian history. More than 300 fires ignited across Victoria, 173 people lost their life, and more than 2,000 homes were destroyed. Black Saturday was a disaster that has quite literally rewritten the rule book when it comes to bushfires. While many of our bushfire policies have been developed over many years and have served us well, the Victorian bushfires highlighted an overall need to re-examine strategies and policies.

On 5 March 2009, the Minister for Emergency Services announced the formation of a specialist task force, consisting of experts in various fields, following the catastrophic Victorian bushfires. The bushfire task force was commissioned to analyse key issues arising from the Victorian bushfires and to look into immediate, medium and long-term solutions needed to improve bushfire management practices and strategies in South Australia. The task force was chaired by the Chief Officer of the South Australian Country Fire Service, Mr Euan Ferguson, and comprised expert members from 17 government agencies with a role in bushfire planning, mitigation and management.

The task force has now analysed each issue investigated by the Victorian Bushfires Royal Commission in the South Australian context and developed a set of recommendations for change where it is deemed necessary and appropriate. The culmination of the task force's work is an action plan, which contains 63 recommendations ranging over 26 identified issues. Today, I can inform the house of the state government's response to the task force's recommendation.

The state government will implement immediately a number of recommendations made by the bushfire task force, the first of which will be an investment over the next five years by this government of $12.4 million to establish and roll out a telephone-based emergency warning system, in tandem with the federal government, which will be up and running in time for this year's fire danger season.

The new warning system will allow messages to be sent to landline and mobile phones based on the owner's billing address. I am told that by the 2010-11 bushfire season we expect the system will be technologically able to also send messages to mobile phone users travelling through designated emergency areas. The system will be backed up by a website and a virtual call centre.

While early warnings play a critical role in preventing hazardous events turning into disasters, the system will be dependent on infrastructure that could be damaged during major emergencies. Therefore, the community needs to be mindful not to rely on any one warning system. We will introduce a new nationally agreed graduated warning system which will include the new categories of 'severe', 'extreme' and 'catastrophic', with 'catastrophic' (Code Red) indicating that the Fire Danger Index exceeds 100.

I am advised that the Fire Danger Index for the Victorian Black Saturday bushfires was 120-plus, while the Wangary bushfires had a rating of 340-plus. The purpose of this new category is to tell people that, if a fire starts on one of these catastrophic days, it is highly likely to be fast moving and uncontrollable and that they should not try to stay and defend their homes but go and relocate elsewhere.

The new slogan of PREPARE. ACT. SURVIVE will be adopted by the South Australian government, and nationally, to reinforce the very real message that people simply will not survive unless they are prepared to take the appropriate action. PREPARE. ACT. SURVIVE will be used extensively in all communication material. Other key recommendations made by SA's bushfire task force that will be implemented include:

- introducing new CFS guidelines and procedures for 'directed evacuation', involving police and other emergency services;
- identifying 'neighbourhood safer places' to be used as an alternative for shelter from a bushfire;
- conducting Bushfire Prevention Awareness Week in preparation for fire danger seasons;
- developing a dwelling bushfire shelter guideline;
- amending the CFS siren policy, recommending that working CFS station sirens be used to provide warnings to communities in specified bushfire emergency situations;
- conducting an audit for the provision of more sirens; and
- investigating a framework where state and federal government emergency call centres are interlinked and a capacity for mass incoming calls established.

A recommendation by the Victorian Bushfires Royal Commission was to encourage commercial radio operators to enter into a memorandum of understanding, similar to those that currently exist with the ABC and Radio FIVEaa, for the broadcasting of bushfire warning messages. I can inform the house that this week I have written to commercial radio stations asking them to partner with the CFS to broadcast bushfire warning messages for this fire danger season, which is just 51 days away. This would greatly increase the reach of warnings delivered by radio and reach audiences beyond those of the ABC and FIVEaa.

I can also inform the house that, as a result of changes made by the state government, people can now clear native vegetation within 20 metres of a building without any approval. In addition, the approval process for clearance beyond 20 metres and for fuel reduction and firebreaks has been simplified, with most approvals now being conducted by the CFS rather than the Native Vegetation Council.

A new simplified guide setting out the new rules will be released before the fire season. A combined fuel reduction program has also been given the green light. In fact, the Minister for Environment and Conservation at a news conference today talked about a greatly increased fuel reduction program. A total of 28 prescribed burns are proposed for the spring 2009 and autumn 2010 seasons, covering a total area of 864 hectares.

Whilst SA fire and emergency services can provide advice and warnings to communities, ultimately each individual living in a high risk area needs to be prepared to take protective action at any time. Bushfires strike suddenly, and it is this surprise element that communities and individuals should prepare for. Too many people are unprepared and, as Euan Ferguson said this morning, 'If you own the fuel you own the fire.'

South Australia is at equal risk of a bushfire of the magnitude that occurred in Victoria in February. Climate change and drought are altering the nature, ferocity and duration of bushfires. Unfortunately, it seems that still too many South Australians are under the impression that it will not happen to them. For whatever reason, some people are under the impression that they are immune to any real threat and that a fire will magically deviate from their property or that the CFS, MFS or other emergency services will save them.

People who are not clearing their properties or preparing for the bushfire season are placing themselves, their family, our firefighters, emergency services personnel, volunteers, police and others at risk. Again, I urge all South Australians, no matter where they reside, to prepare for the forthcoming bushfire season.

Since 2002 this government has implemented a number of important initiatives relating to bushfire prevention. One of the first actions was to introduce legislation to parliament to create bushfire offences with a maximum gaol term of 20 years. Expenditure on firefighting aircraft has increased massively since the election of this government. Under the previous government $831,000 per year was allocated to our state's aerial capacity while in 2009-10 $6.9 million has been budgeted for, representing a $6 million increase since we were elected in 2002.

Our firefighters are better trained and better resourced than ever before, with improvements in training, increases in funding and the provision of protective clothing and new equipment that is the envy of other services across the country.

The task now for the government, communities and individuals is to ensure that our state is as prepared and as fire safe and fire ready as possible for the upcoming bushfire season. It is vitally important that we all play our part in the lead-up to and during this bushfire season to ensure that we are bushfire ready. The state government is absolutely determined, in partnership with agencies, local government, communities, voluntary and professional firefighting services, and individuals, to do everything in its power to make our communities better prepared and as safe as possible. We must all prepare, act, survive.

NATURAL RESOURCES COMMITTEE

Mr RAU (Enfield) (14:14): I bring up the 33rd report of the committee, entitled South Australian Arid Lands Resources Management Board Levy Proposal 2009-10.

Report received and ordered to be published.

VISITORS

The SPEAKER: I advise members of the presence in the gallery today of students from Kildare College, who are guests of the member for Torrens.

QUESTION TIME

WATER TRADING

Mrs REDMOND (Heysen—Leader of the Opposition) (14:15): My question is to the Premier. When he made his statement to the house on 8 September regarding his proposed High Court challenge, was the Premier aware that the upper house of the Victorian parliament had already passed legislation, on 3 September 2009, to remove the 10 per cent non-water user limit?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:15): What I said on that day (if every member here reads the *Hansard* carefully) is that what we have been doing is basically saying there is a whole series of targets that we want to

achieve, and I acknowledged that in fact the Victorians had promised to have that totally removed by the end of October. It has to get through both houses of parliament and then be proclaimed. The Victorians would not have taken this action unless we had not threatened the case; that is the whole point.

Earlier on, you will be aware, we had Victorians who were adamant that that would not happen. They outlined their timetable. Their timetable did not include removing it this year. It is because we had them in our sights for a High Court challenge and because they know what the likely outcome of such a challenge will be that the Victorians have been in retreat.

I would have thought that every single member of this parliament on both sides would be saying that it is vitally important to ensure that Victoria continues to retreat, because there is a whole series of issues. There is the 10 per cent cap, there is the 4 per cent cap and, of course, there is a whole range of issues relating to riparian rights and issues that in fact go back to the very founding of Federation, in which we believe this state has had its legal rights removed by those upstream who take out 93 per cent of the water that is extracted. So, you just have to see this.

We are waiting for that cap to be removed by proclamation. We are waiting for the Victorian government to do so. We are waiting for the cap to be removed. It has not been removed yet. We are waiting for the 4 per cent and the 10 per cent to be removed, and then I will be announcing other matters in this parliament relating to South Australia's constitutional riparian rights.

ROYAL INSTITUTION OF AUSTRALIA

Mr KENYON (Newland) (14:18): My question is directed to the Premier. Can the Premier provide the house with an update on the upcoming opening of the Royal Institution of Australia and why this new institution is so important to our state?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:18): I thank the member for his question. He is known for his interest in science, particularly in geological sciences, and I know that the former leader of the opposition (the member for Waite) is a great supporter of the Royal Institution coming to South Australia, as are so many other members. I know that the Minister for Education and Children's Services has played an invaluable role in the Bragg initiative. People would be aware that William and Lawrence Bragg, father and son Nobel Prize winners, were both South Australians who went on to become directors of the Royal Institution in London.

It is this government's view that science education can and must play a vital role in our state's economic future and in creating a well-rounded society. Science is part of everything we do, everything we create and nearly every aspect of our lives: whether focused on tackling climate change, addressing drought, discovering new medical solutions or improving the way in which we grow our food, science play a part. When you think about the scientific literacy not only of the community but also of parliaments these days, we have to deal with stem cell issues and with issues such as genetically modified crops, and I am very pleased that, on the basis of the best science that I know, we banned GM crops in this state.

We want our state to excel in science, our kids to get excited about the many wonders of science, our schools to provide quality science education, and more of our graduates to choose science careers. That is why we annually acknowledge and celebrate the successes of our scientists through science excellence awards and, as part of these awards, honour a South Australian Scientist of the Year as well as the South Australian Young Tall Poppy of the Year.

A commitment to science education and awareness is also why we launched the Bragg Initiative, which supports projects such as Science Outside the Square, a program that is in its fifth successful year, offering engaging science events that are free to the public. That is why in 2006 we helped launch, and continue to support, the Australian Science Media Centre. The Australian Science Media Centre maintains a database of approximately 3,000 scientists and provides independent, evidence-based science information to the public through the media. The Australian Science Media Centre has already affected or inspired over 6,000 media reports and will soon be collocated within the Royal Institution.

Our interest in ensuring quality education in the sciences is also why, during national Science Week, this government announced that its Primary School Skills for the Future strategy will include additional grant funding to boost the maths, science and literacy skills of our state's

primary school students, and why we announced that specialist training in science and mathematics will be provided for every primary school teacher in the state between 2010 and 2012.

The Royal Institution of Australia, the nation's new hub for science exchange, is an important part of this government's vision for science, technology and innovation in South Australia. The RiAus will be based in Adelaide's historic and newly renovated Stock Exchange Building, soon to be known as the Science Exchange, and will bring together scientists, engineers, journalists, companies, educational institutions, community groups and families. This will be the second royal institution of science in the world and the only sister institution to the more than 200 year old Royal Institution of Great Britain. The Royal Institution in London was founded by eminent scientists, including Sir Joseph Banks, and has always been known for the quality of its scientific research. Fourteen of its scientists have been awarded the Nobel Prize and 10 of the chemical elements were discovered in its research laboratory.

However, the RI in Britain has also won public acclaim for making science accessible to a wider audience. The RI in London has worked for two centuries to bring science to the people in many creative and inspiring ways, and to bring people to science. That is exactly what the RI of Australia will seek to do here in Adelaide. The Science Exchange Building has been equipped with state-of-the-art audio-visual facilities, able to beam events, debates and forums from Adelaide to distant towns and cities across the state, across the nation and across the world.

Both the federal and South Australian governments have made multimillion dollar commitments to help establish the RiAus. Kevin Rudd announced $15 million earlier this year, but the RiAus is a not-for-profit incorporated association that will operate independently from government under the guidance of its own director, Professor Gavin Brown, and its own council. I am very pleased that the vision first offered by Baroness Professor Susan Greenfield, a former Thinker in Residence, to create the Royal Institution in Australia is about to become a reality.

I am pleased to announce that the Royal Institution of Australia will be officially opened on 8 October by His Royal Highness The Duke of Kent, cousin of Her Majesty The Queen. The Duke of Kent is President of the Royal Institution and will be spending several days in Adelaide and, I understand, in regional South Australia during this time. Four days of exciting events are planned from 8 to 11 October. The 8th will focus on official functions, including the royal launch. The 9th will be a day of events that celebrate where science meets culture. The heritage and arts day will include the launch of a documentary on Adelaide's Nobel laureates William and Lawrence Bragg.

On Saturday 10 October, the RiAus will be open to the public, with an open house and public tours. Sunday the 11th will be a family fun day, with a variety of science shows planned in and around the Science Exchange Building. I urge all members to come and bring their families to these exciting weekend events.

WATER TRADING

Mrs REDMOND (Heysen—Leader of the Opposition) (14:25): My question is again for the Premier. Has the Premier received crown law advice not to proceed with the High Court action against Victoria?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:25): Oh dear. Can I say that the advice that I have received is quite the opposite. The advice that I have received only today is that not only are we intent on continuing with the challenge—not only has the challenge already scored us significant results, with the Victorians backing out of commitments they made to their own irrigators. Here we have the Victorian government backing down, but we are not backing off.

Let me tell you this. The advice that I received today, in discussions with several of my ministers, is that I will be receiving some legal advice very shortly that will have the support, I believe, of both sides of parliament and that the people of this state will be united behind it, just as they were united behind our challenge to the former federal Liberal government imposing a nuclear waste dump on this state. I remember what the sneers were. I remember the sneers were that we had not got a snowball's chance in hell—

Mrs REDMOND: I rise on a point of order, Mr Speaker. The relevance of the Premier's answer escapes me.

The SPEAKER: No, I do not uphold the point of order. The Premier.

The Hon. M.D. RANN: I think that courtesy is really important. If you ask a question of a minister, I think it is really important that courtesy is given to both sides of the house. If I can just finish this, because this is really important. The fact is that the opposition believed that there was absolutely no point, that it would cost this state millions of dollars and that we would be unsuccessful in mounting a High Court challenge against a nuclear waste dump being established in South Australia.

Mrs REDMOND: Mr Speaker, I rise on a point of order. The Premier's answer has nothing whatsoever to do with my question which was quite straightforward. Has he received legal advice not to proceed with the High Court challenge against Victoria?

The SPEAKER: No, I do not uphold the point of order. The Premier.

The Hon. M.D. RANN: What happened? Because we had the guts, because we had the vision to stop a nuclear waste dump being established in South Australia, we took them to court and we won. We beat the federal government. We fought for our state, rather than fight amongst themselves—

Mr GRIFFITHS: Mr Speaker, I rise on a point of order.

The Hon. M.D. RANN: —and that is exactly what we will do again.

The SPEAKER: Order! There being a point of order, the Premier will take his seat.

Mr GRIFFITHS: I again refer to the matter of relevance. The leader's question was specifically about water issues.

The SPEAKER: Order! The question was about a High Court challenge and the Premier is answering that question. The Premier.

Members interjecting:

The SPEAKER: Order! The Premier has the call.

The Hon. M.D. RANN: I close by saying this. If the opposition wants to side with the upstream states, if the opposition wants to side with Victoria, we will be taking legal action in the interest of all South Australians, and I appeal to members opposite to put your state before your party and join us in taking on Victoria.

The SPEAKER: I think the Premier is now engaging in debate.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. Atkinson interjecting:

The SPEAKER: The Attorney-General will come to order!

STORMWATER INITIATIVES

Mr PICCOLO (Light) (14:29): Will the Minister for Water Security advise the house regarding the CSIRO's research into the suitability of stormwater for drinking purposes?

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security) (14:30): I thank the member for Light for his question and I acknowledge his great interest in this area and the support that he has shown in his former role and as a local member for these kinds of stormwater projects.

Yesterday on FIVEaa the Leader of the Opposition claimed that the opposition has a fully costed plan to harvest 89 gigalitres of stormwater in Adelaide for $400 million. The Leader of the Opposition also suggested that the water could be treated better than the current water that we are drinking and that, therefore, it could be put directly into our drinking water supply—and they could do all this for $400 million.

An honourable member: And a stadium.

The Hon. K.A. MAYWALD: And a stadium. South Australia currently has a submission before the commonwealth government for funding consideration to harvest eight gigalitres of stormwater at a cost of $145 million. That is $18 million per gigalitre. The Leader of the Opposition's claim that they have fully costed their proposal to produce 89 gigalitres for $400 million (or $4.5 million per gigalitre) is laughable. Their stormwater costing assessment has a

familiar ring to it. They once claimed that they could build Adelaide a desalination plant at a cost of $400 million, and we know that this was a massive underestimation.

The opposition water spokesman, Mitch Williams, has also not been providing the public with all the information—

Members interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: The opposition water spokesman, the member for MacKillop, has also not been providing the public with all the information from a CSIRO project trialling the treatment of stormwater to drinking water quality. A quick check of the CSIRO reports on the internet actually shows that the bottle of water that Mitch Williams was drinking, although it had already met drinking water requirements, was then passed through a 0.45 and a 0.2 micron filter and given light exposure to granular activated carbon as additional barriers to pathogens and trace organics. So, it was not water that was lifted straight out of the Salisbury wetlands, as claimed by the member for MacKillop. It is interesting that the member for MacKillop in the statements made by the—

Mr WILLIAMS: On a point of order, Mr Speaker, my recollection of the question was that it asked the minister to comment on the CSIRO's research. At this stage, I have not heard the minister mention the CSIRO or its research, which is quite damning of her policies.

The SPEAKER: The question was about the suitability of stormwater for drinking purposes.

Mr WILLIAMS: It was about the CSIRO's research, sir. I think if you consult the *Hansard* you would realise that.

The SPEAKER: The Minister for Water Security.

The Hon. K.A. MAYWALD: I have here the transcript of the comments of the member for MacKillop on this radio program. The member for MacKillop said:

> …but if you properly treat it, like it's already been demonstrated by the Salisbury Council in their wetlands…that's about a 10 day process, inject it into the aquifer, extract it out of the aquifer and you do that through a different bore…any [unclear] that were in the water when it was injected are automatically killed and the water comes out at drinking quality…I've got a bottle of it sitting in my office here…which was bottled a year or two back by the Salisbury Council…I've got one bottle that's full, I had another bottle which I'd drunk, there is nothing wrong with it.

What he failed to mention was that that bottle had also gone through a number of processes post being drawn from the wetlands.

The other information that is really interesting that he has neglected to include in his public statements on this matter—

Mr Williams interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: The other thing that the member for MacKillop failed to tell the public when he was talking about this matter—

Mr PENGILLY: On a point of order, Mr Speaker, the minister has been speaking for 3½ minutes and has not answered one thing about the CSIRO.

The SPEAKER: Order! There is no point of order.

The Hon. K.A. MAYWALD: I am actually quoting from the CSIRO's website on this particular project. That indicates what was done to the water before it was bottled.

Mr Williams interjecting:

The Hon. P.F. CONLON: On a point of order, I would like to hear the minister because she is telling us things that are interesting. She should not be shouted down constantly by that bully.

The SPEAKER: Members will come to order!

The Hon. K.A. MAYWALD: The member for MacKillop also failed to mention that the report on the CSIRO website talks about this bottled water. It states, 'This bottle of water shows the

potential for treated stormwater to go into mains supplies.' It continues with the bit the member for MacKillop forgot to mention, 'Further research is required to validate and then make these methods available.' The CSIRO project also states:

> Recharge signifies the potential value of urban stormwater as a resource. Further research is required to show whether this can be reliably done on an ongoing basis for normal water supplies taking into account of all of the hazards likely to be present in an urban catchment.

This is also on the website. Peter Dillon says:

> The bottled water clearly shows the potential for this water to go into mains supplies. Further research is required to validate this and build confidence in this approach.

The Water for Good government—

Members interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: —strategy states:

> This plan does not support the use of recycled stormwater for drinking purposes at this stage, but it will continue to monitor scientific developments in this area.

Members interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: Interestingly enough, the member for MacKillop also said in the interview he did with FIVEaa on 8 September, 'We can do that here in Adelaide. The government has chosen not to do it.'

Members interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: Let me inform the house who are the partners in this.

Mr Williams interjecting:

The Hon. K.A. MAYWALD: Just by coincidence, I have this one, member for MacKillop—snap! It would be really interesting if the member read page 9, Urban Opportunities.

Mr Williams interjecting:

The SPEAKER: Order, the member for MacKillop!

The Hon. P.F. CONLON: Sir, I know that he is embarrassed to hear it, but I would like to hear it.

The SPEAKER: Members on both sides will come to order!

Mr Pengilly interjecting:

The SPEAKER: Order, the member for Finniss!

Mr Williams interjecting:

The SPEAKER: Order, the member for MacKillop!

The Hon. K.A. MAYWALD: We know that, from my previous comments in regard to this report, the member for MacKillop is very good at selectively quoting from documents. In actual fact, if you read page 2 of the Executive Summary—

Mr VENNING: On a point of order, she is debating the question.

The SPEAKER: She is not debating it, and there is no point of order.

The Hon. K.A. MAYWALD: The Executive Summary of the report commissioned by the National Water Commission, undertaken by the CSIRO and funded by the Australian government, is called Managed Aquifer Recharge: An Introduction. The authors are Peter Dillon, Paul Pavelic, Declan Page, Helen Beringen and John Ward. It is dated 13 February 2009, so it the latest report from the CSIRO. Page 3 of the Executive Summary states:

> Urban stormwater stored in an aquifer for a year has been proven to meet all drinking water quality requirements and has been bottled as drinking water.

This has been selectively quoted by the member for MacKillop in the past. What he does not tell you is that the next sentence says:

> Further research is needed to build confidence in the robustness and resilience of preventive measures to ensure that drinking water quality can be met reliably on an ongoing basis.

So, what the member for MacKillop would do is risk our water quality on the basis of incomplete science. The big difference between the opposition and the government is that we will not risk public health on incomplete science and the opposition will.

The SPEAKER: The Deputy Leader of the Opposition.

Members interjecting:

The SPEAKER: Order! The Minister for Transport and the member for MacKillop will come to order!

MOTOR ACCIDENT COMMISSION

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (14:40): My question is for the Treasurer. Has the solvency level of the Motor Accident Commission improved since 30 June 2009, given that the Australian equities market, where a significant amount of the commission's investments lie, has risen by 15 per cent since then?

Members interjecting:

The SPEAKER: Order! Members will come to order so that all members have an opportunity to hear the question from the Deputy Leader of the Opposition.

Mr GRIFFITHS: I was speaking as loudly as I could, sir.

The SPEAKER: I know you were. The deputy leader.

Mr GRIFFITHS: My question is to the Treasurer. Has the solvency level of the Motor Accident Commission improved since 30 June 2009, given that the Australian equities market, where a significant amount of the commission's investments lie, has risen by 15 per cent since then? On 4 March 2009, the Treasurer told the house, regarding the solvency of the Motor Accident Commission, 'Our Motor Accident Commission, at about 100 per cent, is doing pretty well.' In his statement to the house yesterday, the Treasurer said that the Motor Accident Commission was 91.3 per cent solvent as at 30 June 2009. However, from 4 March to 9 September 2009, the Australian equities market has increased by 45 per cent.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:42): I am not quite sure what the point of that question is.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I will come back to the house with that information. However, one would assume that, if the equities market has improved, the solvency would have improved. However, the asset allocation of the Motor Accident Commission is a conservative asset allocation. It is much more heavily into cash, bonds and other forms of assets and has a lower allocation of equities than does Funds SA, for example. But I am happy to come back and advise the house what the current solvency is at 1 September or 8 September. If we even get that information before question time ends, I am happy to share it with the member.

However, let's just remember where we have taken the Motor Accident Commission since coming into office in that we adopted a risk-free discount rate, and we also ensured that we put a proper prudential margin into the fund; that is, to align it more to the funding ratios that would be required of private sector insurance companies, a move that the former Liberal government never made. By doing that, we had actually raised, prior to the global financial crisis, the solvency of the Motor Accident Commission (CTP) Fund upwards of around 160 per cent. So, for the Motor Accident Commission to have, when the crash occurred—when the markets had been shattered by the GFC—a solvency of around the 90 to 100 per cent mark is quite an extraordinary effort.

Had the solvency been what it was when I came to office, under the former Liberal government, we would have a very, very sick Motor Accident Commission today. I do not recall the exact solvency when I came to office, but assuming it was around 100—it may have been a little

less; it may have been a little higher—whatever the number was, it would be a very sick entity today if we had not put that very large prudential margin in place. So, the action of this government coming into office, ensuring that we lifted the solvency ratio of that entity, has ensured that it has been in a very strong position to weather this incredibly damaging global financial crisis.

I am confident that, particularly under the chairmanship of Roger Cook, who is highly respected on both sides of the house, and also under the leadership of Andrew Daniels, who is doing an outstanding job, we will see that entity recover and remain a very, very viable and good government business and one that the government of the day can be very confident of in terms of its solvency ratios.

MOTOR ACCIDENT COMMISSION

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (14:45): I have a supplementary question, if I may, Mr Speaker, and it refers to the Treasurer's answer. Given the concern that you have held for some time for the solvency rate of the Motor Accident Commission and your announcement yesterday of the solvency rate being 91.7, can you confirm to the house how often since 30 June you have received briefings on what the solvency rate is?

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:45): I meet monthly with the Chairman and CEO of the Motor Accident Commission and, at those meetings, they update me on the financial position of the Motor Accident Commission.

Mrs Redmond interjecting:

The Hon. K.O. FOLEY: I do not have that information right in front of me. I have just said to you in that last answer that I will get you that information. I do not carry solvency ratios to the exact percentage point or the dollar point in my head. You may be cleverer than me but I do not have that on hand. My office, I am sure, are listening to this and, as diligent as they are, they will—

Mrs Redmond: Are they going up or down?

The Hon. K.O. FOLEY: We will have that information for you shortly. As I said, I meet monthly with Mr Cook and Mr Daniels and am updated on their financial position. My guess is—and I will wait until we have the actual information from my office—it is probably around the same situation as at 30 June, maybe a little bit better. Also, remember that the operation of the motor accident scheme is not just about investment: it is also about accident rates, costs and the operational side of the business in terms of claims costs, etc. There are a number of factors and payouts. You only have to have a serious, traumatic settlement—

The Hon. P.F. Conlon: One catastrophic accident.

The Hon. K.O. FOLEY: —a catastrophic accident—where you make a very large lump sum payment, and that has a very serious material impact in the short term on the solvency. But I am asking my office via the microphone to get me that information and I am happy to get it and give it to you.

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

Mrs REDMOND (Heysen—Leader of the Opposition) (14:47): Has the Premier spoken to the Attorney-General about the Attorney-General's failure to maintain a majority in the house last night when he knew that the government's constitution bill, which was to be voted on, required an absolute majority to be present?

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (14:47): Mr Speaker—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: There were many members from both sides absent last night for one reason or another—some paired, some not. The government needed to obtain a constitutional majority of 24 and did not do so at the relevant time through my fault, through my own fault, through my own grievous fault. For Anglicans I will translate that: We are very sorry for these our misdoings; the remembrance of them is grievous unto us; the burden of them is intolerable. We managed lawfully and—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: —through proper procedures, using precedents used by previous Liberal governments within my memory—precedents that were used by former ministers Brokenshire and Evans—to recommit the bill validly. We were in the same position—

Ms Chapman interjecting:

The SPEAKER: Order, the member for Bragg!

The Hon. M.J. ATKINSON: —this morning with the Legislative Council reform as we intended to be this time yesterday.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: First of all, the member for Bragg accuses us of not using our numbers and then she accuses us of using our numbers. The fact of the matter is that I have been in this place almost 20 years and nearly every day standing orders are suspended. But I think that we have to have a long, hard look at the generosity of granting pairs. We have to ask ourselves why, instead of leading the Parliamentary Liberal Party from the front, the Leader of the Opposition was at home during discussion of a constitutional bill.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: We have to avoid the situation in future where the Leader of the Opposition is summoned from her bed and returns to the chamber dressed in a combination of pyjamas and gym gear.

Ms CHAPMAN: I have a point of order, sir. That is nothing but an insult and it is completely irrelevant to the question before the house.

The SPEAKER: Order! It is a discourtesy to refer to the absence of an individual member from the chamber at any time and I ask the Attorney-General to refrain from the practice.

The Hon. M.J. ATKINSON: Government members were absent last night and opposition members were absent last night. The opposition was down to single figures in this chamber but, nevertheless, it was an error, a mistake, by the government not to have a constitutional majority at the relevant time. We accept our fault for that. We acted swiftly to remedy the matter—

Mr Hanna: Recalled the troops.

The Hon. M.J. ATKINSON: Recalled the troops, indeed, wherever they were. Let us not lose sight of the issue that was before the parliament. The issue that was before the parliament is that the Rann Labor government wishes to reduce the number of state MPs—

Ms CHAPMAN: I have a point of order, Mr Speaker. This is a bill before the parliament and it is not to be a subject of question time. It is a matter still alive before the parliament. In fact, we are still on clause 1.

Members interjecting:

The SPEAKER: Order! If the house comes to order I will give a ruling. I will listen to what the Attorney-General says, but, yes, he must not pre-empt debate. As the member for Bragg rightly points out, the matter is still before the house.

The Hon. M.J. ATKINSON: The opposition asked about the bill—

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: The difference between the Rann government and the Liberal opposition is that we want to give the people of South Australia the right to vote on this question.

Ms CHAPMAN: I have point of order, sir. The Attorney-General is debating the substance of the bill which is before the house.

The SPEAKER: Order! I think the Attorney-General has finished in any case.

PUBLIC-PRIVATE PARTNERSHIPS

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (14:53): My question is to the Treasurer. What amount of compensation or other payments has been paid to consortia involved with the government's cancelled prisons PPP projects? If payments have not been made, when will this issue be resolved?

The June state budget cancelled the $500 million prisons PPP projects, with the government acknowledging the need to compensate the affected consortia. The Treasurer is yet to disclose the amount of compensation but has said that it will cost millions of dollars.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:53): The government did cancel the PPPs for the prisons. I think that the member for MacKillop said yesterday that the only reason we have improved our budget position is because we stopped doing things. That is what you have to do when times gets difficult.

Mr Williams interjecting:

The Hon. K.O. FOLEY: To save the AAA rating, yes, and we stopped doing things; guilty.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: We did that and, by doing that, we were able to deleverage the balance sheet going forward.

An honourable member interjecting:

The Hon. K.O. FOLEY: Borrow less, have fewer borrowings. In putting the government's balance sheet into a better position, given the current financial crisis, we maintained our AAA credit rating. The payment stream we would have had to pay for those facilities has been captured by the government, in terms of savings.

What I have said is that under the contracts—under the request for proposal processes—it was very clear that the government reserved its right to cancel the project at any time: no compensation. I took a decision, having decided to cancel these projects at a later stage than one would normally cancel such a project, that I thought (and I think) there is an obligation on me as Treasurer to provide some form of compensation to the bidders. We are now negotiating what the size of that compensation shall be. It is not surprising that the three consortia would put a large number to government and that I would start off at a small number, and we will meet somewhere along that road.

Mr Griffiths interjecting:

The Hon. K.O. FOLEY: Soon, maybe. A couple of weeks, a month; I don't know—however long it takes to sort out this stuff. It will come to the tune of some millions of dollars, but I am not going to speculate on how much per consortium. It is a good faith decision by government. It is an acknowledgment that the government is a serious player when it comes to being active in the PPP marketplace and that, when decisions are taken that are effectively beyond our control, such as a global financial crisis, we will at least acknowledge in some part that we are a good faith government to deal with.

I have made that decision and the cabinet supported it. No-one likes to give away X millions if one does not have to. However, the decision to cancel the project will save the budget in any one year tens of millions of dollars. So, the payback period: whatever we choose to pay to the consortia will be paid back in a very quick space of time.

GOVERNMENT LITIGATION

Ms CHAPMAN (Bragg) (14:56): My question is to the Attorney-General. Is it now government policy to take all litigation in which it is a party to trial and not consider any reasonable settlement offer? In the case of Cannon v Atkinson, the government chose the option of a $200,000 settlement, which minister Holloway claimed was the best option for the taxpayer. Last week, however, the Treasurer is reported to have stated in a case in which the government is being sued that, 'The cabinet and Premier agreed with my view that this government would not negotiate

a wholesale settlement with a bunch of feral protesters.' Even in that case, if they win, the Treasurer refers to an estimated cost to the taxpayer of $400,000.

The government is currently being sued by Ms Kate Lennon for nearly $2 million, which is due to go to trial in a few months, and refers to the conduct of the Premier, the Deputy Premier and the Attorney-General.

The Hon. P.F. CONLON: Sir, I rise on a point of order. This is a party political speech. It is utterly unnecessary to explain the question.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order, the member for MacKillop! I think the member for Bragg went a bit beyond what was necessary for the explanation of the question.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:58): I will answer the question for two reasons. One is that, given that the Attorney had a conflict of interest on that issue and exempted himself from any discussion on that, it would be inappropriate for him to answer.

Secondly, the issue is about statements I made in relation to the action to do with Beverley, and I will come to that in a moment. My recollection is that it is a case by case basis. I remember when former premier and good friend of the member for Bragg, Dean Brown, was sued by the former chief executive of the health department—

The Hon. P.F. Conlon: Blaikie.

The Hon. K.O. FOLEY: Blaikie. That went to trial and it was close to a million dollar payout to him, I think; many hundreds of thousands of dollars. I think when—

The Hon. M.J. Atkinson: And a finding that the judge didn't believe the premier.

The Hon. K.O. FOLEY: That is right; didn't believe it. I think from memory the former Liberal government let go to trial the matter of—was Lucas v Xenophon a—

The Hon. M.J. Atkinson: And Matthew.

The Hon. K.O. FOLEY: And Matthew.

Mr GRIFFITHS: Sir, I rise on a point of order.

The Hon. P.F. Conlon interjecting:

The SPEAKER: Order!

Mr GRIFFITHS: Sir, the question was quite specific. It was: what is government policy now.

The SPEAKER: The question might have been specific, but the explanation was not. So, I think the Treasurer is answering the question given the context of the explanation.

The Hon. K.O. FOLEY: Former minister Wayne Matthew had a $175,000 legal bill paid, despite crown law advice saying they should not indemnify him because it was a matter as an MP, not a minister. That payment of $175,000 was made against crown law advice, so the cabinet of the day ignored crown law advice. Former minister Ingerson, I am told, cost about $30,000 for an out of court settlement in that case. I think, as we say, it is a case by case basis.

As it relates to the particular action (and I need to be careful, because it is before the courts), the issue related to the Beverley uranium mine—an incident that, I might add, occurred on the opposition's watch, from memory. It was definitely during the Liberal government's term in office that this action took place. The Department of Treasury and Finance, through its insurance arm, SAICORP (the government's insurance corporation), is handling that case. I have said publicly that its view as an insurance company is to negotiate settlements. In fact, a couple of settlements have occurred in that case, some small amounts. I think a gentleman who is legally known as Earthling received a small compensation to settle.

Ms Fox interjecting:

The Hon. K.O. FOLEY: Legally named Earthling. That's his name.

The Hon. M.D. Rann interjecting:

The Hon. K.O. FOLEY: Yes, Earthling, formerly known as something or other. That is what he calls himself. There was a small settlement there. The view of the government's insurance corporation is that in these cases they do like to settle. I took it to cabinet and I consulted with the Minister for Police (and the police commissioner) as to how we should proceed with this. Cabinet took the view, which both the police minister and I support, that we have to send a very clear message to people who may wish to protest and put the care and safety of our fine men and women in uniform at risk—that is, to settle would be sending the wrong message about what we will do in relation to supporting our police men and women. It is a matter of principle.

Ms Chapman: You will let the taxpayer pay for that?

The Hon. K.O. FOLEY: Yes.

Ms Chapman: You will let the taxpayer pay for that?

The SPEAKER: Order!

The Hon. K.O. FOLEY: Yes, in defence of our men and women in police.

Ms Chapman interjecting:

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

The Hon. K.O. FOLEY: Yes, absolutely.

The Hon. P.F. Conlon: I think we will wait and see who wins, first.

The Hon. K.O. FOLEY: Yes, that is right. Let us see what transpires through the court, but I have made it very clear. There may be a higher cost to the taxpayer from this action—there may well be a higher cost to government by doing this—but we believe that the right thing to do is to stand behind the men and women who put their lives at risk to protect a private company's assets. The shadow attorney-general clearly is saying that she does not support that. That is fine.

Ms Chapman interjecting:

The SPEAKER: Order! If the member for Bragg has further questions, I am happy to give her the call.

The Hon. K.O. FOLEY: No, they are suing each and every police officer.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Yes.

The SPEAKER: Order!

The Hon. K.O. FOLEY: The shadow attorney-general (the member for Bragg) is now saying that we should settle with the protesters—as I said, one of them goes by the name of Earthling—and not support the men and women in uniform. I am astounded that that is the position of the Liberal opposition.

Mrs Redmond: You stand there and make assertions about what our position is.

The Hon. K.O. FOLEY: That is what she is saying. Are you in disagreement with the shadow attorney-general?

Mrs Redmond: I am saying you are standing there making comments about what we think about it. Tell us your position.

The Hon. K.O. FOLEY: The shadow attorney-general is saying that we should settle. Should we settle, Vickie?

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I am sure the Police Association will be pleased to hear the views of the shadow attorney-general as they relate to this, because she is clearly interjecting across the house that taxpayers should not have to pay more than we would if we were to settle and that this matter should not be taken through to its conclusion in the courts. There are matters of principle

and matters of honour when it comes to supporting the men and women of the South Australian police force. You can shake your head, member for Bragg, but we stand behind and in step with the men and women of the South Australian police force against those who wish to do harm to them in a violent manner.

An honourable member interjecting:

The Hon. K.O. FOLEY: Yes, I would be surprised if the member for Stuart did not support the government in this action. Are you with us on this one, Gunny? Just give us a nod. I can see a nod.

Mrs REDMOND: Mr Speaker, I rise on a point of order. The Treasurer has now strayed into debate. Apart from anything else, he is addressing the member for Stuart who is sitting in the gallery.

The SPEAKER: Order! Yes, he must not make references to people in the gallery, but he has completed his answer.

GOVERNMENT LITIGATION

Ms CHAPMAN (Bragg) (15:06): My question is again to the Attorney-General. What are the estimated legal costs the taxpayer will incur as a result of last week's full court of the Supreme Court decision in Thompson v Dutton 2009 SASC 270?

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (15:06): An independent statutory corporation decided to prosecute an individual and they were not successful. It is all there on the court record for anyone to read.

MINISTERIAL CODE OF CONDUCT

Mrs REDMOND (Heysen—Leader of the Opposition) (15:06): My question is for the Premier. Has the Premier now considered whether the Attorney-General in his statements about Deputy Chief Magistrate Cannon was in breach of the ministerial code of conduct and, in particular, section 2.3 which states:

> In the discharge of his or her public duties a minister shall not dishonestly or wantonly and recklessly attack the reputation of any other person.

If so, did he obtain crown law advice on same?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:07): I am very pleased to answer this question. The answer is that he did not breach the code of conduct because he honestly believed that the judgment or the determination of Magistrate Cannon was absolutely wrong and, indeed, I said that I felt that he was absolutely wrong, as did, I am told, the Supreme Court of South Australia.

I guess that is the difference. We have heard from the other side today that opposition members, if they were in government, would cave in to the protesters and not fight back, but they would agree with the release of every parolee and all the rest of it. That is the difference. I think it is good that we have a difference in this state, but let us go back to the code of conduct. It is about whether or not he dishonestly or wantonly and recklessly, and with absolute malice, decided to do so. That was clearly not the case. He was giving his honest interpretation of what Magistrate Cannon said. I did likewise. The Supreme Court of South Australia came down with a damning judgment, on my advice, on what Mr Cannon had said in his determination.

The Hon. M.J. Atkinson: Describing it as a 'press release'.

The Hon. M.D. RANN: Describing it, I am just advised, as a 'press release'. All of us on both sides of politics give thousands of interviews. This is all about one phrase used by the Attorney-General for which he apologised profusely, but it continued and we had to make a judgment. We made a judgment that bringing over the Supreme Court judge from Western Australia—

Ms Chapman interjecting:

The SPEAKER: The member for Bragg will come to order!

The Hon. M.D. RANN: —would cost massively more than fighting the case. I have to say, I strongly disagreed with what Mr Cannon said. I said so on the day. He did not sue me, he did not sue the Supreme Court of South Australia, but he did sue the Attorney-General. The Attorney-General ventured his views honestly and sincerely. He used an unfortunate phrase, but that is quite different from recklessly peddling forged documents, recklessly peddling fake documents. it is quite different from having an opposition unit on the 2nd floor that is about dirty tricks and forgeries. It is about forged websites, fake Twitter sites, people who fake names—that is the opposition's standards.

The SPEAKER: Order! The Premier is now debating.

MINISTERIAL CODE OF CONDUCT

Mrs REDMOND (Heysen—Leader of the Opposition) (15:10): I ask the Premier a supplementary question. If the Attorney-General did not recklessly attack the reputation of any other person, on what basis did the cabinet decide to pay out $210,000 of taxpayers' money?

The Hon. P.F. Conlon: On crown law advice.

The SPEAKER: Order!

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:10): We made a decision that it was in the public interest not to go to the massive expense of bringing over a Western Australian judge and setting up a court, because you could not have a judge of this state sitting in judgment on one of our own, or the Attorney-General. We made that judgment, just as judgments were made for payouts and cases relating to a whole series of Liberal ministers.

The Hon. P.F. Conlon: We never indemnified anyone against crown law advice.

The Hon. M.D. RANN: That's right. The key point is: was the Attorney-General acting honestly and sincerely in his beliefs? Absolutely. Totally. I also came out and condemned Mr Cannon's determinations, but I was not sued. I stand by what I said on that day: both of us honestly and sincerely believed that what he said was wrong. This was all about the choice of a few words for which the Attorney-General apologised. We made the decision to act in the public interest, and that is the difference. You would let out the von Einems, you would let out the McBrides and all the rest of them, because you would rather stand by your mates in the legal profession—

The SPEAKER: Order! The Premier is now debating.

CHESHIRE, PROF. ANTHONY

Mr WILLIAMS (MacKillop) (15:12): My question is to the Minister for Environment and Conservation. Is the minister aware that, at the time the marine parks boundaries were being designed by the scientific working group, the chair of that group, Professor Anthony Cheshire, was a board member of the Australian Bight Abalone, which has fishing leases in the area of Waldegrave Island, which was excluded from Marine Park 4?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (15:12): This false allegation was I think levelled in some correspondence at the time the marine parks debate was occurring. In fact, at all relevant times I understand that that member of the scientific working group had made a declaration of interest of anything that had anything to do with his business interests. Because of the unfair controversy that was created around that, he has since resigned from that particular company and has taken no further part in any of the deliberations that had any effect on that particular part of the coastline that was relevant to that business.

MINISTERIAL CODE OF CONDUCT

Mrs REDMOND (Heysen—Leader of the Opposition) (15:13): My question is again to the Premier. In agreeing to indemnify the Attorney-General's $210,000 defamation settlement with Deputy Chief Magistrate Cannon, did the Premier seek the Attorney-General's resignation from cabinet? Dr John Cornwall resigned on 4 August 1988 after he was found by the District Court to have defamed Dr Peter Humble. Dr Humble was awarded $80,000 plus legal costs which

amounted to $70,000. According to Dr Cornwall, on 4 August 1988 cabinet agreed to indemnify him for the entire amount on condition that he resign his position as health and community welfare minister, and he resigned later that day.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:14): I am very happy to answer that question. I did not seek the Attorney-General's resignation because there was no reason to, just as you did not seek the resignations of premier Brown, who was criticised by the judge at the time; premier Olsen; minister Wayne Matthew; deputy premier Graham Ingerson; or many others.

The Hon. P.F. Conlon: Rob Lucas twice in a row.

The Hon. M.D. RANN: Or Rob Lucas twice in a row. I am happy to go through them. On 28 May, *The Advertiser* reported that 'taxpayers may have to pick up a $175,000 legal bill for former minerals and energy minister, Wayne Matthew, despite a warning to the former Liberal government not to identify him.' Rob Lucas: 22 December 2000, *The Advertiser* reported that Mr Xenophon was awarded $20,000 after the government settled out of court in the first defamation case between him and Mr Lucas. It was reported that taxpayers paid the legal bills and defamation payout. Mr Xenophon launched a second case for $30,000 in damages over comments Mr Lucas made about Mr Xenophon accepting the $20,000.

Dean Brown: 27 February 1997, *The Advertiser* reported that taxpayers would have to pay $45,000 to settle a defamation case against former premier Dean Brown. It was also reported that Mr Brown recklessly attacked former health CE, Dr David Blaikie, forcing him to quit his job. The then Liberal government agreed to pay Dr Blaikie $700,000 and an annual pension. Graham Ingerson: an Adelaide law firm received a $30,000 out of court settlement against the then industrial affairs minister, Graham Ingerson, and so forth and so on.

I did not ask the Attorney-General to resign because that would have been unjust. If I had asked him to resign, he would not be sitting there, so it is a pretty unusual question to ask. However, the point of the matter is this: I believe that Magistrate Cannon got it wrong in his judgment, and I am very pleased that just as, with our case against the federal government in terms of a nuclear waste dump the Supreme Court agreed, just as the Federal Court agreed on that occasion with my judgment not sine die. They were ad idem.

MOTOR ACCIDENT COMMISSION

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:18): I seek leave to make a very brief ministerial statement.

Leave granted.

The Hon. K.O. FOLEY: During question time, the shadow finance minister asked me a question.

An honourable member: Shadow treasurer.

The Hon. K.O. FOLEY: Sorry; I keep forgetting. I thought Rob Lucas was shadow treasurer. I see Rob Lucas as shadow treasurer.

The Hon. A. Koutsantonis: He is the shadow treasurer.

The Hon. K.O. FOLEY: Yes; Rob Lucas is. I am advised that at 31 August there had been an improvement in the performance of the Motor Accident Commission and that, in fact, the sufficient solvency requirements had increased to 94.3 per cent, so there was an improvement. It has 107 per cent solvency ratio in terms of assets over liabilities, so it is in a good position, and it is returning to a very solvent position.

GRIEVANCE DEBATE

WATER TRADING

Mr WILLIAMS (MacKillop) (15:19): Today, we saw the Premier exposed. We saw him exposed for what he is—that is, somebody who sets up the people of South Australia and their expectations in the hope that they will think he is doing something good for this state. Today, it has been revealed that what the Premier did yesterday in once again trying to invoke patriotism amongst the South Australian public against our cousins across the border in Victoria is a sham.

On Tuesday, the Premier came into this place and told the house, by way of ministerial statement, that, if the Victorian government did not lift the 10 per cent on water trade out of individual water districts in Victoria, he would proceed immediately with the High Court challenge.

The reality is that, way back on 9 May, the Victorian water minister (Tim Holding) told the Victorian parliament and the people of Victoria that he would move immediately to legislate the change to lift the 10 per cent cap, yet our Premier threatened yesterday to go ahead with the High Court challenge.

I can tell the house today that the process is almost complete in Victoria. In fact, the Victorian parliament has almost completed the legislation; it has gone through the upper house. I can tell members that the government controls the lower house, and it is a mere formality. The opposition is very reliably informed that, come the 15th day of this month, that legislation will be assented to.

So, the Premier came into this place yesterday knowing full well that, well before the Premier's sham October deadline, the Victorian government would remove that 10 per cent cap. Why did the Premier do that? Because he wanted to go out there and tell the public what a good job he had done. Back on 5 March this year, when we first heard that the Premier was contemplating making a High Court challenge, the Premier said that he was going to the High Court to remove the 4 per cent annual cap on trade out of any Victorian water because he thought that was uncompetitive.

The reality is that it was only in July last year that the Premier signed off on an agreement of the scaling down of that trade barrier. In fact, in a press release on 3 July last year, following the COAG meeting, the Premier had this to say:

> I came to Sydney to make sure this agreement was signed. This is a stunning result for South Australia and a victory for the environment. In addition, a significant agreement was reached today for the states to work toward lifting the trading cap on water between regions along the Murray-Darling Basin from 4 to 6 per cent by the end of 2009, with a view to the complete removal of the trading cap by 2014. This will help in the process of purchasing water licences along the river to return that water for environmental flows.

That is what the Premier said in July last year, just over 12 months ago; yet, all of this year, he has been beating this patriotism drum that he is going to take the Victorians to court to try to get them to lift the cap. He, the Premier, signed the deal, and he, the Premier, is aware and was aware on Tuesday that the Victorian government is well down the path to passing the legislation and will have it assented it to well before the date he set as a challenge.

The Premier has oversold on this one. Yet again, he has overspun, and he is now trying to make his way out of this High Court challenge sham that he has been running for the last six months. The reality is that the Premier knows that he has little chance. The reality is that the Premier has received, we believe, high level advice from within his government that he should not proceed with the challenge, that it will be very expensive and that he has no chance of success.

It was in 1775 that Samuel Johnson said that patriotism is the last refuge of the scoundrel. It ill behoves the Premier of the state to instil hatred between the people of this state and their cousins across the border. What we need is sensible debate, sensible discussion and sensible decisions—something we have not seen from this government.

FARMING EQUIPMENT

Mr PICCOLO (Light) (14:25): Today I rise to raise a couple of matters dealing with the rural part of my electorate. On Tuesday I raised a matter of concern relating to the urban (or southern) parts of my electorate, and today I would like to bring to the house's attention some issues which affect the rural parts of my electorate.

I understand that the matters I will raise today have also been raised with the member for Hammond, and I acknowledge that he and I are working on these issues together. I understand that he has constituents in his electorate with problems similar, if not identical, to those experienced by my constituents.

For the purposes of the discussion today, I do not intend to name the parties involved in the various disputes as some of them are currently working with the South Australian Farmers Federation in order to mediate a resolution. However, the issue is sufficiently important to justify a preliminary report to this house.

Farmers are having considerable difficulty in getting machinery manufacturers to undertake repairs to machinery that is under warranty. While the initial problem may be covered by warranty, the problem often continues when it is outside of warranty and manufacturers are then refusing to undertake further work.

Two problems arise from this. First, there is the cost of repairs. In my constituent's case, he has spent more money on repairs to his machinery than the original cost of the piece of machinery. The second and more important problem—and I am sure the member for Hammond would agree—is the loss of productivity when machinery cannot be used.

To help fund the cost of machinery, farmers often do a lot of contract work with their machines to recover some of the cost. So, when the equipment or machinery is down, because of the seasonal nature of a lot of the work, they lose a lot of work. In fact, my constituent has estimated that the cost to him, through both the repairs to the machinery (which is the subject of complaint) and also the loss of productivity, is about $1 million. You can see the impact that these problems have on our farmers.

The other issue relates to the safety concerns raised from machinery and equipment that is faulty and where the manufacturer refuses to take the necessary action. In the case of my constituent, it has been alleged and supported by an independent safety report that the faulty machinery could result in lives being put at risk. There is some comment in the community that some serious incidents have already occurred as a result of machinery not having been repaired properly.

It has been put to me—and my initial inquiries appear to substantiate it—that manufacturers would rather fight the matter in court than address the substantive issues involved. Many farmers have clocked up huge legal costs in trying to have the matter addressed. Farmers often have to capitulate to the manufacturers because they cannot afford the legal bills. In my initial dealings with one of the manufacturers, they were quite belligerent and even questioned my right to advocate on behalf of my constituent. Whilst they have become a little more conciliatory in recent times, I can see why this firm has earned a reputation of being a bit of a corporate bully.

At this stage, I am not clear whether the problem lies with the manufacturers in Australia, their parent company overseas or the individual machinery retailers. I am hoping to hear from more farmers so that I can get a better understanding of the depth and scope of the problem and make a decision about the best way to progress this matter to ensure a just outcome for farmers. If the problem is widespread, as I suspect it is, some type of parliamentary inquiry may be required in order to bring the issue into the open.

I am suggesting a parliamentary inquiry so that farmers can tell their story without the fear of legal action, because this is a tactic which the manufacturers appear keen to utilise at the first opportunity. A parliamentary inquiry would assess whether existing laws provide farmers with sufficient protection and whether there are sufficient avenues to have their grievances resolved.

Time expired.

CHILDREN IN STATE CARE

Ms CHAPMAN (Bragg) (15:30): I wish to speak about victims of child sexual abuse while under state care—some hundreds of them—who are still awaiting the government's redress scheme by way of compensation. On 1 April 2008 Commissioner Mullighan published a number of recommendations, one of which was that a task force be established to consider redress for survivors.

On 17 June 2008 the Premier announced that he accepted that a number of the recommendations would be implemented, including that a task force would be set up for this purpose. There were other recommendations for legislation and procedural reforms, particularly those operating in departments and the like, a number of which are pending in their implementation; and some bills are pending before the house.

This was very important because it related to the actual money that victims could receive in order to move on. Some of these victims had waited decades just to be able to tell their story, and now—18 months after Commissioner Mullighan's recommendation—we have not heard one piece of information from the government as to whether or not the task force even exists to the extent of its operation and, in particular, there was no mention in this year's budget of any provision for a redress scheme.

The extraordinary delay is heightened by the fact that on 1 June 2004 the Premier was scathing in this house of the Anglican Church, in particular St Peters College, arising out of claims of sexual abuse and misconduct that had occurred. Members will recall that Justice Trevor Olsson had been called in to conduct an inquiry in relation to that behaviour. On that day the Premier said:

I believe that the Anglican Church must involve itself in adequate and fair compensation for those who were abused.

I do not disagree with that. The fact is that the Anglican Church, however, has received claims and largely paid them out in that time frame. Its cases have been settled, some tens of thousands and some hundreds of thousands of dollars of compensation have been paid, depending on the case and the nature in which it occurred. The Anglican Church has accepted responsibility, resolved the matters and paid the victims—as it should.

Here we are waiting for some response from the government. The Attorney-General's answer has been to dismiss the critics of delay, saying 'Well, they can go off to the Victims of Crime Fund.' This compensation fund is available for victims of crime. It is a fund of first resort where, if you establish you have been the victim of a crime, you are able to get some compensation up to a certain level and, if you recover by common law or some other form money arising out of that conduct, there is a payback to the government. Basically, the people of South Australia pay the victims in those circumstances.

Why should this fund be the reservoir to pay for the negligence of governments that have failed to protect children in their care? If they do so, will the moneys—I think about $15,000 a year is allocated to this fund—be soaked up for that purpose and not be used for what it is clearly intended to provide for?

In any event, why is it that victims of crimes have not applied? Let me say that the threshold is oppressive. You have to establish beyond reasonable doubt, not on the balance of probability (as would apply to a fund interstate). More pertinent, in respect of periods prior to 1974, the maximum claim was $1,000, from 1974 to 1978 $2,000, and from 1978 to 1987 $10,000. We were at our zenith in 1993 when it was $50,000, but the current position with that fund is that you get an award of which (under a structure) you get a certain percentage. What you used to get under a rape case was, say, $36,000 and it is now $12,000. It is quite inadequate.

Time expired.

VOLUNTARY EUTHANASIA

The Hon. S.W. KEY (Ashford) (15:34): Voluntary euthanasia is now a legal option in the Netherlands, Belgium, Oregon, Switzerland and Luxembourg, and Washington State now has doctor-assisted law. This law is called the Death with Dignity Act, following the Oregon initiative in 1994, and then, after a Supreme Court challenge, it was confirmed in 1997. The Washington Death with Dignity Act includes the following provisions and safeguards.

The first is consulting a physician for medical confirmation of the diagnosis and for determination that the patient is competent in making an informed decision and acting voluntarily. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counselling.

Another safeguard is that at least 15 days must elapse between the patient's initial oral request and the writing of a prescription, and at least 48 hours must elapse between the date that the patient signs a written request and the writing of a prescription. So, in this case, the patient receives a prescription from a physician and is involved in their own voluntary euthanasia. That is a little different from some of the other places that I mentioned, particularly in Europe.

There are also a number of provisions that I think need to be noted in this act. The act allows for an attending physician to prescribe medication to competent adults over 18 years to ensure a humane and dignified manner under prescribed conditions, with competency assessed by two physicians. It also allows for medication for self, not physician administration, as I mentioned earlier; and relies on fully informed patient consent following advice on all options, including hospice and health care.

These provisions in the act apply only to terminally ill patients with a prognosis of less than six months to live, verified by two physicians. It includes strict health care provider responsibilities; it requires a residency requirement; it requires two medical opinions; it allows for appropriate

counselling; and it requires that 15 days lapse between the initial oral request and the written request. Also, as I said, it requires a lapse of 48 hours between the written request signed by two independent witnesses.

It allows for rescinding the decision at any time and in any manner and provides penalties in the event of coercion or concerns that are raised in this area. It includes reporting requirements, including copies of all prescriptions provided to the Department of Health, which publishes an annual report reviewing the act. It promotes, but is not reliant upon, the notification of a patient's next of kin. It provides immunity to the health care workers in respect of participation or non-participation in the act. It ensures that any provisions in a will, contract, insurance policy or any other agreement are not part of what influences the patient in making the decision under the act.

I think we could learn well from the Oregon and the Washington State experience. However, my own view is that, where there is an ability for health professionals—physicians—who know the patient to assist them in participating in voluntary euthanasia, that is an option that I think should be available in South Australia. There are many people in this state and around Australia who agree with that point of view.

MURRAY RIVER

Mr PEDERICK (Hammond) (15:39): I rise today to talk about the lack of action by the state government with respect to the River Murray and the delivery or non-delivery of water to communities. This government seems to wish to go out there and divide communities, whether it be in the placing of bunds in the river at Lake Bonney in the Riverland or at Narrung, where Lake Albert is now cut off from the main lakes and river system, or at Goolwa and Clayton, where a bund has gone in. Bunds are also going in on Currency Creek and the Finniss River. This is the government's attitude to this state's once mighty river. It is throttling it to death, and it has created much angst in communities up and down the river.

It is concerning that we have seen the loss of irrigation areas. We have seen the loss of irrigation around Meningie and the Narrung Peninsula. We are seeing the loss of irrigation on the reclaimed swamp area where $22 million of government money was spent, let alone the many hundreds of thousands that was invested by farmers in rehabilitating that country. The government finally came in kicking and screaming last water year, after we had lobbied for months on this side of the house for critical water allocation, and supported permanent plantings, and it is just a pity that other people on so-called high security water in this state could not access that water.

We now see this year a less worthwhile approach where a grant system has been introduced because the government bowed to pressure from the Eastern States that said, 'If you purchase water for your irrigators we will cut you off from transmission flow.' This is another reason there should be full national control over the River Murray. This is what happens with interstate intervention. Yes, we have had water forwarded to us, but we have to pay it back. It is a great shame to see what is going on up and down the river.

Point Sturt and Hindmarsh Island have had a huge issue in securing potable water supplies. It was indicated to me that any savings that showed up in the Murray Futures plan for pipelines in the Lower Lakes would go to these communities. However, it has taken two years and great work by Michael Doecke (a local resident) and others (Mike South included), to finally get a reasonable outcome. You just have to wonder why a government would let these two communities suffer when $14.5 million of savings were identified back at budget time (and I explored this during estimates) and these two pipelines would only cost $7.3 million.

Community members received communication from the minister that indicated that they would have to pay $100,000 per connection, so it was a great relief, after much lobbying from politicians in here (including myself and the member for Mayo, Jamie Briggs, at a federal level) to get fairness for this community. It is great to see that, if we get federal sign-off, they will be able to connect for around $3,117 per connection. I commend the community for its lobbying.

It is sad to see, as with the Murray Futures program, the lack of federal money spent on programs to assist communities in this state. Where is the money that is supposed to be put into riverine recovery and projects to take irrigators' pumps off back waters and get them into the main stream? I believe not a dollar has entered that program.

We saw people protesting at Swan Reach the other day—300 people from right up through the river system, from the Lower Lakes and the Mid Murray to the Riverland and the Mildura-

Sunraysia area. There are people just starting to learn that this cancer of inattention to the River Murray is going right through the system. Yet, we still see inattention by the government.

Minister Weatherill (the minister for the environment) made two commitments to go down to Milang and Clayton to meet with the community. One of those commitments was to the primary school at Milang—a great little school. There was no show. The Premier was invited to go down to Nalpa Station on the western side of the proposed weir site, and they even tried to entice him with a barbecue. Again, no show. Then we had a rumour Peter Garrett came down to the area unannounced.

Time expired.

SOLAR THERMAL PROJECT

Ms BREUER (Giles) (15:45): Today I will speak about a world-class solar project which is touted for Whyalla. A $350 million world scale concentrating solar thermal project is proposed near Whyalla, and I am hoping that we are able to get the strongest possible state support. Whyalla has already secured a $16 million concentrating solar thermal power plant as a result of a partnership between the private sector, the federal government and the Whyalla City Council, and is now in the running for a $350 million project, which, given the technology involved, will be a world first. I am very hopeful that the Premier will get behind the Whyalla project in the same way that he has got behind the major defence project and other projects for Adelaide. We need a major lobbying effort from the Premier and the state government to secure this world-class project, but it is looking very good at present.

This project will put South Australia on the global cutting edge when it comes to concentrating solar thermal. The project will use Australian developed and controlled technology, and will use the world's largest solar dishes capable of generating temperatures in excess of 2,000°. Each dish has a surface area of 500 square metres and can generate green electricity, but they can also use their wide temperature range to support a whole range of industrial processes. The 600-dish project will provide the greatest opportunity Whyalla has ever had to diversify its economic base.

I am told that, for tourism purposes, we will attract tourists from all over the world who will be interested in looking at this project. It is also our number one economic priority at present. It is a shovel ready project that comes at a time when we are experiencing a downturn in the steel industry. Up to 200 jobs are likely to be lost at OneSteel and the construction work crew to be employed over the next two years, if the solar project gets a nod, will be 200, plus the additional ongoing jobs. The project offers a real opportunity for other companies to collocate to take advantage of green electricity and high temperatures suitable for a number of industrial processes.

The private sector consortium is looking to invest $250 million, but we do need federal support and we do need the state government to get behind the project. It is too good an opportunity to miss and it certainly ticks all the boxes. It is green energy, green jobs, Australian technology, and South Australia will be leading in this project. It is diversification for Whyalla. They all get a big tick. My congratulations to all those who have been involved in getting this project to its present stage. I am looking forward to the opening on 25 September by the federal minister, and I am also looking forward to its further expansion.

Today, I also want to tell a couple of good news stories about the APY lands and my recent trip. First, the homemaker centres. Now, I only visited two of them—one at Amata and one at Fregon—but I am consistently impressed with the work that is being undertaken in the homemaker centres in these communities. The one at Amata is run by an incredible woman called Brenda Stubbs. It is always a hive of activity. They do incredible work, particularly with the young women in the communities, but also with some of the young men. They prepare food for the older people in the community. They provide nutrition classes, etc. They are also a safe haven for people. They are clean, beautiful and well cared for. Brenda does a wonderful job in Amata.

I was also very impressed with the Fregon centre, which is run by Roxanne Colsen. She is also working extremely hard, along with her dedicated staff. They are doing similar work. One of the jobs in which they are involved is dealing with children who are at risk, particularly from neglect. They play a major role in caring for those children and providing parental support, assistance and instruction.

The other issue I want to discuss is the role of AEWs (Aboriginal Education Workers) in the APY lands—an absolutely wonderful group of dedicated hard workers who keep those schools

going in those communities. Remember that when many of the children first attend school (and even later), they speak very little English. Of course, land schools are very often staffed by young teachers who are straight out of university and who do not speak Pitjantjatjara, and so, without the AEWs, we would have disasters on our hands.

These AEWs work extremely well with the students. They are always there; they are very dedicated. I pay a particular tribute to the director, Katrina Tjitayi and Makinti Minujukar, who have this wonderful way of working with their people and keeping their AEWs in full control at all times.

Time expired.

INTERVENTION ORDERS (PREVENTION OF ABUSE) BILL

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (15:50): Obtained leave and introduced a bill for an act to provide for intervention orders and associated problem gambling and tenancy orders in cases of domestic and non-domestic abuse; to make related amendments to the Bail Act 1985, the Criminal Law Consolidation Act 1935, the Criminal Law (Sentencing) Act 1988, the Cross-border Justice Act 2009, the Evidence Act 1929, the Firearms Act 1977, the Problem Gambling Family Protection Orders Act 2004, the Summary Procedure Act 1921 and the Youth Court Act 1993; to repeal the Domestic Violence Act 1994; and for other purposes. Read a first time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (15:51): I move:

That this bill be now read a second time.

The bill reforms laws for the restraint of domestic and personal violence. It repeals the Domestic Violence Act 1994 and the parts of the Summary Procedure Act 1921 that govern personal restraining orders, and makes consequential changes to other acts.

The government is concerned about the prevalence of domestic violence and its potentially lethal consequences. A recent discussion paper about domestic and family violence death reviews released by Queensland's Domestic Violence Death Action Group (*Dying to be Heard,* 2008) put it like this:

> Domestic Violence is described as the use of violence by one person to control another and is used to describe any abuse that occurs in intimate relationships.
>
> The abuse may take the form of physical, emotional, sexual, spiritual, social, and financial abuse. Abusive behaviours may range from intimidation, stand-over tactics and threats to serious assaults, rape, strangulation and death.

The member for Bragg interjects that it sounds like the Treasury. I will leave that. The quote continues:

> The abuse may continue long after the relationship has ended and it is well recognised that many women have either left the relationship or are in the process of leaving when they are killed. Often the threats made to victims are not idle threats and each year a significant number of adults and children continue to die as a result of domestic/family violence.

By this bill—and the member for Bragg seems to view it with some levity—the government fulfils its commitment to review the rape, sexual assault and domestic violence laws, announced in November 2005 as part of the whole-of-government policy initiative 'Our Commitment to Women's Safety in South Australia'.

Our review of domestic violence laws began with the public release of a discussion paper we commissioned from barrister Maurine Pyke QC. Her recommendations and a simultaneous review of domestic violence laws by the Victorian Law Reform Commission (resulting in the enactment of the Victorian Family Violence Protection Act 2008) form the background to this legislation.

The bill brings together laws restraining domestic violence and laws restraining other forms of personal violence. The aim is to make these laws easier to understand and enforce and to emphasise that our society does not tolerate personal violence of any kind, whether it occurs within a domestic relationship or not. Nevertheless, there is strong emphasis on domestic abuse, and there is no doubt that these laws will mostly be used by people seeking to protect themselves and their children from domestic abuse.

For that reason, the bill acknowledges, in its definition of abuse, not only the obvious physical forms of violence but also the brutal and controlling behaviour that is typical of violence that takes place under cover of a private, familial relationship and can be concealed from the world at large, trapping the victim in a night mail world from which there is little hope of escape. It also extends the kind of relationship that will be considered 'domestic' and continues to require the courts to give priority to proceedings for the restraint of domestic abuse.

I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill reforms laws for the restraint of domestic and personal violence. It repeals the *Domestic Violence*

The Bill retains many of the features of the current *Domestic Violence Act 1994* and the personal restraining order provisions of the *Summary Procedure Act 1921:*

- An interim and final civil restraint process (now also adopted by most other Australian jurisdictions) using a civil standard of proof;
- A requirement for courts to give priority to domestic violence restraint (intervention) proceedings;
- Terms of restraint (called 'intervention' in this Bill) that exclude an alleged perpetrator from the family home, regardless of the alleged perpetrator's legal or equitable entitlements to the property;
- Prohibitions relating to firearms and problem gambling orders;
- A bar on applications by defendants to apply to vary or revoke an intervention order if there has been no substantial change in circumstances since the order was made or last varied;
- Police powers to arrest and detain a person for contravention of an intervention order;
- Police applications to the court by telephone or other electronic means (now to be regulated by rules of court);
- A requirement for applicants to inform the court of any relevant contact or Family Court order, and for courts to consider the effect of an intervention order on the contact between a child and the person subject to the intervention order proceedings;
- A power in the Magistrate's Court, when making an intervention order, and to the extent of its powers under section 68R of the *Family Law Act 1975* (Cth.), to revive, vary, discharge or suspend relevant orders relating to children under Part 7 of the *Family Law Act* to the extent that they are inconsistent with the proposed intervention order;
- The Youth Court having the same jurisdiction as the Magistrates Court to make an intervention order where the person for or against whom protection is sought is a child or youth, and to vary or revoke any previous intervention orders;
- A maximum penalty of two years imprisonment for breach of an intervention order, so that it remains a summary offence. (Of course, if the conduct constituting the breach also constitutes another criminal offence, such as assault or causing harm or damage to property, the perpetrator will also be liable for the penalty for that offence. That penalty will be aggravated because in committing the offence the defendant was acting in contravention of an intervention order designed to prevent just that sort of conduct (s5AA *Criminal Law Consolidation Act 1935*).)

New features introduced by the Bill are:

- Binding objects and principles for intervention designed to promote a common approach by those enforcing the Act to perpetrator accountability and to the protection of victims of abuse and their children;
- A definition of abuse that includes not only physical injury and damage to property, but also, specifically, emotional or psychological harm and an unreasonable and non-consensual denial of financial, social or personal autonomy;
- A definition of the relationships within which an act of abuse is to be considered domestic abuse that includes not only relationships between spouses or partners and children but also those between grandchildren and grandparents, brothers and sisters, within an Aboriginal kinship group and between a carer and the person cared for;

- An acknowledgement of the damaging effect on children of experiencing and being exposed to domestic or personal abuse. This is expressed in the principles for intervention and the way they are to be applied, in the class of persons for whose protection an intervention order may be made, in requirements for courts and police to consider the interests and needs of children in determining applications for intervention, in an emphasis on consistency between intervention orders and relevant family court or child protection orders, in offering special arrangements for the taking of evidence of victims, including children, in making it possible for domestic violence victims and their children to stay in the family home if they choose rather than routinely move out to a shelter, in ensuring that relevant Government departments are aware of intervention orders affecting children, in prohibiting the publication of reports of intervention proceedings that would identify victims and their children, and so on.
- Improved police powers to intervene in situations of domestic or personal abuse, including the power to issue an interim intervention order, to direct a person to remain in a certain place and if necessary to detain the person while arrangements are made to protect the victim or to facilitate the preparation and service of orders;
- Express police powers to search for weapons and articles required to be surrendered by an intervention order;
- Simplified processes that reduce opportunities for perpetrator manipulation;
- A power in the court to dismiss an application that is frivolous, vexatious, without substance or has no reasonable prospect of success, with a presumption against dismissal in cases of domestic abuse and in cases where the defendant is alleged to have committed an offence of personal violence or stalking;
- A power in the court, when the protected person and the defendant live in rented premises under a tenancy agreement to which the defendant is a party, and when the intervention order excludes the defendant from those premises, to assign the tenancy to the protected person or other persons (not including the defendant), in circumstances where it would be unreasonable for a landlord to withhold consent to the assignment;
- An ability for police or the court, by interim order, to require a defendant to be assessed for an intervention program to deal with associated problems of substance abuse, problem gambling, anger management or mental health and for the court then to order the defendant to undertake such a program;
- Provision for courts to protect victims or witnesses who give evidence in court in these applications from distress or embarrassment by the use of special arrangements, such as physical screens and C.C.T.V., and by limiting the ways a defendant may cross-examine them so that the defendant cannot do so in person;
- The registration of interstate and New Zealand intervention orders in a way that requires the court to take into account the implications of service on the safety of a protected person;
- A prohibition on the publication of reports of proceedings for domestic and personal abuse that would tend to identify the person or persons whom the application seeks to protect and their children, any other person involved in the proceedings (not including people acting in an official capacity or the defendant), and any child of the defendant;
- An intervention order to prevail over a child protection order to the extent of any inconsistency, with a power in the Youth Court to deal with any inconsistency by varying or revoking the child-protection order;
- The exemption of protected persons from guilt for an offence of aiding, abetting, counselling or procuring the commission of the offence of contravening an intervention order, provided no other protected person is affected by the commission of the offence.
- Notification requirements that ensure all relevant public-sector agencies (that is, those responsible for education, families and communities, and child protection and the South Australian Housing Trust) are aware that intervention orders have been made, varied or revoked; and
- Authority for public sector agencies and organisations contracted to provide services to them to provide information to police on request to locate a defendant for service.

I turn now to the practical scheme of the Bill.

What is an intervention order?

Intervention orders are orders restraining a person from doing certain things and, if necessary, requiring the person to do other things. The order may be issued for the protection of anyone against whom it is suspected the defendant will commit an act of abuse or any child who may hear or witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against another person. The order may be issued to protect more than one person.

What can an intervention order do?

The terms of an intervention order (whether interim or final) can include any form of restraint that is needed to protect the victim from abuse: for example, prohibitions on contact in person or by texting, phoning or emailing, prohibitions on proximity and exclusion from the family home.

The order can require the defendant to do certain things: for example, to surrender specified weapons or articles. When an order requires surrender of weapons or articles, police may search the defendant or the defendant's possessions or enter and search places where the weapon or article is suspected to be and take possession of it, using reasonable force to do so.

An intervention order can also require the alleged perpetrator to be assessed for, or to undertake, an intervention program dealing with substance abuse, problem gambling, anger control or mental health. If a defendant is assessed as eligible for a program, and there are services available for the defendant to undertake it, the court may order the defendant to do so without the defendant's agreement.

The order may also contain terms that protect children affected by the violence and ensure their continuing safety and security.

Grounds for issuing an intervention order

The grounds for issuing an intervention order against a person, whether interim or final, are simple. Grounds exist if it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person, and if the issuing of the order is appropriate in the circumstances.

These grounds are anticipatory. There is no need for proof of the commission of an act of abuse before an intervention order is issued.

Who may issue an intervention order?

Both police and the courts can issue interim intervention orders, and on the same grounds, but only a court may confirm an interim order; dismiss an application for an intervention order, substitute an intervention order for an interim one; or vary or revoke an intervention order. (The Commissioner of Police may, however, revoke an interim order that was issued by a police officer. This power is intended for situations where the issue was clearly inappropriate or there was some mistake in the process.)

An interim intervention order issued by police serves as an application to the court for an intervention order. A defendant who is served with the interim order is taken to have been served with a summons to appear in court on the date specified in the order for the hearing of that application (within eight days of the date of the issue of the interim order). When police issue an interim order, there is no preliminary hearing by the court, as there would be when a person applies directly to the court for an interim order; there is only a final hearing to determine what to do with the interim order that the police have issued.

This new police power, combined with improved powers to hold a defendant pending preparation and service of process and while making arrangements for the security of the victim, is designed to give victims and their children immediate protection from abuse without the need to go to court first, in circumstances where the alleged perpetrator can be served on the spot and is therefore instantly bound by the order. A similar effect can be achieved under the current law by telephone application to a magistrate when the alleged perpetrator is present, but as a matter of practice this process is usually reserved for out-of-hours situations. The ability to apply to a magistrate by telephone or other means is preserved in this Bill for situations where it is not possible, or it is inadvisable, for police to issue an interim order and it would take too long to wait for the next sitting of the court to obtain one.

When can police issue an interim intervention order?

Police may issue an interim intervention order if there are grounds to do so and if the defendant is present to be served with the order or in custody. The issue of the order must be authorised by a police officer of the rank of sergeant or above, although investigating police officers of lower rank may do so with written or telephone authorisation from the more senior officer. There are no other limits on this power.

An interim order issued by police can require the defendant to stay in a particular place until the order is prepared and served, for as long as it takes. If the defendant won't stay as required by police or it looks like the defendant is not going to stay, the police may arrest and detain the defendant without warrant for as long as it takes to prepare and serve the order, but for no longer than two hours or such longer period as is approved by the court (no more than eight hours in aggregate).

The police will have their own *pro-forma* interim intervention orders, incorporating all information relevant to an application for intervention, including information about current relevant orders for parenting or child protection or firearms or problem gambling, the terms of interim intervention that have been imposed, and the date and time when the court will hear the application and determine whether the interim order is to be confirmed, substituted or dismissed. It will include a form by which the defendant can consent to the terms of the order and another by which the defendant is to provide an address for future service.

Additional police powers

The Bill gives police extensive powers to hold and detain defendants to intervention orders, aimed at better protecting victims of abuse.

Having served an intervention order on a defendant, police may arrest and detain the defendant to prevent further immediate abuse and allow measures to be taken to protect any person protected by the order, for as long as is necessary to prevent immediate abuse or for these measure to be taken, but for no longer than six hours or such longer period as is approved by the Court (and this no more than 24 hours in aggregate). This power is expected to be used only in cases where there is an immediate risk of violence to the protected person should the defendant not be detained.

When an intervention order requires the defendant to surrender a weapon or article, police may search the defendant and anything in the defendant's possession for that weapon or article or enter premises or a vehicle to take possession of it, and may use reasonable force to do so.

Police may also arrest and detain a person in custody without warrant for suspected breach of the interim order or a final order, as long as the person is brought to court as soon as possible, and no more than 24 hours later, for the court to deal with the alleged offence. If the alleged breach occurs on a weekend or public holiday, the 24 hours does not include that period. This means that a person who is arrested for breach of an intervention order on, say, the Friday night of long weekend will be detained in custody for three days before the person comes to court.

Police obligations to provide copies of orders they issue

As well as serving the defendant, police must give a copy of each order they issue to the Principal Registrar of the Magistrates Court and each person protected by the order. That is because the order is taken to be an application to the court, and must be lodged with the court and the people to whom it applies as if it is such an application. The Registrar must then provide copies to relevant public sector agencies (the departments responsible for the *Children's Protection Act 1993,* the *Education Act 1972,* and the *Families and Community Services Act 1972* and the South Australian Housing Trust).

Finally, police must give the Registrar a copy of the defendant's address for service, if supplied, so that the court can locate the defendant for the service of its orders and notices.

Other options for police

The police may still apply to the court for an interim intervention order without issuing one themselves. This will usually happen when the defendant is not present or available for service when police want to intervene or when police are not sure how to make an interim order that is consistent with a current Family Court or child protection order.

Locating the defendant for service

When police apply for an interim intervention order they may have difficulty finding the defendant, and unless the application is served on the defendant the court cannot make a final determination. Information from public sector agencies and people under contract to provide services to such agencies may often help police find the defendant, but sometimes it is not clear whether the State's Information Privacy Principles authorise them to release this information to police. The Bill provides that information that is in the control of such an agency or person must be made available to police on request if it could reasonably be expected to assist in locating a defendant on whom an intervention order is served.

Who may apply to the court for an intervention order?

An application to the court for an intervention order may be made regardless of whether police have been called out to an incident and regardless of whether there has been a previous act of abuse. A person need not have been abused already to invoke these laws, which are designed as much to protect from apprehended abuse as from further abuse.

Anyone needing protection from an act of domestic or personal abuse may apply.

An adult may make an application and may do so through another person with the court's permission.

A child may apply either on the ground that the defendant may commit an act of abuse against the child or simply on the ground that the child may hear or witness or otherwise be exposed to the effects of an act of abuse committed by the defendant against any person.

If the defendant or a person proposed to be protected is a child who is the subject of an order made under s38 of the *Children's Protection Act 1993*, the Minister responsible for that Act may apply. It is expected that the Minister may do so when applying for new orders or variations of existing orders under the *Children's Protection Act 1993* about the child.

A child who is entitled to apply may do so in person if aged 14 or over, with the permission of the court. Otherwise, the child's application must be through a parent or guardian, someone the child usually lives with, or another suitable person who has been approved by the court.

Police may apply in their own right, whether they have the consent of the alleged victim or not, if they have not already issued an interim intervention order.

All these people, and also the defendant, may apply for a variation or the revocation of an intervention order. The defendant, however, may apply only with the permission of the court, which will not be granted unless there has been a substantial change in relevant circumstances since the order was issued or last varied.

Preliminary hearing of application for order

When a person applies to the court for an intervention order in circumstances where the police have not already issued an interim order, the court must hold a preliminary hearing as soon as practicable and without summoning the defendant. It will then either make an interim order or dismiss the application.

An interim intervention order made by a court comes into effect only when served on the defendant, as does a police-issued interim order.

The interim intervention order will set a date for a hearing at which the application will be determined finally.

The court can adjourn the determination hearing for a limited time if satisfied that the interim order has not been served or there is other good reason for the adjournment.

Hearing to determine application for intervention order

At this hearing, the court has three options:

- to confirm the interim intervention order (whether issued by police or the court);
- to issue an intervention order in substitution for the interim order (this will usually happen when a term of the interim order needs to be changed); or
- to dismiss the application and revoke the interim order.

If the interim order is confirmed, it continues in force as an intervention order against the defendant *without any further requirement for service,* because the defendant has been given full notice of the hearing date and what will happen at the hearing and has been told that the interim order is ongoing until revoked or substituted. When a defendant fails to appear at this hearing, the order may be confirmed without hearing further from the defendant. It can also be confirmed when the defendant has consented to the order, even if the defendant disputes some of its terms, without hearing further from the defendant.

The court will substitute another order if there are terms in the interim order that need to be changed—either at the instance of the person for whom protection is sought or the defendant. A substituted order must be served on the defendant before it has effect, but, until it is served, the interim order will remain in force.

If the court dismisses the application and revokes the interim order, revocation takes effect immediately but the defendant must be served with written notice of the revocation.

How long does an intervention order last?

All intervention orders, whether interim or not, have continuing effect: they continue in force, subject to any variation or substitution by the court, until revoked.

Intervention orders are to be ongoing because no court can predict, when making an order restraining a defendant from being violent, what may happen when the defendant is no longer subject to that restraint. That is for the defendant to establish, much later, in an application to revoke the order, by reference to the defendant's conduct since the making of the order (inasmuch as that has any relevance at all to the defendant's future conduct when not so restrained), to changes in the defendant's circumstances or the circumstances of the victim or both, to changes in their relationship and to a range of other relevant factors.

The continuing nature of intervention orders means they cannot be made for a specified period or until a particular event occurs. It also means that an intervention order cannot lapse. If, for example, an intervention order is varied, the order as in force before it was varied continues to bind the defendant until the amended (substituted) order is served.

The transition provisions bring restraining orders made under the current laws within this regime. If such an order were given an expiry date and, after this new legislation comes into operation, is brought before a court for variation or revocation, the court must, if it decides to continue the order in original or varied form, turn the order into a continuing order. The original order cannot be extended for a fixed term.

How are the terms of the order made known to the defendant and protected persons?

The terms of an intervention order and any associated orders will be set out in the orders themselves.

In addition, though, the issuing authority (police or the court) must try to ensure that the defendant and those protected by the order understand what these orders mean by explaining their terms and effect (but a failure to do so will not invalidate the order). For example, if the order is an interim one, issued by police, the police officer must ensure that the defendant understands that this is an application to the court and serves as a summons to appear in court for a hearing on the date specified in the summons, as well as explaining each individual term of the order.

The issuing authority must also explain how these orders interact with any current *Family Law Act* (Cth.) or *Children's Protection Act* (S.A.) orders of which the authority is aware.

Finally, the explanation must include that a protected person cannot give permission to contravene the order.

Court obligations to provide copies of its orders

As well as serving the defendant, the Principal Registrar must give a copy of each interim order and each intervention order that it issues, and each notice of variation or revocation of either kind of order, to:

- The Commissioner of Police;
- Each person protected by the order;
- The applicant, if the applicant was not the police or a person protected by the order;

- The relevant public sector agencies (the Departments administering the *Children's Protection Act 1993,* the *Family and Community Services Act 1972* and the Education Act 1972I and the South Australian Housing Trust).

In this way not only those directly affected by the order but all relevant agencies and Government authorities, whether already providing services to a person or family affected by the order or not, will become aware that an order has been made, its current status and its terms at the earliest possible moment and can take this information into account when providing their services.

There are also requirements for the court to notify relevant authorities of any associated orders it makes—problem gambling orders and tenancy orders—and to notify the relevant public sector agencies of any foreign intervention order it registers.

Housing options for victims

Some victims of domestic violence choose to move out of their home, despite the defendant being subject to a restraining order excluding the defendant from the home, for their own safety and the safety of their children.

Others who are confident that the order will protect them from future violence may wish to stay in the home, particularly when there are children in the household whose schooling and social lives would be disrupted by a move. Until now, there have often been legal or practical barriers to staying in the home.

The Bill contains measures to help victims of abuse either leave home safely or stay in their home.

First, it allows an intervention order to prohibit the perpetrator from being anywhere near the family home, even though the perpetrator may own or rent it. The aim is to encourage victims of abuse and their children to stay in the family home if they want to and so prevent their lives being unnecessarily disrupted.

Secondly, it offers a means of longer-term security to protected persons who wish to stay in the home. The Bill allows the court, when making an intervention order that excludes a defendant from rented premises in which the defendant lives with the protected person, to make another order by which the defendant's interest in the tenancy agreement is assigned to the protected person or to some other person or persons other than the defendant.

For these purposes a tenancy agreement will include not only agreements for residential tenancies under that Act but also residential parks agreements and agreements for the tenancy of rooming houses.

This measure takes into account the needs of the landlord (that the new tenant will comply with the obligations under the tenancy agreement, such as payments for rent and utilities charges) and prevents the order being made if incompatible with the legal obligations of the landlord (for example, when the landlord is a registered housing co-operative and the proposed assignee is not eligible for membership of that co-operative or, although eligible, is not willing to accept the responsibilities of membership, or when the landlord is the South Australian Housing Trust and the proposed assignee does not meet the eligibility requirements).

These orders do not terminate the tenancy agreement but allow it to continue in terms that are consistent with the assignment of a tenant's rights in a residential tenancy agreement under s74 of the *Residential Tenancies Act.*

This provision does not prevent applications by other parties to the agreement to the Residential Tenancy Tribunal or to the South Australian Housing Trust under the provisions of their Acts.

Finally, the Bill contains measures to help victims who decide to move out of the home, leaving the defendant in residence. It is common for such a defendant to continue the abuse by denying the victim or the children access to the home to collect personal possessions or by denying the victim access to the family car to transport children to and from school or to shop for the family. If there is already a restraining order in place that does not refer to personal property, the defendant will often invoke the no-contact terms of that order to deny such access.

To countermand this, the Bill allows the court or police to order the defendant to return specified personal property to the protected person, and to do so in a way specified in the order; to allow the protected person to recover or have access to or make use of specified personal property, again in a way specified in the order (for example by giving the protected person access to the former home at a particular time); and to allow the protected person to do these things under police protection or in the company of a specified person, if desired.

Child defendants

The legislation contemplates that sometimes a child will be the defendant to an intervention order. It allows the Youth Court to hear such matters as if it were a Magistrate's Court and to make intervention orders against children, using all the special safeguards afforded to children by that court. (The Youth Court may also make intervention orders itself, in appropriate cases, protecting a child.).

Of course, if a child breaches an intervention order, the matter will be heard in the Youth Court in the same way as would any other criminal offence committed by a child.

Protected persons exempt from liability for aiding and abetting breach of intervention order

The Bill exempts a person who is protected by an intervention order from liability for aiding, abetting or procuring its breach, unless the conduct, so abetted, also contravenes this order or any other intervention order against the defendant for another protected person.

This provision recognises the power imbalance between parties to abuse and the potential for subtle manipulation by the perpetrator of the victim by way of pay-back or retribution or in an attempt to reconcile without regard to the order. Of course, when the protected person is overborne by threats to aid and abet a breach of an intervention order, there is a defence of duress. But even if there is no duress, the criminal law should not be used against an abused person unless this person has assisted a breach that puts the safety of other people protected by this or another order at risk.

Police report that there are some occasions when a victim of abuse will manipulate the defendant to breach the order, to get the defendant into further trouble. These rare cases do not warrant an exception to this exemption. We expect that in cases where there would, but for this exemption, be good grounds for a charge against a protected person for aiding and abetting a breach of an intervention order (that is, where there is no suggestion of coercion or duress), police should simply apply to the court for a variation or revocation of the intervention order on the ground that it is not working as intended. The court can then review the terms of the order and rectify the problem to the extent possible. The possibility of such a review may well deter this kind of manipulation by protected persons.

In conclusion

In enacting these reforms, Parliament will be sending a clear message that it will not tolerate the use of violence to control or intimidate another person, particularly in a domestic setting; that it recognises and abhors the lasting psychological and emotional damage to children from exposure to such violence; that it expects perpetrators to accept full responsibility for their violent behaviour; and that the paramount consideration is always the protection and future safety of the victims of abuse and the children who are exposed to it.

It will also be offering perpetrators of domestic or personal abuse the means to deal with associated problems of substance abuse, mental health, problem gambling and anger control, in the expectation that they will then be able to reflect upon and appreciate the effects of their abusive behaviour on others, take responsibility for it and learn to treat other people, particularly those close to them, with respect and care.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause provides necessary interpretative provisions for the measure.

4—Application of Act outside State

This clause ensures that the measure applies in relation to a defendant wherever the defendant resides and to abuse wherever it occurs.

This is similar in effect to current section 4(3) of the *Domestic Violence Act 1994* and section 99(2a) of the *Summary Procedure Act 1921*.

Part 2—Objects of Act

5—Objects of Act

This clause describes what the measure achieves and the purposes designed to be achieved.

The measure brings together the provisions relating to domestic violence restraining orders under the *Domestic Violence Act 1994* and other restraining orders for violence under the *Summary Procedure Act 1921*. Violence amongst more remote family members, carers and others currently dealt with under the *Summary Procedure Act 1921* is to be dealt with under this measure.

Part 3—Intervention and associated orders

Division 1—General

Note—

This Division is designed to set out the substantive framework for the issuing of intervention orders with the following Divisions dealing with matters of procedural detail and associated problem gambling and tenancy orders.

6—Grounds for issuing intervention order

The grounds for issuing an order are that it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person and the issuing of the order is appropriate in the circumstances. This reflects section 4(1) of the *Domestic Violence Act 1994* and section 99(1) of the *Summary Procedure Act 1921* and continues the South Australian approach which allows for an order to be made in anticipation of violence, rather than only after the event.

7—Persons for whose protection intervention order may be issued

This clause provides that an order may be made, not only for the person against whom the act of abuse is directed, but also for any child who may hear or witness, or otherwise be exposed to the effects of an act of abuse against another.

This emphasises the importance of considering the broader implications of abuse for children.

It is also made clear that an order can protect persons other than a person who applies for the order.

8—Meaning of abuse—domestic and non-domestic

This clause describes the many potential aspects of abuse. It refers to physical, sexual, emotional, psychological and economic abuse and recognises that abuse may result in—

- physical injury; or
- emotional or psychological harm; or
- an unreasonable and non-consensual denial of financial, social or personal autonomy; or
- damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

Extensive examples are included of the types of acts that may result in emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or personal autonomy. These concepts are designed to expand on and more effectively describe what is currently referred to as intimidating or offensive behaviour in section 4(1) and (2) of the *Domestic Violence Act 1994* and section 99(1) and (2) of the *Summary Procedure Act 1921* and the range of examples included has been significantly expanded.

Some of the examples are drawn from the corresponding Victorian legislation.

This clause also sets out when abuse will be considered to be domestic abuse. This covers a broader category of relationships than is currently captured by the concept of family member in the *Domestic Violence Act 1994* (generally limited to spouses or partners and children). The new concept extends to the relationship between grandchildren and grandparents, brothers and sisters, an Aboriginal kinship group, and so on, and also between a carer and the person cared for.

9—Priority for intervention against domestic abuse

This clause requires proceedings relating to intervention against domestic abuse to be given priority, as far as practicable.

This equates to section 18 of the *Domestic Violence Act 1994*.

10—Principles for intervention against abuse

The principles set out in this clause are to guide the police and magistrates in the issuing of intervention orders.

Subclause (1)(a) and (b) describes at a high level the pervasiveness and character of abuse in our society. This is designed to guard against prejudices and uninformed views about abuse.

Subclause (1)(c) sets out the primary aim of preventing abuse. There is a similar emphasis in section 6 of the *Domestic Violence Act 1994* and section 99(5) of the *Summary Procedure Act 1921*.

Subclause (1)(d) reflects an increased focus on encouraging defendants to accept responsibility and take steps to avoid committing abuse and on assisting protected persons and children.

Subclause (2) sets out other matters that must be taken into account. Currently, courts are required to take into account certain Family Law Act orders and the matters set out in paragraphs (b) and (d) (see section 6 of the *Domestic Violence Act 1994* and section 99(5) of the *Summary Procedure Act 1921*). This is expanded to include Children's Protection Act orders, agreements and orders relating to the division of property and other legal proceedings between the defendant and protected persons.

11—Ongoing effect of intervention order

It is made clear that intervention orders are ongoing (that is, that they do not expire after a specified time period).

12—Terms of intervention order—general

The clause sets out examples of the types of prohibitions and requirements that may be included in an intervention order. These include, most significantly, excluding a defendant from a residence or prohibiting the defendant from engaging in particular conduct.

The terms are similar to those set out in section 5 of the *Domestic Violence Act 1994*.

The clause provides that if a defendant is excluded from rented premises, then despite any other Act or law the protected person may change the locks and the defendant may not terminate the tenancy agreement. These are new aspects to the law.

13—Terms of intervention order—intervention programs

This clause authorises the Court to impose a new requirement for the defendant to undertake an intervention program. This is part of the focus on trying to get the defendant to accept responsibility and to take action to avoid committing acts of abuse. Assessment in relation to such a program can be required as a term of an intervention order. The assessment and programs are to be managed by the Courts Administration Authority's intervention program manager, along the same lines as those that may be imposed as a condition of bail or as a term of a bond.

14—Terms of intervention order—firearms

This clause requires an intervention order to include specific terms designed to ensure that the defendant surrenders any firearms in his or her possession and is prevented from possessing firearms while the order is in force. It allows the Court to allow a defendant to possess firearms but only if the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

This reflects the current requirement for firearms orders contemplated by section 10 of the *Domestic Violence Act 1994* and section 99D of the *Summary Procedure Act 1921*. The new scheme streamlines the requirement by integrating it with the intervention order.

15—Inconsistent Family Law Act or Children's Protection Act orders

This clause explains that the effect of the Commonwealth *Family Law Act* is that Family Law Act orders referred to in section 68R of that Act prevail over intervention orders but that the Magistrates Court may vary the Family Law Act order in proceedings for an intervention order.

This clause provides that an intervention order is to prevail over a Children's Protection Act order under section 38 of that Act and contemplates that the inconsistency will be resolved by an application made under that Act.

16—Explanation for defendant and protected persons

This clause contains a new requirement for the police and magistrates to explain the terms and effect of intervention orders to defendants and to protected persons. They are also required to explain the effect of clause 15 (if relevant) and that a protected person cannot give permission for contravention of an order.

This is a simplified version of the approach taken in the corresponding Victorian legislation.

Division 2—Police orders

17—Interim intervention order issued by police

This clause contains a new power for the police to issue interim intervention orders on the spot.

The defendant must be before the police officer or in custody. The order must be issued or sanctioned by a police officer of or above the rank of sergeant. This is similar to the situation in respect of the issuing of interim firearms prohibition orders under the *Firearms Act 1977*.

It is contemplated that the police will establish a series of pro forma interim intervention orders to suit the different sorts of situations with which they are most often confronted.

An interim intervention order will require the defendant to appear before the Court at a specified time and place. This must be within 8 days and gives the defendant an opportunity to make submissions and present evidence to the Court. It is contemplated that the form would also include provision for the defendant to consent to the order if the defendant so chooses.

An interim intervention order issued by a police officer must be served personally on the defendant.

The provision draws on the ideas in the corresponding Victorian legislation but avoids the complexity of a different scheme of orders and notices.

This mechanism is designed to ensure that the police can respond effectively on the spot to situations of abuse.

18—Revocation of interim intervention order by Commissioner of Police

The Commissioner of Police is empowered to revoke an order issued by a police officer. Again this is similar to the arrangements in respect of firearms prohibition orders.

Division 3—Court orders

19—Application to Court for intervention order

This clause provides for formal applications to the Court by the police, an abused person or representative, a child exposed to abuse or, if there is a relevant Children's Protection Act order in force, the Minister responsible for the administration of that Act.

Allowing representatives and the Minister to make applications invokes a new approach.

Application to the Court is an alternative avenue for police if they are approached in the absence of the defendant or the circumstances of the particular case involve inconsistent Family Law Act orders or Children's Protection Act orders (a matter only able to be resolved by the Court). An abused person may choose to approach the Court directly.

The clause replaces the provisions for making a complaint in sections 7 and 8 of the *Domestic Violence Act 1994* and sections 99A and 99B of the *Summary Procedure Act 1921*. Details relating to the making of applications by telephone or other electronic means are left to rules of Court.

20—Preliminary hearing and issue of interim intervention order

The Court is required to hear an application as soon as practicable and without summoning the defendant to appear. The Court may dismiss the application including if satisfied that the application is frivolous, vexatious, without substance or has no reasonable prospect of success, but there is a presumption against exercising the discretion to dismiss the application if the applicant alleges that the defendant has committed an offence involving personal violence or an offence of stalking under section 19AA of the *Criminal Law Consolidation Act 1935*. This presumption is similar in effect to section 99CA(2) of the *Summary Procedure Act 1921*.

The process is similar to that of making a restraining order in the absence of the defendant under section 9 of the *Domestic Violence Act 1994* or section 99C of the *Summary Procedure Act 1921*.

As for telephone applications under section 8(1)(d) of the *Domestic Violence Act 1994* and section 99B(1)(d) of the *Summary Procedure Act 1921*, the Court may adjourn the hearing if it wishes to question the applicant in person.

The Court may rely on affidavit evidence at the preliminary hearing but the defendant may require the deponent to appear at the hearing of the application for cross-examination. This is the same approach as in section 9(3) of the *Domestic Violence Act 1994* and section 99C(3) of the *Summary Procedure Act 1921*.

As for interim orders issued by a police officer, an interim intervention order issued by the Court must require the defendant to attend the Court at a specified time and place for the full hearing of the application. It is contemplated that the standard form order would also include provision for the defendant to consent to the order if the defendant so chooses.

An interim intervention order issued by the Court must be served on the defendant personally or in some other manner authorised by the Court. Expressly allowing the Court the flexibility to order some other form of service is new.

The mechanism presented in this clause is designed to provide a quick way of obtaining protection for the victim of abuse, with the defendant given an early opportunity in the full hearing to put the defendant's case.

21—Adjournments

This clause allows for adjournments in the event of difficulties serving an interim intervention order or for other adequate reason. As in the equivalent current provisions, the emphasis is on urgency with adjournments ordinarily being for no more than 8 days (see section 9(5) of the *Domestic Violence Act 1994* and section 99C(5) of the *Summary Procedure Act 1921* although in those cases the period is 7 days).

22—Determination of application for intervention order

This clause contemplates the Court confirming, substituting or revoking an interim intervention order.

It allows for the issuing or confirmation of an order to take place in the absence of the defendant after summons or without taking further submissions or evidence if the defendant consents (and is to the same effect as section 9(1) and section 4(4) of the *Domestic Violence Act 1994* and section 99C(1) and section 99(2b) of the *Summary Procedure Act 1921*).

In the case of substitution of an order, the clause provides for the interim order to continue in force until service of the substituted order. This is similar to the current approach with confirmation of orders in an amended form.

23—Problem gambling order

The Court is empowered to make problem gambling family protection orders under the *Problem Gambling Family Protection Orders Act 2004*.

Section 10A of the *Domestic Violence Act 1994* currently provides for the making of problem gambling family protection orders.

24—Tenancy order

This clause introduces a new power for the Court to assign the defendant's interest as a tenant to the protected person or some other person if the Court is imposing an intervention order (other than an interim intervention order) under which the defendant is excluded from rented premises at which the defendant and protected person previously resided.

Before doing so the Court must be satisfied that the assignee could reasonably be expected to comply with the obligations under the tenancy agreement. This is designed to ensure that it is satisfactory to assume landlord consent to the assignment.

The defendant will continue to be responsible for liabilities accrued before the assignment and any bond paid by the defendant will (subject to any agreement by the parties to the contrary) remain in place as security for the proper performance by the assignee of obligations under the tenancy agreement.

Division 4—Variation or revocation of orders

25—Intervention orders

This clause enables police orders and court orders to be varied or revoked on application to the Court. As in section 12(1a) of the *Domestic Violence Act 1994* and section 99F(1a) of the *Summary Procedure Act 1921* a defendant may only apply for variation or revocation of an order (other than an interim order) if there has been a substantial change in the relevant circumstances since the order was issued or last varied.

26—Problem gambling orders

This clause provides for variation or revocation of problem gambling orders when an intervention order is revoked or on separate application.

If an intervention order is revoked but the problem gambling order is not revoked, then the matter is to become an ordinary matter for the Independent Gambling Authority under the *Problem Gambling Family Protection Orders Act 2004*.

Division 5—Evidentiary matters

27—Burden of proof

The Court is to decide questions of fact on the balance of probabilities. This equates to section 17 of the *Domestic Violence Act 1994* and section 99K of the *Summary Procedure Act 1921*.

28—Special arrangements relating to evidence and cross-examination

This clause is new to the scheme. It contemplates the Court making special arrangements for taking evidence that are similar to the *Evidence Act 1929* arrangements for vulnerable witnesses. It also limits how a defendant may cross-examine victims of and witnesses to abuse in a similar manner to that contemplated for victims of offences in section 13B of the *Evidence Act 1929*.

Part 4—Foreign intervention orders

29—Registration of foreign intervention order

This clause provides for registration of interstate and New Zealand intervention orders. The regulations are to nominate the types of orders or notices that may be registered and given effect here as intervention orders. The Court may require the Principal Registrar to serve the order on the defendant, in which case it will not come into force against the defendant until so served.

See section 14 of the *Domestic Violence Act 1994* and section 99H of the *Summary Procedure Act 1921*.

Part 5—Offences and enforcement

Division 1—Offences

30—Contravention of intervention order

As well as making it an offence to contravene an intervention order (see section 15 of the *Domestic Violence Act 1994* and section 99I of the *Summary Procedure Act 1921*), this clause states that a protected person is not to be guilty of an offence of aiding, abetting, counselling or procuring the commission of such an offence provided no other protected person is affected by the commission of the offence.

If the contravention is constituted of failure to participate in an intervention program or assessment, the offence is expiable. Otherwise the maximum penalty provided is one of imprisonment. It should be noted that the provisions of the *Criminal Law (Sentencing) Act 1988* allow a Court to impose a fine instead in certain circumstances and generally set out the principles to be applied in determining sentence. Intervention programs are also a feature of that Act. It should also be noted that in circumstances where the abuse independently amounts to the commission of an offence other criminal penalties will also apply.

31—Landlord not to allow access to excluded defendant

This clause makes it an offence for the landlord to provide a key or otherwise assist or permit a defendant to gain access to the premises if the landlord has been notified that the defendant is prohibited from being on the rented premises. This is a new provision.

32—Publication of report about proceedings or orders

This is a new provision making it an offence, without the authorisation of the Court, to publish by radio, television, newspaper or in any other way a report about proceedings under the measure, or an order issued or registered under the measure, if the report identifies, or contains information tending to identify any person involved in the proceedings (including a witness but not including a person involved in an official capacity or the defendant), or a person protected by the order or a child of a protected person or of the defendant, without the consent of that person.

Division 2—Special police powers

33—Powers facilitating service of intervention order

This clause enables a police officer to hold on to a defendant for up to 2 hours in order to apply for, serve, or prepare and serve, an intervention order on the defendant. The Court may extend the period but not beyond 8 hours. Compare section 11(3) of the *Domestic Violence Act 1994* and section 99E(3) of the *Summary Procedure Act 1921*.

34—Powers following service of intervention order

This is a new and significant power loosely based on Victorian provisions to enable the police to arrest and detain a defendant for up to 6 hours to prevent abuse or to enable measures to be taken immediately for the protection of a protected person. The Court may extend the period but not beyond 24 hours. It is also contemplated that the rules of Court may authorise an application for extension to be by telephone or other electronic means.

35—Power to arrest and detain for contravention of intervention order

This clause enables a police officer to arrest and detain a person for contravention of an intervention order. It provides the same power as section 15 of the *Domestic Violence Act 1994* and section 99I of the *Summary Procedure Act 1921*.

36—Power to search for weapons and articles required to be surrendered by intervention order

This clause provides express power to search for weapons and articles required to be surrendered by an intervention order. This has been elevated from a matter dealt with in the terms of the order (see section 5(2)(k) of the *Domestic Violence Act 1994*).

Division 3—Disclosure of information

37—Disclosure to police of information relevant to locating defendant

This clause compels public sector agencies and contractors to provide information that may assist in locating a defendant on whom an intervention order is to be served to the police on request.

Part 6—Miscellaneous

38—Delegation by intervention program manager

This clause provides a power of delegation to the Courts Administration Authority's intervention program manager.

39—Dealing with items surrendered under intervention order

This clause provides that surrendered firearms are to be dealt with under the *Firearms Act 1977* and other weapons and articles at the direction of the Court.

40—Evidentiary provision

This clause provides an evidentiary aid relating to contravention of a requirement regulating participation of a defendant in an assessment or intervention program.

41—Regulations

This clause provides general regulation making power.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Bail Act 1985*

2—Amendment of section 24—Act not to affect provisions relating to intervention and restraining orders

The provision currently provides that nothing in the Act affects the operation of the *Domestic Violence Act 1994* or the provisions of the *Summary Procedure Act 1921* relating to restraining orders. The amendment updates the reference.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

3—Amendment of section 348—Interpretation

An ancillary order is defined to include a restraining order issued under section 19A of the *Criminal Law (Sentencing) Act 1988*. The Full Court is empowered to make ancillary orders on appeal against acquittal or on an issue antecedent to trial. The reference is updated.

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 19A—Intervention orders may be issued on finding of guilt or sentencing

A court is empowered, on finding a person guilty of an offence or on sentencing a person for an offence, to exercise the powers of the Magistrates Court to issue against the defendant a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* as if a complaint had been made under that Act against the defendant in relation to the matters alleged in the proceedings for the offence. The reference is updated.

Part 5—Amendment of *Cross-border Justice Act 2009*

5—Amendment of section 7—Interpretation

This amendment updates the definition of restraining orders for the purposes of the cross-border justice scheme.

6—Insertion of Part 3 Division 2A

This clause enables police to exercise the power to issue an interim intervention order in any part of the cross-border area, including in those parts that are within Western Australia or the Northern Territory.

Part 6—Amendment of *Evidence Act 1929*

7—Amendment of section 13B—Cross-examination of victims of certain offences

Section 13B of the *Evidence Act 1929* contains special provisions for cross-examination of victims of certain offences, including an offence of contravention of a domestic violence restraining order. The reference is updated.

Part 7—Amendment of *Firearms Act 1977*

8—Amendment of section 5—Interpretation

Under section 5(11) a person is not a fit and proper person to possess a firearm if the person is the subject, or has in the past been the subject, of a domestic violence restraining order. The reference is updated.

9—Amendment of section 32—Power to inspect or seize firearms etc

This amendment extends the powers to seize firearms to those possessed in contravention of an intervention order.

Part 8—Amendment of *Problem Gambling Family Protection Orders Act 2004*

10—Amendment of section 4—Grounds for making problem gambling family protection order

Section 4(8) provides for adjournment of proceedings in favour of proceedings under the *Domestic Violence Act 1994*. The reference is updated.

Part 9—Amendment of *Summary Procedure Act 1921*

Note—

The amendments remove provisions relating to personal violence restraining orders, to be dealt with under the new measure. After amendment, Part 4 Division 7 of the Act will deal only with paedophile restraining orders.

11—Non-application of Acts Interpretation Act

This clause provides that the provision for automatic commencement after 2 years does not apply to this Part. This is to enable certain provisions to be suspended indefinitely if necessary to take account of other measures.

12—Amendment of section 4—Interpretation

This clause deletes the definition of *relevant family contact order* because it is unnecessary to the paedophile restraining order provisions. It also makes a necessary adjustment to the definition of *restraining order* to reflect the fact that the Part will only deal with paedophile restraining orders.

13—Repeal of section 99

This clause repeals the section dealing with the making of personal violence restraining orders.

14—Amendment of section 99AA—Paedophile restraining orders

This amendment sets out that a police officer may make a complaint under the section. This is currently set out in section 99A.

15—Repeal of sections 99A and 99B

These sections currently set out who may make a complaint under the Division and establish a scheme for the making of telephone complaints. The latter are not relevant to complaints for paedophile orders.

16—Amendment of section 99C—Issue of restraining order in absence of defendant

This amendment removes a reference to section 99CA which is to be repealed.

17—Repeal of sections 99CA and 99D

This clause repeals the sections on special provisions relating to non-police complaints for section 99 restraining orders and firearms orders for section 99 restraining orders.

18—Amendment of section 99E—Service

This amendment removes reference to firearms orders.

19—Amendment of section 99F—Variation or revocation of restraining order

This amendment removes reference to an application being made by a victim.

20—Amendment of section 99G—Notification of making etc of restraining orders

This amendment removes reference to an application being made by a victim.

21—Amendment of section 99H—Registration of foreign restraining orders

This amendment removes reference to an application being made by a victim.

22—Repeal of section 99J

This clause repeals the section dealing with complaints by children.

23—Repeal of section 99L

This clause repeals the section dealing with the relationship between the *Domestic Violence Act* and this Act.

24—Amendment of section 189—Costs

This clause updates the reference to domestic violence restraining orders so that it will continue to be the case that costs will not be awarded against an applicant unless the Court is satisfied that the applicant has acted in bad faith or unreasonably in bringing the proceedings.

25—Further amendments

References to a member of the police force are updated to police officer throughout the Act.

Part 10—Amendment of *Youth Court Act 1993*

26—Amendment of section 7—Jurisdiction

Section 7 gives the Youth Court the same jurisdiction as the Magistrates Court to make a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* if the person for or against whom protection is sought is a child or youth, and ensures that the Youth Court has power under that Act to vary or revoke such an order previously made by the Court. The references are updated.

Part 11—Repeal

27—Repeal of *Domestic Violence Act 1994*

This clause provides for the repeal of the *Domestic Violence Act 1994*.

Part 12—Transitional provisions

28—Continuance of restraining orders

This clause ensures that existing orders will continue to be effective. If an application is made to vary or revoke an existing order that has an expiry date and a decision is made that the order should continue in some form, the Court is required to turn it into an ongoing order (and so there will be no concept of an extension of an order).

29—Continuance of registered foreign restraining orders

This clause ensures that orders that are currently registered will continue to be effective.

Debate adjourned on motion of Ms Chapman.

ATTORNEY-GENERAL, REMARKS

Ms CHAPMAN (Bragg) (15:57): I seek leave to make a personal explanation.

Leave granted.

Ms CHAPMAN: A few moments ago, during the contribution made by the Attorney-General to introduce the Intervention Orders (Prevent of Abuse) Bill 2009, he stated words to the effect that, 'The member for Bragg appears to be receiving this with some levity.' I take personal offence at that.

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: No, not at all. Don't you try to rewrite it. It will all be there on the *Hansard*.

The DEPUTY SPEAKER: Order! The Attorney will allow the member to make her explanation.

Ms CHAPMAN: Domestic violence is not a matter that I or, I am sure, other members of the house receive with levity. It is a very serious matter, and I will have much more to say about it when we have the opportunity finally to deal with this legislation, which is long awaited.

The DEPUTY SPEAKER: Order! The member is straying beyond personal explanation.

STATUTES AMENDMENT (RECIDIVIST YOUNG OFFENDERS AND YOUTH PAROLE BOARD) BILL

Adjourned debate on second reading.

(Continued from 9 September 2009. Page 3876.)

Mrs PENFOLD (Flinders) (15:58): The most glaring omission from this bill, in my view, is the recognition that offenders are human beings and should be treated as such. I believe that it is an abdication of its responsibilities by this government that young offenders are given harsher punitive orders and sometimes marked for life as criminals, with no hope of fitting into society and with no hope of ever being accepted as a participating citizen.

The government should put more money and resources into the Department for Families and Communities so that reports of child abuse and family breakdown can be investigated and dealt with promptly, and also much more funding should be allocated to successful crime prevention programs. The funding for several of these on Eyre Peninsula was withdrawn by this Attorney-General and has never been replaced.

The staff of the Department for Families and Communities is now so stretched that only the worst cases of abuse or other problems can be seen. It is far better to put a fence at the top of a cliff than an ambulance at the bottom. The fence that protects and serves the community in child abuse and family breakdown cases is the Department for Families and Communities.

I have been told of children being expelled from primary school (fortunately, not in my electorate), one of whom (a girl) was a prostitute and the other (a boy) a drug dealer. These children did not get into these activities without adult involvement. Of course, unless the associated problems are resolved, children will go on to worse behaviour.

It is well documented that abused children often go on to be abusers as adults and that many of them are so traumatised mentally that it affects their judgment and behaviour for the rest of their life. Effectively treating these children while they are children removes them from the criminal scene as they get older and gives them the chance of a future. Many juveniles in custody have some form of serious abuse in their past, including violence and neglect, and diversionary programs are a more appropriate and successful response to what is at the root of the problem rather than locking them up.

Better mental health services are also an essential component of effective treatment, but this government seems happier to put millions of dollars into a film hub than mental health facilities. An article in the September 2009 issue of *The Adelaide Review* states that the cost of keeping a young person in custody in South Australia for 12 months runs into tens of thousands of dollars, although South Australia's costs are said to be less than that in New South Wales, which is quoted at in excess of $150,000 to keep a juvenile in custody for 12 months.

Mission Australia runs programs around the country that have had enormous success in keeping young people out of trouble and preventing crime—sometimes 50 times cheaper than having a young person locked up. These outcomes were received for the small sum of about $2,500—the average cost of support by the Mission's Pasifika program for three to six months. The Pasifika program is aimed at young offenders from South Pacific Island backgrounds in Sydney. In the six months after their referral to the program, offence rates among participants were cut by more than half while serious offences such as assault were reduced by close to two-thirds. Sixty-five per cent of participants have not re-offended within 12 months of program completion.

These diversionary programs help divert a person from entering or re-entering the juvenile justice system and prove that alternatives to incarceration are cheaper and more effective than having children locked up. They are about addressing the root causes of a young person's problems, as well as showing them that they can have a future outside of stealing cars or breaking and entering. They receive help with education, personal and social skills, finding work, health and wellbeing, reducing alcohol and other drug consumption and financial literacy.

If any child deserves specialist treatment, it is those children who are so deeply entangled in the youth justice system that they have been unable to comply with previous judicial orders or unable to resist committing further offences. If rehabilitation is to be assertively pursued, as recommended by the To Break the Cycle report, children who have repeatedly offended should not be labelled as recidivists and remain for a longer period in an environment that does not facilitate their rehabilitation.

Those who deal with child offenders should genuinely believe that every child is able to be rehabilitated. To act with any other belief is to get across to some children that they are worthless and can never change. We are seldom aware that what we think comes across to those we meet more strongly than what we say.

The Children and Law Committee of the Law Society of South Australia states that, in March 2008, a review program in the youth training centres found that 67 per cent of residents re-offend within six months and nearly 100 per cent within four years. Research by Mission Australia shows that about 90 per cent of youth clients released from custody re-offend within two years. These rates of re-offending are not the result of young people being released from custody prematurely but are a reflection on the lack of rehabilitation they receive while in custody.

Adults who are trying to break a drug habit must also change their social life and contacts to avoid the temptation to backslide through returning to the same community that they are attempting to escape. This aspect of child offending must also be a strong part of their overall rehabilitation program because without it re-offending is an almost foregone conclusion.

The Children and the Law Committee states that the bill will not have any material impact on rates of recidivism as evidence shows that longer sentences for young offenders do not correlate to a reduction in offending. Why should it when no alternatives have been put to offenders and they have received little or no training in how to deal with problems and how to alter their actions, behaviours and thinking?

This, of course, comes directly to the detention centres where these child offenders are incarcerated. The government has money to spend on signs and advertising that say how wonderful they are, on overseas jaunts and ministerial staff, but the same government does not have funding for mental health and appropriate residential facilities for young offenders, which illustrates the wrong priorities of the government's spending. As the Children and the Law Committee states:

> The environments in which longer detention orders are to be served have been found to be lacking in the provision of therapeutic interventions targeted at the reasons for offending.

Remaining in an institution found to be lacking in appropriate therapeutic support is not in the best interests of the child. A child who is hungry will steal. In the 1770s such children were transported to Australia as convicts. Surely 200 years later we can consider ourselves more enlightened and humanitarian than to condemn such a child without attempting to rectify the reasons why he is not being fed properly.

It is noted that this bill presumes to deal with that proportion of young people who are repeat and serious offenders. Incarceration and transportation as the accepted and only means of dealing with offenders did not reduce crime in the 1770s nor will it today.

When condemnation and punishment are put forward as the only means of dealing with repeat and serious offenders, they have neither the encouragement nor the inclination to change. The Children and the Law Committee states that creating a subclass of offenders declared as recidivists and making it more difficult for them to qualify for their conditional release will do nothing to encourage or motivate in them a change in attitude or behaviour or ability to desist from offending upon eventual release.

Members of the Children and the Law Committee regularly act for children charged with an offence of assault whereby the child verbally or physically assaults residential care staff. No violence in the workplace is to be tolerated; however, there is no indication of possible actions or behaviours by staff which prompted the child's response. We have heard heartrending stories of children assaulted by adults when placed in care. It requires a special person to cope with these children who, for the most part, are a product of their environment.

Adequate staff in training centres, so that staff do not become overstressed, and more staff in the Families SA department are more positive ways to deal with young offenders and to bring about lasting change. Funding in these areas will have an impact on lessening crime and preventing children from committing crime in the first place. Detention intensifies the need for greater levels of expensive post-release support, so the community pays for the system's failure well into the future.

Certainly, putting the same amount of money into juvenile justice as the government is spending on a film hub would have a more lasting effect on reducing crime and rehabilitating offenders, thus taking them out of the criminal system for their lifetime.

As Mission Australia has demonstrated, detention is not the most appropriate means for tackling juvenile crime and stopping reoffending. The younger the person is when they first enter the juvenile justice system the more likely is their return as they get older. Another symbol of the system's failure is the overrepresentation of minority groups. For instance, only 5 per cent of 10 to 17 year old Australians are indigenous but 40 per cent of all young people under supervision are from an indigenous background.

Locking up young people for long periods of time, as proposed in this legislation, is a breach of their human rights. Article 40 of the United Nations Convention on the Rights of the Child, to which Australia is a signatory, states:

> States parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 3 provides that the best interests of the child should be of primary consideration in all actions, thoughts and law. Rule 19(1) of the United Nation's Standard Minimum Rules for the Administration of Juvenile Justice echoes the United Nations Convention on the Rights of the Child and states:

> The placement of a juvenile in any institution shall always be a disposition of last resort and for the minimum necessary period.

Declaring a child to be a recidivist and a danger to the public does not promote a child's sense of dignity and worth nor does it make the community a safer place.

I urge the government to put more money into those services that deal with children and families, such as Families SA, and into proven, successful programs, such as those conducted by Mission Australia, to keep children out of the justice system in the first place, and rehabilitating them before they become adult crime statistics. This will be cheaper and more effective than the government's proposed draconian approach that ignores common humanitarian principles.

Mr HANNA (Mitchell) (16:11): I am speaking on the government's legislation which labels serial young offenders as recidivists. The background is well set out in the report To Break the Cycle, prepared by Monsignor Cappo in 2007. Monsignor Cappo was asked by Premier Mike Rann to report on problems of youth crime. Page 10 of his report states:

> It is important to put the issue of youth offending into perspective. There is no youth crime wave. The rate of youth offending in South Australia is falling. In 2005 there were 6,127 police apprehension reports, this was 5.5 per cent lower than the number of reports in 2004 and the lowest in the 12 years. For example, police apprehended 25.1 per cent of young males born in 1984 before they turned 18 years of age. However, the majority of cases involved petty, often one-off offences, many of which were dealt with by the police without the matter going to court. That is, many of these young people 'wake up' to themselves and grow up to be productive and law abiding citizens. At the other end of the spectrum, there is a small number of young people who repeatedly break the law. This is the area for real concern and is the focus of this report.

Obviously, these were the concerns that led the government to introduce this legislation. It is worth stressing that it is for a very small proportion of young people and, indeed, even a small proportion of those who offend as young people.

There are a couple of other points that I wish to highlight from the To Break the Cycle report. Page 26 states:

> I think that is a very telling conclusion drawn by Monsignor Cappo. If the government really wanted to get criminally offending young people off the streets, the best thing it could do would be to spend money in therapeutic, education and training programs so that these young people could be turned around.

The simple solution is to lock them up for longer. The government seeks to take that simple approach because it seems to make good headlines; people do not have to think about that solution. If a certain young offender is incarcerated for a few months longer, people assume they are safer but, if the young person does not come out any better than when they went in, it is a false sense of security enjoyed by the public

What we really need is more concentration on the causes of crime, and we are not seeing that. The rubric 'tough on crime, tough on the causes of crime' has been twisted by this government to be 'tough on crime and tough on anyone who does not agree with them'. One cannot see any great headway being made in relation to overcoming the causes of crime.

When we come to this piece of legislation, it is worth bearing in mind recommendation No. 2 from the To Break the Cycle report. That recommendation was as follows:

> That the objects of the Young Offenders Act 1993 (Part 3, Section 3) be amended to strengthen the requirement to take account of community safety when sentencing serious repeat young offenders. The strengthening of these provisions should occur in the context of a stronger focus on rehabilitation.

So, quite clearly, what the government has done is adopt that recommendation about stressing community safety, but what it has not done is take a matching step down the road of more rehabilitation for young offenders.

The same sentiments are echoed by the Children and the Law Committee of the Law Society. The member for Bragg has fulsomely related to us the views of the committee, but the main points are worth repeating. The committee describes the bill very concisely in the following paragraph:

> The Committee understands the Bill (materially Parts 3 and 4), proposes to permit a court sentencing a child for committing a serious offence, where the required criminal history exists, to declare that child 'a recidivist young offender'. Such a declaration would override sentencing considerations of proportionality to the offence in question, and require the child to complete no less than four-fifths of the resultant detention order before being eligible for consideration for conditional release by the Training Centre Review Board constituted as a Youth Parole Board.

So, there we have the essence of the legislation. Where there are repeat offenders and they are under 18 they can be labelled as recidivist and then a mandatory minimum penalty, dependent on their detention order, is imposed, and must be imposed.

The Children and the Law Committee of the Law Society opposed the legislation for the following reasons. It was concerned that the number of recidivist offenders would increase due to the definition of 'serious offence' that is used in the legislation. There was a concern that there is not evidence to show that longer sentences will reduce offending. There was a concern about the labelling of offenders—that those who are labelled recidivist may start to think that there is no point in trying to change—and there were concerns about longer detention orders on children breaching their human rights.

In relation to that, we also need to bear in mind that the conditions of incarceration are not really conducive to rehabilitation or a sense of dignity. The cells at Magill are not pretty and are certainly not conducive to a dignified standard of living. I was visiting people there in the early 1990s, and I am told that they have not changed since then—and, indeed, they have not changed for decades.

I also refer to a submission from the Youth Affairs Council of South Australia. It has put a lot of work into analysing the bill quite exhaustively. Again, the main points have been well presented to the House of Assembly by the member for Bragg, but I will just highlight a couple of the main points.

The best interests of the child should be paramount here—and this comes back to my point about rehabilitation. That really should be the focus as much as anything: turning young people around so that they do not offend as adults. Surely that is the best, most important policy priority.

Secondly, the YACSA submission highlights the relevance of mental health issues for young people. It is often not just a matter of providing security, encouragement, self-esteem, education and training for troubled young people but also addressing mental health issues. To some extent, mental health issues need to be considered as beyond the control of young people, and they need to be adequately treated if there is going to be any prospect of turning them around. The YACSA submission also stresses rehabilitation, not surprisingly. In fact, it is a common theme from submissions concerning youth justice, particularly, all around the world.

It is unfortunate that the legislation has a punitive emphasis. There is no argument in the community about appropriate and strict punishments for repeat offenders, but that must be coupled with appropriate efforts and resources directed toward rehabilitation, otherwise it is just plain stupid.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (16:21): The bill arises from the government's concern about the harm done by a small cohort of young offenders who cycle in and out of detention and persist in serious crime despite the best endeavours of diversion and rehabilitation. These measures have been introduced to balance the interests of young offenders and their need for rehabilitation with the legitimate interests of the public and its need for protection.

Remember that repeat juvenile offenders are few in number, representing about 15 or 16 offenders, as was estimated to be so in July 2008 by Lisa Perre, Youth Justice, Families SA. These are the 15 or 16 that meet the criteria of a recidivist young offender under the legislation. Given the small numbers of people involved, this measure does not represent an assault on the youth justice system, as the members for Bragg, Mitchell and Flinders would have us believe, and, indeed, for reasons I am about to state, it does not even represent an assault on recidivist young offenders.

The bill was designed to meet, specifically, recommendation 2 of Monsignor Cappo's report which states that:

> The objects of the Young Offenders Act 1993 (Part 3, section 3) be amended to strengthen the requirement to take account of community safety when sentencing serious repeat young offenders. The strengthening of these provisions should occur in the context of a stronger focus on rehabilitation.

And we are doing that.

Mr Hanna: Ha!

The Hon. M.J. ATKINSON: Well, perhaps the member for Mitchell could have taken some interest in the Aboriginal Power Cup. The member for Mitchell looks perplexed. Doesn't he know about the Aboriginal Power Cup?

The bill meets recommendation 2 of the Cappo report in that the bill amends the Criminal Law (Sentencing) Act and the Young Offenders Act to strengthen the requirement to take account of public safety when sentencing serious repeat young offenders. Indeed, Monsignor Cappo provided this commentary in a letter dated 20 July 2008 on the draft bill. This is what Monsignor Cappo had to say about—

Ms Chapman: We are now being told?

The Hon. M.J. ATKINSON: Yes, I am telling you. He said:

> A key focus of the To Break the Cycle report was to balance the individual needs and rehabilitation of young offenders with community safety. The most socially responsible way of achieving community safety is through a combination of preventive measures that target young people at risk and through a planned, responsive rehabilitation approach for those young people already in contact with the juvenile justice system.
>
> The To Break the Cycle investigation identified that there is a very small group of young offenders who are responsible for the majority of youth crime, some of whom pose a significant risk to both themselves and the broader community. It is this very small group of young people for whom the only sensible, immediate course of action is detention that is coupled with assertive individualised case management. For all young offenders, the focus should be delivery of individualised case management within the community setting.
>
> As such, I would like to communicate my in principle support of the draft bill. I would also like to take the opportunity to emphasise that any legislative changes that enable a young person to be deemed a recidivist offender should only be used in the most severe cases of repeat offending. For this group of young people, a continued focus on rehabilitation must remain. Using detention as the sole means to manage this group of young people cannot be an option if we are to justly improve community safety. For all other young offenders, legislative change must not be allowed to encroach upon their management within the juvenile justice system.

I wish to conclude Monsignor Cappo's remarks by saying that the legislation meets the objectives of public protection, without undermining the rehabilitative focus of the Young Offenders Act and the wide range of diversionary measures that are available to deal effectively with the vast majority of offenders.

Not one of these mechanisms has been removed or affected by the legislation, except for informal cautions, where there is now a mechanism for recording informal cautions, an amendment that I think the opposition supports. This is an operational amendment that assists police in being able to determine which youths will best respond to cautions by checking to see who is new to being cautioned and who may respond to cautions and diversion from the criminal justice system. If the member for Mitchell got his way, the police would be unable to know, when informally cautioning a young offender, whether that offender had been informally cautioned dozens of times before. The member for Mitchell would blind and hobble the police. Protections have been retained so that cautions may not be used for the purposes of a criminal record check or allowed for use in judicial proceedings.

I turn now to deal specifically with the critique of the bill by the member for Bragg—and what a tour de force the member for Bragg's contribution was last night. The critique essentially encapsulates and distils criticisms contained in the lengthy submissions of the Law Society in particular and the Bar Association. Indeed, the honourable member's speech refers to the Law

Society's submission at length. It could be seen that the member for Bragg was somewhat leaning upon the Law Society. I propose to outline my responses to the topics raised by the Law Society and the Bar Association.

Firstly—and this is the claim from the member for Bragg—the bill will cast the net wider than its stated intention and increase numbers of recidivist offenders owing to the definition of 'serious offence'. The recidivist young offenders measures will not widen the net beyond the bill's stated aims. The measures are targeted to a very small cohort of repeat offenders who are responsible for the commission of the majority of crime in South Australia. For instance, in any one year, 10 per cent of male juvenile offenders in South Australia are responsible for nearly half of all crime, a figure repeated nationally, internationally and across time and cultures. Around 5 per cent of male juvenile offenders will be sentenced to detention each year.

The mechanisms of a declaration: a longer custodial term and conditional release upon youths to be of good behaviour, assisted by mandatory supervision by Families SA officers, who are qualified to work with young offenders within the rehabilitative framework of the juvenile justice system, are aimed at protection of the public.

We are talking about, roughly, 16 offenders who are part of the so-called gang of 49. We are talking about crime machines. We are talking about offenders who commit the vast bulk of serious juvenile crime in South Australia. Yet those people found a voice in this house last night through the Liberal Party, and the victims of those offenders who contact my office and the offices of members of parliament will be getting a summary of the advocacy on their behalf by the member for Bragg and the Liberal Party in this house last night and today.

These measures do not ignore the legislative aim of rehabilitating young offenders under the Young Offenders Act, given the range of rehabilitation interventions available for young offenders in custody and under supervision. Any possibility of net widening is also likely to be mitigated under other provisions of the bill.

Mr Goldsworthy interjecting:

The Hon. M.J. ATKINSON: Well, the member for Kavel says that anything I mail out must be accurate. It will be the speech itself, the record of *Hansard*. Just recently the Leader of the Opposition has tried to stop me circulating—trying to use quasi legal means—the whole speech of a Liberal member, on *Hansard*. Why would that be?

Firstly, the eligibility criteria for the declarations are strict. A young offender will have to have been convicted of serious offences on three separate occasions—three separate occasions—for sexual offences against a child, under the age of 14 years on two separate occasions. Secondly, a declaration is likely to arise after initial, if not considerable, exposure by a child to diversionary mechanisms under the Young Offenders Act, including cautions, community service orders and family conferences.

Thirdly, a declaration would only follow successful prosecution, being a proceeding of last resort. Prosecution proceedings would only be instituted in the event of the commission of either a very serious offence or serious repeat offending. Fourthly, a declaration would only be made where custody is deemed to be the only appropriate penalty, which is again a penalty of last resort, under the framework of the Young Offenders Act, assuming the eligibility criteria for a recidivist young offender is met.

Finally, the courts retain a discretion to make a declaration for eligible offenders who fulfil the criteria referred to above. This will ensure that such declarations can be expected to be made when the need for public protection is considered the priority.

In sum, given the statistically small numbers of offenders to which such declarations apply, the eligibility criteria that apply to recidivist young offenders and the retention of the court's discretion to make declarations, the government considers there is unlikely to be much net widening.

Let me tell the member for Kavel and the member for Bragg that I am willing to debate this with them in any forum. I will go to Mount Barker, I will go to Lobethal, and I will go to Burnside to debate this very question, because I am sure their constituents would be astonished, in the face of the damage and the number of victims created by the so-called gang of 49, that the member for Kavel, the member for Flinders, the member for Finniss and the member for Bragg would vote against this sensible measure. I think their constituents would be astonished about how they side with the gang of 49 against society.

A second claim: the bill will not have any material impact on rates of recidivism as (a) evidence shows that longer sentences for young offenders do not correlate with a reduction in offending. Well, tell that to the victims of the so-called Gang of 49 when members of that so-called gang are released early from youth detention and immediately begin a course of creating more victims; and (b) (this is the member for Bragg's claim, and one she adopts) the environment in which the longer detention orders are to be served—

Ms CHAPMAN: On a point of order—

The Hon. M.J. Atkinson: It is not a point of order. She is disagreeing with me.

The SPEAKER: Order!

Ms CHAPMAN: The Attorney-General is attempting to present to the house claims I have made, which are not true. He is reading from the Law Society's submission, not mine.

The SPEAKER: There is no point of order.

The Hon. M.J. ATKINSON: Just as the member for Unley introduced the forgeries to the house, so the member for Bragg introduced the Law Society's submission to the house at great length and endorsed it. This is the claim, (2b): the environment in which the longer detention orders are to be served have been found to be lacking in the provision of therapeutic interventions targeted at the reasons for offending.

The member for Bragg swallowed this hook, line and sinker. My response: the government's bill is designed to protect the public. However, it can also be said that youth training centres are also designed to deliver rehabilitative interventions to young offenders in custody. On advice received from Families SA, South Australia's youth detention centres currently run rehabilitation programs in addition to education programs, sports and life skills that are specifically tailored to young offenders' needs, including (I will list these because you will never hear this from the member for Bragg):

- victim awareness, a focus on the experience of victims to improve cognitive empathy skills;
- the STAR program, systematic training anger reduction;
- moral reasoning, a cognitive behavioural therapy program;
- cultural identity, run with the Metropolitan Aboriginal Youth and Family Service; and
- individual behavioural management programs.

Other programs include juvenile justice job placement and Alcohol Services South Australia; drug and alcohol education and counselling services, in conjunction with Drug and Alcohol Services South Australia; continuing the journey for youth in transition to community; and the healing room: journey to respect, in conjunction with Child Adolescent Mental Health Services.

Ms Chapman: Is that all?

The Hon. M.J. ATKINSON: No; I will finish the list in a minute. As to the first list, with the so-called Gang of 49, who have had most unfortunate lives, who couch surf, who do not get proper nutrition and who do not have a father or male mentor in their life, what chance do you think you have of those offenders doing these rehabilitative programs unless they are in youth detention? How else are they going to be required to attend? Do you think they will turn up voluntarily?

New programs that began in 2009 include apprenticeship and employment, through OneSteel, a metal industry and mining business, and also a mentoring service in conjunction with WHITELINE SA, funded by my department. A Review of Programmes in Youth Training Centres report was released by the Guardian for Children and Young People and the Minister for Families and Communities accepted recommendations in the report already being implemented in part by the recommendations of the Commissioner for Social Inclusion made in the To Break the Cycle report.

Here is the Law Society and the member for Bragg's third criticism: creating a subclass of offenders declared as recidivists and making it more difficult for them to qualify for conditional release will do nothing to encourage or motivate in them a change in attitude or behaviour or ability to desist from offending upon eventual release.

Our first task is to disable them from committing serious crimes against South Australians by putting them in detention in the immediate aftermath of their crimes. This is something the

parliamentary Liberal Party seeks to stop us doing by opposing this bill. The government's priority is the protection of the public from a very small but persistent group of young offenders who have not benefited from past lenience or past interventions at rehabilitation. The measures will require the assessment of strict criteria for the conditional release of recidivist young offenders.

However, it is important to note that the views of the young offender and the victim will be important to the Youth Parole Board's decision. These interested parties will not only have the opportunity to make sense of their own experience at a youth parole hearing but also to the debate of what they would like to see happen after a young offender's release from detention. These views, apart from the utility of other expert reports, will not only affect the board's decision to release an offender but also influence the type of conditions that are imposed to meet the needs of the offender, the protection of the victim and society. For instance, conditions for release may also be of a rehabilitative kind, including, for example, a youth's continued attendance at a program, under supervision of Families SA workers, who are best qualified to deal with juveniles, within the rehabilitative framework of the youth criminal justice system.

We come to the fourth criticism of the government's bill by the Law Society and their servant, the member for Bragg: imposing longer detention orders on children is a breach of their human rights. Those shadow ministers who simply read into the record interminably the submissions of lobby groups and pressure groups ought to reconsider the way in which they are fulfilling the responsibilities of their shadow portfolio.

The answer to the member for Bragg's point is this: the government has taken a view that the rights of recidivist offenders need to be balanced against the need to protect the public, and that is a balancing act the parliamentary Liberal Party has rejected. Although detention of young offenders helps prevent the commission of further offences, this is not at the expense of rehabilitation of the offender, taking into account the range of rehabilitation interventions available for young offenders in custody and under supervision, and I have enumerated those. Rehabilitation interventions available in the youth criminal justice system aim to promote the child's reintegration and assumption of a constructive role in society and, by doing so, promote the child's sense of dignity and self-worth. The member for Bragg would merely leave the so-called gang of 49 on the ran-tan. Her approach and the approach of the parliamentary Liberal Party is all carrot, all chocolate and no stick.

Let us deal with the South Australian Bar Association's submissions, and this forms point five: serious repeat offender declaration and removal of proportionality in sentencing by requiring young offenders to serve four-fifths of their sentence in custody will guarantee the child as a career criminal. Again, that is a submission the member for the Bragg and the parliamentary Liberal Party decided to adopt.

Ms Chapman: They're wrong, too, are they?

The Hon. M.J. ATKINSON: Yes, they are wrong. They are completely wrong. Our response: the government has taken the view that the rights of recidivist young offenders need to be balanced against the need to protect the public. The member for Bragg takes the view that, if a youth offender is required to serve four-fifths or more of his sentence, then he will be a career criminal as a result. What an extraordinary analysis. The member for Bragg is saying that no-one should serve their full sentence if they are a youth; in fact, they should not even serve four-fifths of it. Extending the non-parole period to four-fifths of the sentence will help achieve the aim of balancing, in the mix, the rights of victims—

Ms Chapman: As if you care about victims.

The Hon. M.J. ATKINSON: —as will the imposition of stringent conditions by the Youth Parole Board after release. Well, the member for Bragg ought to ask some victims of the so-called gang what they think—

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: —of our proposals compared to the Liberal Party's proposal. On the last interjection, the woman who has just collected a damages payout of something like $500,000 from the government would not agree with the member for Bragg about children in state care. It should be remembered that this sentencing discretion will vest in the court and will be reserved for a very small category of repeat young offenders who have not benefited from past leniency and who appear to be going straight back into crime after being caught, charged and convicted. The Liberal Party says: let 'em rip.

Proportionality will be maintained for the vast majority of young offenders. Recidivist young offenders are not lost to the criminal justice system. I refer specifically to the interventions pledged to detainees including post-release by the Department for Families and Communities in the examples that I have already supplied in my contribution to the house today.

I would now like to touch on comments raised by the member for Bragg about the creation of a victims register and the release of some information to victims about detainees. I note proposed amendments that the Hon. Ann Bressington has sought to move concerning the release of detainee information to victims. The government proposes to move amendments that mirror similar provisions in the Correctional Services Act for the release of information about detainees to victims. I will speak to these amendments in committee.

Bill read a second time.

[Sitting extended beyond 17:00 on motion of Hon. M.J. Atkinson]

In committee.

Clause 1.

Ms CHAPMAN: I move:

Page 3, lines 3 and 4—Delete '*Recidivist Young Offenders and Youth Patrol Board*' and substitute:

Miscellaneous Criminal Procedural Matters

I am speaking to amendment No. 1 and advise the house that the remaining amendments up to No. 16 (as circulated) are consequential upon the deletion of 'Recidivist Young Offenders and Youth Parole Board'. Consistent with what I have outlined in my second reading contribution, the opposition opposes the declaration of young persons for the purposes of introducing and imposing a different sentencing obligation.

The Attorney-General has provided today his estimate of the number of children to whom he would expect the proposed definition and process to apply. I am not sure whether that is on an annual basis. I assume from what he has said that 15 or 16 children a year would come under the definition (to which this would apply) out of some 200 children who are sentenced to some kind of detention provision per year. That is certainly within the realm of what was estimated as a possibility in information provided at the briefing—that it could be four or five or 10. There was no certainty as to what it would be, but an estimate was requested. I am pleased that the Attorney-General has provided this information in his response prior to the conclusion of the second reading debate.

Further information that the Attorney-General has provided in his response does not in any way persuade the opposition that its introduction is justified. The Attorney-General has done two things. In addition to just repeating and dismissing—without producing further corroboration—the criticisms made by the SA Bar Association and the Law Society, he did two other things. First, he quoted what appear to be excerpts from a letter or submission, apparently dated 29 July 2008, from Monsignor Cappo in respect of this proposal of the government.

Two things concern me about that. First, at the time of the briefing on this matter, the information that was conveyed to those in attendance—and other members of parliament and/or their staff were present—was that Monsignor Cappo had not responded to the referral of this information to him on the basis that he was one of the stakeholders to be consulted. The understanding was that it was taken as some acquiescence.

Today the Attorney-General has produced a letter or excerpts from a letter or a submission (as he described it) dated 29 July 2008, which runs through a number of things that Monsignor Cappo thinks are important, but the Attorney-General is hanging his hat on the fact that he provides in-principle support. Of course, we have not seen this submission. As far as we are concerned, it did not exist at the time of our briefing. In any event, if it transpires that it was in existence—and the indication from the Attorney-General is that it has certainly come to his attention—then as members of parliament we need to see it. I ask again that the Attorney-General provide a copy of the full response from Commissioner Cappo in respect to this legislation.

What is evident, even from the information that was provided by the Attorney-General in this regard, is that it is clear that Monsignor Cappo suggests that there are a number of other ways

that we should be dealing with these children—these few children, relative to the total number—to which this would apply. One of them is that they have individualised plans that are responsive to the needs of these children. We did not see any indication from the Attorney-General, other than a list of apparent programs that apply, or are applied, in the prisons.

I am sure that members would know this very well, because we all receive letters from people, not just from adult prisons and children's prisons, but from those who regularly complain about government programs, not the content of them or that they may not be very effective, but that they cannot get access to them, they have to go on a waiting list, or the program is not actually available at the facility where they are at any one time, or—in the prison population—that they are frequently moved from one facility to another so that even if they start a program they never get to finish it. I do not know about other members, but I get plenty of those sorts of letters.

It is not a question of this parliament simply saying, 'Here is a list of the things that we offer, some by way of program, for children.' Clearly, whatever is happening in there is not enough. It may be that individually each of these programs are fantastic. It may be that they are only getting to one or two of the children. It may be that they are not long enough or that, at the end of the day, they need some other supplement for them to actually be effective.

So, I find that wanting in respect to any support for the concept that these children need to be held in detention longer to enable them to have access to the programs, which he says are adequate. It is totally unacceptable to the opposition to in any way support the merits of the proposal that is before us in respect of this declaration procedure.

The second thing that the Attorney-General says today is that if we want to know how the victims are feeling then we should go and ask them. We do ask a number of the organisations that support these people. We are not allowed to know who the actual victims are because there is no public list. There is no list out there where we can say, 'Okay, well, here's this person who is a victim of this child's offence,' so that we can ring them up and say, 'How do you feel? Do you think this should be happening?'

What I do know is this: when I was a member of the Juvenile Justice Inquiry, chaired by the Hon. Bob Such, we had a number of people come before us and we heard a lot about the importance of family conferencing. We heard a lot about the merits of restorative justice.

The Hon. M.J. Atkinson: We are still doing that.

Ms CHAPMAN: The Attorney interjects to say that we are still doing it; as we should. It was recommended that that should continue. That had been under review. It had been operating, I think, for 10 years in the Youth Court, under their supervision, and it was making headway. One thing that was overwhelming amongst the victims, whether it was a Coles supermarket which had had products flogged out of its shop, whether they were someone who had been the recipient of a blow during an assault, whether property or personal damage applied—there were some issues relating to victims of sexual offences and whether family conferencing was appropriate or not, although certainly some people take the view that that is still an appropriate forum and way of managing rehabilitation in a restorative justice program for even victims of those offences—is that they were very happy to come in, sit down and meet with the offenders in relation to these offences and see some demonstrable commitment from those children to changing their lives.

It may even be things which may seem little to us but which are very important to the victim. We were told that something that was very therapeutic and to the advantage of the offender was the obligation, which was imposed through this conferencing process, for the offender to write a letter of apology to the victim. This is a very powerful means by which the young offender is not just given the opportunity but has imposed on them something that will make them think about what they have done and the consequences, and that has had some very significant benefit.

A number of people have provided examples to us of the types of letters that have been provided. We heard from members of the judiciary, when we attended for the 10 year Youth Court conferencing celebration (at which, from memory, the Attorney-General was present), who reinforced the importance of children being obliged to do this and its value not only to them but also to the victims.

The Attorney-General can say, 'Why don't you ask some of the victims about what happens with this?' We have done so, and the position in relation to this matter is that the people out there have demonstrably told the committee of the advantages in undertaking those processes.

In addition, we have heard from the groups in the community that have to represent these people, one of which still has not provided us with any information but to whose representative I have spoken and to whom I have referred in my address, that is, the Chief Executive of the Aboriginal Legal Rights Movement. We have not heard anything from the government about what its response was.

After the briefing, I was speaking to the Chief Executive Officer of the Aboriginal Legal Rights Movement about another bill—a corrections bill, in fact, which is another matter working its way through the parliament and which is outside the Attorney's portfolio (there is a different minister to which they are directly responsible). In the context of looking at that legislation, I was having a discussion with the Chief Executive of the Aboriginal Legal Rights Movement.

I said, 'I would be interested to know what you think about the recidivist young offender procedure the government proposes to introduce in its recidivist young offenders bill.' He said, 'I don't think I've seen it.' I said, 'Perhaps you have a committee or some structure that gets to view these things.' He said, 'No. If it came through here I would have seen it.' I said, 'Look, I'll send you a copy of it, and also the Attorney-General's second reading speech. In a nutshell, there were three—'

The Hon. M.J. Atkinson: He could have been mistaken.

Ms CHAPMAN: Absolutely. I said, 'The government is proposing three initiatives. One is the program that is under immediate review, and I am speaking on that. The second is that there be a Parole Board arrangement, and the register for the victims, and we have indicated our position and our support to the government in respect of that bill. There is a third leg of the bill that relates to recording informal cautions.' He said, 'Oh, yes. I'll certainly have a look at that,' or words to that effect. I said, 'Well, be assured that in relation to that aspect the opposition thinks that that is quite a good idea, and it has been supported by the select committee inquiry,' etc.

The ACTING CHAIR (Hon. P.L. White): Order! I remind members the committee of standing order 364, which limits questions on clauses to 15 minutes. I notify the member for Bragg that, while I have not had the clock on her, she has been going on for quite a long time. If she has a question for the minister, would she please ask it very briefly.

Ms CHAPMAN: Thank you, Madam Acting Chair, for reminding me of that. I suppose I could speak for 15 minutes for all 16 of these but, as I indicated, they are consequential, so I was hoping to shorten the debate on this aspect by speaking, obviously over time, just on this. I may need to use some of that time on amendment No. 2.

Can I say in conclusion, to do with the consultation process, that it does concern me very greatly that someone who represents at the senior level the Aboriginal Legal Rights Movement apparently is not familiar—

The Hon. M.J. Atkinson: Apparently?

Ms CHAPMAN: Yes.

The Hon. M.J. Atkinson: Of course, you could be wrong.

Ms CHAPMAN: I said that before, Mr Attorney. You're not listening.

The Hon. M.J. Atkinson: Why didn't you check it before you came into the house?

Ms CHAPMAN: I spoke to him, as I indicated, and the position is, as I said yesterday in the debate, that we have not had the response yet from them as to their attitude, but at the conclusion of this discussion, he said, 'Yes, I'd be very interested to have a look at that because that would have some concerns.' In reference to what you have described as the estimate of 15 or 16 children (or whatever the number was going to be, because we did not know what the number is going to be,) he agreed with me that the likelihood is that the profile of the people that this would apply to will be young, male, black, poor children—his clients.

Yet, would you not expect in those circumstances that, having raised it even yesterday, if he had had some response or had felt that there had been some consultation and some indication of acceptance or support—'Great, this is fantastic'—at the very least it would be important for the Attorney-General to have rushed in here today not only to produce a summary of bits of whatever Monsignor Cappo presented but to have rushed in here with the Aboriginal Legal Rights Movement submission, if there is one, to say, 'What a great idea!'

Of course he has not, because they do have concerns, obviously, from that conversation that I have had. I think it is incumbent on the government when it consults with these people that it properly consults with the very people who have to work with these children and represent them and pick up their lives and be able to give some chance of rehabilitation, and not just dismiss this issue as though it is of no importance.

So, the opposition is not persuaded even by what the Attorney-General has come back with today to suggest that this has any merit whatsoever, that it is going to provide any greater or safer community protection or, most importantly, that it is going to provide any benefit for the recovery and rehabilitation of the young people to whom this will apply. My amendment effectively amends the initial reference in the bill to this proposed structure and I indicate that, in the event that the passage of this amendment is not successful, I will not be proceeding with the balance. I thank the chair for her indulgence and the extra time allowed.

The Hon. M.J. ATKINSON: I am advised by my staff that the Aboriginal Legal Rights Movement was sent the consultation documents on 5 June and, when it was followed up by members of the Policy and Legislation Section, Mr Gillespie was unsure whether or not he was making a submission but referred the staff member to a lawyer for ALRM who was on long service leave and therefore not available to enter into dialogue about it.

Ms Chapman: Another pathetic excuse!

The Hon. M.J. ATKINSON: A pathetic excuse? What—by ALRM or by my department?

Ms Chapman: By your department.

The Hon. M.J. ATKINSON: By my department! There you have it—a pathetic excuse. My department mails the Aboriginal Legal Rights Movement on 5 June, does not receive a response then follows up by phone and that apparently is a pathetic response. Today's contribution to the debate by the parliamentary Liberal Party has hinged entirely, swung entirely, on a set of facts which has just been falsified. Like so much else—like the Mount Gambier kidney, like the Ceduna classroom, like the Kate Lennon payout—all of them prove to be false and when they are falsified, does the member for Bragg ever come back to the house and say, 'Look, I'm sorry. I got that wrong'? No; she never accepts responsibilities for her error. Here is another one today.

The committee divided on the amendment:

AYES (11)

Chapman, V.A. (teller)	Evans, I.F.	Gunn, G.M.
Hamilton-Smith, M.L.J.	Hanna, K.	McFetridge, D.
Pederick, A.S.	Penfold, E.M.	Pengilly, M.
Venning, I.H.	Williams, M.R.	

NOES (24)

Atkinson, M.J. (teller)	Bedford, F.E.	Breuer, L.R.
Brock, G.G.	Caica, P.	Conlon, P.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Hill, J.D.	Kenyon, T.R.	Key, S.W.
Koutsantonis, A.	Lomax-Smith, J.D.	Maywald, K.A.
O'Brien, M.F.	Piccolo, T.	Rann, M.D.
Simmons, L.A.	Snelling, J.J.	Stevens, L.
Weatherill, J.W.	White, P.L.	Wright, M.J.

PAIRS (6)

Redmond, I.M.	Rankine, J.M.
Griffiths, S.P.	Portolesi, G.
Goldsworthy, M.R.	Ciccarello, V.

Majority of 13 for the noes.

Amendment thus negatived; clause passed.

Clauses 2 to 9 passed.

Clause 10.

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

Page 6, lines 10 and 11—Delete:

'must be a period of not less than the mandatory period prescribed in respect of the relevant offence' and substitute:

(c) must be a period not less than the mandatory period prescribed in respect of the relevant offence; and

(d) if there is more than one such offence in respect of which a mandatory period is prescribed—must be a period not less than the greater of any such mandatory period; and

(e) must be commenced or be taken to have commenced on the date specified by the court (which may be the day on which the person was first taken into custody or a later date specified by the court that occurs after the day on which the defendant was taken into custody but before the date on which the person is sentenced).

Note—

See PNJ v The Queen [2009] HCA 6

These technical amendments have been included to give effect to clause 10 of the bill which amends section 32(5a) of the Criminal Law (Sentencing) Act. Section 32(5a) is a provision that deals with the setting of a minimum nonparole period for a global sentence that is imposed for multiple offences under section 18 of the Criminal Law (Sentencing) Act.

Amendments to section 32(5a) of the Criminal Law (Sentencing) Act were introduced in this bill to give effect to the comments made by His Honour Chief Justice Doyle in the famous case of Dundovic, reported at 2008 South Australian Supreme Court at page 136 in paragraphs 42 and 43. His Honour queried whether the four-fifths nonparole period rule applied to the offence that attracted the mandatory nonparole period or whether the rule applied to the total sentence imposed under section 18A of the Criminal Law (Sentencing) Act. His Honour considered that the latter would work a hardship against the offender. His Honour also queried how pre-custody ought to be taken into account in the setting of a nonparole period for a global sentence.

The current amendment makes clear that the prescribed nonparole period must be not less than the mandatory period prescribed for the relevant offence. The effect of the proposed additional amendment clarifies, first, the calculation of the nonparole period where there may be more than one offence attracting a nonparole period. For instance, paragraph (d) proposes that, if there is more than one such offence for which a mandatory period is prescribed, this must be a period of not less than the greater of any such mandatory period. This paragraph not only provides clarity but addresses the concern raised in Dundovic that the provision does not operate in a way that works unnecessary hardship to a young offender.

Finally, paragraph (e) clarifies how sentences may be backdated to take into account pre-custody, in accordance with the principles in PNJ v The Queen (2009) High Court of Australia at page 6. It is a judgment of 10 February this year. A sentence that is backdated must be commenced or be taken to have commenced on the date specified by the court, which may be the day on which the person was first taken into custody or a later date specified by the court that occurs after the day on which the defendant was taken into custody but before the day on which the person is sentenced.

For example, this will cover the situation where an offender has been placed in custody after his arrest until such time as he has been sentenced for an offence. It will also cover the scenario where the offender may have been bailed for an offence after arrest but was taken into custody because he breached his bail conditions. The court, in that instance, could exercise its discretion to backdate the sentence to the date the offender was taken into custody, assuming that he remained in custody until sentencing.

Ms CHAPMAN: I indicate that, whilst the opposition opposes the general principle of the regime that is being imposed, we do accept that this amendment is for the purposes of clarity. And so, even though we oppose the new regime, we accept that it needs to function and operate and certainly pre-sentencing periods need to be taken into account, so there will be no opposition from the Liberal Party.

Amendment carried; clause as amended passed.

Clause 11 to 15 passed.

Clause 16.

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

Page 9, after line 32—Insert:

(1a) Section 37—after subsection (5) insert:

(5a) If, in relation to an offence for which a youth was sentenced to imprisonment for life, there is a registered victim and the release of the youth on licence under this section is subject to a condition that relates to the victim or the victim's family, the Training Centre Review Board must notify the victim of the terms of the condition.

(5b) However, the Training Centre Review Board is not required to notify the registered victim if—

(a) the victim has indicated to the board that he or she does not wish to be so notified; or

(b) the board is satisfied that, in the circumstances of the case, it is not appropriate to so notify the victim.

(5c) A decision of the Training Centre Review Board to notify or not notify a victim of the terms of any such condition is final and is not reviewable by a court.

The amendments to these clauses are identical and may be considered together. This amendment adds to a proposed amendment by Ms Bressington to clause 21, section 41A(4a) permitting the disclosure to a registered victim of the terms of any condition of a young offender's release that relate to a victim or a victim's family.

For consistency, I propose to add a similar amendment to clause 16—that is, section 37(5a) of the act—permitting similar disclosure of the terms of any licence relating to a victim or his or her family which has been imposed for a young offender who has been convicted of murder. However, my proposed amendment will provide a discretion to the Training Centre Review Board not to notify a victim if he or she has indicated to the board that he or she does not wish to be so notified, or, alternatively, the board is satisfied that, in the circumstances of the case, it is not appropriate to so notify the victim.

In some cases, an offender's health or wellbeing may be put at risk by the release of such information. These additional clauses are, I think, an improvement to the Bressington amendment and again serve to demonstrate the government pledging itself to victims of crime.

Ms CHAPMAN: The opposition understands the proposal submitted to it by the Hon. Ann Bressington foreshadowing her amendments, and I accept the Attorney's explanation that this is largely to cover her proposals. I think the only correction to that is to provide for a decline of information in certain limited circumstances, which certainly appears to be in order. The opposition has no objection to the same; in fact, we support it.

Amendment carried; clause as amended passed.

Clauses 17 to 20 passed.

Clause 21.

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

Page 14, after line 34 [clause 21, inserted section 41A]—Insert:

(4a) If, in relation to an offence for which a youth was detained, there is a registered victim and the release of the youth under this section is subject to a condition that relates to the victim or the victim's family, the Training Centre Review Board must notify the victim of the terms of the condition.

(4b) However, the Training Centre Review Board is not required to notify the registered victim if—

(a) the victim has indicated to the Board that he or she does not wish to be so notified; or

(b) the Board is satisfied that, in the circumstances of the case, it is not appropriate to so notify the victim.

(4c) A decision of the Training Centre Review Board to notify or not notify a victim of the terms of any such condition is final and is not reviewable by a court.

Ditto.

Amendment carried; clause as amended passed.

Clause 22 passed.

New clause 22A.

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

Page 16, after line 38—Insert:

22A—Amendment of section 64—Information about youth may be given in certain circumstances

Section 64—after its present contents (now to be designated as subsection (1)) insert:

(2) If the youth is sentenced to detention or imprisonment for an offence, an eligible person may apply in writing to the Chief Executive for the release to him or her of any of the following information relating to the youth:

(a) the name and address of the place in which the youth is for the time being held in custody;

(b) details of any transfer of the youth from one place in which the youth is being held in custody to another;

(c) details of the sentence or sentences that the youth is liable to serve;

(d) the date on which and circumstances under which the youth was, is to be, or is likely to be, released from custody for any reason;

(e) details of any escape from custody by the youth.

(3) The Chief Executive has an absolute discretion to grant or refuse an application for release of information to an eligible person.

(4) A decision of the Chief Executive as to whether a person is an eligible person or to grant or refuse an application under this section is final and is not reviewable by a court.

This amendment is an alternative to the proposed amendment by Mrs Bressington regarding the disclosure of information about young offenders who receive custodial terms. My amendment mirrors the provisions of section 85D to include the release of information about those matters referred to in that provision for offenders.

Proposed section 64(2) therefore permits the release of information about the names and addresses of the training centre where a youth is detained; details of any transfer of the youth from one training centre to another; details of a young offender's sentence; the date of a young offender's release from custody; and details of any escape.

The amendment stands in contrast to the Bressington amendment, which is confined in its application to recidivist young offenders and also omits from disclosure information about the name and address of the training centre where a young offender is held, as well as details of any transfer of the youth from one training centre to another. I do not see any reason to confine the provisions to recidivist young offenders, nor any reason to exclude details relating to the training centre where the young offender is being held, since we have only two, as, clearly, this would be of interest to a victim.

Proposed section 64(4) allows for the release of information to eligible persons defined to include a registered victim, a member of the youth's family, a close associate, a legal practitioner representing the youth, and any other person whom the chief executive thinks has a proper interest in the release of such information, which may conceivably include a registered victim's family member.

The effect of proposed section 64(3), (4) and (5) is that neither the Department for Families and Communities or the Training Centre Review Board will be compelled to release information to victims of crime or any other person or organisations. Again, it is possible to envisage that, in some case, the offender's health or wellbeing may be put at risk by the release of such information. It is proposed that the chief executive officer of the department or the Parole Board have the discretion to refuse to meet requests, where circumstances dictate.

It is further provided that a decision by the chief executive officer or the board as to whether a person is an eligible person or to grant or refuse an application for information is final and not reviewable by a court. Similarly, this clause serves to demonstrate, among other things, this government's continuing pledge to assist victims of crime.

Ms CHAPMAN: The opposition supports this amendment. We place on the record our appreciation to the Hon. Ann Bressington for having raised this matter, undertaken the consultation and obtained the support of the Commissioner of Victims' Rights. It is important that there be this information, subject to the restrictions, as indicated, by the Attorney. It is her attention to this that brought the matter to our notice, and we express our appreciation to her for undertaking to do that and indicate our support.

What I will say is that, more often than not, the situation is that the offender is a child but so is the victim, in many cases. Therefore, there has to be some opportunity to have this information and recognise that youths, in some situations, lose the right to privacy in relation to some of this information. However, with the safeguard of there being some administrative supervision of that information, the opposition will support the same.

New clause inserted.

Clause 23.

Ms CHAPMAN: I move:

Page 17, lines 3 to 10 (inclusive)—Delete the clause and substitute:

23—Social Development Committee to inquire into the report on operation of act

The Social Development Committee of the parliament must, within three years after the commencement of the Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009, in consultation with the Attorney-General, inquire into, consider and report on the operation of the act (including any effect the operation of the act has had on the criminal justice system in South Australia)

It is the opposition's view that, if we are to have the new regime of the badging of certain young offenders as recidivist young offenders, which we have been unsuccessful in having removed from this bill, it is appropriate that there be a review. The government, in its own bill, proposed that there be a review, and I think that is an acknowledgment that, because of the novelty of this approach by the government, unique in the world, as far as we know, at least there should be some review period. So, at least we agree on that.

What we say is that it is important that, if there is to be a review and it is to be effective, it must be independent, and a review procedure that includes the minister is not independent. Monsignor Cappo, as head of the Social Inclusion Unit, is someone who would have a very significant input, as he should, in matters being reviewed. However, what we say would be more appropriate, just as we do in court reviews, is to have someone appointed independently to undertake that assessment. Certainly, it would be appropriate that Monsignor Cappo or his successor would be, as the head of the Social Inclusion Unit, a valuable person to present submissions and to put their view as to the effectiveness of this procedure. Although we have not yet been able to see even his first submission, we agree that a person in his role should be consulted and obviously serious consideration given to what he may contribute.

One of the roles and responsibilities of the parliamentary Social Development Committee is to deal with issues in relation to children. Therefore, I have moved this amendment on the basis that it be the Social Development Committee which is vested with the responsibility to conduct the inquiry within three years, which is the same time period as proposed by the government, and that would remain in consultation with the Attorney-General because, after all, he is the minister responsible for considering the report. Then, of course, we could review this matter in parliament, if necessary.

The Hon. M.J. ATKINSON: The member for Bragg proposes an amendment for parliamentary review of the act by the Social Development Committee of the parliament within three years of its commencement. The legislation was drafted in response to recommendations by the Commissioner for Social Inclusion in his report To Break the Cycle, a report to the government. I refer to recommendation 2:

That the objects of the Young Offenders Act 1993 (part 3, section 3) be amended to strengthen the requirement to take account of community safety when sentencing serious repeat young offenders. The strengthening of these provisions should occur in the context of a stronger focus on rehabilitation.

This bill strengthens the Young Offenders Act without undermining the diversionary mechanisms of that act to assist with the rehabilitation of young offenders. Given that this bill seeks to carry other recommendations of the Commissioner for Social Inclusion, we think it is appropriate that the

Commissioner for Social Inclusion review the act. Therefore, the government opposes the amendment.

Amendment negatived; clause passed.

Title passed.

Bill reported with amendments.

Bill read a third time and passed.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

In committee.

(Continued from 9 September 2009. Page 3858.)

Clause 2 passed.

Clause 3.

Ms CHAPMAN: I move:

Page 4, after line 11 [clause 3(1)]—Insert:

DPP means the Director of Public Prosecutions and includes a person acting in the position of

This amendment proposes to insert the Director of Public Prosecutions as the person who undertakes the assessment under the provisions of the unexplained wealth bill which may result in an application being made to the court for the appropriate unexplained wealth order to be made.

This is one of the ways in which it is proposed to have a trigger to an application being made in the court, and the government's proposal is that this trigger would be by the Crown Solicitor and that he or she would undertake this responsibility in this legislation. The opposition has already indicated that we support the bill in principle.

It seemed rather curious to us that the Crown Solicitor would be the body to undertake this assessment, because it did not appear to be operating in other jurisdictions. We had a good look at the Western Australian model, which has been operating since 2000, the bill having been debated back in 1999 under the Court government. It utilised the Director of Public Prosecutions as the appropriate person to receive the police information, conduct the assessment and make the application.

This is important to consider. It may seem rather insignificant in itself. They are both competent people who could undertake this role in the sense of experience, but we note that this is quite an unusual piece of legislation in that we are reversing the onus from the person who may be the subject of one of these orders to prove how they might have acquired their wealth rather than the usual proving of it by the applicant.

We are giving the trigger to someone who has only to 'reasonably suspect' that the person has not lawfully acquired the wealth they have. So, it is unique legislation in that we are reversing the onus of proof. We are providing a power to someone who can make a decision that is unreviewable and, ultimately, an order can be made only by the court. It is appealable, but it is unique.

We looked at the Western Australian system. Interestingly, again in this case, we acquired some profile of what cases had occurred in Western Australia in the preparation for this hearing. In fact, I had even sought some information on what had been happening in South Australia in the past few years since we passed the original legislation which has a baseline of requiring conviction and various other qualifications but which certainly does not go as far as the declaration procedure for the purposes of identifying a debt and then enforcing the debt recovery as in this wave.

I was disappointed that we have not received any of that information since the briefing. I hope that the principal act has been successful in that applications have been made for the confiscation of assets. That is in our first wave of legislation which the parliament supported the government in progressing. My understanding on these matters is that, where confiscation legislation has been introduced, applications for confiscation are made quite often, resulting in there being no challenge by the owner or holder of the goods in question. I think the theory is that they do not want to have to line up to try to fight for assets and provide an opportunity for enforcement authorities to question them and put themselves at risk of any disclosure of activity. Therefore they simply walk away; they let the goods be forfeited, as such, and do not challenge it.

So the success of this in other jurisdictions, in the sense of recovering valuable assets that can then be sold and which are essentially forfeited to the Crown, means millions of dollars can be recovered in this manner without too much objection. They may not be very happy to have their assets confiscated, but they do not seem to squeal very loudly. That is my understanding.

I hope that there has been at least some effectiveness in the legislation passed a few years ago. As I said, we are disappointed that we have not had any feedback on that. Similarly, at the briefing we sought some summary of what has happened in Western Australia in the past 10 years. It was at the forefront in introducing unexplained wealth provisions in its legislation, and the understanding we had was that information would be sought and, unless there was any objection to it being released to us, it would be provided. However, not one piece of information has been forwarded to us in that regard, and we are disappointed not to have received that.

I would have been the first to endorse even further the importance of the government bringing in this legislation if it had been effective. I would probably have had a bit of a quip at it for not introducing it a number of years ago when we suggested the government do it; nevertheless, the government would have had the credit for introducing it.

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: I remind the Attorney that, notwithstanding the fact that he thinks the Law Society is some wholly-owned subsidiary of or welded onto the Liberal Party, in this instance the Law Society put forward extensive submissions regarding why this legislation was risky and transcended the usual protections to individuals. Some of the concerns raised were certainly meritorious but, on balance, the opposition has not accepted them as being sufficient to outweigh what we think will be an important tool in the armoury—I think 'toolbox' is the Attorney's new word—to fight organised crime.

The opposition has indicated that it will support the bill. It believes that the DPP is the most appropriate person. If the government were to put something persuasive in response on this, then we would be happy to hear from the Attorney-General as to why it should be the Crown Solicitor. Otherwise, the opposition asks the committee to accept this amendment.

Mr HANNA: I would like to explain why I will support the opposition amendments in relation to this legislation. Of the various pieces of legislation that the government has brought forward to shift the balance of individual rights towards the rights of the state to investigate and prosecute, this is probably the most far-reaching. The notion that a public servant can nominate someone to explain their wealth and, if the appropriate court order is obtained, then for that person to be required to prove how they obtained their assets, is a very heavy imposition on an individual citizen in South Australia.

We will get to the most significant clause—clause 9—a little later but, at the very least, I think it would be appropriate for the DPP to be the person, if there must be one, rather than the Crown Solicitor. I have listened to the Attorney-General so far in relation to this matter. I cannot understand why the DPP would not have been chosen as the appropriate person for this purpose. I support the amendment which effectively creates a definition of DPP; that is a formality and a precursor to the other Liberal opposition amendments which replace the role of the Crown Solicitor in this bill with the DPP.

The Hon. M.J. ATKINSON: I am interested to hear the member for Mitchell say that he would not want to put a public servant in the position of asking a member of the public to explain his or her income or assets. I wonder whether he has ever heard of the Commissioner of Taxation.

Mr Hanna: You can't appoint the Commissioner of Taxation.

The Hon. M.J. ATKINSON: No, the federal government appoints the Commissioner of Taxation. We just appoint state public servants.

Mr Hanna: That's what I am afraid of.

The Hon. M.J. ATKINSON: That is not the point I am making. The government takes the view that it is the Crown Solicitor rather than the Director of Public Prosecutions who should be the gatekeeper. The reason is simple. When commencing a civil action it is vital to have the favourable opinion of the plaintiff's solicitor because this is straightforwardly a civil action.

There is no necessary connection to criminal proceedings. Criminal Assets Confiscation Act 2005 proceedings, while civil in terms of onus of proof, are proceedings that involve assets that are crime related. This is not so with unexplained wealth. It does not matter whether or not the

assets are related; what counts is whether the person who controls the assets can explain whether the assets were lawfully obtained. It is enforced as a civil judgment. Interstate matters would be governed by the commonwealth's Service and Execution of Process Act.

These are not matters with which the DPP is concerned—nor should it be. The government maintains that the position we have taken is the right one. The effect of all these amendments is the same. They were foreshadowed by the honourable member in her second reading contribution. I have given the reasons that we are opposing them. It is quite a deliberate decision that we are taking.

Ms CHAPMAN: The answer from the Attorney-General actually makes me more concerned and starts to persuade me to considerably favourably the member for Mitchell's proposed amendment.

The CHAIR: Order! Could the member for Bragg face the front please.

Ms CHAPMAN: I am sorry; I was trying to gain the attention of one of the members. I certainly have not been persuaded to date that the opposition should support the member for Mitchell's foreshadowed amendment, which would have the effect of significantly restricting the application of this, in summary, to people who have been previously convicted or had assets confiscated. In fact, that very much limits the category.

What we have just heard from the Attorney-General is, 'We're going use the Crown Solicitor because this is just a debt collection matter.' This is not just a debt collection matter. It is true that, ultimately, at the end of the proceedings, the effect of a successful application is that a debt will be created that is recoverable under the legislation that would normally recover debt. That is true, but that is a far different situation from what we will do along the way.

This is not just a question of two people going into a courtroom and one saying, 'His car hit my car first and he owes me an amount of money for damage,' and there being a determination on the balance of probability as to who is right and what payment is made, then recovery of a debt; or a simple situation of saying, 'This person owes me money and here is proof of the purchase and we want to recover the money', a finding is made, a debt is created and we then proceed. No; it is far from that.

This is a procedure which is initiated by several routes, one of which is that the Crown Solicitor—I suppose, arguably, secretly and away from the person who is about to be served with an application for an assessment to be made—collated information and made a judgment, which is unreviewable, as to whether 'reasonably expects', etc.

Once that has occurred, there is a process where the person who is served with these proceedings, if they do not want the debt judgment to be made against them, has to go along and prove all sorts of things. So, this is quite a different procedure that is to occur as we lead up to the creation of a judgment. I would just say that, unfortunately, we are not persuaded. I am disappointed that we did not have some rational explanation that we could have then leapt upon to support the government relating to that, otherwise we are very happy with what the government has put on this bill.

Mr HANNA: The Attorney-General has just given me the impression, with his remarks, that he is not concerned about whether the assets are crime related or not, whether their acquisition was crime related or not, or whether the person is crime related or not. I will check the *Hansard*. If that is the case then there are going to be a lot of small business owners, who might have more than one set of books, who would have a lot of reasons to fear this legislation.

There would be people who might have won money at gambling who would have reason to fear this legislation. There would be people who have received gifts in the family who have reason to fear this legislation. I would have thought that the whole purpose of the legislation, from what the government has stated about it and from its very structure and design, is to attack criminals and to take from them the illicit proceeds of their criminal activity. I would have thought that was the purpose of it.

So, if the Attorney-General is saying that it is actually much broader than that and it is really to be able to take unexplained wealth off of other citizens, then it is even more far-reaching than I thought.

The Hon. M.J. ATKINSON: The member for Mitchell is right in his interpretation of what I said.

Progress reported; committee to sit again.

HARBORS AND NAVIGATION (MISCELLANEOUS) AMENDMENT BILL

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

No. 1. Schedule 1, page 3, lines 35 and 36—

Delete 'Part 14 Division 3 of the Harbors and Navigation Regulations 1994' and substitute:

Part 15 of the Harbors and Navigation Regulations 2009.

STATUTES AMENDMENT (PROPERTY OFFENCES) BILL

The Legislative Council agreed to the bill without any amendment.

At 18:00 the house adjourned until Tuesday 22 September 2009 at 11:00.