LEGISLATIVE COUNCIL

Wednesday 23 October 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.15 p.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Aboriginal Affairs and Reconciliation (Hon. T. G. Roberts)—

Reports, 2001-2002—
Courts Administration Authority
Director of Public Prosecutions—South Australia
Legal Services Commission of South Australia
South Australian Classification Council
State Electoral Office—South Australia
State Supply Board.

TERRORISM

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a ministerial statement on the subject of counter-terrorism made in the other place today by the Premier.

LEGISLATIVE REVIEW COMMITTEE

The Hon. CARMEL ZOLLO: I bring up the 12th report of the committee 2002-03.

QUESTION TIME

URANIUM MINING

The Hon. R.I. LUCAS (Leader of the Opposition): My question is directed to the Leader of the Government. After a spill has been notified to the government by the appropriate government agency under the new procedures to be adopted for the South Australian uranium mining industry, what is the minister's intention as to the time frame within which public notification would occur for those spills that have to be publicly notified?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): As far as I am aware, there is no change to that timetable for the reporting requirement, which has to be within 24 hours. Under one of the other recommendations—

The Hon. R.I. Lucas: They have to report to you within 24 hours.

The Hon. P. HOLLOWAY: If we look at the recommendations of Mr Bachmann, we can see under recommendation 5 that current reporting arrangements should be varied to ensure that all agencies are informed at the same time, and it is recommended that required incidents be reported to the agencies by facsimile or email. One of the changes recommended by Mr Bachmann is simultaneous reporting to the relevant agencies within 24 hours of an incident occurring. As far as the public release is concerned, in situations of a serious spill one would expect that the public would be notified either by the company or by the relevant government agencies as soon as possible after being notified of one of those serious incidents.

The Hon. R.I. LUCAS: Will the minister, as the minister responsible for this procedure, put a time limit on the public notification as soon as a government agency has been advised?

The Hon. P. HOLLOWAY: It is not a matter to which I have given specific consideration, but clearly one would hope that the public would be aware, like the government, within the 24-hour time frame for the reporting of such serious incidents. In relation to those incidents, where they are recorded, as I indicated in my answer yesterday, those of lesser consequence are generally reported to the government at the three-monthly reporting meetings and they have been incorporated on the PIRSA website as soon as that information is collated at the end of that period. With serious spills the practice in the past has been that the companies concerned have themselves notified the media in relation to those spills, and that is one of the issues that would be raised with the companies concerned when they report those spills to the government.

PITJANTJATJARA LANDS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question on the subject of the Pitjantjatjara lands.

Leave granted.

The Hon. R.D. LAWSON: I have been advised that a Ms Deidre Tedmanson and a Mr Paul Acfield have applied for a permit to visit the Pitjantjatjara lands for the purposes of undertaking an inquiry. My questions to the minister are:

1. Will he confirm that Ms Tedmanson and Mr Acfield have been engaged by the government to undertake work in relation to the Pitjantjatjara lands?

2. What are the terms of reference of their appointment?

3. When are the consultants required to provide a response or report?

4. Was their consultancy publicly advertised?

5. Will the terms of reference of Ms Tedmanson and Mr Acfield overlap with those of the select committee appointed to examine the operation of the Pitjantjatjara Land Rights Act?

6. What qualifications or experience do Ms Tedmanson and Mr Acfield bring to this consultancy apart from their factional alliances with the minister?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his question, and I might be able to pass on that information de facto to Mr Chris Marshall, who would be searching for the credentials and the connection of the two members who made an application for permit. The process that people must go through is tight in regard to the application. Certainly, it is not a very public display of being on the lands. In relation to the relevance of the question, the terms of reference are brief. In fact, I will bring back the full details of the terms of reference and the contract arrangements.

The contract arrangement is with the University of South Australia, which has a distinguished record in relation to its work with and for Aboriginal people over the years. A number of people from the university work with the indigenous people of this state in the areas of heritage, social organising and the music and arts department.

The Hon. R.D. Lawson interjecting:

The Hon. T.G. ROBERTS: Well, one of the benefits available to us in this state is the use of the academic research facilities and the people in academia to help and assist us and to work directly with Anangu Pitjantjatjara people to

determine, first, part of the requirements of the commonwealth in relation to the recognition of community building, which is a programming name for identifying the strengths and weaknesses within Aboriginal communities to be able to determine what services are required and how those services are to be implemented. That national strategy is being developed at commonwealth level.

We must get our house in order to ensure that the service provisioning we hope to implement qualifies for commonwealth funding; and we must ensure that, at ground level, the communities have the ability to accept, develop and work with our agency people to deliver those services on the ground in a way that is acceptable to our traditional owners and communities in that area. Many of the programs we have implemented over the years in remote and regional areas have failed on the basis that direct consultation with the communities has not taken place, and the appropriate people have not been consulted in relation to how those services are to be delivered and what services are required.

The Coroner has released reports into the deaths of three people associated with petrol sniffing; and, probably, another 30 people have died in the lands over a short period of time in relation to the abuse of alcohol, drugs and petrol sniffing. It was the view of the people who put together the terms of reference (including myself) that, to be able to determine appropriate strategies for the placement of services within those communities (in the absence of any reports to the contrary), we had to identify, through consultation, first, the existing services on the lands and, secondly, recognise whether they are appropriate in terms of building in extra services and/or training programs because, in the main, the Anangu people are not trained to levels of competency to take over many of the programs that governments will be putting in place over a period of time.

That recognition and assessment is being done by the University of South Australia with a small team of people, who will happen to include Deidre Tedmanson and at some point will also include Paul Acfield, who is currently employed with one of the lands councils in Alice Springs. The fact that I know these people is one of the reasons I was attracted to their skills.

The Hon. A.J. Redford: You didn't ask me.

The Hon. T.G. ROBERTS: What skills do you have in this area?

The PRESIDENT: What you do not have is the ability to speak at this moment.

The Hon. T.G. ROBERTS: It would be a very short CV coming across my desk if the honourable member were to put in an application for living on the lands and doing the appropriate assessments. One of the problems we have when we require professional people to be placed in the lands to enable us as a government to work with the commonwealth, to try to persuade other professional people to at least live in the lands to deliver the services, is the inability to provide accommodation and an atmosphere and climate for those professional people to stay.

At the moment, the communities are uninhabitable for a wide range of reasons for a wide range of people. If people doubt that, I suggest that during their leave they go to some of these communities and try to find accommodation that would be appropriate for what is regarded as western style living and see whether you could stay there during December, January and February. That would be a challenge to any member here. We have engaged a small team of people to make assessments of those communities' ability to integrate their actions and activities with our own at a professional level and to help deliver those services. We have to build up a repository of knowledge after talking to the appropriate people.

The Hon. A.J. Redford: Who's appropriate?

The Hon. T.G. ROBERTS: The people I would regard as appropriate to have input into our cross agency support programs would be the traditional owners and the people who live in the communities.

The Hon. A.J. Redford: What about the shadow minister?

The Hon. T.G. ROBERTS: I have been talking with the shadow minister over a period of time, and the shadow minister is sitting on a select committee that is looking into similar matters. Unfortunately, there is a time frame for the select committee meeting and reporting, although as a single member of that committee I would encourage the committee to put in interim reports so that progress could be made in recommendations that could be put forward. In the absence of that, the government has to make decisions on a way to proceed. The time frames set by the commonwealth are tight in relation to how we integrate our activities with its own and access funding. I have an appointment for a meeting with Amanda Vanstone at the end of November to try to integrate some of the commonwealth activities with our own. I have met with commonwealth public servants—

The Hon. R.I. Lucas: Would you like to start answering the question?

The Hon. T.G. ROBERTS: The question revolved around the qualifications and contract of the two people who are being placed in the lands. I had to set a scene—

The Hon. A.J. Redford: Did you consult with the Hon. Robert Lawson about that?

The Hon. T.G. ROBERTS: About the contracts?

The Hon. P. Holloway: Come on; the former minister for aboriginal affairs didn't call the Pit Lands committee for four or five years.

The Hon. T.G. ROBERTS: The point that my colleague makes is important.

The Hon. R.I. Lucas: Don't listen to my interjections.

The Hon. T.G. ROBERTS: I am learning from you. The standing committee which was set up some time ago and which lapsed under the previous government could have played a monitoring role in a lot of these problems, and we may not have been in the position we are in now in responding to the Coroner's report. As I have acknowledged before, it is not the fault entirely of previous oppositions. Also to blame over time are other governments, which have not dealt adequately with a whole range of service delivery problems facing the people who live in these regional and remote areas.

As to the question about the strict terms of the contract, I will take that on notice and bring back a reply. As to whether they are looking at the Pitjantjatjara Land Rights Act, the answer is that they are not. The relationship that they are working on is talking to the people in situ to develop community building programs that will enable the people themselves to take ownership of the problems and to describe some of the circumstances in which we can stitch our programs into the problems that exist. There is a priority for the petrol sniffing task force, and tier 1 and tier 2 arrangements were set up by the previous government to integrate their operations. This is the start of a consultation process that will take some considerable time.

I understand that the contract has been written for five weeks, with the possibility of extension, but that may have

been changed to an hourly contract. The skills of Ms Tedmanson and Mr Acfield, who works on the Northern Territory side of the border, are required for the first stage of that assessment so that community building can commence.

The Hon. R.D. LAWSON: I have a supplementary question. Was the consultancy publicly called?

The Hon. T.G. ROBERTS: I will endeavour to bring back a reply to that question.

The Hon. A.J. REDFORD: I have a supplementary question. Does the minister acknowledge that, in failing to consult with the Hon. Robert Lawson, he is in breach of the promise made by the Premier at the ALP campaign launch, when he said:

> Labor ministers will consult fully with their opposition counterparts on issues of importance to South Australians. This is the type of government South Australians need and expect.

The Hon. T.G. ROBERTS: I am not sure in what detail or to what point we have to engage the opposition in relation to the development of our policy. I am prepared to give a full briefing to any member of the opposition in relation to the contract and the terms of the contract, which I promised in my previous reply to bring back to parliament, and also to consult with the shadow minister for Aboriginal affairs. I made an offer to consult with a staff member of the Hon. Mr Evans, and I am quite prepared to organise a briefing for anyone else who would like one.

SHARKS

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question on shark procedures.

Leave granted.

The Hon. T.J. STEPHENS: I noted this morning on ABC radio that the Minister for Fisheries stated that a dangerous shark can be destroyed by police or fisheries officers. I assume that he is referring to the powers given under the interim shark attack response plan. Under that response plan, it is the minister who holds the authority to order the destruction of a dangerous shark. Immediately after the tragic death of a young diver in April this year, not one single step of the white shark response plan, which was put in place by the Kerin Liberal government the previous summer and which details how to respond to a fatal shark attack, was activated. I am aware that several families of shark attack victims have written to the minister, imploring him to act before any other lives are lost. I read from a copy of a letter from one of those families, addressed to the minister on 17 June, as follows:

> There is no doubt about the negligence of the government concerning the last attack as the response plan was in order and not one step adhered to. Statements and excuses of 'it wasn't reported officially' and 'the shark will not be hunted or moved on unless it poses a real threat' are ludicrous. Which government officer would have gone for a swim to examine if it was a further threat?

My questions are:

1. After the last fatal shark attack, why did the minister not order the removal of the shark, which still posed a threat, and instead chose to reject the call for a hunt?

2. Exactly when and under what circumstances would the minister order the removal of a dangerous shark?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): As I recall the situation during that last unfortunate fatal shark attack, immediately the department was informed departmental officers were out in their boats to patrol the area and seeking any evidence of sharks in the area. If my recollection serves me correctly, they were out there for two or three days patrolling that area and seeking evidence of a shark in that area.

As it transpired, they were not able to find the shark but, clearly, if they had come across a shark, and there was evidence that that shark was responsible for the attack, they would have been authorised to destroy that shark. One would assume that, if the shark had been in the area and posing a threat to people, they would have taken that action.

Of course, one of the difficulties with a shark response plan in the very remote regions of the West Coast is that it is not easy to get fisheries officers or even police into that area quickly, and notification of a shark attack takes some time, let alone for people to respond and get out there. In contrast, in the metropolitan area there is a response capacity and therefore the response time is speedier. I guess one of the difficulties we face in relation to the shark response plan is how we respond in those very remote regions of the West Coast where there are no departmental officers.

At the time of this particular shark attack, very strong rumours were circulating and were reported back to me that local people had indeed pursued that shark. There were certainly some very strong stories circulating at that time that the shark had been dispatched. Of course, there is no way to prove whether or not that was the case. However, if it had been, that would explain why the fisheries officers were unsuccessful in locating it. I obviously have no way to determine whether those rumours that were in wide circulation at the time are true or not.

As I said the other day, the threat of sharks is a very important issue that we need to deal with. It is likely that the shark population will increase. Under commonwealth law, they are now a protected species. Any action that we take would have to comply with the commonwealth Environment Protection and Biodiversity Conservation Act. The state can operate only in state waters, which is another limitation on any state action—it can take action only within the three nautical mile limit. Outside that area the commonwealth act would apply.

In any case, the commonwealth's EPBC Act would somewhat constrain whatever action a state government might propose in relation to dealing with sharks, because great white sharks are protected under commonwealth law. I am advised that they are listed as an endangered species and, therefore, if the state took any action that was contrary to that the commonwealth act could be invoked. So, any action that we take has to be in relation to our specific constitutional powers.

Obviously, if a threat is posed, we can take some immediate action. But, in relation to providing any broader powers to destroy sharks, that might very well invoke the EPBC Act. They are matters that the Director of Fisheries is currently looking at. He assures me that the report that the honourable member asked me about the other day will be ready by 31 October, and I will look with some interest at that.

I want to share with the council that there are some constraints on how the state can deal with this matter. We certainly take seriously the threat that sharks pose to people involved in both recreational diving and diving as part of the commercial industry. We do take the matter seriously and we will be looking at all the various options open to us.

One of the matters that I do not think I mentioned in my answer to the honourable member earlier this week was that, at the meeting that was held with commercial fishers at

Streaky Bay earlier this year, consideration was given to a proposal about the tracking of sharks so that more information could be discovered about their behaviour, to see whether they were territorial or nomadic, and what factors affected them.

There has been some suggestion that water temperature, and other similar factors, may affect the behaviour of sharks as to whether they stay in a particular area or move on. Clearly, that information would be very helpful to the government and to the scientists involved who might recommend plans on how we can best protect ourselves as a community against any threat posed by sharks. As more information becomes available we will be able to continually improve any plans we have for dealing with that threat.

I conclude by making the point that whatever we do in legislation, whatever changes we might make in relation to great white sharks, the sharks will not be reading the legislation. They will not be aware of what we are proposing.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Well, I think it needs to be stated because protecting oneself against sharks, particularly in remote areas of the state, is something that legislation can play only a peripheral role in, particularly given the constraints that I mentioned earlier. Rather, we need some practical solutions in terms of protecting individuals; in terms of getting better information about shark behaviour and so on. That is the information that we will be endeavouring to collect to ensure that there is some genuine protection because until we know more about shark behaviour it will be very difficult to protect people against such attacks.

The Hon. T.J. STEPHENS: As a supplementary question, will the minister now give an undertaking that in the event of any future shark attack the minister will have the courage to immediately order the removal of a dangerous shark? And I stress the word 'immediately'.

The Hon. P. HOLLOWAY: I do not think the honourable member understands. The powers already exist that if there is a threat the police can, of their own volition—

An honourable member interjecting:

The Hon. P. HOLLOWAY: If they need any urging from me, then I am very happy to do it. If any police or fisheries officer is aware of a shark attack, they already have my authorisation. They have a general authorisation. Fisheries officers and police have—

Members interjecting:

The Hon. P. HOLLOWAY: Well, that is my understanding. I will check on that. But, certainly, when that particular case came up before, I immediately made some inquiries of my department as to what the situation was, and certainly my authorisation was made quite clear for the people involved to take whatever action was necessary to remove that risk.

As I said, the departmental boats were out there as soon as they could be. There was some delay. It did take some hours to get around there and, as I said, that is a problem when you have attacks on some of the more remote parts of the West Coast where we do not have any fisheries vessels within several hundred kilometres. So, that is certainly a problem. It was some hours after the attack was reported before any boats could be out there. But let there be no mistake: those fisheries officers were permitted to destroy that shark if it was in the region and posing a threat.

GRAPEVINE LEAF RUST

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question on grapevine leaf rust.

Leave granted.

The Hon. R.K. SNEATH: The exotic fungal—

The Hon. Diana Laidlaw interjecting:

The Hon. R.K. SNEATH: Listen and you might learn something. The exotic fungal disease, grapevine leaf rust, has been detected on backyard grapevines in the Northern Territory. Concerns have been raised by the grape industry in general regarding the possible spread of this disease to other states, in particular to commercial vineyards. We know that the opposition does not care what happens in the country.

Members interjecting:

The Hon. R.K. SNEATH: We have seen the federal Liberal government not doing anything to give farmers a hand. As a major grape producing state, South Australia takes a special interest in this matter. This state's industry, if infected, would be severely impacted.

The Hon. A.J. Redford interjecting:

The Hon. R.K. SNEATH: We know the honourable member who interjects has moved out of the country and has not heard about it since. Will the minister please advise the council what measures have been taken to ensure that this state's grape industry has been protected?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his question about this significant threat to one of the major industries in this state. Grapevine leaf rust was on the agenda at the Primary Industry Ministers' Council meeting last week, and a certain decision was taken in relation to that matter which I will be pleased to report to the council. Grapevine leaf rust was first detected in Darwin back in July 2001. Although it is described as a tropical/subtropical disease of grapevines, expert opinion available to the department suggests that grapevine leaf rust has the potential to spread to all key grape growing areas of the country and to reduce vine vigour and productivity. Fungicide treatments may be required late in the growing season to control infection. So, clearly we would not want the disease to spread into our major growing—

The Hon. Diana Laidlaw: We must not allow it to spread, not 'We do not want it to spread.'

The Hon. P. HOLLOWAY: Yes, we must not allow it to spread into those regions. The infected vines in Darwin were detected in people's backyards. There are approximately 35 000 properties in Darwin and the surrounding area and an estimated 3 000 vines on these properties. Some 500 to 600 vines are expected to be infected with the disease. Surveys were undertaken in the grape production areas of North Queensland, Kununurra and Ti Tree in the Northern Territory. Urban surveys were also undertaken in capital cities and other high risk areas. No grapevine leaf rust has been detected to date outside the Darwin area.

Not surprisingly, the grape industry is keen to see an eradication attempt against grapevine leaf rust and, following a recent request at the Primary Industries Ministers' Council meeting for a more formal commitment, it indicated the following: a project of about $100 000 has been submitted to the Grape and Wine Research and Development Corporation for research into resistance to this rust disease; a contribution to an inducement package for the removal of grapevines; and

assistance with a public relations and communications program to assist the eradication attempt.

Despite concerns from the Northern Territory and Queensland, the potential exists for successful eradication of the disease on the basis that the disease appears to be restricted to the Darwin area, which is isolated from grape growing areas. There are likely to be a limited number of grapevines growing in these areas. The fungus is restricted to grapevine hosts, and the fungus is not likely to spread naturally over the large distances to grape growing areas. A cost of $1 million relating to the proposed intensive survey of the Darwin area and the removal of infected grapevines has been put forward.

South Australia, as a major grape producing state, under the commonwealth arrangements that apply, is responsible for a significant proportion of that cost. Indeed, in excess of $200 000—about $220 000, in effect—will be required from this state to contribute our share towards—and that is based on production tonnage—the elimination of this disease so that the threat can be removed from this state. That money has been provided by the bio-security fund within my department.

At the Primary Industries Ministers' Council back on 10 October, the issue of funding of that eradication program was considered. The council acknowledged the significance of the disease in terms of the potential impact on the Australian wine and grape industry. It was agreed that $1 million would be provided—of which half of that, $500 000, would come from the commonwealth—and our state share, based on production, would be about $220 000. It would be spent in 2002-03 to support the eradication program in Darwin.

The issue of industry support and funding with respect to funding pest and disease eradication in future years will be considered in the future. I am pleased to report to the council that at the primary industries ministers' meeting we were able to agree to a program to enable the Northern Territory government to survey and eradicate this pest and, although it may take some time, we are hopeful that that program will be successful and will eliminate and eradicate completely this rust disease from Australia.

TEACHERS, SHORTAGES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Education and Children's Services, a question about teacher shortages.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to pending teacher shortages in South Australia's public schools. On 13 May I asked the minister how she intended to address future teacher shortages in this state if she did not intend to make teacher salaries nationally and internationally competitive. On 27 May I received a reply from the minister that said little more than that DETE officers were aware of the issue and that the government was negotiating a deal with the teachers' union. While the final outcome of these negotiations was pleasing, it seems that the final rate of pay will still be lower than that necessary to be nationally and internationally competitive in the longer term.

One important area where the most benefit can be gained from any agreement is if it is supplemented by improvements in teachers' working conditions. If you ask teachers what is a constant frustration to them in relation to working conditions, many say that the growing administrative demands in the classroom reduce their time to teach. The situation continues to be a disincentive to many people who would otherwise train or work as teachers.

If we look to the United Kingdom, where there are already significant teacher shortages, we see that several steps have been taken to improve teachers' working conditions and attract more people to the teaching profession. For instance, in Scotland there is now a 35- hour working week, which has been introduced with guaranteed time set aside for marking. In England and Wales the government advisory board on education, that is, the Schoolteachers Review Body, has recommended guaranteed marking time and a list of non-teaching duties. These duties include photocopying, chasing absentees, collecting money, processing attendances, preparing exam timetables, stocktaking, taking minutes, repairing computers, arranging relief teachers, producing class lists and letter writing.

South Australian public schoolteachers currently carry out almost all of those non-teaching duties. While the new agreement between the government and the teachers' union includes an increase in funding for administrative time, it is still possible for this time to be directed into areas other than those that would reduce the teachers' time spent on non-teaching duties. My questions are:

1. Has the minister considered the possibility of defining non-teaching duties similar to that in the UK to maximise the positive impact of the current agreement with the teachers' union and, if not, why not?

2. If so, what plans are in place to introduce defined non-teaching duties?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer those questions to my colleague in the House of Assembly and bring back a reply.

UNEMPLOYMENT

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Social Justice, a question about South Australia's unemployment rate.

Leave granted.

The Hon. A.L. EVANS: Last week I put a question to the minister concerning South Australia's rising youth unemployment rate. Given the serious nature of the problem and the complexities of the issue that it raised, my question is: will the minister consider recommending to cabinet that a youth unemployment summit be held where innovative ways of dealing with the issues could be explored?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer that important question to the minister in another place and bring back a reply.

GOVERNMENT CONSULTANTS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Treasurer, a question about the employment of consultants.

Leave granted.

The Hon. J.F. STEFANI: I refer to the Auditor-General's Report for the year ended 30 June 2002, and an article published in the *Advertiser* dealing with the employment of consultants by the South Australian government. Before the election, the Labor Party made great pronouncements about

the action it would take, and it promised that it would slash $80 million from the cost of consultancies in order to fund its promises. My questions to the minister are:

1. How many consultants have been engaged by the Labor government since it took office in March this year?

2. What was the number of consultants employed and the amount paid by each government agency since Labor was elected?

3. How many consultants, if any, have been commissioned by the Labor government from 30 June 2002 to date?

4. What are the anticipated costs of those consultancies?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): It would obviously take a very considerable amount of time to get all that information, so I will have to take those questions on notice. I must make the point that, in his explanation, the honourable member did mention that the Labor Party was critical of the employment of consultants by the previous government. Yes, indeed, we were, because, of course, in relation to the sale of ETSA alone, in excess of $100 million was spent on consultants. Of course, the then opposition—the present government—was very critical of the massive amount of money spent by the previous government.

Indeed, my colleague the Treasurer, the former shadow treasurer, did make many of those promises in relation to cutting consultants. I think the council needs to know that the former treasurer knew that he was in a lot of trouble. The former government knew that it was in for a belting at the election once all this was exposed and, of course, it went out of its way deliberately to cut the consultancy bill just prior to the election. I think we all know that happened. I remember drawing attention to that in this council some time last year. Of course, the former treasurer knew that the Liberal Party was in a great deal of trouble on this issue and, of course, that is why, once the Labor Party made it a policy, the former government immediately followed and copied it as a policy and cut its own consultancy bill.

That fact needs to be recognised in the council when the answer is provided. I will try to obtain what information is available. I am well aware that, during the budget estimates committees in the House of Assembly, a significant amount of information was provided in relation to this matter, but I will see what information can be provided for the honourable member.

The Hon. A.J. REDFORD: As a supplementary question, could the government also explain its definition of 'consultant' as opposed to, for argument's sake—

The PRESIDENT: No argument. The honourable member will put the question, please.

The Hon. A.J. REDFORD: Secondly, could the government confirm the rumours that I have heard to the effect that any consultancy expenditure is to be put under another line and, if so, could the minister identify the line that it is to be put under?

The Hon. P. HOLLOWAY: One thing I can be sure of is that, during the sale process of electricity, whatever you called those people responsible for part of the ETSA sale process they cost in excess of $110 million. Of course, as a result, we were also told that we would get cheaper electricity, but we always knew what that was going to be. We all knew where we were going on that one.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I am sure there is a standard definition. Figures on consultancies are provided—as the Hon. Julian Stefani said in his question—in the Auditor-General's Report. I assume the Auditor-General must use a particular definition, so we will provide that information.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Dawkins has the call.

HANCOCK ROAD

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.S.L. DAWKINS: —representing the Minister for Transport, a question about the upgrading of Hancock Road in the north-eastern suburbs.

Leave granted.

The Hon. J.S.L. DAWKINS: The $2.4 million upgrade to Hancock Road was designed to include new gutters, kerbs, median strips, footpaths, parking bays and improved lighting. Funding for this project has come from the City of Tea Tree Gully and the state and federal governments. Under its Roads to Recovery program, the federal government provided the council with a $1 million grant, which was to be matched by the state government. However, a $400 000 blow-out in unforeseen drainage costs has seen on-site work stop while the state government conducts a review. Although drainage problems affect only one section of the road, work has stopped on all of it. The council is apparently waiting for Transport SA to determine whether funding will be made available for completion of the project, which was scheduled to be completed in August. My questions to the minister are:

1. Why has the entire Hancock Road upgrade come to a halt?

2. Will the government ensure that its share of funding for the project will be provided and that the already delayed upgrade will be completed without any further delays or inconvenience to traffic on this major route?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer that question to the Minister for Transport in another place and bring back a reply.

COMMUNITY BUILDERS PROGRAM

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the—

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order! The Hon. Mr Redford is unusually excitable today.

The Hon. J. GAZZOLA: Thank you, Mr President. I seek leave to make an explanation before asking the Minister for Regional Affairs a question about the future of the Community Builders program.

Leave granted.

Members interjecting:

The Hon. J. GAZZOLA: I will just wait for the chamber to settle. I understand that the third round of participants has recently graduated from the Community Builders program and that a number of these community members have taken on new roles as leaders and activists within their regions. In

light of these successes, will the government continue with the Community Builders program?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for his important question and note that members of the opposition are on the edge of their seats waiting for the reply, given their interest in regional affairs. The government is planning to conduct a further program of Community Builders for 2002-03 and has sought a partnership with the commonwealth government to give maximum coverage to the program. Due to the success of the program, there are 14 applications already for cluster groups seeking involvement. Continuation of the program will enable existing expertise developed through the program to be utilised by using the knowledge and skills developed by local people who have participated in previous rounds of the program. The background to the Community Builders is that it is a six month program involving four clusters of community groups each year from regional South Australia.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: It was started under the previous government, and I was about to give the honourable member a bouquet, but he has spoiled it, as is his normal procedure. It is a community-based program that identifies, encourages and empowers grassroots leadership to manage change in regional communities.

An honourable member interjecting:

The Hon. T.G. ROBERTS: I could describe it in my own words, and you would complain about that.

Members interjecting:

The PRESIDENT: Order! The minister will continue with his answer in silence.

The Hon. T.G. ROBERTS: It provides participants with information, skills and tools for community, economic and social development and strengthens motivation and passion for community well-being. A number of participants from the round three group have gone into community positions of leadership as local hospital board representatives and in other groups within communities. The number of volunteer hours in the round three cluster group is estimated to be 60 000.

I think members on the other side know the value and the important nature of volunteerism. When using the South Australian basic rate per hour of $11.50, that equates to $690 000, which would be a considerable amount if the state government had to put in those resources. We get out of the Community Builders program a voluntary organisation where people are being trained and are happy to use the skills they have developed for and on behalf of their communities. The current program is being delivered across the Coorong, Eastern Eyre Peninsula, the Northern Region and the South-East (the Wattle Range area), and this grouping is near completion. Unfortunately, I have to state that I have not been able to put the time into attending those group meetings, as I have been otherwise occupied in other areas for which I have responsibility.

State funding for the programs will be provided from the Office of Regional Affairs' allocation of $90 000 per annum. Matching funding has been sought from the commonwealth. We hope that we will be able to continue the good work started by the Hons John Dawkins and Caroline Schaefer in putting together these programs so that we can build on and capture the enthusiasm for the use of leadership development in local communities.

The Hon. J.S.L. DAWKINS: I have a supplementary question. Will the minister indicate whether the Local Government Association, through its research and development fund, has been approached to continue its involvement in the Community Builders scheme?

The Hon. T.G. ROBERTS: I thank the honourable member for his question. I will have to refer that on and bring back a reply.

HIV/AIDS STRATEGY

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, a question about the government's HIV/AIDS strategy.

Leave granted.

The Hon. SANDRA KANCK: At the present time, the government does not have a documented HIV/AIDS strategy because the strategy expired three years ago under the previous government. This is a public health issue and as a consequence it becomes government responsibility. I understand that a draft has been prepared, but it is not moving at a particularly fast pace. On 23 November, World AIDS Awareness Week will be launched, and people who are involved in that sector believe it would be the most appropriate time for South Australia to have a strategy in place. My questions to the minister are:

1. What progress is being made on a new HIV/AIDS strategy for South Australia?

2. Is the minister prepared to fast-track that progress so that it is ready for the launch of World AIDS Awareness Week on 23 November?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the Minister for Health in another place and bring back a reply.

FISHING, RECREATIONAL

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries questions regarding the ban on recreational fishing in the state's reservoirs.

Leave granted.

The Hon. T.G. CAMERON: Approximately 250 000 recreational anglers are interested in fishing in the 19 metropolitan and country reservoirs in South Australia, according to the national and indigenous recreational fishing survey conducted in 2001. This is more than half of all recreational anglers in this state. According to the 1980 Melville report into the recreational use of reservoirs, South Australia's reservoirs are suitable for fishing, walking, birdwatching and other low-impact activities. It said that reservoirs are safe and accessible fishing locations for the disabled, older members of the community and children. Family groups can easily reach the water from convenient roads, and these venues are relatively safe when weather conditions are unsuitable elsewhere.

The report recommended that recreational access be provided to South Australians once water filtration plants were completed, which has long since been done. The South Australian Recreational Fishing Advisory Council has approached the Office for Recreation and Sport to facilitate progressing access to this significant community asset. However, Premier Mike Rann has rejected its call due to what he said were public liability concerns. SARFAC Executive

Officer, Trevor Watts, was recently quoted in the *Sunday Mail* as saying that the Premier was using public liability as a scare tactic to block the opening of reservoirs in order to get the government off the hook. Recreational fishing is enjoyed by more South Australians—400 000 in total—than any other sport. Recreational fishing is also currently allowed in rural reservoirs in New South Wales and large dams in Victoria. My questions to the minister are:

1. Has the government undertaken any recent reviews or studies into the environmental, financial and legal impact of allowing recreational fishing in the state's reservoirs, including public liability concerns?

2. If so, what were the key recommendations with regard to allowing recreational fishing, and can a copy of the report be made available?

3. Considering that New South Wales and Victoria allow recreational fishing in their reservoirs, will the minister contact his counterparts in those state governments to find out how they can when we cannot?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Recreational fishing is a pastime enjoyed by an estimated 450 000 people in this state, making it one of this state's most popular, if not the most popular, recreational activities. In relation to fishing within reservoirs, they are the property of SA Water, and it has been a long-standing policy of that department to restrict access to its reservoirs. Access for fishing in reservoirs has essentially been an issue of security, protection of water quality, and so on, and I understand that they are the concerns which have tended to drive this issue.

I will refer the honourable member's question to the Minister for Government Enterprises, the responsible minister for reservoirs in this state, and see whether there has been a review in relation to those policies. As I have said, I understand that it is not only a question of public liability but also, traditionally, issues such as security of the water supply. There is a serious security issue in relation to access to our reservoirs, particularly given some of the threats we have seen in the world at the moment.

There is also the question of water quality. Of course, reservoirs in some of the other states are far larger and perhaps access can be more easily provided than in some of our reservoirs. I know that one closed reservoir in this state was made available for fishing. I will refer the honourable member's question to the Minister for Government Enterprises and bring back a reply.

RURAL SEWERAGE RATES

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about sewerage rates in country regions.

Leave granted.

The Hon. D.W. RIDGWAY: It has long been acknowledged that residents in rural South Australia pay a higher price than their metropolitan neighbours for a lot of items, including food, petrol and freight costs. However, I was very surprised to learn recently that they also pay more to go to the toilet!

Recent inquiries to SA Water revealed that sewerage rates for metropolitan regions are calculated at .220 per cent of the capital value of the property while country properties are calculated at .277 per cent—an increase of around 25 per cent. When I questioned why the rate was higher in country areas, I was advised that country residents receive exactly the same services as metropolitan residents but there are fewer people. On Monday, my colleague the Hon. Julian Stefani asked a question about a possible review of the present sewerage rating system. In view of the significant difference between the two regions, it would appear that a review would definitely be in order.

Earlier this year, I asked the Minister for Government Enterprises a question about staff cuts within SA Water. His response was that the changes resulted from improved technology, a review of business processes and industry self regulation that were expected to improve business efficiencies to achieve agreed financial targets. Perhaps the only way that these targets can be achieved is to charge country residents higher sewerage rates. My questions are:

1. What will the minister be doing to reverse this discrimination against the South Australians his portfolio represents?

2. Will the minister please explain why this government is prepared to allow country people to pay more to go to the dunny than their city cousins?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): Although the honourable member's question would be more appropriately directed to the Minister for Government Enterprises, I will have discussions with that minister and bring back a reply for the honourable member.

MATTERS OF INTEREST

ALZHEIMER'S ASSOCIATION

The Hon. G.E. GAGO: I was very pleased recently to address the Alzheimer's Association AGM on behalf of the minister, the Hon. Stephanie Key. I was shocked to read the National Alzheimer's Association paper—Dementia: a Major Health Problem for Australia—which predicted that 460 000 Australians will be suffering from dementia by the year 2041. This is in comparison to 130 000 in 1995.

It has been estimated that there are currently 162 000 people living with dementia in Australia. Dementia affects many people within our community—not just those who suffer from the condition but also their families, carers, friends and, of course, the community generally. A range of support services need to be provided to enable those with dementia to live within the community. The Alzheimer's Association of South Australia is an organisation that provides many of these services, and I acknowledge here today the importance of its role in our community. The Alzheimer's Association strives to be the leading provider of services and advocacy for people living with memory loss and related disorders.

Services are provided with the aim of improving the quality of life of those people who suffer from these disorders. Whilst valuing and supporting people living with memory disorders the association, like all of us, would one day like to see our society free of dementia altogether. However, in the meantime, the role of the Alzheimer's Association is vital in supporting those with dementia, and their carers, to live independently in the community. The association provides a range of services to cater to people from diverse language and cultural backgrounds in the

metropolitan and regional areas. Dementia and memory disorders affect all communities.

The association has a multicultural liaison officer who carries out carer education courses for ethnic communities. Some of these communities include the Italian, Greek, Croatian, Vietnamese and Dutch communities of South Australia. The association has a regional education and support program which provides information and a range of support services to regional communities.

Other services that the association provides include counselling services for sufferers, their families and carers. The counselling services include phone, face-to-face and family group counselling. Twenty four hours a day assistance is also provided and includes advice to carers and respite workers as well as addressing behavioural concerns; and a problem-solving guide for problem behaviour is also being developed. Other services include: the Behaviour Advisory Service (Aged Care); professional training via the Dementia Training Institute of Australia; and a number of projects including the Depression Awareness in Later Life Project, and the Early Stage Dementia Support and Respite Project. The association also plays a very important role in advocating on behalf of individuals as well as providing industry-wide advocacy on behalf of all sufferers of memory disorders and their carers.

It advocates on a wide range of issues in an attempt to improve the broad service system and hence the quality of life of sufferers and their carers. The issues that the association has taken up include such matters as: access to Access Cabs; the level of community care available to individual cases; liaising with medical specialists in an attempt to improve diagnostic pathways; and advocating for such things as an adequate dental hygiene policy from the government.

The issues taken up by the association are remarkably broad, but each and every issue is important to the day-to-day living and the maintenance of independence of the sufferers of dementia and their carers. I trust that fellow members appreciate how important the association is in improving the lives of the sufferers of dementia and their families and, as a result of its work, it improves the social fabric of our communities. I wish to thank the association, the board, the staff and the volunteers for their valuable and important contribution.

GOVERNMENT REVIEWS

The Hon. A.J. REDFORD: Today we heard from the Hon. Terry Roberts of, yet again, another review instituted by this government since taking office on 5 March 2002—a day that all review groupies will celebrate for many years to come! I understand that there are now in place some 70 reviews: the Premier has three; the Deputy Premier has six; the government enterprises minister has six; and the education and children's services minister (the top of the table) has some 15 reviews in progress.

The Attorney-General has five. The health minister, who is making a dash for the top spot, has currently got 10 reviews in place. Environment minister (John Hill)—and this is probably a reflection of the good state of the department when it was handed over to him—has only one review. To that extent, the review groupies' association is disappointed with his effort. The social justice minister has four reviews. The transport and industrial relations area has eight reviews, and I understand that all officers of the AWU have been fully engaged in each of those. The tourism minister is vying with the environment minister for the position of poorest performer with only one review. Then we have the urban development minister, a relative newcomer to the parliament but showing a great deal of promise, with five reviews.

The Hon. Diana Laidlaw: Only because he doesn't make any decisions and doesn't upset anyone.

The Hon. A.J. REDFORD: That's right, but I am putting this on behalf of the review groupies association. The primary industries minister, in a relatively poor performance, currently has in place only two reviews, and the Aboriginal affairs minister has four reviews. To my knowledge we currently have in place 70 reviews. I know that the pro-review lobby would have to be well satisfied with the government's performance to date on this aspect of governance. Indeed, the review lobby group is looking forward with a great deal of interest to some of the consequences that might arise from this review process. Indeed, we could establish a state reviewers' conference, where they could all come together on an annual basis and share and partake in social gatherings and discourse and perhaps even swap papers and on occasions researchers. I suspect that there would also be some discussion about swapping ministers. Indeed, one could think of the possibilities of these 70 reviews that have taken only about six months to establish. If the reporting time for reviews were staged such that they occurred on a monthly basis, the reviews would take us to well after the next state election.

Indeed, given that the only source of policy from this government to date has been the media unit established in the Premier's office, at least some of these reviews should be in place to enable the government to have some opportunity—unlike what happened at the last election—to go to the people with some policies. We have some terrific reviews out there. The Minister for Education will obviously be kept extraordinarily busy over the next two or three years, reading review documents, papers and review reports. Of course, the health minister (Lea Stevens) will also be kept exceedingly busy reading review reports and the like. Indeed, some cynics might ask, 'When are they going to run their departments? When will they make decisions?' Those people who are strongly supportive of reviews and have considered forming the review groupies' association are well pleased with the performance of this current government.

YOUTH BANKRUPTCY

The Hon. J. GAZZOLA: Mr President, you will be glad to know that this is a serious contribution, unlike the previous one from the Hon. Angus Redford. The *Advertiser* report of 20 September on mobile phones, credit cards and youth bankruptcy serves to remind us how vulnerable some people are to the lure of modern technology and easy credit access. With regard to mobile phone use, the majority of young users deserve credit for their prudence. However, the published figures on youth bankruptcies indicate cause for concern. The ease and appeal of the mobile phone, peer pressure and persuasive marketing have resulted in a worrying pattern of compulsory acquisition and fads, more so amongst youth than the adult market. Its manifest and popular use seems like the acquisition of a mutant ear.

Figures provided by the Australian Bureau of Statistics show that approximately 4.3 million households had mobile phones in 2000—an increase from 45 to 61 per cent from 1998 to 2000. Households with children under 18 having

access to mobile phones rose to over 2.5 million—an increase from 55 to 75 per cent from 1986 to 1988. All the categories for household ownership of mobile phones for this time period showed a marked increase. I am sure that mobile phone companies and service provider companies gleefully envisage the day—given the trends—when the landline phones are held in the same esteem as outside toilets.

Figures provided by the Insolvency and Trustee Service for bankruptcy regarding both phone and credit card misuse are worrying. The national figure for youth bankruptcy is over 25 000—an increase of approximately 10 per cent in the past two years, with people from the ages of 16 to 29 years comprising 27 per cent of the total. The number for South Australia is slightly over 2 600, the second highest per head of population in Australia. Given the aspirations of companies and the zealousness with which young people are driven to pursue life, fashion and trendiness, it is not surprising to read such figures. The consequent concern for the younger age group, with many of them going into bankruptcy over relatively small debts, is their credit blacklisting for seven years. As Ms Deane of the Adelaide Central Mission noted, the willingness of the young to embrace bankruptcy as a way out of debt does not, sadly, give them much of a start in life and is the result of being poorly informed, given the existence of other options.

With regard to the role of advertising and manufacturing need and expectations, it is disturbing to read of Telstra's misleading advertising of mobile phone services. Telstra's brochures campaign, using actors playing fictitious roles as business people or people of note and achievement who 'love' their mobile service, has been duping the public for nine months. The advertising has been dropped by Telstra, but an inquiry has been ordered by the New South Wales fair trading minister as to whether there has been a breach of the act. What is of interest is the attitude and justification offered by Telstra spokesman Chris Newland, who said of the publicity lie:

> We do not believe there is anything misleading in the statements in the brochure.

Statements like this are hardly comforting when we consider that many gullible people—especially vulnerable adolescents—are at the mercy of rapacious advertisers and companies who seem to have little sense of social responsibility.

In response to mobile phone use, the Telecommunications Industry Ombudsman notes his concern, adding that mobile phone carriers and service providers should be doing much more about assisting young people to avoid overuse. I think that, to our social detriment, we sometimes expect far too much of the young—something that these service providers are keen to exploit. Further education will assist and guide teenagers. It is also to be hoped that the commercial service and credit providers will start acting in a more socially responsible manner.

CLUBS SA

The Hon. T.J. STEPHENS: I would like to speak about Clubs SA. Clubs SA, which is the trading name for the Licensed Clubs Association of South Australia, was founded in 1919. Clubs SA represents the interests of licensed clubs in South Australia. Today, there are 310 South Australian clubs represented by Clubs SA, and there are all kinds of clubs, including sporting, bowling, football, tennis, cricket, racing, social and ethnic community groups. These clubs form the backbone of our social and sporting way of life, and it is vitally important to our community that they remain viable in ever-changing and sometimes uncertain economic times. Licensed clubs are also significant players in the hospitality and tourism sector, and they will continue to provide increased employment and economic growth within South Australia in the years ahead. That is why the services provided to the clubs by Clubs SA are so important.

I am pleased to say that this association has been effectively representing the licensed club industry for 80 years to the government, media and public. Over that time Clubs SA has successfully promoted changes to legislation so as to give clubs a more equitable position to become totally self-sufficient in the long term. Issues such as excise duties, taxation, industrial relations, fundraising techniques and infrastructure development have been addressed. Clubs SA also provides a number of direct services to the club movement of South Australia, including employee relations, licensing matters, training and development, legal representation and business services. Associations such as Club SA provide an invaluable service to their members and, in so doing, sporting, ethnic, social and community clubs are more likely to remain a viable presence in this state.

On Saturday evening last it was my great pleasure to represent our Liberal leader, Rob Kerin, at the Clubs SA Awards of Excellence presentation and annual dinner. It was the 17th Awards of Excellence annual presentation, and over 320 people attended the annual dinner. I place on the parliamentary record the various outstanding clubs and individuals recognised on the night. In particular, the community service award was won by the Marion Sports and Community Club. The best marketing and promotions award was won by the South Australian Jockey Club, and I certainly congratulate it. The Para Hills Community Club—

The Hon. A.J. Redford: Did Michael Wright congratulate them?

The Hon. T.J. STEPHENS: No, Michael wasn't there. The Para Hills Community Club won four categories—a great credit to it—winning both the best dining and bar facility award and the best gaming machine venue award. The Para Hills Community Club also won the most professional manager award, presented to Mr Cameron Taylor, and the most efficient employee award, which went to staff member Mr Robert Moore. Congratulations to those gentlemen.

The Hon. A.J. Redford: Anyone from the government there?

The Hon. T.J. STEPHENS: No. The best club with a club licence, which means that it has no gaming, was the Vines Golf Club of Reynella. The best club with 10 or more gaming machines in the metropolitan area was won by the Parafield Gardens Community Club. The best club with 10 or more gaming machines in the regions was won by the Renmark Club, and the best regional club was won by the South Lakes Golf Club. The safer industries occupational health and safety award went to the Crows Social Club; and the natural gas award for energy efficiency was also won by the Crows Social Club—and in that regard I say, 'Go the Crows!' There were a couple of judges merit awards, with one going to the Cobdogla and District Club and the other to Mr Donald Hookings, an employee at the Parafield Gardens Community Club. Congratulations to those clubs and people.

South Australia's many sporting, social and recreational clubs each contribute to our community way of life and are capably represented by their industry body, Clubs SA. I enjoyed the 17th annual dinner evening very much and was impressed by the award recipients and their achievements.

My thanks go to Mr Steve Ploubidis, the Chairman of Clubs SA, and to Mr Bill Cochrane, the Vice Chairman, for hosting me on the evening. I also acknowledge their very professional board and congratulate the excellent staff of Clubs SA for the work they do, in particular Mr Michael Keenan and Helen Williams.

AMERICAN POLICY

The Hon. IAN GILFILLAN: Recently I was in Canada on a study tour looking at genetically modified organisms. My visit coincided with the first anniversary of the 11 September attack on the Twin Towers in New York. On the front page of the *National Post* the day after that anniversary—12 September—there was a headline 'PM links attacks to "arrogant" west'. The article quotes the Prime Minister (Mr Chretien) and states:

> You cannot exercise your power to the point of humiliation of others. . .

The article also states:

> John Chretien has linked the September 11 terrorist attacks to perceived Western greed and arrogance and said the United States should not use its position as the world's only super-power to humiliate people in poorer nations.

There is quite a lot more in this interview that was aired on the night of the anniversary. Not only did the Prime Minister make such an assumption but also (and this was reported on the following day, 13 September, in the same paper) a former front runner to replace Mr Chretien as Prime Minister, Mr Paul Martin, said similar things. The article stated:

> . . . appeared at times to echo Mr Chretien as he talked about the self-satisfied western world. The Liberal backbencher, who left cabinet this summer after a leadership skirmish with the Prime Minister, said the west would not be able to claim victory until it demonstrated that the 'widest number' of people would benefit from what it put forward.

Again there was an interesting observation from a commentary piece by John MacLachlan Gray in the same paper who said:

> The tendency of our chattering classes and scribbling classes to mask a taste for social engineering with a coating of faux-populist claptrap continues as a chorus of editorialists, politicos and pseudo-populist loudmouths censure the Prime Minister for a 'disgraceful' TV clip in which Mr Chretien suggested a connection between Third World poverty and Third World support for terrorist organisations such as al-Qaeda.

The actual content of that TV program had been taped some months beforehand and had been, I believe, improperly used specifically on that night. The article continues:

> The Prime Minister's remarks were more or less identical to the editorial positions of the *New York Times*, *Harpers*, the *New Yorker*, the *Economist* and the *Los Angeles Times*, never mind that they coincided with the views of 84 per cent of Canadians, much of the US population, Bill Clinton and Joe Clark [a former Prime Minister of Canada].

While also there, and quite topically a little later in September, quoting from the *Globe and Mail*, Mr Chretien said, regarding Iraqi ties to al-Qaeda:

> . . . he had seen historical evidence that Mr Hussein has attacked his neighbours and used poison gas to kill his own citizens. He has said he has seen no proof of links between Iraq and al-Qaeda, something the Bush administration suggested was one of its concerns.

Further on he observes that that is no longer relevant because the question of Saddam Hussein and al-Qaeda is not used by the United States any more at this moment. He points out that the American President, in pushing for war against Iraq, no longer links Iraq with al-Qaeda but tends to emphasise the weapons of mass destruction.

Also in the *National Post* of 14 September there is a long interview with Scott Ritter, a former United Nations weapons inspector. He is quoted as saying that there is no case that Iraq has weapons of mass destruction. He is asked:

> You believe that Saddam Hussein has done nothing to reacquire weapons of mass destruction?

In response, he said:

> Saddam Hussein is a survivor, plain and simple. Therefore, he understands that weapons of mass destruction represent a suicide pill. He knows that, if he has these weapons, he's a dead man.

It was impressive as a visitor to Canada that its prime print media was so expansive in its description of alternatives to the conventional American view. It will be appropriate for Australia to listen and think along the lines of analysis outlined in the quotes I have given today in this contribution.

GENETICALLY MODIFIED FOOD

The Hon. J.F. STEFANI: Today I wish to speak about genetically modified food. During the state election the Labor Party circulated a news release from the then leader of the opposition (Hon. Mike Rann MP). The new release headed 'Labor's plan to ensure safe food' detailed how Labor would ban the growing of genetically engineered food crops in three of the state's prime agricultural belts and would launch a full scale public inquiry into the safety of GM foods. The Labor leader, Mike Rann, announced that his party would move immediately if elected to introduce legislation allowing a total ban on GM crops on Eyre Peninsula, Kangaroo Island and the Adelaide Hills. Mike Rann said:

> We have to be absolutely sure that tonight's dinner does not turn into tomorrow's disease.

The undated press release was forwarded to the President of GM Free Australia in an attempt to gain the preferences of some candidates who were running in the election and were supported by organisations that represented environmental groups.

The then leader of the opposition acknowledged that genetic engineering is a science still in its developmental infancy, and that there are no compelling reasons to rush the release of genetically engineered organisms into the general environment. Mr Rann said that the whole field of genetic research and DNA modification raises complex issues of morals and ethics, safety and health, economics and environmental impacts; and the simple truth is that, at this stage, no-one knows what the final outcomes will be. Apart from promising the immediate introduction of legislation and the launch of a full-scale inquiry, as I have mentioned, Mr Rann also promised to establish an Office of Gene Technology to monitor closely the operations of the national framework.

The office was to act as a strong advocate for South Australia's interests and to keep the state informed of the impact of GE products on the local environment and economy. It is interesting to note that the Labor Party's policy on GE food outlined the need to resolve fundamental questions about safety and market acceptability, and endorsed a stringent cautionary approach to genetic engineering—far more cautionary than that which was employed by the Liberal government. Labor promised to report annually to parliament on the current status and safety of genetic engineering.

The report was due to be prepared by the Minister for Health, the Minister for the Environment and the Minister for

Agriculture; and it was to be published on the South Australian government's internet site to ensure its ready access to schools, interested groups and all other South Australians. Labor's policy paper recognised that not even the leading national scientific organisation—the CSIRO—was in a position to evaluate carefully the safety or otherwise of genetically engineered organisms, and it was for this reason that the CSIRO had embarked on a three-year study on the ecological implications of GM crops in Australia.

The paper concluded that, in the light of the deep concerns being expressed by eminent South Australian health researchers, geneticists and biotechnology scientists, Labor endorsed what was now being referred to internationally as the precautionary principle, namely, that the proponents of GE foods and food supplements must prove that their products are safe for human consumption and for use in the environment before they can be released. Labor stated that, with so much at stake, GE foods should be compelled to meet the same exacting standards that were applied before new drugs or medicines could be introduced for wider use.

The policy paper, which was endorsed by Mike Rann as leader of the opposition, John Hill (then shadow minister for the environment), Annette Hurley (then deputy leader) and Lea Stevens (then shadow minister for health), outlined that the official government figures for South Australia's food industry were likely to reach $15 billion by the year 2010. It was also claimed that the economic benefits of GM food products by the same year would be only $200 million. Assessing these figures in the simplest of terms, Labor's policy paper claimed that a multibillion dollar food export industry, which had been carefully built on a clean and green image, was being potentially placed at risk for an annual gain that was merely 1.5 per cent of the total value.

I have carefully considered the information that has been recently presented on the Canadian experience, as well as watching the *Insight* program televised on SBS television last Tuesday evening. The compelling facts that have been presented—

The PRESIDENT: Order!

The Hon. J.F. STEFANI: —indicate to me—

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

TOURISM INDUSTRY

The Hon. T.G. CAMERON: I cannot give it to Julian, can I?

The PRESIDENT: Certainly not.

The Hon. T.G. CAMERON: He was just getting wound up.

The PRESIDENT: If no-one is on their feet, I will call on—

The Hon. T.G. CAMERON: I know that you have got me when the clock is running. I am on the wrong page. I do not want to do a Terry Roberts! Tourism has undoubtedly been the global growth area over the last decade with more than 700 million tourists travelling to foreign destinations each year. World trends indicate that tourism is consistently growing at double the rate of the world economy and now accounts for at least one in 10 jobs around the world. Tourism is one of Australia's leading industries, generating 4.7 per cent of the national income in 2001—a major export earner contributing 11.2 per cent of our exports in goods and services for the same year.

However, the contribution of tourism to our economy is even stronger if one considers the indirect contributions from businesses serving the industries supplying the tourists. Total tourist consumption in Australia totalled a massive $71.2 billion in 2000-01—more than the entire South Australian economy put together. So, is South Australia getting its fair share of tourism? The answer, quite simply, is, no. Many indicators show South Australia lagging behind the other states. South Australia has a relatively low number of guest rooms (10 596), which is increasing by only 1 per cent a year—or it was last year.

South Australia has lower room occupancy rates and a lower ratio of four and five star rooms compared with most of the other states. With relatively low quality guest rooms and occupancy figures, South Australia's share of national takings (4.9 per cent) was below its share of guest rooms (5.4 per cent) and below its share of the national population (7.8 per cent). South Australia's tourist trade is dominated by domestic tourists, with most tourists staying for only very short visits. During 1999, 297 000 international tourists visited South Australia, giving us a ranking of seven out of 20 behind Sydney, Melbourne, the Gold Coast, North Queensland, Brisbane and Perth.

Furthermore, as I have already said, when visitors do come they do not spend much time here. Research shows that as baby boomers age their tastes will change, preferring cultural experiences to beach based or theme park tourist destinations. It might be if your name is Di Laidlaw and you are a baby boomer but not necessarily Terry Cameron, but be that as it may. So, where does this leave the South Australian tourism industry? South Australia then should be well placed to take advantage of this shift in the ever-expanding older market.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: I am talking about you, Di Laidlaw. Recent performances in our own tourism industry have been steady, competing against the other states in the cultural and event context, with a subdued growth expected. Realistically, South Australia cannot compete with Queensland or New South Wales. We do not have year-round sunshine and we do not have the theme parks or the adventure holidays that many overseas tourists currently seek. However, we do have the best wine regions in Australia: the Barossa Valley, McLaren Vale, the Adelaide Hills, the South-East and the Coonawarra. South Australia has fantastic cultural appeal.

We need to raise the standards which, quite frankly, have been slipping over the past 20 years; or, more importantly, the other states have simply caught up and are now overtaking us. Compared with the eastern seaboard, South Australia looks a little tired and old, yet we have more to offer—particularly to Australian tourists travelling domestically—than any other state, and that is not just a parochial view. One other problem for South Australia is that developers and investors are fed up with the time it takes to get projects up and running. Investors do not want to go through three years of red tape to get approval before they start construction.

An excellent example of that would be the Holdfast Shores development. I pay tribute to the Premier (Hon. Mike Rann) for one occasion when it looked like caucus was going to oppose that development. At that time I was a member of the caucus together with the President. Mike Rann intervened, basically sat on top of Pat Conlon and said, 'No, we are going to do this project,' and the rest of the Labor caucus followed. That is the kind of leadership we need—not the tired old Pat Conlon left anti-development rhetoric. We can do it in South

Australia and we should do it. I hope that Mike Rann stands up to the left wing in his caucus more often.

Time expired.

STATE LOTTERIES (MINORS) AMENDMENT BILL

The Hon. T.G. CAMERON introduced a bill for an act to amend the State Lotteries Act 1966. Read a first time.

The Hon. T.G. CAMERON: I move:

That this bill be now read a second time.

It is my pleasure to introduce this bill. There is a discrepancy in this state's policy regarding the legal age for gambling in state owned lotteries and other forms of gambling. On the one hand, pokies, the TAB and casino games are restricted to those over the age of 18, while on the other hand we legitimise keno, X-Lotto, bingo tickets and instant scratchies for those over the age of 16. However, the introduction of minors to these forms of gambling may be the seeds needed to desensitise them to problem gambling later in life; who knows? Not only that, but the lower age for purchasing tickets in state run lotteries allows minors to gamble serious amounts of money.

Under other acts of parliament, we do not consider 16 and 17 year olds fit to make decisions regarding gambling on poker machines and at the casino and a whole range of other matters, but under the Lotteries Commission Act we do deem them fit to make decisions regarding gambling on scratch lottery tickets. That may have had something to do with the fact that the government owned the Lotteries Commission at the time, but only a cynic would think that. A 16 or 17 year old can walk into any newsagency and buy hundreds of dollars worth of scratchie tickets. They can put up to $500 per ticket on a keno selection and they can then spend their disposable income on more X-Lotto tickets. It could be argued that the $1 million jackpots these games offer are much more appealing than the 2:1 returns you get on casino games, especially for young people.

This bill simply raises the age for participation in the state run lotteries, including X-Lotto games, keno and instant scratchie tickets, from 16 to 18. What it seeks to do is impose a regime of consistency. If it is okay to gamble when you are 16 it should be okay to gamble everywhere. If we deem the age at which one can gamble to be 18, as we do for nearly all forms of gambling in this state, then let us be consistent. Let us not say that if you want to go in and gamble on a game of chance at the casino you can do that when you are 18; however, if you want to gamble on scratch lottery tickets you are allowed to do that if you are 16 or 17. All this bill seeks to do is apply some kind of uniformity and consistency across the regime. It removes the discrepancy in the law that allows a minor to gamble legitimately on state lotteries. It will hopefully stop any state sanctioned problem gambling that 16 and 17 year olds may suffer as a result of the lower gambling age. I commend the bill to honourable members.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

SELECT COMMITTEE ON SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I bring up the report of the select committee together with minutes of proceedings and evidence and move:

That the report be printed.

The Hon. R.D. LAWSON: In seconding the motion, I should say that this is a report well worthy of printing, and I am delighted to be able to support the motion. The committee was established for the purpose of providing an opportunity for industrial relations issues to be appropriately addressed. They have not been addressed to date, and therefore a majority of the committee has agreed that a sunset clause be introduced for the purpose of enabling that issue to be addressed before 30 June next year. No doubt an opportunity will arise tomorrow to discuss the matter further.

Motion carried.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That standing orders be so far suspended as to allow the bill not to be printed as recommended by the select committee but the bill be recommitted to a committee of the whole of the council on the next day of sitting.

Motion carried.

GAMING MACHINES (GAMING TAX) AMENDMENT BILL

In committee.

(Continued from 21 October. Page 1125.)

Clause 1.

The Hon. R.I. LUCAS: The opposition put some questions to the government during the second reading and the Leader of the Government, in the opening of the committee stage early this week, provided some replies on behalf of the government, and I thank the leader for that. I asked a series of questions about budget estimates in relation to gaming machine taxation and the impact of various measures. As we have outlined before, this bill and the gaming machine surcharge bill are companion bills and I think that we have agreed that some of the issues canvassed in this bill overlap issues in the other bill, and vice versa. During the debate on clause 1 earlier in the week, the minister said:

With regard to the timing of available information for forward estimates, the amount of gaming tax revenue collected depends on the distribution of NGR [net gaming revenue] by venue, as well the aggregate NGR level. The estimates of the impact of the gaming machine measure included in the budget forward estimate were based on venue distribution information related to eight months of 2001-02.

Given that the budget was not brought down this year until the second week of July, or about that time, why is it that the government relied on information that was compiled only until the end of February, that is, as I understand it, eight months? As I said, the budget was produced in July and my understanding is that cabinet did not sign off on the final detail of the budget until June. Why was the information ruled off at February in relation to the forward estimates of the impact of these new measures?

The Hon. P. HOLLOWAY: I am advised that, in order to obtain this information, a specific data request was made from Treasury to the Liquor and Gaming Commissioner who, I gather, keeps that information. That request was made in March, and the next update on that information was not

available until the end of the financial year. In relation to the other information, as outlined in my answer in relation to other aspects of this measure, the Department of Treasury and Finance obviously had more current information available then, but this specific information was, I am advised, requested from the Liquor and Gaming Commissioner.

The Hon. R.I. LUCAS: Why did the government not request updated information from the Liquor and Gaming Commissioner other than to the end of February? I understand the point of view that the request was made in March, bearing in mind that that was at the time of the changeover to the new government, and at that stage it would not have been clear exactly when the budget would be presented, I presume, although guesses might have been made. When the decision was taken that the budget would not be brought down until July, why was not a further request made to the Liquor and Gaming Commissioner to provide updated information rather than information that was eight months old?

The Hon. P. HOLLOWAY: I am advised that the analysis was made on information made available in March. The Treasury view was that the updated data would not have made a great deal of difference to the analysis.

The Hon. R.I. LUCAS: Clearly, if that was the view of Treasury, it was not accurate: that is why we are exploring further changes in the estimates. However, I will put that aside for the moment. Given that the minister has expert advice near at hand, can he indicate, if a request was made to the Liquor and Gambling Commissioner, what was the time frame for the Commissioner to provide the information, for example, for the end of March and the end of April as opposed to the end of February?

The Hon. P. HOLLOWAY: I am advised that the information is available on the seventh day of the following month. Therefore, information for the end of March would be available on 7 April and for the end of April on 7 May.

The Hon. R.I. LUCAS: That is indeed my view, based on my past experience with the Commissioner and his staff: they are very efficient in turning around that information very quickly. I think members are entitled to know, if the information is available within seven days and the budget was not finally concluded until June and the budget was brought down in July, why did the government or the Treasurer or Treasury officers not request updated information from the Commissioner post the end of February figures?

The Hon. P. HOLLOWAY: I am advised that, although one can get the information on NGR fairly speedily, it requires up to two weeks of full analysis—and the work lies in the analysis of that information—to make a full year projection out of it. Clearly, given that this was during the busy lead-up to the budget, it would have been difficult for Treasury to undertake that analysis when it had all the other detailed work to do in relation to the budget at that time.

The Hon. R.I. LUCAS: I am not here to be critical of Treasury officers. The Treasurer is responsible for the production of the budget documents, and he must accept responsibility. In essence, this is his broken promise. He indicated to the parliament that he 'had the moral fibre to break his election promises' and that the opposition did not have the moral fibre to break election promises. It was his responsibility to get updated and accurate information on this issue.

The Leader of the Government has just confirmed that the Liquor and Gaming Commissioner could have provided within seven days, for example, the information for the end of April. So, end of April information could have been provided by 7 May. Even if one were conservative in saying that Treasury officers required two weeks to analyse the information—and, in my judgment, Treasury officers are much more efficient than that; they undersell their expertise in this area—and even if one accepts the Leader of the Government's conservative estimate of two weeks, the April figures could have been well and truly analysed (over-analysed, I suspect) by Treasury by the end of the third week of May and made available to the government well before the final decisions being taken on the budget by cabinet in June. Indeed, from my experience with past budgets, the end of May information could have been made available—that information would have been assessed, in my judgment from past experience, by the middle of June, if one gave Treasury officers one week to do the analysis—a full month before the budget papers were brought down in parliament.

My criticism is not of the Commissioner and his officers or, indeed, Treasury and Treasury officers. It is directed wholly and solely at the Treasurer, who was trying to implement a broken promise in relation to this. Yet he did so on the basis of inaccurate information—information that was out of date as of the end of February—without ascertaining whether the information could have been provided, if he had only asked, from the Liquor and Gaming Commissioner within seven days of the end of the month. As I have said, Treasury could have analysed it in two weeks—very conservatively, in my judgment—although it is much more efficient than that and could have analysed the information in less than a week.

It is the opposition's view and that of many others who, sadly, have been impacted by the Treasurer's and the government's bungling on this issue, that a lot of this could have been resolved if only the Treasurer had done what he should have done in relation to satisfying himself about the estimates and the impact on the industry of this revenue measure.

The bills before us are a result of that initial mess, which was concocted and overseen by the Treasurer. He had to come back to the estimates committees of the parliament and bring forward a whole new package of gambling tax measures. We will explore in a little detail the new growth estimates that are incorporated in that together with the new surcharge devised to try to extricate himself from the hole he had dug. At this stage, there is nothing much more that we can do, now that we have confirmed the set of circumstances in relation to the collection—or the failure by the Treasurer to collect—of accurate and up-to-date information for the budget papers.

I refer now to the growth estimates, which was the aspect of the questioning that I put to the government during the second reading. I thank the government for the information which indicates that over the past four financial years the growth in net gaming revenue has been 12, 10, 12 and 12 per cent.

I think the Treasurer has relatively accurately used a publicly known figure, saying that the past growth was around 11 per cent per year. I think that the figure is marginally higher, but I do not think anyone could reasonably be critical of the Treasurer's averaging it out at 11 per cent. The government has confirmed that the budget forecasts were based on figures of 6.94 per cent for this financial year and 5 per cent and 3.42 per cent for the two following years.

Before I go on to explore these growth estimates, I will clarify again what the government's position is in relation to

those estimates. Were those estimates based on the eight month figures or, as I read later, 11 months data, that is, the aggregate data that was provided to the end of May?

The Hon. P. HOLLOWAY: I am advised that it was based on the 11 month data. While on my feet, I will respond to the previous point made by the shadow treasurer. I again make the point that it was the judgment made at the time that additional information was not likely to alter the estimates. Of course, we are a little bit wiser with the benefit of hindsight; but that was the considered position at the time. I also make the point that, had the budget been brought down at the usual time (the end of May), the sort of information that would have been used in preparing the budget would have been of the order of up to the end of February, anyway. So, one needs to take into account that the whole budget process was somewhat delayed and compressed this year compared with other years; and I think it should be put on the record that the Treasury officers, and indeed the government as a whole, were operating on a fairly tight time frame because the government did not come into office and begin the whole process until 6 March.

The Hon. R.I. LUCAS: In relation to the growth estimates, the government's reply was, 'These estimates were subsequently revised by Treasury and Finance'; that is, the numbers that I read out in my last contribution. As has been explained in a number of public interviews—I will not delay the committee by going through the transcripts, because I do not think there is much dispute about it—both the Treasurer and the AHA confirmed that, when the original proposition was released in the budget, the AHA put a position to the government that the growth estimates that were incorporated into the budget by Treasury were unduly conservative.

The Treasurer has been quoted as saying that the AHA came back to the government and gave another set of numbers, which he described as being—and these are not the exact words—too high in terms of the growth rate, and he then said that he agreed that a lower than the AHA estimate but a higher than the state budget estimate would be incorporated in the revised forward estimates. On what basis did the Treasurer change the forward estimates? What was the government's position that led it to decide that the forward estimates that it made in the original budget documents were conservative and needed to be upgraded, other than the advice from the industry?

The Hon. P. HOLLOWAY: I am advised that the industry did provide some advice to the government. That advice was considered by the Department of Treasury and Finance which, after reflection, agreed that the industry advice did reflect the true state of events.

The Hon. R.I. LUCAS: I am assuming that Treasury and the Treasurer would not just look at the AHA's claims and accept that the government's estimates were conservative and the AHA's were better. What information became available? Was it the March-April-May figures from the Liquor and Gaming Commissioner that became available that gave Treasury the confidence to agree with the industry estimates, or was there some compromise on the industry estimates of growth in gaming tax revenue?

The Hon. P. HOLLOWAY: I am advised that the significant information that was provided to the government was on the planning assumptions of the industry; it provided that information on its planning assumptions.

The Hon. R.I. Lucas: What sort of planning assumptions?

The Hon. P. HOLLOWAY: The assumptions that the industry had made in relation to, I guess, its own projections of growth in the industry and what it would use as a basis for planning its forward investments. The other information that Treasury considered were the historical growth rates in other jurisdictions. It looked at that information after the industry had provided its information on planning assumptions, and it was on the basis of that information that it made its re-assessment.

The Hon. R.I. LUCAS: Can the government confirm that that historical information in other jurisdictions would have been available when Treasury and the Treasurer undertook the original estimates for the forward estimates?

The Hon. P. HOLLOWAY: I am sure that information would have been available. I guess it is a matter of whether one would use it; whether one needed the comfort of that; and in what context that information would be required. And, clearly, given that the industry had brought in new information, it seems to me to be highly logical that the Treasury officers would look at what other information was available that might verify that.

The Hon. R.I. LUCAS: If the government agrees that the historical information of other jurisdictions was available at the time of the original estimates, the question to the government is simple: what new information was made available by either the AHA or the Liquor and Gambling Commissioner for the second estimates for Treasury and the Treasurer to believe that greater credence should be given to the new estimates?

The Hon. P. HOLLOWAY: As I have already answered, essentially that was the planning assumptions that were used by the industry. That was essentially the key new additional information provided.

The Hon. R.I. LUCAS: We do not have the AHA here to engage in this debate, and the government might be pleased that we do not, but I have to say that that is a nonsense. The broad planning assumptions of the AHA would be well and truly known to officers within the appropriate government agencies. I am not aware that the AHA, certainly in the discussions that I had with it, came to the government and said, 'Okay, here is exactly how much money will be invested by this particular company, or others'.

The commissioner would certainly know, and so would the government, about the applications for licences that were pending. As the minister will know, these things drag on for years as a result of a variety of events. I think we handled one by way of special legislation earlier this year which had been going on for almost two years as a result of various appeals and protests from our friend and colleague the Hon. Mr Xenophon and others of like mind.

The Liquor and Gaming Commissioner, his staff and Treasury would be aware of virtually all of the major applications in terms of planning approval. So, whilst today we are not in a position to be able to say what allegedly new information was provided by the AHA to the government on planning, all I can say, on the basis of what I have been told, is that I think the Leader of the Government's response has little substance in relation to what new information was made available for the revised estimates.

The Hon. P. HOLLOWAY: Industry growth projections of that detail were not available to Treasury prior to that time; that is my advice. Obviously the investment decisions that industry might make are something that would not normally be widely shared. But, I guess it was in the context of the proposal that industry would have chosen to make that

information available. So, I think that is the context in which my earlier comments need to be seen.

The Hon. R.I. LUCAS: The government's reply in response to a question I asked is as follows:

> The final point asked by the leader involved provision for anti-gambling measures. I am advised that no provision was made in the forward estimates of gaming machine tax receipts at budget time for any anti-gambling sentiment that may result in initiatives over the forward estimate period. Gambling-related measures in 2001-02 are effectively built into the base estimates.

It may well be that, by way of leaked information from within government or as a result of FOIs, I was given advice by Treasury that, as a result of the antigambling measures—and, indeed, that was the sentiment in the parliament in 2000-01—a conservative provision had been built into the base estimates for gaming machine tax receipts. I know what I was told, but that is just my word against that of the government. A leaked copy of information could become available to me which documents that advice. I will just have to see whether I am lucky enough to receive a leaked copy of that advice. If a leaked copy does not come, it may well be that an FOI—although the current Treasurer—

The Hon. Diana Laidlaw: The Treasurer's a bit slow in answering.

The Hon. R.I. LUCAS: Not a bit slow; he is glacial in terms of his activity.

The Hon. P. Holloway: He doesn't have any jurisdiction. You haven't read the FOI Act you introduced last year.

The Hon. R.I. LUCAS: He is glacial, in terms of—

The Hon. P. Holloway: On the contrary: he has no say in it. He is removed from the process under the amendments of last year.

The Hon. R.I. LUCAS: Then Treasury is glacial.

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: It may well be that, if a leaked copy does not become available, at some stage a freedom of information request would validate what I have just indicated. I place on record that the Leader of the Government's statement—and I accept that it was produced and given to him by the Treasurer—is not accurate. As I said, I know the advice I was provided with. I had a number in the back of my mind—and I will not place it on the public record at this stage—that I recall being told was a conservative provision in the forward estimates for antigambling measures introduced by the former government. I did not dispute the view from Treasury—even though I as an individual member obviously did not necessarily share the antigambling sentiment of some members of parliament—that maybe the feeling of 2001 might spread over the forward estimate years. Therefore, a conservative position in relation to the forward estimates was not an unreasonable position for Treasury officers to take on gaming machine estimates.

In concluding on this important area of growth estimates, as a result of the original mess, the government's response has been to up the growth figures. It just said, 'The original growth figures were too low. We will change the assumptions, up the growth figures and magically produce an additional approximately $20 million over the forward estimates period.' In addition to that, it added the gaming machine surcharge which will allegedly recoup about $19 million or so over the forward estimates period.

In essence, that increase in growth indicates that some or all of the provisioning that Treasury put into the gaming machine receipts—as a result of the sentiment in the parliament to wind back gaming machine receipts and operations in South Australia—which would have an impact on the budget has now been removed by the current Treasurer. That is why I said at the time that with these new growth estimates—and the old government was criticised in relation to gambling issues—the Treasurer was saying, along with the Minister for Gambling, Mr Hill, that the government was not going to do anything other than further ratchet up the gaming machine tax receipts in South Australia by taking out the provision included in the base estimates over the forward estimates period and obviously by increasing the overall taxation and the surcharge.

The Hon. P. HOLLOWAY: I am advised that in the 2001-02 budget there was some provision for a decrease in the base figure for that year, which flowed through into future years in relation to an expected decline in revenue from gaming machines as a result of legislation.

The Hon. R.I. Lucas: That's what I said.

The Hon. P. HOLLOWAY: It was autoplay facilities and restrictions on cash. That was apparently built into the budget in 2001-02, so it was in the base figure.

The Hon. R.I. Lucas: And then over the forward estimates period.

The Hon. P. HOLLOWAY: All those were adjusted. I made the following comment:

> No provision was made in the forward estimates of gaming machine tax receipts at budget time—

that is, in this budget—

> for antigambling sentiment that may result in initiatives over the forward estimates period.

I assume that the question the honourable leader was asking was about the 2002-03 budget. I would think that would be a reasonable assumption.

The Hon. R.I. LUCAS: I thank the Leader of the Government. In essence, he has just agreed with what I have just recounted in terms of the advice I have been given. Let me read again the Treasurer's response that was provided by the Leader of the Government. It is on the *Hansard* record of 21 October. The response states:

> I am advised that no provision was made in the forward estimates of gaming machine tax receipts at budget time for any antigambling sentiment that may result in initiatives over the forward estimates period.

The forward estimates period is this budget year and the next three years until 2005-06. The minister has just indicated that in the base year there had been a reduction in the estimated gaming machine receipts and there would have been, as a result of that—and the minister has conceded this—a reduction over the forward estimates period. As I said, based on advice given to me, that reduction was on the basis of what had occurred in the parliament in 2001. That prevailing sentiment was unlikely to go away through the forward estimates period and, therefore, there was a lower base and a lower figure all the way through the forward estimates period as a result of the antigambling sentiment that prevailed at the time in 2001.

We have arrived at the same position. The Treasurer's advice to the parliament of 21 October, just two days ago, is misleading in the extreme, given the information that the Leader of the Government has just given me now. It takes sophistry to its ultimate degree if the Treasurer is going to argue that what he gave to the Leader of the Government to say two days ago and what the Leader of the Government is saying, based on the Treasury officers' advice today, are one

and the same. We have arrived at the same position so at least that has been clarified now.

The CHAIRMAN: Order! We have had a fair debate on this issue. I am concerned by some of these stages when we get to clause 1. Whilst a lot of the questioning and answering has a point—certainly philosophical and intellectual—I am aware that we are not pursuing the bill to all that great an extent, and quite frankly some of it is political. I ask members of the committee to address the bill to see whether we cannot make some further progress.

Clause passed.

Clause 2.

The Hon. R.I. LUCAS: I know that parliamentary counsel is here. I have placed on file an amendment for the Gaming Machine (Surcharge) Bill which reflects on the objects of a discretionary trust and beneficiaries and a variety of other things like that. I note that in clause 2 there are new definitions of 'beneficiary'. I just want to clarify whether, should my amendment be successful in the surcharge bill, I require any overlapping amendment in this bill as a result of that. I got a shake of the head from parliamentary counsel and I thank them for that. The answer is no.

Clause passed.

Clauses 3 to 17 passed.

Clause 18.

The Hon. R.I. LUCAS: I move:

Page 10, after line 9—Insert:

(ba) by striking out from subsection (4)(a) '$2.5 million' and substituting '$3.5 million';

(bb) by striking out from subsection (4)(b) '$3 million' and substituting '$4 million';

(bc) by striking out from subsection (4)(c) '$19.5 million' and substituting '$20 million';

I intend to speak briefly to my amendment, but I want to leave sufficient time for my articulate colleague, the Hon. Diana Laidlaw, who will speak with some passion on this amendment. As I indicated briefly in the second reading contribution, an amendment was moved in the House of Assembly by my colleague, the Hon. Ian Evans, albeit unsuccessfully, but the background to this is very much the background of a similar amendment moved by the Labor Party when in opposition back in the mid-1990s when I suspect that Stephen Baker was treasurer and poker machine legislation was introduced.

The then Labor opposition believed that it was appropriate to hypothecate a lump of money into a number of funds to indicate that some of this money would be spent on readily identifiable and worthy purposes. I will not trace the whole history of that debate. I am sure it will not surprise members to know that the government's original position was not entirely sympathetic, but in the end the resolution was that the funds were established. The Labor opposition was successful as it had the numbers in the parliament to establish the funds and hypothecate amounts of money into these funds.

The Liberal opposition in the House of Assembly, following the lead of the Labor Party in that first Liberal government, introduced these amendments. In relation to live music, my colleague will speak eloquently and passionately, but in relation to other areas and the arguments mounted by the Labor Party at the time, should this become caught up in a conference of managers or something like that, I am sure the detail can be explored at that stage. However, I will not waste the time of the committee in revisiting all the eloquent arguments evidently used at the time to convince the parliament to establish these funds.

The only general point I make is that, as a result of these gaming tax budget measures, the Treasurer has conceded that he will be collecting about $19 million more from the total package of gambling taxes than was included in the state budget. The state budget came down with an estimate of cash surpluses and accrual deficits over the forward estimate period. The final resolution put to the parliament in relation to this is that, in addition to those bottom line estimates, there is an extra almost $20 million over the forward estimates period to be made available to the government for discretionary spending. It can spend it on the purchase of the Reserve Bank building if it wants or spend $6 million on a referendum, which is of no purpose. For whatever purpose, it can spend the $20 million on things not in the forward estimates expenditure already.

The decision the council and parliament faces is not something that impacts on the aggregate budget bottom line. This is additional revenues and therefore available as additional expenditure over the forward estimates period. The aggregate over the four years in terms of additional expenditure would be $2.5 million a year, or around $10 million over four years, which is about half the additional moneys to be collected from gaming taxes ('additional' means additional over and above the original budget estimates to be collected). Even if these provisions were to be accepted, there is still another $10 million, which I am sure ministers are desperately fighting to get their hands on, without impacting on the budget bottom line produced in the budget documents. That is the critical issue: without impacting on the budget bottom line. I hope we will not be hearing from the government in this or another place that this measure would impact on the budget bottom line as produced in the budget documents because that is not correct.

As I understand it, one of the arguments for some of the additional $10 million is that maybe the new crown lease arrangements in the select committee in another place may take some of that money if it moves to a freeholding policy. Where the additional $10 million goes is not an issue in this debate, but of issue in this debate, should this place and this parliament accept this amendment, is the good purposes to which the individual funds might be put. Obviously one of the funds makes available funding for additional anti-gambling measures, so I am sure the Hons Mr Evans and Mr Xenophon, the Australian Democrats and other members will want to see additional funding go into that area. At least that portion of the allocations would make that possible in terms of additional project expenditure. I indicate the Liberal Party's position in relation to this issue. I will leave to my colleague, the Hon. Diana Laidlaw, and others the argument of the particular detail on how some of this money could be well spent.

The Hon. M.J. ELLIOTT: I indicate Democrat support for these amendments. Hypothecation is something the Democrats have always found attractive and on previous occasions we have tried to increase the amounts of money going to these purposes. The Liberals in government were not keen on hypothecation and did not like as a government being told how to spend their money, but they have had some sort of conversion on the road to Damascus.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: It is also true that you resisted quite a few along the way also. Regardless of the motivation of the Liberal Party, I am still prepared to support the amendment because there is a need for extra moneys to go to these purposes and, considering the harm being done by

poker machines, nowhere near enough is being done. At the end of the day it is not just spending money after the damage has been done that is required but we have to tackle the root cause of the problem—something which it appears that neither of the major parties are genuine about tackling.

The Hon. DIANA LAIDLAW: I thank the Hon. Mike Elliott for indicating support for the amendment. I have been a fan of hypothecation of funds and, at that time, I remember supporting the introduction of poker machines in this state as shadow minister for tourism and moving amendments in terms of the hypothecation of funds for tourism-related and promotion purposes. I thank the Hon. Robert Lucas for speaking in such a compelling way for this amendment because, while I will never reveal details of cabinet deliberations and should not really indicate details of party room discussions, the Hon. Mr Lucas, as the former treasurer and now shadow treasurer, had to be convinced that the money was available for this purpose; that it was money over and above what the government had budgeted for; and that this is from windfall profits from poker machines and would not be undermining the budget bottom line. Is that a fair presentation of the Hon. Robert Lucas' views?

The Hon. R.I. Lucas: You always give a fair presentation.

The Hon. DIANA LAIDLAW: I just wanted to make sure that I did on this occasion. The former treasurer is a mean fighter in the party room, and earlier in cabinet, but he was persuaded to this cause, not only because he is the father of young children and he likes live music but because this money would not upset the government's bottom line. There is no reason for the government not to be supporting these increases in two sums of money for purposes which, in opposition, it supported back in 1996 when it moved for the establishment of these hypothecated funds.

I would not wish to see any hypocrisy on behalf of the Labor Party at this time in not supporting a simple increase in the funding allocations to the very funds that it championed in 1996. Those funds were established for the purposes of sport and recreation, charitable and social welfare and community development. This amendment increases the sums of money in each instance and, in addition, in terms of community development, specifically defines that the increase should be allocated for live music. I will not dwell on this for long, but most members—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: —and I include the Hon. Mr Cameron—in this place, when I was Minister for the Arts and Minister for Planning, were very keen for me and the government, with their support, to address the noisy neighbour conflicts in the community arising from live music which, in our increasingly ageing community, was resulting in more and more venues that attracted young people ceasing to operate in our community because of noise issues. It is in our interests to appeal as a government and as a parliament to our young people and say that this is an attractive place to live, that they are relevant to us and that we provide a range of activities for young people.

We must not think that, in every instance, the answer is a skateboard park in every council area—it is just not good enough. We do live music so brilliantly, not only across the Adelaide metropolitan area, from the northern suburbs to the south, but across the country areas of this state. As a result of that concentration of concern amongst hotels that provided live music (these hotels generally do not have poker machines) and as a result of questions in this place, the government established this working group (chaired by the Hon. Angus Redford) in July last year. It was a year to this month, October 2001, that the eight recommendations were advanced and I set in place—with a timetable—EPA guidelines and a range of buyer beware initiatives, and the like, all to be finalised by February this year.

In addition, cabinet agreed to funding of $200 000 for each of the four years for the live music fund. I think it was the height of sadness and hypocrisy—and a good indication, I think, of the meanness of this government, notwithstanding its words about social inclusion, and the like—that one of its first actions was to cut that live music fund from the arts budget. That fund that would have seen hotels—

The Hon. T.G. Cameron: Foley wanted a balanced budget.

The Hon. DIANA LAIDLAW: He may have wanted a balanced budget, but what about a balanced community, what about things for our kids and what about the pressure on hotels as viable community centres? Unless this government moves on these issues fast, we will see again, as we did last year, neighbour noise conflicts involving hotels, because we are facing development pressures across our metropolitan community. Those development pressures should not be discouraged but nor should they give rise to hotels being asked to cease presenting live music, and nor should they be pressured to close their business overall.

Many members would know that one thing our young—and not so young—musicians and songwriters say of Adelaide is that the introduction of poker machines caused many live music venues to stop offering live music on a week day and week night basis. I think, therefore, it is even more appropriate that this gaming measure, with the windfall revenue the government is gaining, should dedicate something back to our live music industry as a whole, because it appears to have been a casualty of the introduction of poker machines. I think that I have said enough. I hope that I have convinced the Labor Party, also, in terms of acting in the best interests of music, the arts, the community and young people with respect to the allocation of windfall gaming revenue.

The Hon. T.G. CAMERON: I am not normally a supporter of hypothecation, unlike the Hon. Di Laidlaw who wants to squirrel a few chestnuts away for, it seems, whatever purpose comes into her mind. But, be that as it may, I am inclined to support new clause 18A on the basis that it does highlight some hypocrisy in respect of the position of the state Labor government and, in particular, the Premier. I will not go into all of the gory details, but when you say one thing it will come back to haunt you; and the Premier is on record all over the place as pretending to be a great supporter of young people, live music, etc.

As was correctly pointed out by the Hon. Di Laidlaw, one of the first things this government did when it got into office was to start cutting arts funding, although that is another subject. It decided to cut funding to the live music stream. As I have indicated to the committee, I am inclined to support the amendment standing in the name of the Hon. Robert Lucas, but there are certain phrases and words that keep coming back to me from the past that he and Trevor Griffin enunciated in this place about some of the sinister evils of hypothecation for political purposes. So, I was wondering how much thought the Hon. Robert Lucas had put into subsection (4), and I would like to know from the Chairman whether it is appropriate to put a couple of questions to the Hon. Robert Lucas.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. CAMERON: I must confess to not hearing all your contributions on this point, but what I did hear was that no effort was made to justify where the figure of $500 000 came from. It might have been just plucked out of the air to see what the government would do with an amendment like this. I think it is fair enough to put this to the former treasurer, because I am sure he would have been firing these questions to whoever had carriage of this amendment here. Perhaps he could reverse the roles and imagine he is sitting on the other side of the chamber for a moment. I ask him where the figure of $500 000 comes from and whether he is satisfied with the wording of his amendment that it must be applied from a fund in each financial year towards programs that will be of benefit to the live music industry.

Talk about beauty being in the eye of the beholder! I wonder whether he could outline to me what programs he has in mind that would be of benefit to the live music industry. I have two simple questions; I am sure he would have respected being asked these if he were still the treasurer. Where did the figure of $500 000 come from, and what programs does he have in mind on which he would like this money spent and which will be of benefit to the live music industry? That seems to be missing from some of the submissions I have heard today—although I concede I might have missed some.

The CHAIRMAN: I was hoping that the Leader of the Opposition would be aware of that well known trade union principle that, when you have it won, get it done. I see he is being briefed by his colleague and will make a contribution.

The Hon. R.I. LUCAS: I find that to be not just a great trade union principle but also a very good parliamentary principle. I have been provided with some advice from my colleague the Hon. Diana Laidlaw, and I will respond very quickly to some of the Hon. Mr Cameron's questions. The excellent report that has been produced, together with advice that the former minister has provided, shows that the live music fund will address a range of issues, such as doubling or significantly increasing the funding for the recording assistance program and the statewide live music touring program.

Music House was to be provided with additional money for training courses and the South Australian Folk Federation was to be assisted to relaunch the annual folk festival in the Adelaide Hills, something which I am sure would be near and dear to the heart of the Hon. Mr Cameron. In addition to that, I am further advised—and I think the Hon. Diana Laidlaw referred to this—that it also includes assisting venues to undertake improvements to meet EPA noise level requirements, assisting developers of residential development in mixed use zones in certain circumstances with noise attenuation measures and enhancing the development of the South Australian live music industry generally.

In relation to the first question as to the figure of $500 000, I rely very much on my colleague the Hon. Ms Laidlaw for advice on these issues. My colleague advises me that any sensible program would be looking at funding of about $1 million a year but that, in the spirit of compromise for which the Hon. Ms Laidlaw is well known, she believes that a useful program may be eked out with the sum of $500 000.

Finally, I do not have them with me, but I would be very happy to assist the Hon. Mr Cameron by digging up old *Hansard* references in relation to my views on hypothecation which, as I indicated at the outset of my speech (which he missed), are perhaps a little closer to his than to some others. The point to make in relation to this is that these funds are already in existence. The decision has been taken by the parliament and they exist. We are not talking about establishing a new fund: in essence, we are making a judgment about how much money should go into existing hypothecated funds and, on that basis, perhaps the Hon. Mr Cameron might allow a marginal amount of extra discretion and flexibility.

The Hon. T.G. CAMERON: I will conclude, then I will shut up. I thank the Leader of the Opposition for his full reply to my inquiry and indicate that, while I am not convinced on the $500 000 figure—

The Hon. Diana Laidlaw: Do you want to move an amendment for more?

The Hon. T.G. CAMERON: No, I don't think I will do that. I indicate that I am happy to support the $500 000. I guess one would hope that in a year or two when this money is spent someone will stand up in this place and ask where the money went. I indicate my support for the amendment.

The Hon. A.J. REDFORD: I support this amendment. I congratulate my colleague the Hon. Diana Laidlaw for pursuing the matter through our party room and I strongly endorse the comments made by the Hon. Robert Lucas in relation to this and the other issues. I have not made any contribution at all on this bill to date, because I wandered around in a great sense of disbelief and am still shocked and stunned over the extraordinary way the Labor government could simply ignore a written promise, foolishly signed, and I deprecate that. In fact, it has done great damage to the standing of politicians within the community, and for the record I wish to dissociate myself from the conduct of the Labor Party in so treacherously turning its back on a written agreement.

This issue has some precedent. Members might recall that in its early days the Brown government proposed a quite substantial increase in poker machine taxation. I well recall sitting in the office of the then minister for primary industries and mining and being visited by the now Treasurer, the Hon. Kevin Foley, and my good friend the Hon. John Quirke, we discussed the establishment of the community benefit fund. The community benefit fund is one example of a hypothecation which occurred many years ago and which, despite the comment of one extraordinarily misguided individual, has in my view been an extraordinary success. I know that a lot of us—Dale Baker, Stephen Baker, John Quirke, the current Treasurer and I—have all claimed our share of credit for the establishment of that important fund. I must say that it is exceedingly disappointing to read in *Hansard* this week that in quite a churlish and vindictive comment the current Minister for Transport called the community benefit fund 'pork barrelling'. I look forward to writing to all those people who—

The Hon. T.G. Cameron: It must be unparliamentary to call him churlish.

The CHAIRMAN: Interjections are unparliamentary.

The Hon. A.J. REDFORD: To describe these many organisations which provide extraordinary services to our community as being the subject of a pork barrelling exercise—in a typical way, I might add—demeans these organisations and the efforts of John Quirke, Dale Baker, other members of this parliament and me to look after these small bodies. How quickly the Treasurer forgets some of the things he did when he was in opposition! In any event, we have not forgotten and we will stick to our principles.

The live music fund, in my view, is an important part of the recommendations made by the working group which I had

the honour of chairing last year. There was a series of recommendations, some of which were initiated and followed through by the former attorney-general, the Hon. Trevor Griffin, and some of which were followed through by the present Attorney-General, the Hon. Michael Atkinson. I congratulate the Hon. Michael Atkinson. I think that he has been good and diligent in implementing the recommendations of the live music group.

There has been a little bit of a glitch in relation to one recommendation, and I think it is an important lesson in terms of how politicians relate to some elements of the bureaucracy. I well remember during the course of the working group that a pretty strong submission about patron behaviour was put forward by SAPOL. It was felt after much discussion within the working group that perhaps it went way too far and perhaps we could narrow it down. It was acknowledged by SAPOL that there was a problem with patron behaviour in car parks and, in the end, after lengthy discussion, we agreed on an amendment. I know that SAPOL is very strong on the point.

I also know from my very open and frank discussions with the Attorney-General, the Hon. Mick Atkinson, that he has done his very best to implement the recommendations, but I received a letter a week or so ago from the Attorney and I nearly fell off my chair when I got to the end of it because it informed me that the Police Commissioner believed that he does not need any increase in powers and that he can manage it pretty adequately as it is under the existing law, which is totally contrary to the advice he gave the former government. So I say to bureaucrats, particularly those who might be saying certain things, that we politicians do talk to each other across the benches, and both the Attorney-General and I were perplexed at the extraordinary difference in advice that we got as opposed to the advice that he received, and I hope that he gets to the bottom of that.

There are some other issues in regard to building codes, local council development plans and other matters which I have to say, to my great disappointment, have not been attended to by this government. Other than the Attorney-General's diligence in implementing his responsibilities in relation to this act, all the other ministers have simply failed to do so, and that is disappointing, and certainly when I talk to music industry people, which I do on a very regular basis, and they ask me about it, I have to advise them that the Labor Party has been an abject failure in relation to most of the recommendations.

The Hon. Diana Laidlaw: It doesn't care.

The Hon. A.J. REDFORD: No, it does not care. This bill gives members in opposition and on the crossbenches an opportunity to implement another important part of those recommendations, and that is the establishment of the fund. The fund is necessary to assist those venues to undertake improvements, to assist developers and to enhance development. The biggest recipients will be those groups that my colleague the Hon. Terry Stephens talked about today, and they will be the clubs, because it is the clubs that need to spend money on noise reduction measures and it is the clubs that do not have the financial support to enable them to do that.

I will give members one example. The British Workingmen's Club, which provides a fantastic entertainment service to its local community, is the subject of a lot of noise complaints. When we looked at it, we came to the conclusion that most of those complaints were a consequence of the very old airconditioning system that caused a lot of noise. It was not the music at all. A small amount of funding to upgrade that airconditioning system would enable that club to continue to provide that important service to the community.

The Hon. Diana Laidlaw: And youth clubs.

The Hon. A.J. REDFORD: Yes, and youth clubs. It is little things like that that can make all the difference to a small club and to a local community. I know that the Hon. Andrew Evans, who has a deep and passionate interest in the affairs of young people, would agree that music is an important part of young people's lives, and little things can make all the difference and empower young people to feel part of the community. With those words, I strongly urge members to support this measure, but I want to make one other comment. I heard a rumour yesterday, from the Labor Party again, and I am sure it is made up because I do not believe that it would have happened—

The Hon. M.J. Elliott: But you will repeat it.

The Hon. A.J. REDFORD: I am about to, yes. I would not just raise it and leave it hanging there! I know that the Hon. Michael Elliott is keen to hear what I am about to say.

The CHAIRMAN: I trust that it impinges on this clause.

The Hon. A.J. REDFORD: It absolutely impinges on it because it is a direct reference to it. I heard this rumour from the Treasurer's office that someone from the Liberal side—and we have heard this sort of stuff from Labor before, and one needs only to look at the 'Liar, liar' case—said to the Treasurer, 'Don't worry about this clause. It will get through the upper house and then we will knock it off in the conference. Don't worry, the Liberals aren't all that serious about it.' We are serious about this and, should this measure get to a deadlock conference, the Treasurer needs to understand that this is pretty fundamental. He need not take any comfort from some made-up source from the Liberal Party—and we know it is made up because none of my colleagues would leak like that or say something like that. I just draw members' attention to the 'Liar, liar' case and point out that we are pretty serious about this. When the Treasurer reads this comment, I can only assure him—

The Hon. M.J. Elliott: He reads all your speeches.

The Hon. A.J. REDFORD: I know he does, because after the last half dozen he has stopped calling me Angus; he now calls me Mr Redford. It is a very frosty relationship now, I am sad to say. I assure the Treasurer that we on this side of the chamber are very serious, and I know that the Treasurer will have other options but he will have to accept this one.

The Hon. T.G. ROBERTS: I have never heard so much hypocritical hyperbole to justify an hypothecation in my life. We will be opposing the amendment, which could also be called the 'mutual admiration for the opposition' clause. I have never heard so much back patting in my life, but we have to accept the way in which the numbers are falling.

The Hon. A.J. Redford: I suspect it was because I was praising my friend the Hon. Michael Atkinson. That is what really has got up your nose.

The CHAIRMAN: Order! The Hon. Mr Redford has made a contribution.

The Hon. T.G. ROBERTS: In many of the contributions, I could see tongues in cheeks poking out a mile. *Hansard* cannot pick that up; it only picks up the rhetoric. We have to accept the decision of the committee, given the numbers, but generally it is opposition members who use the benches as much as they can to determine the direction in which funding can be directed to those favourite projects of their own. Hypothecation is one of the ways in which it can be done and,

given the numbers, probably in both houses, we will have to accept the outcome.

The Hon. A.J. REDFORD: I assure those avid readers of *Hansard* that there was no tongue-in-cheek in relation to any praise of any person, including the Attorney-General.

The CHAIRMAN: Before I put the amendment which no-one has spoken to but which is before the committee—

The Hon. M.J. Elliott interjecting:

The CHAIRMAN: Order!

The Hon. M.J. Elliott interjecting:

The CHAIRMAN: Order! The Hon. Mr Elliott is quite enthusiastic today. I remind members of the committee that they do have a responsibility—

Members interjecting:

The CHAIRMAN: Order! Honourable members of the committee have a responsibility to address the clauses before them. I am concerned that, during the committee stage, we are traversing a lot of areas, and my forbearance, which is legend, has been tested. Members will concentrate on the clauses before them and not go back over second reading speeches about ancillary matters, as has been manifested today. The amendments before the committee are to page 10, after line 9. There is another amendment, which has been expanded on, and I do not expect any debate on that.

Suggested amendments carried.

The Hon. R.I. LUCAS: I move:

Amendment to section 73C—Community Development Fund

18A. Section 73C of the principal act is amended by inserting after subsection (3) the following subsection:

(4) Despite subsection (3), at least $500 000 must be applied from the fund in each financial year towards programs that will be of benefit to the live music industry.

Suggested amendment carried; clause as suggested to be amended passed.

Remaining clauses (19 and 20) and title passed.

Bill taken through committee with amendments; committee's report adopted.

Bill read a third time and passed.

TEACHER NUMBERS

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to Year 10 staffing criteria made today in another place by my colleague the Minister for Education.

TELECOMMUNICATIONS PROCUREMENT

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to telecommunications procurement made today in another place by my colleague the Minister for Education.

STATUTES AMENDMENT (BUSHFIRES) BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1146.)

The Hon. IAN GILFILLAN: This bill changes the penalties for the offence of starting a bushfire. Under South Australian law, such an offence is currently dealt with as arson and attracts varying penalties, depending on the value of damage that occurred. Where the damage does not exceed $2 500, the maximum penalty is imprisonment for two years. In cases where the damage exceeds $2 500 but does not exceed $30 000, the maximum penalty is imprisonment for five years. The maximum penalty of life imprisonment is in effect where the value of the damage caused exceeds $30 000.

The government highlights that there are deficiencies with this method of dealing with those who light bushfires in this way. This rests on the fact that the severity of the penalty for arson relies upon the dollar value of the amount of damage resulting from the arson, but this does not take into account the effect of risk to property and life caused by a bushfire.

The bill establishes an offence of causing a bushfire and sets a maximum penalty of 20 years imprisonment. The offence is defined as:

A person who causes a bushfire—
(a) intending to cause a bushfire; or
(b) being recklessly indifferent as to whether his or her conduct causes a bushfire.

However, the bill excludes the situation where the person who causes the fire does so on their own property or has permission from the owner of the property. It also addresses and exempts a situation where the bushfire results from operations that are aimed at preventing, extinguishing or controlling a fire.

The Democrats see this bill as part of the government's agenda in law and order and, as such, I suspect that the bill has more to do with votes than it does about deterring the lighting of bushfires. The persons who light such fires have no real belief that they will be caught and nor would they be likely to be aware of the penalty for such an act. It is my understanding, and perhaps the minister would like to address this in summing up, that should someone cause a bushfire that results in greater than $30 000 damage then they would be likely to be charged with arson rather than with causing a bushfire as, in that case, arson carries the higher maximum penalty of life imprisonment. So the real change here is that the maximum penalty for causing a bushfire that results in less than $30 000 damage is increased from two or five years to 20 years' imprisonment.

We would look more favourably on the proposed approach of the Law Society, which would enable the court to have regard to the harm done to the community when sentencing someone convicted of arson or causing a bushfire. Clause 5 of the bill deals with sentencing and is a positive move towards restorative justice. It is the belief of the Democrats that restorative justice offers a more effective means of reducing crime and addressing reparation for crimes. The Democrats, while recognising that there are deficiencies with the way in which those who cause bushfires are dealt with, do not believe that the bill before it is the appropriate way to address it.

I refer to the Law Society's opinion which was sent to the Attorney-General on 20 June. The last paragraph of the letter, signed by the President, Chris Kourakis QC, states:

Generally, in relation to this bill, the Law Society wishes to emphasise that merely increasing the penalties in the case of bushfires is unlikely to have a deterrent effect. Many arson offenders are found to suffer from psychiatric conditions or, in some cases, an intellectual disability. More effective health services are more likely to protect the community from bushfires in those cases.

So, I think it will be a matter which may have some interesting committee deliberations. The most recent bushfire in New South Wales was caused by the use of an angle grinder by a water maintenance crew. It would be an interesting test to see whether that fits into 'reckless indifference' because, surely, anybody in those circumstances would have been aware that

the use of tools of such a nature was extraordinarily dangerous and quite likely to cause sparks and therefore, of course, a bushfire.

I think there are anomalies that can rise from the legislation. I think it is inaccurately targeted and reflects, yet again, the trend of this government to promote a 'feel good' sensation by increasing penalties without really addressing the causes of the offences and the community damage, which it should be approaching it in a much more sensitive and sophisticated manner.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

LAW REFORM (DELAY IN RESOLUTION OF PERSONAL INJURY CLAIMS) BILL

Adjourned debate on second reading.
(Continued from 29 August. Page 964.)

The Hon. R.D. LAWSON: This bill is identical to a bill introduced by the Liberal government in July 2001. It passed through all stages in the Legislative Council and was introduced into the House of Assembly on 27 November 2001 but lapsed with the prorogation of parliament. The earlier bill was the government's response to the Hon. Nick Xenophon's private member's bill entitled the Statutes Amendment (Dust-Related Conditions) Bill 2000.

That bill sought to enact special laws for people who suffer from dust-related conditions. It amended the Survival of Causes of Action Act to make damages or workers compensation for personal pain and suffering, or loss of expectation of life and/or bodily or mental harm of a person who suffered a dust-related condition payable to the estate of the deceased person; in other words, those causes of action in relation to dust-related conditions survived. That part of the bill introduced by the Hon. Nick Xenophon eventually passed.

However, his bill had sought to make insurers and defendants who deliberately delayed dust diseases cases pay extra damages. That proposal of the Hon. Nick Xenophon was opposed on the ground that any law on this topic should apply not only to cases involving dust diseases but should apply generally. Accordingly, this bill adds a new division 10A to part 3 of the Wrongs Act. It also amends the Survival of Causes of Action Act by removing references to certain obsolete causes of action.

I will deal first with unreasonable delay in resolution of claims. Under the new section 35C of the Wrongs Act, courts and tribunals will be able to award damages against a defendant—in the bill called 'the person in default'—if that person knew or ought to have known that the claimant was, because of advanced age, illness or injury, at risk of dying before resolution of the claim and that the person in default unreasonably delayed the resolution of the claim. So, the essence of this bill is unreasonable delaying of claims.

The question as to whether the person in default unreasonably delays a claim is to be determined in the context of the proceedings as a whole, including negotiations prior to the issue of proceedings in a court or tribunal and including the conduct of the deceased person or any other parties; and those parties would undoubtedly include the legal advisers of the deceased person. Under section 35C the damages are awarded against the defendant or other person who has authority to defend the claim, such as the insurer of the defendant, a liquidator of a defendant company or the personal representatives of a defendant who may have died.

The amount of damages is at the discretion of the court or tribunal. In determining the damages, the court is required to have regard to the need to ensure the defendant (who is usually, but not always, an insurance company) does not benefit from the unreasonable delay in the resolution of the deceased person's claim, and also to have regard to the need to punish the person in default for the unreasonable delay. The first element is based on concepts of unjust enrichment, the amount by which the defendant in default would benefit or be unjustly enriched by unreasonable delay in the amount of the liability for non-economic loss.

The second element is undoubtedly punitive in nature. The amount that may be awarded when a claim that has been delayed unreasonably is a claim for workers compensation may not exceed the total amount that would have been payable by way of compensation for non-economic loss under the workers compensation legislation if the worker had not died. Under the bill, damages will normally be paid to the dependants of the deceased claimant. However, the court or tribunal does have a discretion in this matter. Those damages may also be paid to the estate of the deceased person. In apportioning the damages between dependants, the court or tribunal will be required to have regard to any statutory entitlements such as those that are conferred on the dependants by the workers compensation legislation. The bill also has a new provision for the Survival of Causes of Action Act 1940 to make clear the intention that nothing in that act prevents an award of damages under new section 35C.

The new remedy is available where the claimant dies after the act comes into operation. It would have the effect of discouraging delay by dependants of claims that have been made already. It will ensure also that people who have been exposed to injurious substances in the past but have not yet made a claim—perhaps because they have not yet developed symptoms—will have the benefit of the effect of this reform. At present, a defendant against whom a good claim is made is liable to pay damages or compensation for non-economic loss if the plaintiff lives. If the plaintiff or claimant dies, the defendant is relieved of that liability. However, under this bill, a different liability arises in its place, that is, the risk of liability to pay the section 35C damages if the defendant is found to have unreasonably delayed the proceedings knowing that, by reason of advanced age, injury or illness, the claimant was at risk of dying before the claim was resolved. The sort of unreasonable claim to which this new remedy will apply is unconscionable. The defendant should not be permitted to benefit from delay of this kind, regardless of whether it occurred before or after the act comes into operation.

A number of people in the community believe that defendants, insurers and their lawyers invariably delay claims for the purposes of waiting upon the death of the claimant. That is a widely held perception. However, in my experience as a legal practitioner, it is a rare event. It is almost invariably very much in the interests of any defendant—especially an insurance company—to settle a claim quickly and resolve it rather than allow it to remain unsettled and unresolved, because experience shows that the ultimate cost not only of prosecuting such a claim but also the ultimate cost in damages awarded if the court actually comes to award them will be higher than if the defendant had paid at the beginning.

I do not believe that this measure will, in fact, often be applied, because in my experience there have not been many cases of unreasonable delay such as to attract section 35C

damages. However, it is important that we as a parliament indicate an abhorrence of that practice and indicate a belief that a claimant who is held out of damages in these circumstances ought be appropriately compensated, and I believe that in the future this bill will be a very strong disincentive to those who might choose to delay the proceedings.

The next element of this bill is the removal of obsolete provisions from the Survival of Causes of Action Act. Section 2 of that act provides that the causes of action of defamation, seduction, inducing one spouse to leave or remain apart from the other spouse and also claims for adultery do not survive the death of the plaintiff or the defendant. In other words, the existing provisions of our law provide that, upon the death of either plaintiff or defendant in one of those cases, the action cannot survive for the benefit of the estate of the plaintiff, or to the detriment of the estate of the defendant.

The actions for seduction, enticement and harbouring were abolished in 1972 in this state. Actions for damages for adultery ceased when the Matrimonial Causes Act came into operation in 1961. However, that act still allowed a husband or wife to sue for damages for adultery, that is, it abolished damages only against a person who was not in the spousal relationship. The right of a husband or wife to sue the other for adultery was abolished by the Family Law Act 1975, with effect from 1 January 1976. Accordingly, the only causes of action that are now mentioned in section 2 of the Survival of Causes of Action Act, which are current actions which might be pursued, are actions for defamation.

Section 3(1)(c) of the Survival of Causes of Action Act provides that a cause of action for breach of promise to marry survives the death of the plaintiff or the defendant, but it limits the damages recoverable for the benefit of the estate of the plaintiff. However, the right to sue for damages for breach of a promise to marry was abolished in this state in 1971 with a special act called the Action for Breach of Promise of Marriage (Abolition) Act 1971. That act is now obsolete and is repealed in this bill. I indicate the liberal opposition's support for the second reading of this bill.

I also mention that in 2001 the Law Society made a strong submission in relation to an earlier version of the bill. It was the view of the society that actions for damages which include an exemplary or punitive amount should not be awarded. The society was of the view that a measure such as that now contained in section 35C was, to use its words, 'The thin edge of the wedge'. I think it meant to say, 'The thin end of the wedge.' The Law Society commented:

> It would be merely a small step for any future government to incorporate further awards for exemplary or punitive damages into legislation in circumstances which those governments considered appropriate.

Notwithstanding the fears expressed by the Law Society, we do support this measure. The Law Society, its members and their clients have nothing to fear from legislation of this kind, because it is all predicated upon unreasonable actions on the part of defendants. I am sure members of the Law Society would not engage in unreasonable conduct of the kind prescribed in the act.

The Law Society noted that the issue of whether there is an unreasonable delay in the resolution of a claim will be a question of fact in each case, and the role of the court will be to determine that. The society said that this would involve an assessment of issues such as the initial court's interlocutory decisions on issues including, for example, extensions of time and other issues. The general thrust of the Law Society's opposition was that this new course of action would increase litigation and lead to cases in which matters were tried on more than one occasion. Notwithstanding these fears, the Liberal Party did not believe in government, and does not believe in opposition, that the fears, although sincerely expressed, will be realised.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

[Sitting suspended from 5.56 to 7.45 p.m.]

STATUTES AMENDMENT (BUSHFIRES) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from Page 1176.)

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank members for their support for this bill and for its progress. I know that members have not had a lot of time to digest its content, but the seriousness of the situation we face in this year's bushfire season is such that members have facilitated the process and I thank them for that. This legislation follows the commonwealth Attorney-General's request for all jurisdictions to enact a new bushfire offence like the one recommended by the Model Criminal Code Officers Committee in 2001. New South Wales has already enacted this offence and similar legislation is before the parliament in the ACT.

Under the law now, if a person causes a fire that spreads out of control to other properties, he or she may be charged with one of two offences: first, arson (sections 85(1) and (2) of the Criminal Law Consolidation Act)—a very serious offence carrying a maximum penalty of life imprisonment; or, secondly, endangering life or property by lighting a fire during the fire danger season under section 52 of the Country Fires Act 1989—a less serious offence carrying a maximum penalty of $8 000 or two years imprisonment.

This bill adds one more offence, somewhere between those two offences, for which such a person may be prosecuted. It catches people not caught by existing offences and gives the prosecution a greater range of options in the charges it may bring. The new offence is one of intentionally or with reckless indifference causing a bushfire, which fire is a fire that burns or threatens to burn out of control, causing damage to vegetation, whether or not other property is also damaged or threatened. The maximum penalty is 20 years imprisonment. The offence is easier to prove than arson in that, unlike arson, it does not depend on proof of damage to property and, unlike arson, its penalty does not depend on the value of the damage caused or threatened to be caused, which may not in itself be any indication of the seriousness or the harm caused by, or threatened by, fire.

The bill also requires a court sentencing a person for a bushfire offence or for arson to have regard to the fact that it is a primary policy of the criminal law in relation to arson or causing a bushfire to bring home to offenders the extreme gravity of the offence and to exact reparation from the offenders for harm done to the community. In an update to the response to the contribution made by the Hon. Ian Gilfillan in the debate, this offence does not replace the offence of arson. It is a new and different offence—one that can catch people who light fires that threaten to burn out of control and burn vegetation, whether or not this eventuates.

The penalty for the bushfire offence does not depend on the monetary value of the property damage caused, or potentially caused, by the fire. The penalty for arson on the other hand requires proof of such value. There are some circumstances that are not caught satisfactorily by the offence of arson because the damage caused is of very low monetary value.

Sometimes, although the monetary value of the damage may be small, the threat posed by the fire burning out of control is enormous. I give this example: a group of campers lights a bonfire in the Adelaide foothills on a hot windy night before the fire danger season has started. It gets out of control and threatens to burn nearby homes. After valiant attempts by teams of firefighters and the evacuation of residents, the fire is brought under control. The actual damage to property is several paddocks of burnt grass and some acres of adjoining scrubland. It has minimal monetary value. If charged with arson, the campers would face a penalty that did not correspond with the unreasonable risk they took in lighting the fire and its results.

The penalty for arson, where the value of the damage is below $2 500, is a maximum of two years imprisonment and, if under $30 000, up to five years imprisonment. With these limits, and given that the crime was unintentional, albeit reckless, the actual sentence imposed might be less than this. By contrast, the maximum penalty for those offenders, if charged with this new bushfire offence, would be 20 years imprisonment. In addition, the court would be required, in imposing sentence, to bring home to the offenders the extreme gravity of this offence and to make the offenders make reparation for harm done to the community.

The decision about which offence to charge will, of course, depend on the circumstances of each case. If there is damage worth more than $30 000, in this example many homes are burnt, arson could be charged and the offenders face a penalty of life imprisonment. I commend the bill to the house as an important tool in bringing to justice those who deliberately or irresponsibility light fires that have the potential to spread out of control with devastating effects.

The Hon. J.S.L. DAWKINS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

Bill read a second time.

In committee.

Clause 1.

The Hon. IAN GILFILLAN: It is appropriate to indicate the Democrats' opposition to the bill, even though we did not divide on the second reading. Obviously, one can argue that there are some grounds for accepting that the motivation was reasonable, although, in my second reading contribution, I made it plain that I was more suspicious of a gung ho, 'Let's present ourselves as law and order champions' scenario, rather than constructively approaching the attempt to reduce the incidence of bushfire. I listened to the minister when he closed the second reading debate, and I am grateful that he did address—as I picked up—some of the aspects to which we referred critically.

I will analyse that in more detail, because I did not pick up all of the content of the response. In my second reading contribution I referred to the case of a work gang from the New South Wales water department who were using an angle grinder. At this stage, as far as I know, it has not been convincingly proved that the angle grinder caused the fire, although it seems to me and to others that that was a very good reason for the start of the fire. In the minister's interpretation of the bill before us, would that action be regarded as recklessly indifferent and therefore that gang could be charged under this bill and face a maximum penalty of 20 years imprisonment?

The Hon. T.G. ROBERTS: The advice to me is that if it were a recklessly indifferent act, that is, if supervisors had advised against carrying out that work on a particular day and those employees went ahead and did the work any way, or if there were circumstances that led them to believe that what they were doing was a dangerous act and they continued doing it, that would provide one set of circumstances that may lead to a conviction in that area. If, for instance, the incident happened on a declared fire ban day, that situation could be handled under a different act, the Country Fires Act. So, as pointed out, there are two other categories under which charges can be laid. I am not sure.

I am familiar with the case. I saw some of the detail on television, but I am not sure what the investigation has turned up in relation to the exact circumstances. Certainly, many bushfires are started in similar circumstances, particularly in bushfire season. It is unusual, in the early part of the season, for those sorts of circumstances to provide the right environment for bushfires to start. New South Wales particularly, and Queensland, have had very extreme dry seasons, and probably some of the preventative measures that would normally be put in place later in the year have been applied much earlier.

The Hon. J.F. STEFANI: My question is along much the same lines as the question asked by my colleague the Hon. Ian Gilfillan. In a case where a public utility in a remote area requires urgent repairs—and, as an example, I will define a public utility as, say, a water pipe—and the only method of repairing that pipe or that infrastructure is by diesel welder or, in some cases, diesel driven grinders to cut out a faulty weld, how can we safeguard against the possibility of something like that getting out of hand?

The Hon. T.G. ROBERTS: Public utilities do not have any special protection over and above a private individual. If the fire spreads to a property, away from where the event took place, the circumstances in which that fire started would have to be investigated. If a dangerous or reckless act did take place, that is, if faulty equipment was being used knowingly and circumstances occurred in which a fire started, that consideration would probably be taken into account. If an event got out of control in circumstances where it could have been prevented, I guess that the courts would make a consideration based on the individual circumstances of a particular event.

The Hon. J.F. STEFANI: Does the minister consider that it would be useful to prescribe by regulation a process that could be put in place, particularly on fire ban days, so that we have a standardised procedure whereby people who are required to effect repairs are, in fact, following a certain procedure that would tend to minimise the risk? In my view that would be a useful way of at least prescribing the parameters under which people could undertake the work.

The Hon. T.G. ROBERTS: I acknowledge the problem that you have described. My advice is that those prescribed circumstances would come under the control of the Country Fires Act and that the offence would be dealt with under that act rather than the criminal offence act that we are describing here.

The Hon. IAN GILFILLAN: While the minister and his adviser have their thinking caps on, I will ask about another scenario to get some clarification. If a land-holder had lit a

fire which was intended to be contained to his or her property but the fire escaped and went into an adjacent property, and if that property had not complied with any basic requirement to have fire breaks and there was no mechanism on that property to control the fire and the fire went through that property and caused considerable damage, even loss of life as it flowed into other areas, who would be culpable? Would they be committing an offence under this bushfires legislation?

The Hon. T.G. ROBERTS: My advice is that the person who lit the first fire would be charged under this act. If it spread onto another property and that landowner did not take precautions to have appropriate control measures on his property, civil action could be taken by others if that damage spread.

The Hon. IAN GILFILLAN: I thank the minister for that answer. With your permission, Mr Chairman, my concluding contribution to the committee stage will be to quote a letter I read earlier in my second reading contribution from the Law Society to the Attorney-General on 20 June signed by Chris Kourakis, QC, President, because it very succinctly outlines our attitude to the bill. I did not read it in its entirety and I think it is appropriate to do so now. It states:

> Dear Mr Attorney
>
> Statutes Amendment (Bushfires) Bill 2002
>
> This bill was recently considered by the Criminal Law Committee of the Society. The Law Society doubts the necessity to introduce a separate offence for causing a bushfire. The rationale in the third paragraph of the accompanying report, dealing with the difficulty in quantifying the damage caused by a bushfire, appears to be contradicted by the very next paragraph, with the example of damage of up to $70 million in the recent NSW bushfires.
>
> An alternative would be to provide for a greater maximum wherever there was a real risk of loss of life.
>
> The amendments to the Criminal Law (Sentencing) Act are also of doubtful utility. In any event a simpler method would simply be to amend subsection 1 to enable the court to have regard to
>
> (eb) In the case of arson or causing a bushfire—the need to bring home to the offender the extreme gravity of the offence and to extract reparation from the offender to the maximum extent possible, for harm done to the community.
>
> More fundamentally, it is not clear how it is proposed that the court make the orders or directions referred to in the examples. As matters now stand the court could only do so pursuant to the terms of a bond.
>
> Generally, in relation to this bill, the Law Society wishes to emphasise that merely increasing the penalties in the case of bushfires is unlikely to have a deterrent effect. Many arson offenders are found to suffer from psychiatric conditions, or in some cases, an intellectual disability. More effective health services are more likely to protect the community from bushfires in those cases.
>
> Yours faithfully, Chris Kourakis.

I repeat that the most devastating and savage deliberately lit bushfires have been lit by people who are mentally deranged, and that has been shown to be the case over and over again. They will not be deterred, even if they have the faintest idea that the penalty has been elevated. Incidents occur from time to time with varying degrees of culpability where, in going about their normal process, landowners allow a fire to escape. I do not think the lifting of that penalty has been fully comprehended by the rural community. The application of this legislation to what are quite frequently reasonable and acceptable uses of fire on properties in South Australia may cause quite serious concern. So, I repeat: we oppose the bill in its entirety.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. A.J. REDFORD: I draw the minister's attention to proposed section 85B(3)(a)(i). For those avid readers of *Hansard*, I point out that it provides that an offence is not committed against this section if the bushfire damages only vegetable or other property on either or both of the following: (i) the land of the person who causes the fire; (ii) the land of a person who authorised or consented to the act of the person who caused the fire. What is meant by the term 'land of the person'?

The Hon. T.G. ROBERTS: As described, 'ordinary' is the normal description given to land and will be determined by the courts.

The Hon. A.J. REDFORD: With the greatest respect, when we are creating an offence that leads to a period of imprisonment for 20 years and then a defence that relies on some understanding of what 'the land of the person' might mean, how am I to answer if a constituent rings me up and asks, 'I'm not sure, but I'm about to undertake a burning off (and describes the circumstances). Can you tell me, Mr Redford, do I come within the definition of "land of the person?"' To simply respond to that person, 'Well, it is up to the courts,' is, quite frankly, from any client or constituent's perspective, an unacceptable answer, and I am suggesting to the minister now that that answer to me was unacceptable.

The Hon. T.G. ROBERTS: As described to me, it is a defence for those people who own the land. It assists the process; it does not hinder it.

The Hon. A.J. REDFORD: If I have a lease on the land or if I am a tenant, am I protected under that defence?

The Hon. T.G. ROBERTS: The situation as described to me would be assisted if parliamentary counsel were here. I can either take that question on notice and assure the honourable member that I will get back to him or we can adjourn while we take further instructions.

Progress reported; committee to sit again.

HOLIDAYS (ADELAIDE CUP AND VOLUNTEERS DAY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 October. Page 1152.)

The Hon. R.D. LAWSON: I support the passage of this legislation and commend the government for bringing it forward. When I held the office of Minister for Administrative and Information Services, I had a good deal to do with the Mount Gambier Racing Club and other proponents of this measure. The club has been assiduous for quite some time in pressing a proposal that the Mount Gambier Gold Cup be run on a local public holiday, similar to those which apply in Victoria, where regions have the capacity to celebrate a public holiday or half holiday in lieu of Melbourne Cup Day, which is a public holiday only in the metropolitan area of Melbourne. Views on the subject were not unanimous but the club was strongly supported by my colleague the Hon. Angus Redford and also by the local member, Mr Rory McEwen.

The government took the view that it would be inappropriate to consider the issue of regional public holidays in isolation, and a discussion paper was developed and circulated in October 2001. That discussion paper, entitled 'Regional public holidays for South Australia', was widely circulated in the community, local government organisations, as well as sporting clubs. It acknowledged the fact that the particular proposal had initially arisen out of representations from the Mount Gambier Racing Club. It noted the fact that in July

2001 the Mount Gambier City Council had passed a resolution supporting the proposal for a substituted holiday for Mount Gambier Gold Cup day, the substituted day being rather than the third Monday in May, when Adelaide Cup Carnival and Volunteers Day was celebrated. I will call the Adelaide Cup and Volunteers Day holiday by its most commonly known designation, namely, Adelaide Cup day, celebrated as I said on the third Monday of May each year.

In July 2001, following the resolution of the council to which I referred, the District Council of Grant, which adjoins, as you would know, Mr President, the area of the Mount Gambier City Council, as well as the local chamber of commerce, the local trades and labour council and other regional bodies strongly supported the council as well as the Racing Club. It is worth emphasising that this bill will allow the substitution of a public holiday.

There are presently nine public holidays designated under the Holidays Act of South Australia. That act, curiously, does not designate a particular name for most holidays. For example, the so-called Adelaide Cup day is simply designated in the act as the third Monday in May; the Queen's birthday holiday is simply the second Monday in June; Labour Day is not designated by that name but as the first Monday in October; and likewise 1 January and 26 January are not given any particular designation. The only names designated are Good Friday, Easter Monday and Christmas Day. Anzac Day, which is 26 April, is also a public holiday, although a public holiday of a slightly different designation for various acts.

The existing legislation, unlike that in Victoria, does not permit the substitution of holidays in part of the state. It is interesting to note that there are 33 local public holidays in the state of Victoria and many of them are only half holidays. Most are in the period October-November, around about the time of the Melbourne Cup Carnival in Melbourne. None of the holidays in Victoria is observed on a Monday and most are very localised, rather than regional. In other words, they comprise not the whole of a municipality or shire but simply a town, and very often quite a small town, in the area. In Western Australia, public holiday substitution is allowed under section 8(1) of their legislation but only in respect of the Queen's Birthday holiday. As in Victoria, this process has been used for local racing days, agricultural shows and regional events. Some of those holidays are celebrated in very remote parts of Western Australia.

A number of interests groups are not enthusiastic supporters of regional holidays and point out that banks will be closed, tourists will not be serviced, people will arrive, for example, in Mount Gambier on a day when they expect to be able to do business or make a purchase and will be disappointed because the shops are closed. Others say that the problem with this type of arrangement is that some businesses will take the holiday but many will also take a holiday on Adelaide Cup Day. So, in effect, two public holidays will be observed rather than one, at the expense of business. Others say that national businesses such as banks will be put in a difficult situation. My answer to them all is that it works and has worked in Victoria for many years. It cannot be impossible, and it is something that is certainly well worth trying here.

Local communities are the best judges of what will suit their particular interests—not only tourist interests but also sporting and local community interests. I believe we should give greater autonomy to local councils. This is one way we can give them autonomy provided, of course, there is an appropriate period of consultation and all issues are addressed.

The Western Australian legislation has a novel solution to the problems that arise in relation to industrial awards or enterprise agreements which, of course, contain specific provisions about public holidays—either a requirement to work or not to work and the rate of remuneration for public holidays. Their solution is to stipulate that the substitution of a public holiday prevails over any provision of an award or enterprise agreement made under the Industrial and Employee Relations Act.

As a person from Port Pirie, Mr President, you would be well aware of the practice over many years in that city of celebrating a particular local holiday—one, I think, accounted for in the award governing employment at the Port Pirie Smelters—and no-one would suggest that that provision has held back the city or district of Port Augusta.

Much has been made of the fact (and it is a very important point) that this legislation is limited to the District Council of Grant and the City of Mount Gambier. As I have already mentioned, they were the promoters of this original idea, but it is not something unique to that area. I am disappointed that the government has not adopted a more flexible approach to allow other regions of South Australia to adopt the same initiative if they wish to do so.

I believe the government has been unduly inflexible about this matter, and I am disappointed that its response has not shown a greater appreciation of the diversity of our state and a willingness to allow autonomy for regions such as Port Lincoln and Eyre Peninsula where there is strong interest in pursuing this issue. The minister in another place gave what I would regard as a very perfunctory response to this suggestion. Hopefully, the minister in this place on behalf of the government will provide an explanation which justifies the government's position to a greater extent. The opposition will be supporting the second reading of this bill and amendments will be introduced during the committee stage.

The Hon. J.S.L. DAWKINS: I indicate my support for this legislation and, subsequently, for the amendment to be moved by the Hon. Angus Redford. As members would know, I have had a lot of experience dealing with rural communities in recent years. I have a strong affinity for their sense of community and, as described by, I think, the Hon. Robert Lawson, their sense of autonomy. I believe that it is a very good move to allow Mount Gambier Gold Cup day—a significant event not only in the racing calendar for the South-East but also as a significant social event across that region—to be a holiday in the City of Mount Gambier and the District Council of Grant.

When I spent a couple of years in Victoria in the early to mid 1970s, I was intrigued at the range of arrangements in that state for the Melbourne Cup. I grew up thinking that everyone had a full day off in Victoria for the Melbourne Cup. Of course, that is not the case. It is generally only a half-day holiday, and generally it is observed only in the metropolitan area. As mentioned by others during this debate, a range of communities exercise their right for a half-day holiday or, in some cases, a full-day holiday on other occasions, whether it be for a racing event or a local show.

I remember attending the Warrnambool cup—I think it is the Grand National event, but the minister might correct me—and, at that time, they were lobbying for a public holiday for that event. That has since happened and has been

very successful, as mentioned yesterday by, I think, my colleague the Hon. Mr Redford.

I strongly support the flagged amendment which would allow some 10 Eyre Peninsula councils to observe a public holiday to mark the Port Lincoln Cup, which is also a very significant event in that region. This amendment would allow residents of not only the City of Port Lincoln but also the Ceduna, Cleve, Elliston, Franklin Harbor, Kimba, Le Hunte, Lower Eyre Peninsula, Streaky Bay and Tumby Bay councils to have a half-day holiday for the Port Lincoln Cup. I support the legislation.

The Hon. G.E. GAGO secured the adjournment of the debate.

STATUTES AMENDMENT (BUSHFIRES) BILL

In committee (resumed on motion).

(Continued from page 1179.)

Clause 4.

The Hon. T.G. ROBERTS: In relation to 85B(3)(a), which was the clarification required by the honourable member, the extra information that I have received from the parliamentary draftsperson is that the exception is designed to deal with people who are genuinely back-burning; 'the land of the person' refers to the person who occupies the land; the legal concept of occupation always means possession, so it does not matter whether the person is a leaseholder, native title holder or freeholder—what they have in common is possession of the land.

The Hon. A.J. REDFORD: I take it from that that when I am down at my beach shack at Beachport this summer having a barbecue and, in normal holiday spirit perhaps I am a little bit more negligent even to the point of being recklessly indifferent and I manage to put the fire out before it hits the neighbour's fence—

An honourable member interjecting:

The Hon. A.J. REDFORD: I'd get the kids onto it. So I am not liable for a 20-year gaol term. Is that correct?

The Hon. T.G. ROBERTS: Under the act you could be legally charged for an offence of being in charge of the land, or in charge of the circumstances in which you found yourself.

The Hon. A.J. REDFORD: In those circumstances, would the offence apply on the basis that I have a right to occupy those premises for the 13-odd days (which my kids think is pretty measly) that I stay at Beachport?

The Hon. T.G. ROBERTS: That would be the intention of the act if this bill was passed.

The Hon. A.J. REDFORD: I do have a defence in those circumstances?

The Hon. T.G. ROBERTS: Yes.

Clause passed.

Clause 5 and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

CRIMINAL LAW (SENTENCING) (SENTENCING GUIDELINES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 October. Page 1103.)

The Hon. A.J. REDFORD: This is an interesting piece of legislation and is, in some respects, uncharacteristic of this government in that its introduction was not preceded by some review or summit. I know that the current Attorney-General is passionate about this issue and has spent many a long hour, usually late at night, talking to South Australians about the complex and difficult task of sentencing.

In my many conversations with judges and magistrates, most are agreed on one thing: that the task of sentencing is a difficult and time-consuming one that gives them more cause to reflect and worry than anything else. The taking of a fellow citizen's liberty is a serious thing indeed. This bill seeks to amend the Criminal Law (Sentencing) Act. It seeks to:

(a) empower the Full Court to establish sentencing guidelines for particular classes of offence or offenders; it may indicate a range of penalties; and how aggravating or mitigating factors are to be taken into account;

(b) enable the Full Court to do this on its own initiative, or on the application of the DPP, the Attorney-General or the Legal Services Commission, and permits the DPP, the Attorney-General, the Legal Services Commission and organisations representing offenders or victims of crime to appear in relation to those matters; and

(c) sets out some procedural aspects to the sentencing process.

In his second reading speech, the Attorney referred to the law generally; discussed current sentencing processes such as instinctive synthesis; tariffs; some interstate experiences and cases; and some judicial comment in South Australia and in the High Court.

My colleague the Hon. Robert Lawson made an extensive contribution last Thursday. In summary he:

(a) indicated support for the bill;

(b) acknowledged it was ALP policy which was put to the electorate at the last election;

(c) pointed out that the bill effectively hands sentencing policy in this state to the judiciary, a body of which the Attorney-General has been highly critical in terms of sentencing;

(d) critically analysed the Attorney-General's changing position on this topic over the past seven or eight years;

(e) noted that Premier Carr recently announced the abandonment of the New South Wales legislation that this bill is based on, thereby embarrassing this government.

The Hon. Robert Lawson also expressed concern in his contribution at the inclusion of clause 29C(3) which enables the Full Court to ignore the rules of evidence. In that respect, I am not sure why this is necessary and I would be most grateful to hear from the government as to why there is any need to abandon the rules of evidence.

The Hon. Robert Lawson advised that he will be moving an amendment to the bill to:

(1) alter the provisions concerning the initiation of proceedings and representation proceedings to include a broader class;

(2) establish the sentencing advisory council.

He adequately justifies that in his second reading speech, and I will not traverse the same grounds. I know that the Attorney-General will support these amendments in the oft stated bipartisan fashion and not be churlish enough to oppose them

simply because they were not his idea. In that respect I believe the Attorney-General is somewhat different from most of his colleagues.

In any event, today I want to make some general comments about sentencing and generally comment about the issue in so far as a recent decision of the High Court in Wong and the Queen, which was a case concerning the sentencing of offenders convicted of being knowingly concerned with the importation of narcotics. I will also draw the attention of this place to a couple of other options and congratulate the Attorney-General on what Sir Humphrey might describe as an extraordinarily courageous decision, but I will come to that later.

Wong v. the Queen was a case that was decided by the High Court of Australia, and a decision was handed down on 15 November 2001. In that case, the current High Court gave extensive consideration to the issues of sentencing and guideline sentencing in general—although it did not consider some issues. In a well researched and considered judgment Chief Justice Gleeson made some comments about sentencing, and in particular he made some comments about the current legal position in so far as prosecutions are concerned. In that respect, he alluded to a decision made by the then Chief Justice, His Honour Justice King, in the case of R v Osenkowski. He says:

> The proper role for prosecution appeals, in my view, is to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic views of individual judges as to particular crimes or types of crime to be corrected, and occasionally to correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience.

Indeed, Chief Justice Gleeson went on and endorsed the comments of his colleague as follows:

> . . . a sentencing judge imposes a sentence that is definitely below the range of sentences appropriate for the particular offence.

These two cases—the latter goes back to 1994, and the former goes back to 1982—demonstrate that the courts are setting out the sorts of principles that the Attorney-General is seeking to instigate in this bill. Indeed, His Honour Justice King I think quite adequately put the position from a legal perspective.

Since that time, we have had judges, full courts and courts of criminal appeal throughout this country endeavouring to try to come up with a formula in a whole range of cases that would display a level of consistency. From time to time, there has been some criticism, whether it be from a genuine point of view or from a politically opportunistic point of view, despite the fact that some of the best and brightest in our community have diligently applied their minds to having some form of consistency. That demonstrates the extraordinarily difficult and complex task that courts and judges are confronted with in exercising their sentencing function. I know that there was some comment by the Attorney-General about this concept of synthesis sentencing. Indeed, he also talks about two-step sentencing.

The Hon. R.D. Lawson: Instinctive.

The Hon. A.J. REDFORD: Instinctive, yes. The Hon. Robert Lawson made some comment about the way in which it was apparent that the Attorney-General's level of understanding of this process, as indicated by his second reading speech, was perhaps not as accurate as one might have hoped from our first law officer. In any event, I make no direct criticism; he cannot get it right every time. However, I draw his attention to the decision of Justices Gaudron, Gummow and Hayne in that case, and in particular the comments that were made at page 25. In that part of the judgment the court said:

> The reasons of the Court of Criminal Appeal suggest a mathematical approach to sentencing in which there are to be increments to or decrements from a predetermined range of sentences. That kind of approach, usually referred to as a two stage approach to sentencing, not only is apt to give rise to error, it is an approach that departs from principle. It should not be adopted.

What the three very learned High Court judges are saying is that sentencing is too complex to try to break it down into a mathematical formula, and an example is to say, 'This is worth five years but, because you pleaded guilty at an early stage and cooperated with police and dobbed in co-offenders, we'll discount that by 2½ years; therefore your sentence is 2½ years.' They deprecated that. In fact, they are learned judges and perhaps some have more or less experience in the criminal courts than others.

Their argument in support of their resistance to that two stage approach is set out in this paragraph, as follows:

> It departs from principle because it does not take account of the fact that there are many conflicting and contradictory elements which bear upon sentencing an offender. Attributing a particular weight to some factors, while leaving the significance of all other factors substantially unaltered, may be quite wrong. We say 'may be' quite wrong because the task of the sentencer is to take account of *all* of the relevant factors and to arrive at a single result which takes due account of them all. That is what is meant by saying that the task is to arrive at an 'instinctive synthesis'. This expression is used, not as might be supposed, to cloak the task of the sentencer in some mystery, but to make plain that the sentencer is called on to reach a single sentence which, in the case of an offence like the one now under discussion balances many different and conflicting features.

The Attorney does not agree with those three learned judges, and that is his prerogative. However, it is an important sentencing issue. In practical terms, in about 98 per cent of cases, it is more a practical difference than an academic difference.

If you adopt a two-step process or adopt this distinctive synthesis process, you finish up with the same result in any event. It is more an academic exercise than a practical application of the law and I know that the Attorney-General is vulnerable to being side-tracked into some of these academic arguments, although less so now than perhaps a year or so ago because of the more extensive advice pool within his office. In any event, there is clearly a debate at the highest echelons of the judiciary on the issues raised by the Attorney. In this respect the final arbiters are the High Court—a body or institution which has the distinction of never having had a South Australian serve on it. It is that body that ultimately will decide sentencing policy in this state because this bill actually hands over that policy to that unelected group of people who are supervised by another unelected group of people, none of whom have ever lived, resided or been educated in the state of South Australia. That was the Attorney's policy that he took to the election and that policy we will not seek to hinder.

The most interesting judgment in this case, and the one that has attracted me in terms of both style and substance, was the judgment of His Honour Justice Kirby. I do not often agree with Justice Kirby, but in this matter he has applied his very good intellect to a very complex issue. In his judgment at page 33 he refers to the judgment of His Honour Justice Mason in the case of Lowe and the Queen in terms of consistency and criminal punishment. That is the fundamental issue: all this argument about two-step or intuitive synthesis is a process by which we try to get some consistency in our system of justice in sentencing. Justice Mason in that case

said that consistency is 'a fundamental element in any rational and fair system of criminal justice'. Justice Kirby went on and said:

> Inconsistency he declared 'is calculated to lead to an erosion of public confidence in the integrity of the administration of justice' and is 'regarded as a badge of unfairness and unequal treatment under the law'. He was there speaking of disparity between the sentences imposed on co-offenders. However, the principle is one of general application.

Indeed, when you look at the size of the cause list that appears at the back of the newspaper and at the number of cases that hit the first half a dozen pages of our daily newspaper in this state, a lot of cases in terms of sentencing go unremarked. There could be a range of reasons for that. It could be that the entire public is entirely and utterly ignorant of what is happening, that we are immune to it or that they are doing a remarkably good job, so good that they do not, generally speaking, attract the attention of the media. There are people in our community who would pick any one of those three causes as to why the majority of sentences passed in our state are passed unremarked upon by the media. His Honour Justice Kirby went on and said:

> In an attempt to reduce inconsistency in sentencing, suggestions have been made by law reform bodies.

In that respect he was referring to the Australian Law Reform Commission, Sentencing of Federal Offenders, 1980, entitled 'Guiding Judicial Discretion'. He further stated:

> Laws have been enacted, some seeking to give greater guidance to the exercise of sentencing discretions. Other laws have set out to reduce the ambit of discretion and to substitute mandatory sentences for a wider category of offences. One judicial response to the perceived concern about inconsistency has been the adoption of sentencing guidelines.

He then goes through the history of it, which indeed is long. It goes right back to the English Court of Appeal some 20 years ago in the case of Bibi, which was reported in the 1980, 71 criminal appeals report at page 360. He refers to similar initiatives being adopted in New Zealand, Hong Kong and other places throughout the common law system. He went on and said:

> Australian courts of criminal appeal have also instituted attempts to reduce inconsistency in sentencing. At first such attempts focused upon consideration of sentencing data, including statistics, particularly as provided to the New South Wales Court of Criminal Appeal by the judicial commission of that state. Certain reservations have been expressed in other states about the risks inherent in the use of such data. Raw statistics may afford impressions as to the range of patterns of sentencing, but they can sometimes mask a great variety of facts concerning an offence and an offender which only the study of the detailed reasons in each case would unveil.

Justice Kirby has hit the nail on the head in terms of one important aspect of the public concern and criticism we so often hear about sentencing and that is the inconsistency in the mind of the public. I never have been, and suspect I never will be, a judge in a court, but I know that judges agonise over it and that it is an extraordinarily difficult task to sentence an offender, to take another citizen's liberty and do so in a way in which there is an element of consistency. A number of factors can weigh against consistency, including the adequacy of legal representation, the adequacy of rehabilitation and a whole range of factors in many cases way beyond the control of any single individual or institution within the criminal justice system.

His Honour Justice Kirby, at page 39 of the judgment, turns to this concept of intuitive synthesis or instinctive sentencing and states:

> The question of whether sentencing should return to the so-called 'instinctive' or 'intuitive' synthesis approach is a very large one.

He is directly pointing to the fact that there is a great judicial debate about the way in which sentencing ought to occur. He goes on and says:

> The debate about it should be reserved to an appeal where the answer is essential.

Unfortunately, courts can be prone to do that, particularly high courts. Sometimes when there is a need to answer a particularly important question, you can get great disappointment in court and find another way of deciding the case and avoiding the actual issue. Unfortunately, in respect of this academic point, that is what they have done. He goes on to state:

> Recent decisions of this court have been interpreted, correctly in my opinion, as requiring greater disclosure by sentencing judges of the way in which they actually arrive at the sentence imposed on a person convicted of an offence. The final sentence will normally include elements of judgment and intuition.

He says two things, both absolutely correct: first, in today's society there needs to be greater transparency, which is vital; and, secondly, at the end of the day, whatever process you use, whatever track you go down, there is a process of intuition as described there or an element of personal judgment and they are always at the margin and are going to be elements of inconsistency, and that can never be avoided. His Honour further states:

> But in my view, it cannot be denied that adjustments are made to a prima facie level with which the sentencing judge begins the task. How can one even begin to think of 'discounts', for example, without at least conceiving the integer which is the subject of the discount? The ultimate product is no more scientifically demonstrable than a judgment for damages for personal injuries. But it would be a retrograde step to subsume the adjustments which the law requires to be taken into account in sentencing by a 'return to unexplained judicial intuition'. Greater transparency and honesty are the hallmarks of modern public administration and the administration of justice. In sentencing, we should not turn our backs on these advances.

His Honour Justice Kirby is saying—in an unarguable fashion in my personal view—what the Attorney said when he introduced this bill; and I agree with the fact that even the very use of the terms 'instinctive' or 'intuitive synthesis' have the capacity to mystify the law to a point where it becomes the subject of some ridicule. I know that those who might support that process are genuine, but they do set up the courts to be exposed to some form of ridicule. I very much support the comments of His Honour Justice Kirby.

His Honour Justice Kirby then turned to a second and, in my view, very fundamental and important issue, namely, who should be responsible for sentencing in this state, or, indeed, in this country. The Attorney-General, when he was shadow minister, was never hesitant to make comments about sentencing in general. Indeed, he took it upon himself to champion the cause of higher sentences and longer terms of imprisonment, and a very attractive argument he presented to the audience he used to confront—generally closer to midnight on week nights on talk-back radio.

That is, in fact, a political process, which I think should be acknowledged positively. He has also, from time to time, made demands of the previous government that it do certain things in relation to sentencing, and he has never hesitated to play some politics with the issue. As a politician (albeit I did not agree with everything he did), he certainly earned my admiration and respect in relation to the manner in which he played the political game. But in terms of this bill, the

Attorney is saying, 'Forget about the fact that I have criticised the courts for the last seven years, forget about the fact that I think the courts are not the appropriate place to make these policy guidelines, forget about the fact that I have said for the last seven years that the government ought to do something about this, forget about the fact that I have said for seven or eight years that the government has been weak and indecisive and forget about the fact that the government and the parliament has failed to act and that the government, by implication, should act.'

He has introduced a bill to this parliament that says, 'I am letting the government and the parliament off the hook. I am going to give, ultimately, to seven unelected judges—not one of whom, in over 100 years, has come from this state—the power—

The Hon. Diana Laidlaw interjecting:

The Hon. A.J. REDFORD: No, the High Court,'—to make general comments about sentencing policy in this state.' The hypocrisy is stunning, and we have all played a part in it. As first law officer, it is disappointing that he has shown signs of defending the judiciary and the public; but in this case, by bringing this bill to this parliament, he has ducked his responsibilities, he has shirked his duty, and that is disappointing.

The Hon. Diana Laidlaw: Or too difficult now that he is in government, perhaps.

The Hon. A.J. REDFORD: He is confronted with the reality of having to deliver. I know that, ultimately, this measure will come back to haunt him and it will come back to haunt him in a number of different ways, and I will explain why in a minute. His Honour Justice Kirby talked about whether or not it is constitutional for a court to be responsible for creating policy, particularly in the difficult and important area of sentencing. His Honour Justice Kirby talks about chapter three of the Australian Constitution (which does not exist in so far as this state is concerned in terms of this parliament's relationship with our judiciary), however, under the topic 'Constitutional objections. A legislative function?', he states:

> The foregoing is sufficient to dispose of the appeals. However, because the appellants raised even more fundamental objections of a constitutional character to the course adopted by the Court of Criminal Appeal it is appropriate to mention those objections briefly because, on one view, they represent an even more basic defect, at least in the case of federal offences, forbidding 'guideline judgments' of the kind attempted here. The appellants contended that the 'promulgation', as the Court of Criminal Appeal itself described its action, of 'guidelines' was incompatible with the exercise of judicial power contemplated by the constitution.

In other words, His Honour is saying that it contradicted the doctrine of separation of powers because the issue of sentencing guidelines was simply giving the courts means by which to exercise a legislative function, and that contravened the doctrine of separation of powers. I suspect that, whilst Justice Kirby said there is much force in the submission (and he goes on in some detail), and without coming to a definitive conclusion, if the matter comes before him again he would probably say that it is appropriate for courts to do so; but, I suggest, he is answering that question from a legal perspective. The reality is that there is yet another statement within this judgment that points out that the Attorney-General in this case has ducked it, has shirked it, by transferring a legislative function to another body—

The Hon. Diana Laidlaw: The whole government has.

The Hon. A.J. REDFORD: The whole government has. And, in the end, the Attorney will seek—when undoubtedly sentencing criticism arises from time to time over the next couple of years—to blame the courts again. I hope that he does not do that because that would be intellectually dishonest. In fact, it would be personally dishonest. He has handed it over to the courts, he should not then set the courts up to fail. He has a duty and a responsibility, then, having given this important task to these institutions, to defend them and to defend what they undertake. I suspect that, at the sign of the first bad headline, at the first dip in public opinion, he will shirk his duty. I hope I am wrong, but I suspect that is what will happen.

I think there are also some risks attached to this, particularly if you look at the provision which allows courts to go beyond the rules of evidence and which allows courts to impose all sorts of broader policy considerations in the exercise of their discretion. They are simply not equipped to do so. The classic example of that is the Mabo case, where the courts decided to legislate. They had one set of facts and circumstances in front of them, and look at the upheaval and drama they inflicted upon our community and our country in a very divisive way for quite a significant period of time. They are simply not equipped or resourced to be legislators and policy makers in a broad context. In any event, I think I have made my point.

There are some interesting provisions in this bill, but the greatest by far is that set out in proposed section 29B(1)(c), which provides that the full court may establish or review sentencing guidelines on application by the Attorney-General. For those who are not totally familiar with our current system of justice, a former long serving Labor attorney-general, the Hon. Chris Sumner, following a series of precedents set in other jurisdictions in this country, decided to establish the office of the Director of Public Prosecutions and transferred all prosecutorial responsibility and the discretions associated with that to that independent office, and that has worked very well since then.

On the odd occasion the current Attorney-General as the shadow minister suggested that the then attorney-general, Hon. Trevor Griffin, ought to interfere with the processes of the Director of Public Prosecutions, and I have to say that the Hon. Trevor Griffin quite wisely resisted the temptation to interfere and allowed the independent Director of Public Prosecutions to fulfil his responsibilities pursuant to his act quite independently. This opens the door for the Attorney-General to get back into the courts.

The Hon. Diana Laidlaw: And, if he doesn't, ask why he does not.

The Hon. A.J. REDFORD: I am about to come to that. As members of parliament we are all familiar with the TV program *Yes, Minister*. I can just imagine that when this clause came before the Attorney-General, the Hon. Michael Atkinson—he being the Jim Hacker of this scenario—there must have been someone in his office who performed the role of Sir Humphrey who went in and said, 'That is very, very courageous, minister.' I have no doubt that that would have happened, and I am sure that what also happened was that the Hon. Michael Atkinson said, 'No; I am courageous.'

I will make a prediction: our shadow minister for police, the Hon. Robert Brokenshire, who was a hard working, diligent and consistent police minister, will dog the Attorney-General with demands that he exercise his power pursuant to section 29B(1)(c) every time there is a bad sentence. He will do it every time, and we will see the Attorney-General down in the courts of criminal appeal arguing his case. There is no precedent for this, but I can see some money-raising oppor-

tunities for the Treasurer here, because I for one will pay $20 or $30 or $40 to go down and watch the Hon. Michael Atkinson, the Attorney-General of this state, get involved in a courtroom and start arguing about sentencing guidelines. It will be a sight to behold; it will be the best show in town. I do not always agree with the Hon. Robert Brokenshire, but I know he is a man of passion; he is consistent and will demand the presence of the Attorney-General in the courts.

I do not think it is appropriate that the Attorney-General should be in the courts, but he wants that power and we will give it to him. Having given it to him, we will demand that he exercise his power. I look forward to my first attendance on the Bob Francis show demanding that the Hon. Michael Atkinson stand up in the Court of Criminal Appeal or the Full Court and run the case, because that is the power he has demanded in this bill and that is the power the opposition will expect him to exercise. If he does not, if he fails or if he cannot win a case, we will demand that he fix it, because for the past five or six years he has stood up again and again and said he will fix it.

The Hon. Diana Laidlaw interjecting:

The ACTING PRESIDENT (Hon. R.K. Sneath): Order! Interjections are out of order.

The Hon. A.J. REDFORD: The Hon. Diana Laidlaw whispers very quietly in my ear to ask whether this means he can go in there in lieu of the Director of Public Prosecutions, and my answer is: you betcha! He can go in there. The bill provides that it is the Full Court or the Director of Public Prosecutions or the Attorney-General. So, I look forward to the illustrious career of the Attorney-General at the bar, defending the interests of Bob Francis and all the listeners, because now we will give him the power to fix up this system personally. I look forward to his doing it and, if he does not, I will point it out.

I wish to raise a couple of matters in closing. The Hon. Robert Lawson has proposed some very sensible amendments. We would like to claim credit for them, in particular, the establishment of a sentencing advisory council. I think it is an eminently sensible suggestion, and I say that for this reason. I have talked about the difficulty of getting consistency in sentencing, and the High Court has grappled with that extraordinarily difficult and complex issue, but the other just as important issue is that there needs to be a sense of inclusiveness in the sentencing process, and this will assist in that process.

Personally—and I know this might put me apart from one or two of my colleagues—I think that sitting a juror or some person off the street next to a judge and saying they are part of the sentencing process is a silly idea. It will not work and will not make any difference, but it will get you a headline, and that is about it. Having a formal sentencing advisory council that can expose themselves to the courts and have the reaction of the courts is important, because it brings the courts closer to the community and enables community values to be passed backwards and forwards. The judges can also communicate the extraordinary complexity with which they are confronted. So, that is to be supported.

I must say that fortuitously the Victorian parliament is dealing with the same issue at the moment, and I have read the debate with great interest. A lot of the debate has happened since the Hon. Robert Lawson spoke last week. A number of matters were raised there that are worthy of some attention here. I know the Attorney-General will give the sentencing advisory council serious thought; he might even want to be on it himself.

I wonder whether or not it should be appointed by the parliament itself, as opposed to the Attorney. In effect, they are participating in a legislative process which the Attorney, through this bill, has conveniently handballed to the judiciary in order to avoid criticism, although he has set himself up in relation to the other clause, but I have already covered that adequately. That is one issue that ought to be given some consideration.

The second issue that should be considered concerns some amendments moved by the shadow attorney-general in Victoria, Victor Perton MP. Victor has been a colleague of mine for a number of years and we always catch up when I go to Melbourne, but he indicated to me that there is a limitation in terms of the publication of statistics on crime in Victoria. Given the record of our two principal former attorneys-general, I do not believe that we have the same problem in this state, because the Hon. Chris Sumner and the Hon. Trevor Griffin were always most forthcoming in the publication of crime statistics.

However, something needs to be explored here, and I will be endeavouring to raise it at our next party meeting in terms of this bill. I think that the public needs more information about what sentences are actually being imposed so that we can get out of the realms of perception and get into the world of reality. Judges claim that the public perceptions on sentencing are misguided because the media highlights low sentences and gives them a false perception. Others, including prosecutors, say that the publication of these statistics would shock the community as to the overall low level of sentencing. At the end of the day, the truth in information brings about the best result and I will be putting to the shadow attorney-general this eminently sensible suggestion that we amend this bill to ensure that sentencing facts are published. In that way we will be able to keep the Attorney a little more accountable when he goes to the full court to put in his submissions. I know that Mr Robert Brokenshire will be diligent in ensuring that he does that.

The Hon. Diana Laidlaw: And if he doesn't, why not.

The Hon. A.J. REDFORD: I have never seen Mr Brokenshire look so excited as when he read this bill. The real demand in that sense is a determination to be transparent. I have covered the bill perhaps longer than I thought I would, but it is a very important bill and it is a very difficult issue. The Attorney-General, who is a gifted politician, has played politics with this exceptionally well, but politics without substance usually catches up with you and, in this respect, unless there is a very quick U-turn on the part of the Attorney-General, the clock will tick against him because I do not believe that he has thought this out. He went to the people with it, in all fairness. He got a mandate for it, in all fairness, so we will assist him in delivering that mandate, but we will be ever vigilant and we will hold the Attorney-General as accountable as he demanded the Hon. Trevor Griffin in the former government be held accountable.

The Hon. J. GAZZOLA secured the adjournment of the debate.

STATUTES AMENDMENT (ENVIRONMENT PROTECTION) BILL

Received from the House of Assembly and read a first time.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

The Labor government is committed to revamping the EPA as an independent authority and to ensure that it has the powers to enforce tougher environmental standards in South Australia.

The Statutes Amendment (Environment Protection) Bill 2002 builds upon the administrative changes that this government has already made to establish an independent and appropriately empowered EPA. It is an important step in honouring the commitments made to the South Australian community about improved environmental protection.

The bill will establish the Board of the Environment Protection Authority and the Office of the Chief Executive of the Environment Protection Authority. It provides that the Chief Executive of the EPA will be the Chair of the Board, and clarifies that the Chief Executive is to be responsible for giving effect to the policies and decisions of the Board.

It is intended that the Chief Executive will be given powers and functions of a chief executive in respect of the EPA administrative unit established under the Public Sector Management Act. In this way Ministers will have no power to direct the staff of the Authority.

The bill provides that the Board will not have specific categories of membership but specifies the range of skills to be possessed by the members of the Board. The Board will be slightly greater in size than the current Authority, with the bill providing that it may have between 7 and 9 members.

The bill will enable the Board, without the need to seek the Minister's approval, to establish its own committees or subcommittees to advise or assist the EPA. The bill will also refine the functions of the EPA, with a focus on its regulatory role.

The Labor government is also fulfilling its promise to increase environmental penalties for those who intentionally or recklessly cause environmental harm. The bill will increase the penalty for the offence for intentionally or recklessly causing serious environmental harm from $1 million to $2 million for a body corporate and from $250 000 to $500 000 for a natural person. It will also significantly increase the penalties for intentionally or recklessly causing material environmental harm, the strict liability offences of causing serious or material environmental harm, and the offence of failure by a person to notify the EPA of causing serious or material environmental harm. In each case, the penalties are around double the current maximum fines.

This government is also following through on its commitments for tougher environmental protection by empowering the Courts to impose orders requiring a person convicted of an offence to pay any illegally obtained economic benefit (including in the form of a delayed or avoided cost) to the EPA through the bill.

Importantly, in accordance with the Labor government's plan for tougher environmental protection, the bill will make it easier for the EPA to prosecute the offences of intentionally or recklessly causing serious or material environmental harm. It will do this by simplifying the degree of knowledge that a person is required to have about the level of environmental harm that would or might result from their actions.

Also noteworthy, is that in support of the administrative changes already adopted by this government to make the EPA responsible for monitoring the State's radioactive waste storage and uranium mining industry, the bill will enable the EPA to take appropriate action on these matters under the *Environment Protection Act 1993*.

The main thrust of this bill is to enhance the initiatives already undertaken by the government to increase the independence of the EPA. It also sends clear messages to the community that the government is serious about protecting the environment and wishes to ensure that those who are reckless are properly penalised. A general review of the *Environment Protection Act* has identified a number of other areas where its effectiveness can be improved. There are also other items of government policy, including the introduction of civil penalties, which are yet to be dealt with. These matters will require consultation both within government and in the broader community. It is intended that a second bill that addresses these matters will be released for targeted consultation later this year

The Labor government is supportive of industry, but it is vital for South Australia that we also encourage industry to be environmentally responsible and punish wilful acts that harm the environment or endanger the health of our community.

The government looks forward to the support of Parliament in passing this *Statutes Amendment (Environment Protection) Bill 2002* as a key measure for the facilitation of the newly independent EPA's operations and the provision of appropriate penalties for harming the environment.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This is a standard interpretation provision for a Statutes Amendment Bill.

PART 2

AMENDMENT OF ENVIRONMENT PROTECTION ACT 1993

Clause 4: Amendment of s. 3—Interpretation

This clause amends section 3 of the principal Act to insert a definition of "Board" and of "Chief Executive" and to make a consequential amendment to the definition of "appointed member".

Clause 5: Amendment of s. 7—Interaction with other Acts

This clause removes the provisions in the principal Act which currently provide that it does not apply to circumstances in which the *Pollution of Waters by Oil and Noxious Substances Act 1987* (now known as the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987*) or the *Radiation Protection and Control Act 1982* applies.

Clause 6: Repeal of s. 12

This clause is consequential to other changes proposed in the measure (see, in particular, proposed section 14B).

Clause 7: Amendment of s. 13—Functions of Authority

This clause substitutes a new provision detailing the functions of the Authority.

Clause 8: Amendment of s. 14—Powers of Authority

This clause amends section 14 of the principal Act to reflect the new structural arrangements. The proposed provision makes it clear that if the Chief Executive of the Authority is declared, under section 13 of the *Public Sector Management Act 1995*, to have the powers and functions of Chief Executive of an administrative unit of the Public Service, the Authority may make use of the administrative unit's employees and its facilities.

Clause 9: Insertion of ss. 14A and 14B

This clause inserts two new provisions as follows:

14A. Chief Executive

This clause establishes the office of the Chief Executive of the Authority.

14B. Board of Authority

This clause establishes the Board of the Authority and details its membership.

Clause 10: Amendment of s. 15—Terms and conditions of office

This clause makes consequential amendments to section 15.

Clause 11: Amendment of s. 16—Proceedings of Board

This clause amends section 16 of the principal Act to provide that the Board must meet at least 12 time in each calendar year and to make various consequential amendments.

Clause 12: Amendment of s. 17—Board may establish committees and subcommittees

This clause removes the requirement for Ministerial approval to establish committees and subcommittees to advise or assist the Authority and makes consequential amendments to section 17.

Clause 13: Amendment of s. 18—Conflict of interests

This clause makes consequential amendments to section 18.

Clause 14: Amendment of s. 19—Round-table conference

This clause makes consequential amendments to section 19 and requires a member of the Board to attend any round-table conference that the Chief Executive of the Authority is unable to attend.

Clause 15: Amendment of s. 24—Environment Protection Fund

This clause is consequential to clause 22.

Clause 16: Amendment of s. 28—Normal procedure for making policies

This clause makes a consequential amendment to section 28.

Clause 17: Amendment of s. 79—Causing serious environmental harm

This clause amends the knowledge requirement in the offence stated in section 79(1) of the principal Act. Under the proposed amendment a person will be guilty of the offence if they caused serious environmental harm by polluting the environment and they knew that environmental harm (of any degree) would or might result from their

pollution. Currently a person has to know that the environmental harm will or might be "serious".

The monetary penalties in both subsections (1) and (2) are also doubled.

Clause 18: Amendment of s. 80—Causing material environmental harm

This clause amends the knowledge requirement in the offence stated in section 80(1) of the principal Act. Under the proposed amendment a person will be guilty of the offence if they caused material environmental harm by polluting the environment and they knew that environmental harm (of any degree) would or might result from their pollution. Currently a person has to know that the environmental harm will or might be "material".

The monetary penalties in both subsections (1) and (2) are also doubled.

Clause 19: Amendment of s. 83—Notification of incidents causing or threatening serious or material environmental harm

This clause doubles the penalties for failing to notify the Authority of an incident causing or threatening serious or material environmental harm.

Clause 20: Amendment of s. 117—Notices, orders or other documents issued by Authority or authorised officers

This clause makes consequential amendments to section 117 of the principal Act.

Clause 21: Amendment of s. 122—Immunity from personal liability

This clause makes consequential amendments to section 122 of the principal Act.

Clause 22: Amendment of s. 133—Orders by court against offenders

This clause inserts new subsections in section 133 of the principal Act allowing a court that convicts a person of an offence against the principal Act to order the convicted person to pay to the Authority the court's estimation of the amount of the economic benefit acquired by, or accrued or accruing to, the person as a result of commission of the offence. The proposed provisions also provide that an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of commission of an offence if commission of the offence can be attributed (in whole or in part) to that delay or avoidance.

Amounts paid to the Authority in accordance with such an order must be paid into the Environment Protection Fund.

PART 3
AMENDMENT OF RADIATION PROTECTION AND CONTROL ACT 1982

Clause 23: Substitution of s. 19

This clause substitutes a new confidentiality provision in the principal Act which mirrors the confidentiality provision in the *Environment Protection Act*.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

SUMMARY OFFENCES (TATTOOING AND PIERCING) AMENDMENT BILL

Received from the House of Assembly and read a first time.

PARLIAMENTARY COMMITTEES (PRESIDING MEMBERS) AMENDMENT BILL

Returned from the House of Assembly without any amendment.

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

Received from the House of Assembly and read a first time.

EMERGENCY SERVICES ADMINISTRATIVE UNIT

Adjourned debate on motion of Hon. Ian Gilfillan:

1. That this council expresses its deep concern at the drain that the Emergency Services Administrative Unit is on this state's emergency services; and

2. Further, this council calls on the Minister for Emergency Services to dismantle the Emergency Services Administrative Unit.

(Continued from 17 July. Page 560.)

The Hon. J.S.L. DAWKINS: The Liberal Party opposes this motion. Liberal members do not agree that the Emergency Services Administrative Unit (ESAU) is a drain on this state's emergency services and particularly opposes the Hon. Mr Gilfillan's call to dismantle the unit. The total annual cost to operate ESAU was initially $1 million but this dropped to $500 000 in 2001-02. An additional significant sum was needed to pay for the non-operational staff who were transferred from agencies such as South Australian Metropolitan Fire Service, Country Fire Service and the State Emergency Service to ESAU. This period also saw the setting in place of service level agreements. ESAU conducted a post implementation review last year, and many of the issues of concern were addressed as part of a fine-tuning process, which is generally required after the evaluation of a new unit of government.

The management of account payment on behalf of brigades was the major area that ESAU need to improve. I became aware of instances in the Riverland and other country areas where this process had caused some delays in payment. However, I understand that ESAU has put procedures in place to ensure an improvement in this area. ESAU has also focused on improvements in areas such as risk management, occupational health and safety and volunteer support for agencies. The SES, Surf Lifesaving SA and Marine Rescue as well as other agencies are receiving greater support through ESAU than they did before the unit was introduced.

I am aware that there is a minority in the community who did not want to give ESAU a chance to support and improve non-operational aspects of the emergency services agencies. However, I am aware that many others, particularly the volunteers who provide such vital emergency service work to the South Australian community, have appreciated the benefits that have arisen through the work of ESAU. The Emergency Services Administrative Unit is well on the way to bringing major benefits, streamlining and cooperation to the running of our emergency services. The unit provides a pool of expertise from which all emergency services can draw. This expertise is critical for the success of these agencies in meeting the challenges posed by changing technology and community needs. The Liberal Party will oppose this motion.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

HOMESTART FUNCTIONS

Order of the Day, Private Business, No. 7: Hon. Carmel Zollo to move:

That the regulations under the Housing and Urban Development (Administrative Arrangements) Act 1995 concerning functions of HomeStart, made on 15 January 2002 and laid on the table of this Council on 5 March 2002, be disallowed.

The Hon. CARMEL ZOLLO: I move:

That this order of the day be discharged.

Motion carried.

DIGNITY IN DYING BILL

Adjourned debate on second reading.

(Continued from 10 July. Page 450.)

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I indicate my intention to oppose this bill, as I have done with similar bills on previous occasions. I set out my reasons way back in July 1997 when a similar bill was before the council, and my views have not essentially changed in the interim. Indeed, some of the cases that have come up in the interim have, if anything, strengthened my views in relation to opposition to this measure.

The Hon. M.J. ELLIOTT: I rise to support the second reading of this bill, but indicate that I am unhappy with the state of the individual clauses and, if the bill stays as it is, I will not support it. At this stage, I will talk about the general principles that I do support and tackle some of the other issues later.

I suppose that I have done a bit more thinking about this issue as a consequence of the death of my father-in-law some five months ago. He died of cancer, and it was a slow—but not as slow as it is for many cancer patients—and painful death. It is amazing that I have got this far in life without being that close to someone who is dying. I had never before had anyone close to me die or, in cases where they have died, it was fairly quick and I was not around at the time.

As I have said, I witnessed this fairly slow and painful death, and that does have a profound affect on someone. It has to be noted that my father-in-law was from a Christian fundamentalist background, and he would not have availed himself of this bill. He chose to die at home surrounded by his family, which is something that those who would use this might also choose to do.

Without going into the ins and outs of this case, the important thing was that he made his choice about how and the circumstances under which he would die. His choice was to go through whatever pain was involved. He did have a lot of pain relief, and one of the consequences of that was that it muddled his thinking quite extremely. When I witnessed this, it was hard to tell how well he was thinking because, at times, he talked incoherently. However, at times there were moments of coherence. In the last day or two before he died, there would be almost nothing all day and then there would be a word or a look that indicated there was still some awareness.

I respect his decision in the way he wished to die. For him it was right and what he was prepared for—and probably had always been prepared for. Right to the end, I am sure that he was happy with his decision. I think that the important thing about death with dignity is that we should all respect each other's decisions. If a person does not come from a particular religious background and has their own views about death, those views should also be respected, which is why I support this legislation.

I respect those people who choose, if you like, to battle it through all the pain and suffering, etc., right to the end no matter how long it takes or how much pain there is. But I equally respect the decision of a competent person to decide that, under certain circumstances, they do not want a protracted death, etc. The important point is the respect for other points of view and religious beliefs.

I am concerned that some people are seeking to inflict their views about death onto someone else—and that is wrong. No-one has the right to put their religious belief onto someone else. An atheist cannot put it onto a Christian, a Christian cannot put it onto a Muslim and neither one can put it onto an atheist, an agnostic or whatever.

The Hon. Sandra Kanck interjecting:

The Hon. M.J. ELLIOTT: Well, nevertheless, in fact that is the way things are at present. There are some people who inflict their view of the world onto somebody else, and I simply do not think that they should have the right to do so; just as I would never have thought to inflict my views on my father-in-law. I respected what he did; I and my family were there for most of the last week and it was a very moving experience. I would never have tried to encourage him to do anything differently. I would never have sought to change the law to force him to die earlier, or anything else like that. Similarly, I do not think that anybody has a right to take away the rights of another person who has a different set of beliefs.

The challenge with the legislation then, having come to that first starting point, is to ensure that this is a competent decision made by a person under a set of circumstances. As far as possible, we must ensure that there is not the ability for pressure to be brought to bear; that you do not simply have doctor shopping etc. There must be processes put in place, in advance to start off with. Just as we now have living wills, I think it would be only a small step further to allow one, in advance, to put in writing prescribed conditions under which a person would want their life to be terminated.

I do not think the current definitions are adequate to do the job but, in broad-brush strokes, I have said that we have to make sure that there are sets of safeguards to ensure that this is a decision that has been made by a person alone; that they have expressed this wish early on when there was no question about their competence; that the circumstances are clearly described; and the legislation itself needs to describe a set of circumstances so that you do not have a person simply committing suicide because they have a cold or are not feeling well on the day. Clearly, no-one will suggest that, but I think this parliament is competent to be able to draw up sets of conditions with adequate safeguards, where at the end of the day we will not interfere with somebody else's personal wishes and personal beliefs. I support the second reading.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

STATUTES AMENDMENT (EQUAL SUPERANNUATION ENTITLEMENTS FOR SAME SEX COUPLES) BILL

Second reading.

The Hon. G.E. GAGO: I move:

That this bill be now read a second time.

Today I am very pleased to introduce and commend a bill to the council to remove discrimination for same gender couples in the area of superannuation with state superannuation funds. This private member's bill is the result of years of work and commitment by the member for Florey, who has introduced this bill on a number of occasions in another place. It is a bill to which parliament has shamefully avoided giving its attention for many years. The member should be commended for taking a stand and persevering for the length of time that she has.

The bill seeks to amend the provisions of the Parliamentary Superannuation Act 1974; the Police Superannuation Act 1990; the Southern States Superannuation Act 1994; and the Superannuation Act of 1988 to remove discrimination that is unwarranted and unfair. The bill seeks to ensure that the surviving partners of same sex couples have access to the same superannuation benefits as married or defacto couples.

The bill does this by including same sex couples in the definition of 'putative spouse'. This means that same sex couples who meet the eligibility criteria for defacto status would be able to claim the same superannuation benefits as any other defacto couple. It ensures that rules relating to payment levels apply equally to opposite sex and same sex couples.

The current provisions clearly discriminate against public servants who are living in same sex relationships. I would like to point out the obvious, although it clearly appears to escape some: that these people work diligently to implement the policies of parliament and the government and pay the same contributions as other participants, and yet we have allowed blatant discrimination to be entrenched in our own statute books. We need to ensure that they receive the same benefits as heterosexual couples.

It is mandated by statute that every employer and every employee must contribute to a superannuation fund for the long-term benefit of the employee. It is a fundamental employee right. However, it is a right that is not provided on an equal basis to all contributors. The bill before us is explicitly confined to the four superannuation acts that I have mentioned, and does not seek to implement sweeping changes to relationship legislation or the definition of marriage.

This reform is long overdue, as other parliaments in Australia have already moved to ensure the rights of people caught in this predicament. In the New South Wales parliament, Deputy Premier Dr Andrew Refshauge's Superannuation Legislation Amendment (Same Sex Partners) Bill was assented to in February 2001. In speaking to that bill the honourable member said:

> As honourable members would be aware, New South Wales public sector superannuation schemes are required to comply with the principles of the commonwealth government superannuation law. Failure to comply has the potential to jeopardise the significant tax concessions available to New South Wales public sector superannuation schemes. The commonwealth superannuation law, embodied in the Superannuation Industry (Supervision) Act 1993 and regulations made under the act, does not permit superannuation schemes to recognise same sex partners as beneficiaries.
>
> Minister Della Bosca therefore requested Senator Rod Kemp, Assistant Treasurer of the commonwealth government, to advise whether implementation of the provisions contained in this bill would adversely affect the tax status of the New South Wales public sector superannuation schemes. Senator Kemp has provided written advice on behalf of the commonwealth government that there will be no adverse tax effects resulting from the passage of these amendments.
>
> Finally, I indicate to the House the cost of the measures proposed in this bill: the government actuary has estimated the cost in today's dollars to be in the order of just over $20 million, spread over the foreseeable life of the scheme which is approximately 75 years. This represents an infinitesimal increase in superannuation liabilities which, at 30 June 2000, were calculated to be just over $33 billion.

The ACT was the first parliament to move on any legal issues regarding same sex couples with the Domestic Relationships Act 1994. The act meant that same sex couples were viewed as legally the same as defacto heterosexual couples, including in matters of superannuation. In Victoria the Statute Law Amendment (Relationships) Bill 2000, which also prevents discrimination against same sex couples in superannuation matters, received royal assent on 12 June that year.

In Tasmania, in July 2001, a joint standing committee on community development prepared a report to parliament on the need for the legal recognition of significant personal relationships. It was broad ranging and covered many legal and financial aspects of same sex couples, including superannuation. I am told that the legislation has since been introduced and passed. In Western Australia the Acts Amendment (Sexuality Discrimination) Bill was before parliament and had been there since 1997, much the same as this bill.

Sweeping legislation was assented to in Western Australia on 17 April this year, and that includes reform in superannuation. In Queensland legislation was passed in 1999 which extends to same sex couples the right to parental, family and bereavement leave. Any state awards or state based workplace agreements which include provision for employees' partners or families will extend the same rights to same sex couples. The bill also includes broad anti-discrimination cover which extends the current legal protection against discrimination by reason of lawful, sexual activity to cover a person's sexual preference—the Industrial Relations 1999.

The commonwealth government is finally seriously attending to this matter. Part of the background of this bill is that, at the time we introduced this matter, the federal opposition, under Anthony Albanese, was looking at amending the commonwealth superannuation act. However, that did not go much further, unfortunately. On 17 March this year, the following was reported in the *Sunday Mail*:

> Laws discriminating against homosexuals by preventing gay partners getting full access to their super benefits will be removed under reforms being considered by the federal government. The moves would give same sex couples for the first time the same superannuation entitlements as married couples. Assistant Treasurer Helen Coonan is including the groundbreaking reforms in new legislation to give Australians greater freedom to choose and change their super funds.

You can see that the move is on also in the federal government sphere. It is important to note that the changes at the federal level will not impact on our state superannuation funds. It is, therefore, necessary for us to address the anomaly in this state.

Under the current state and federal superannuation laws, a putative spouse or de facto spouse may make claims for a number of benefits under their partner's superannuation, that is, death benefits. 'Putative spouse' is the term used in South Australian legislation to refer to a de facto relationship between opposite sex partners. Under the state's Family Relationships Act a person may apply to the District Court for a declaration that he or she was a putative suppose or de facto partner of another person, provided that they were of the opposite sex. For superannuation this means that a same sex partner is prevented from accessing death, sickness and other benefits which opposite sex partners are entitled to.

The bill will amend the four state superannuation acts and will introduce an additional provision to the definition section of each act providing for same sex couples to be included in the definition of 'putative spouse' for the purposes of superannuation. It will adopt the same criteria as the Family Relationships Act of South Australia for determining putative spouse status. It will provide the same mechanism as the Family Relationships Act for determining putative suppose status, that is, through the District Court declaration.

I now wish to briefly address the member Hartley's private member's bill which has been introduced in another

place, entitled Statutes Amendment (Superannuation Entitlements for Domestic Co-dependents) Bill which I will refer to as the domestic co-dependents bill. This bill is no substitute for the one before us. It proposes the establishment of an entirely new category called 'domestic co-dependent' for the purposes of payment of superannuation entitlements. However, under this bill, same sex couples will have rights less than those of de facto partners.

This new category broadens eligibility to include a wide range of relationships of dependency, including non-sexual relationships, for example such as sisters living together. However, the bill places a cap on superannuation payments for this new broader category. This would mean that same sex de facto partners will still be treated unequally under the domestic co-dependent bill and as a result would entrench the status of same sex relationships as inferior to those of opposite sex couples.

The member for Hartley appears to have done this to limit the costs of the bill, because the bill significantly expands upon the eligibility criteria with domestic co-dependents. If payments are not limited to this new category via a cap, I understand that the costs to the state could be considerable. In order to broaden the eligibility criteria, the bill entrenches rather than removes discrimination of same sex couples. The purpose of the bill before us is to remove the current discrimination of same sex couples for the purpose of superannuation entitlements. As you can see, the domestic co-dependents bill is unacceptable.

I have no doubt that many of us in this place have been approached by same sex couples regarding some form of discrimination against them because they are in a same sex relationship. We in this place represent all people of this state—all families, not just some. We should not allow some members of our community to be pushed aside, treated differently and suffer unfair disadvantage. We must remedy this situation. It is long overdue for parliament in this state to address the situation and to cease discrimination of this sort on our statutes.

Our state is one with a proud history of leading the elimination of discrimination and, of course, tolerance of social pluralism. We now need to examine why our superannuants are so disadvantaged. I urge the council to deal with this matter expeditiously so that we do not see this very important issue still on the *Notice Paper* at the end of the 50th Parliament. I wish to make a final plea to those honourable members who may feel it necessary to oppose this bill on moral grounds to reconsider their position of placing these beliefs ahead of the human rights of others. Same sex couples are entitled to assert their relationships with pride and should no longer endure the disadvantages that presently exist. I commend the bill to the council. I move:

That standing orders be so far suspended as to enable the bill to pass through the remaining stages without delay.

Motion carried.

The Hon. DIANA LAIDLAW: I thank all my honourable colleagues present this evening for ensuring that there were 12 in this council to enable that motion to pass and, in turn, to enable me to speak briefly to this bill tonight. I am keen to support this measure, and I applaud Francis Bedford, the member for Florey, for introducing this bill and championing this cause in the other place, and the Hon. Gail Gago for taking this bill in this place. I note that the ALP has not allowed a conscience vote on this issue. The Liberal Party is treating this bill as a conscience measure. I note, too, that the government has not taken the bill on as a government measure. That is unfortunate given the importance of this matter.

It has been left to backbenchers—in both cases, women—to champion this important cause. That is why I wish to speak tonight and support them in taking up this matter, and doing it through private members' business, which is always much harder than having it facilitated as a government measure. But that is the way for women in our society, and generally for women in this parliament, and I am not surprised that it is the way with this important measure. It is also important to acknowledge that so many of the causes for equal opportunity in this parliament have started as private members' measures. I highlight the Hon. David Tonkin, who introduced the first equal opportunity bill in this nation, in the other place as a private member's bill, to provide equality of opportunity for women on the basis of marital status in the other place. That matter was later taken up by the then premier Mr Dunstan.

The Hon. Murray Hill introduced a private member's bill in this place in terms of equal opportunity for homosexuals in this state. Later, as a private member, I introduced age discrimination legislation and it took me two private member's bills before the then attorney-general (Hon. Chris Sumner) took it on as a government bill, and I thank him for doing that because that support facilitated this important measure. I recall the only government measure in terms of equal opportunity over the past 30 years not first initiated as a private member's bill was by the former attorney-general (Hon. Trevor Griffin) in terms of intellectual disability and some extension to equal opportunity provisions generally.

As a Liberal I have always championed individual dignity and individual decision making, and I do so again on this occasion. I am a single person. I have never been in a relationship of a long-term nature that could be deemed as a partnership or de facto relationship with a male or female—that has been my choice. Female relationship does not interest me. Male relationship interested me at one stage and it did not work, so I have made my own decisions there. I have always contributed to superannuation and I find it completely offensive that an individual who contributes to their superannuation, no matter their sex or life choice decisions, should be discriminated against because they are not married in the traditional sense of male and female over some period of time.

There is not even an age or duration limit in terms of married men and women as there is in terms of other de facto relationships. At some stage parliament may look at these issues in terms of the choices people make and why we should seek to restrict those choices, and particularly in respect of one's own contribution. Where there is a state contribution there should be no limit to the rights of members of parliament or between one member of parliament and another, nor should there be any difference between one member of the work force and another in that same place of employment.

There is an anomaly and I am pleased that it is being fixed in this instance. I do not want to see this important measure stalled for any reason—because of other important issues that have been raised in the meantime that have been prompted by this bill or have been around for some time and have led to an initiative being taken in the other place. I refer in particular to the private member's bill introduced by the member for Hartley, Mr Joe Scalzi. The measure he has introduced is very worthy, but it introduces a range of other

considerations, including capped payments. As I indicated earlier, people in the workplace, whether in parliament or another workplace, should not have uncapped payments while another has capped payments if we are promoting equality of opportunity as the basis for this reform. I do not support his bill on that basis as it undermines the integrity of what he is seeking to do and the principle of the measure I am supporting on this occasion. I support the bill with pleasure.

The Hon. J. GAZZOLA secured the adjournment of the debate.

ADJOURNMENT

At 10.10 p.m. the council adjourned until Thursday 24 October at 11 a.m.