LEGISLATIVE COUNCIL

Thursday 21 November 2002

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

VOLUNTARY EUTHANASIA

A petition signed by 901 residents of South Australia, concerning voluntary euthanasia and praying that this council will legislate for voluntary euthanasia which will allow a willing doctor to assist a person who is hopelessly ill and suffering intolerably to die quickly and peacefully under certain guidelines, was presented by the Hon. Sandra Kanck.

Petition received

A petition signed by 112 residents of South Australia, concerning voluntary euthanasia and praying that this council will reject the so-called Dignity in Dying (Voluntary Euthanasia) Bill; move to ensure that all medical staff in all hospitals receive proper training in palliative care; and move to ensure adequate funding for palliative care for all terminally ill patients, was presented by the Hon. A.L. Evans.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

District Council By-laws—
- Robe—
  - No. 1—Permits and Penalties
  - No. 2—Moveable Signs
  - No. 3—Roads
  - No. 4—Local Government Land
  - No. 5—Dogs
  - No. 6—Bird Scarers
- Yankalilla—
  - No. 1—Permits and Penalties
  - No. 2—Moveable Signs
  - No. 3—Roads
  - No. 4—Local Government Land
  - No. 5—Dogs.

LEGISLATIVE REVIEW COMMITTEE

The Hon. CARMEL ZOLLO: I lay upon the table the report, minutes of evidence and correspondence of the committee on regulations under the Passenger Transport Act 1994.

Report received and ordered to be published.

QUESTION TIME

GOVERNMENT CONSULTANTS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Industrial Relations, a question about government fraud on consultancy figures.

Leave granted.

The Hon. R.I. LUCAS: Some members will be aware that the government, I think through the Commissioner for Public Employment guidelines, has clear definitions of what constitutes a consultancy and what constitutes a contract. Those guidelines have existed for some time and have governed departmental and ministerial behaviour, in terms of reporting, for some time. Without going through the detail of the definition, the essential features of a consultancy are that it is of a shorter-term nature and tends to be for people undertaking reviews and short-term functions. A contractor is engaged under a longer-term arrangement and, in many cases, undertakes ongoing functions as a private contractor, much as we have been discussing over the last two days in relation to various government bills.

On 13 May, the minister appointed Mr Greg Stevens as a consultant on a six-month agreement to review the Industrial Employment Relations Act. The Department for Administrative and Information Services Annual Report, which has been tabled within the last two weeks, for the financial year 2001-02, lists all consultancies for the Department for Administrative and Information Services, which covers the industrial relations section and reports to the Minister for Industrial Relations. Whilst there are many interesting consultants listed, including Lizard Drinking Superior Business Solutions who have undertaken a consultancy on the information economy policy office review, there is no record of the consultancy undertaken by Mr Stevens.

Information provided to the opposition indicates that the minister and the department have not only endeavoured to construct the employment agreement but have also decided not to include Mr Stevens' consultancy in the list of consultants and consultancy costs within the department. He has been reclassified, one assumes, into the contractor provision. I might note—

The Hon. Diana Laidlaw: That's pretty deceptive.

The Hon. R.I. LUCAS: As my colleague says, it is deceptive and, as my question indicates, a fraud on the consultancy figures. It has been indicated to me that, on that basis, the former government could have classified all of the electricity consultancies for the privatisation not as consultants but as contractors, if such a deception had been practiced by the former government. Of course it was not. My questions are:

1. Will the minister confirm that he and the department have reclassified Mr Stevens' six-month consultancy to exclude it from the consultancy figures within the department and to include it within the contractor figures?
2. Can the minister confirm that this is inconsistent with the government guidelines which, as I said, I believe are the office of the Commissioner for Public Employment Guidelines, on the definitions of what is a consultant and what is a contractor?
3. What other consultancies have been reclassified by this minister into the contractors' classification?

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

The Hon. A.J. REDFORD: As a supplementary question, will the minister confirm one way or the other the existence or non-existence of documents in support of Mr Stevens' travel claim, and will the minister confirm one way or the other whether the Stanley consultancy or contract will be treated in the same fashion?

The Hon. T.G. ROBERTS: I will refer those two supplementary questions to the minister in another place and bring back a reply.

PRISONS, PRIVATE

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about private prisons.

Leave granted.

The Hon. R.D. LAWSON: Earlier this week the minister tabled in this place the annual report for the year 2000-01 of the Department for Correctional Services. It purports that the average number of prisoners in South Australia was 1 430, of whom 85 were female over the period covered by the report. The report also highlights in quite some detail—indeed, many might say alarming detail—the considerable pressure on the South Australian correctional system.

The report also notes that the only privately run correctional institution in this state is the Mount Gambier Prison, which is managed and operated by Group 4 Correctional Services Pty Ltd. It accommodates 110 remand and sentence prisoners, the majority of whom are made up of medium and low security male sentenced prisoners, but females on remand also are catered for at that prison.

Does the minister agree that South Australia needs additional prison bed capacity at the moment? The minister has already acknowledged the necessity for a new women's prison. Will the minister indicate whether the government has undertaken any evaluation of the cost effectiveness of the arrangements which operate in relation to the Mount Gambier prison? If the government has not undertaken any such evaluation, will he agree to do so? Finally, having regard to the fact that the minister indicated to this council on 17 October that the government '. . . will not be using private management in any of our public operations in relation to prisons', is the government prepared to consider private sector involvement in the provision of capital for the purposes of building any new institutions?

The Hon. T.G. ROBERTS (Minister for Correctional Services): Some of these questions and issues have been raised and some replies given, but I will give an update as far as my understanding goes. It is true that at the present time all South Australian prisons have almost reached full capacity. There is little or no room within the prison system to provide management with those management tools that are required to get the best results in relation to how you house prisoners safely and how you secure them safely. That does not mean to say that the prison system is in crisis. We certainly inherited a situation where there was urgency for an assessment to be made in relation to what our next step was in extending the prison capacity, which we did.

We recognised that there was an immediate problem associated with the women's prison. We allocated funding for the women's prison to increase the bed capacity, and I understand that they will come on line shortly. I am not saying that the final amount spent on the women's prison will alleviate all the problems in the near future, because I suspect that, if the trends continue, the current women's prison will be found not to be suitable. However, that assessment is being made in conjunction with the department and the government in relation to the future of the women's prison, particularly the site. The site is being crowded in by urban development. The prison was previously in an isolated area on its own; and security from outside forces impacting on the prison has now changed. Houses have been built almost up to the prison fence, and that is not a circumstance that we prefer.

The process involves evaluating the total program for prisons. Being the previous minister for correctional services, the honourable member would realise that the Yatala prison has now reached its use-by date, and I suspect that the aggregation of prisoners will require us to undertake a new assessment of what we do with Yatala prison. That then brings into play the number of prisons that we have in regional areas. Port Lincoln prison, for instance, is very old and it probably needs to be assessed. Certainly the prison at Cadell needs to be assessed as well.

The Hon. Ian Gilfillan: We will have to reopen Adelaide Gaol!

The Hon. T.G. ROBERTS: The honourable member says, 'We will have to reopen Adelaide Gaol'.

The Hon. M.J. Elliott: The meal is better now!

The Hon. T.G. ROBERTS: It probably has a better presence now than when it was being used as a prison. The situation in which the government finds itself is that the bed capacity of the total prison population that we have in South Australia needs to be assessed, and that is happening at the moment. We have allocated funding of $3.8 million for 50 extra medium security prison beds. That process of evaluation is occurring, and I expect a decision to be made some time in the next two or three weeks. The immediate problems are being dealt with, but inherent in the question is: what are we doing long-term? I can say that, while we are spending money on remedial programs in an emergency sense, we do have a long-term program to look at the total prison population as a whole.

That then makes us examine the appropriateness of a public-private partnership in relation to how we fund any future investment in capacity. The situation is that we will not be privatising the management services, as I stated originally, but we are examining what benefits could apply in a PPP. If there are no benefits to the taxpayers of South Australia, that will not be pursued. However, if there are some benefits, it is a consideration that may be made.

As to making an evaluation of the Mount Gambier Prison, my information is that the Mount Gambier Prison is and has been good value for taxpayers' money in its role and function. There are no plans to change the circumstances in which the Mount Gambier Prison is managed or run. I will have to take the second part of the honourable member's question on notice about the comparison with a publicly run prison, bearing in mind that it is very difficult to line up one prison against another. It is difficult to do those sorts of equations, but you can work out from a single prison whether or not it is running effectively and efficiently.

The long and the short of it is that we are making available funding for the emergency situation that we find ourselves in. We are looking at options other than incarceration of law-breakers, rather than criminals, in relation to people who default on fines, etc., so that we do not get the remand numbers that we have at the moment. We will try to look at alternatives to incarceration so that, in the short term, we do not have to spend large sums of money, which may turn out to be money not well spent, so evaluations are being done on that, as well.

The Hon. IAN GILFILLAN: I have a supplementary question. Will the minister give more specific detail on what he has in mind to reduce the numbers, dramatically and quickly, of the churned out 15-day remandees or prison servers?

The Hon. T.G. ROBERTS: The sentencing options that are before magistrates are being looked at. I will have to refer that question to the Attorney-General in another place. Most of the detainees who are in the system for less than 15 days are people who have no fixed abode or do not have an address that is seen as a safe haven for that individual if they were released. What we have to do at a broader level is try to come to terms with some of the problems associated with homelessness, because a lot of the people who find their way into the system do not have stable home lives, and that is something we cannot fix overnight. We will be trying to look at alternatives such as bail hostels that we have not given consideration to in this state in the past.

The Hon. J.F. STEFANI: I have a further supplementary question. Will the minister advise the chamber how many prisoners are held presently at Yatala?

The Hon. T.G. ROBERTS: I will have to take that question on notice because the figures that I have are not up to date. To get an accurate figure, I will have to take that question on notice.

EYRE PENINSULA

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about water and stock supplies on Eyre Peninsula.

Leave granted.

The Hon. CAROLINE SCHAEFER: I have received information that a stock agent in Kimba has been instructed to tell his clients to reduce stock numbers due to insufficient water infrastructure, and that farmers have been asked not to bring stock in or even to destock. The history of Eyre Peninsula, as we know, is one of relatively cyclical droughts, and one thing that people do there very efficiently is to destock early. Very seldom is there erosion on Eyre Peninsula as a result of overstocking. I refer to an article which appeared in the *Advertiser* of 1 November 2002, entitled 'Save our Stock', in which the Deputy Prime Minister states:

> Preserving the country's core breeding stock during the current drought has become a matter of national importance.

I am sure that all members would agree with that. This year many Eyre Peninsula farmers find themselves in the enviable position of having good stock feed available despite the drought. Stock levels are down to less than half what they would be in many years, so infrastructure is not an issue. In spite of this, I have been told that farmers are being accused of being opportunistic and speculating because they are following good business practices and either agisting or purchasing stock. My questions to the minister are:

1. Will he outline the true water position on Eyre Peninsula, and what is his response to the advice that people are being given not to carry stock when they are in a position to do so and when the country is desperate for people to take core breeding stock?

2. Will he advise the council of the position because I believe that there are no water restrictions on Eyre Peninsula at this stage?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The question of water supply on Eyre Peninsula is really a matter for the Minister for Government Enterprises. I know that, when the government held its community cabinet meeting in Port Lincoln earlier this year, one project that was approved by the government was a pilot plant to desalinate the Todd River reservoir. Anyone who knows Eyre Peninsula would know that levels in the Uley Basin—which supplies Port Lincoln—have been dropping for the past few years, which does put a severe limit on the water supplies on that growing part of the state due, in no small way, to the aquaculture and fishing industries.

Certainly, there is a water problem in Port Lincoln that is affecting development. As I said, the government has looked at this pilot plant for desalinating water from the Todd River reservoir, which is the only available surface water on Eyre Peninsula. It is also my understanding that the government supports a pipeline from the Todd River to Streaky Bay as a result of the severe water problems Streaky Bay has been facing for many years. There have been endemic water problems on Eyre Peninsula and, clearly—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: I certainly agree with the shadow minister when she says that Eyre Peninsula does have a good record of destocking; it also has a very good record of farm and agricultural practices. There has been a huge improvement since the introduction of a joint state-federal program some five or 10 years ago. That has certainly improved farm practices throughout that region. I will need to get the details of the water situation on Eyre Peninsula from the Minister for Government Enterprises. In relation to the carrying of stock in that region, the honourable member asked me what advice I would give.

Clearly, that would really depend on the situation and, in any case, I believe that the best people to give that advice are officers from my department who work in the area and who are more familiar with the situation than I am. I will get some information from them as to whether there is any advice; but, certainly, as I have indicated on previous occasions in this parliament, I do agree with the Deputy Prime Minister that we need to conserve our breeding stock. I know that it is an issue of great concern to many farmers who are in drought-affected areas. They need to keep their core breeding stock so that when rains do come, as they surely will, they can rebuild their flocks and other stock.

They are keen to keep their core stock, but at the same time they must be mindful of the impact that that is having on their property. Clearly, it is a matter of assessing particular cases. I suppose that depends on what sort of fodder farmers have available and what opportunities they have for agistment. When the drought first made its presence felt in this state, PIRSA established an agistment hotline for people requiring information on agistment, etc. in anticipation of these sorts of problems arising. I will ask my department to provide more information of the specific situation on Eyre Peninsula.

The Hon. CAROLINE SCHAEFER: I ask by way of a supplementary question whether or not the minister agrees that farmers on Eyre Peninsula are quite capable of working out whether they have sufficient feed and water to carry stock, and what is his response to the advice that they are being given that they should not be carrying stock when there are no water restrictions on Eyre Peninsula?

The Hon. P. HOLLOWAY: Who provided that advice?

The Hon. Caroline Schaefer: As I understand it, SA Water.

The Hon. P. HOLLOWAY: I would be surprised if that were the case. If farmers wish to seek advice about their stock-carrying capacity, I would have thought that the appropriate people to approach would be officers of Rural

Solutions, the arm of PIRSA which deals with these matters. Farmers are certainly in a position to determine what their situation is in relation to water. I imagine that, if SA Water or the Department of Water Resources are involved, that probably relates to what is available through the distribution system on Eyre Peninsula.

I will have to get some advice on this matter because I do not want to anticipate or speculate on the situation regarding what water resources are available for Eyre Peninsula if they are relying on reticulated supplies. If the question has been put in that context, clearly the people responsible for managing the water resources on Eyre Peninsula would be in a better position than anyone else to know but, in relation to matters of agistment and the carrying capacity of the land, clearly the agricultural officers in Rural Solutions would be in a very good position to provide that advice if required.

ECOTOURISM

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about ecotourism.

Leave granted.

The Hon. G.E. GAGO: One of our state's growing sectors is ecotourism. Many visitors, mainly from overseas, are attracted to our pristine wilderness and exciting wildlife. Many operators function not only as tour guides but also by contributing to our knowledge of the environment by helping to conduct research. Included in this is the experience of viewing the great white shark in its natural environment. Not only is this rated very highly by tourists but it also helps people to learn more about the great white shark. Will the minister inform the council of where these operations take place and how they contribute to research into the great white shark?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The majority of these trips to which the honourable member refers in her question have been undertaken by two operators. Cage-viewing charters currently are restricted to five sites in South Australia: the Little English Island, Sibsey Island, North Neptune and South Neptune Islands, and Dangerous Reef, all of which are located in Spencer Gulf. Any potential effect on other users of the water and local communities was considered as part of the recent review of these operations.

Each viewing site has a seal colony. North and South Neptune Islands have both New Zealand fur seal and Australian fur seal colonies, whereas Dangerous Reef has an Australian sea lion colony. Access to Dangerous Reef is restricted for seven months spanning the pupping period to minimise disturbance of the sea lions. Operators anchor on site and attract sharks to their vessel using fish based (mainly tuna) berley and bait. The use of mammal products for berley and bait is prohibited.

The most effort is concentrated at North Neptune Island. Ad hoc tagging and reporting of shark sightings has been carried out by operators over the past decade. This followed specific tagging programs initiated by South Australian fisheries researchers in conjunction with the Cousteau Society in the early 1990s. In 1999, after discussions with operators and the Department of Environment and Heritage, a compulsory daily log book was introduced to standardise a reporting system and formalise the tagging of great white sharks at each site. Operators are now required to record the site where they start work, the time they start and finish berleying, the number of sharks sighted each day, whether or not the sharks are tagged, the tag identification number if possible, and both the size and sex of sharks, again if possible.

Prior to 2001, tags were obtained from the New South Wales Fisheries Research Institute under its cooperative game fish tagging program. Several modifications were made to the basic tag to allow sharks to be identified if resighted, including colour coded tubing, beads and teflon plates. Tags have now been standardised and are currently supplied by CSIRO marine research. Sharks are tagged while they swim close to the operator's vessel. The tag position and the location of natural marks and scarring is recorded for each shark. A total of 143 white sharks were tagged by cage dive operators or researchers in South Australia between January 1990 and January 2001, with more being tagged since. All log book information is provided to the CSIRO white shark research program for analysis.

The information provided by the cage dive operators in South Australia is recognised as a major component of the international database being collected on the white shark, and a significant contributor to knowledge and information about the shark in Australian waters. In addition to providing information through their log books, the cage dive charters also provide the major platform for research on the biology and status of white sharks in Australian waters. The CSIRO, SARDI Aquatic Sciences, Sydney Maritime Museum and other agencies and research organisations often commission the cage dive charters to undertake specific activities related to the areas in which they operate.

The Hon. CARMEL ZOLLO: I have a supplementary question. Can the minister inform the council as to the status of the review of the berleying exemptions for tour operators and the white shark response plan?

The Hon. P. HOLLOWAY: I thank the honourable member for her question. The government has received the great white shark response plan, which is very important and made eight recommendations. Seven of those recommendations relate to the berleying of sharks, and the eighth recommendation relate to the conditions under which action could be taken in relation to sharks.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation.

The Hon. P. HOLLOWAY: As a result, I have approved a number of changes to the plan. First, exemptions under section 59 of the Fisheries Act permitted the berleying for white sharks in the waters of the Neptune Island Conservation Park only. I think it is important that those operations are limited to the Neptune Islands, because that is the—

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: If you like: you are welcome to it. It is important that the North Neptune Islands and the Dangerous Reef area is an area which is currently a conservation park and, indeed, there has been berleying in that region for some time by the tour operators, which my colleague the Hon. Gail Gago asked about earlier. In carrying out those activities, we have to be very careful, of course, that we do not disturb sea lions in their breeding season. However, we also have to be very careful—and remember that I was asked about the great white shark response plan—that any berleying behaviour does not change the behaviour of the great white sharks, because there had been allegations by many fishers when they raised these issues at a meeting in Streaky Bay earlier this year that the activities of these berley

operators could change the behaviour of the sharks. If they get a feed every time a charter boat comes by, they could be attracted to boats, which might change their behaviour.

As a result of the great white shark response plan a number of changes will be implemented to reduce the areas in which berleying activities can be undertaken. Any berley has to be fixed to poles with twine of a certain length. The activity will now be much more closely scrutinised to ensure that it has no impact upon shark behaviour.

The ecotourism industry, about which the Hon. Gail Gago asked, is very important for this state. People pay big money to dive in cages and watch the great white shark, because they are of great interest. We do not wish to stop that activity, because it has important economic benefits for the region. However, we want to ensure that that activity does not put at risk the lives of any divers or people in those waters. Apparently, there have been occasions where, if these operators could not go to their preferred sites near Dangerous Reef, they would go to some other islands in the Sir Joseph Banks group. The government has decided that it will not allow activities in those regions because they are frequented by recreational fishers and divers, as well as, perhaps, commercial divers.

The changes that we will implement in response to the review of the great white shark response plan, as it relates to berleying operations, is to restrict such practices to this particular area. The other change that the government has made is that, under certain limited conditions, where a shark is posing a threat to the safety of individuals in the water, it will allow that shark to be destroyed by authorised officials. The authorities involved would be the Director of Fisheries and the Director of National Parks and Wildlife. If a shark is posing an immediate threat to people, authorised officers from the police department and National Parks and Wildlife, as well as fisheries officers, would have permission, which they do not have now, to take some pre-emptive action. I stress that the shark would have to pose an immediate threat to people in the vicinity.

With respect to the great white shark response plan, it is stressed that no plan can provide security for every person in this state from shark attacks. There have been eight fatalities from shark attacks in this state over the past 20 years. So, the risk is not particularly high, but eight fatalities are eight more than we would like to see. However, it is important that people take care and exercise commonsense if they are swimming or engaging in other water activities in regions where it is not possible for surveys to be carried out into the presence of sharks.

Clearly, if the great white shark response plan is to work, it requires cooperation from the public in terms of the public letting us know, via Fish Watch, of the presence of sharks. It is not the government's wish that the change allow any hunting of sharks; that is not its purpose. The change is purely to deal with a situation where a shark may be posing an immediate threat to the safety of people in the water. Alternatively, if a shark has indeed attacked and is in the vicinity, it will allow action to be taken.

So, that is the change that has been made to this plan. We hope that this change, combined with the changes that we are making to restrict berleying operations, will reduce the likelihood of shark attack. However, I again make the point that anyone who enters the water should take a great deal of care.

WATER CONSERVATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Government Enterprises, a question about water conservation.

Leave granted.

The Hon. M.J. ELLIOTT: Drought is affecting the water flow of the Murray River and will have significant impact on the amount of water storage in South Australia. While New South Wales and Victoria have implemented water restrictions and offer incentives for water tanks, South Australia is yet to adopt any public water saving strategy.

The opposition has called for water restrictions to be imposed as well as warning the government against moves to sacrifice 2.5 per cent of the Murray River's flow to help drought-stricken farmers interstate. The minister has suggested in media comments the possibility of allowing people, through their water bill, to pay for water-saving devices. However, we already have means by which to implement a water-saving strategy.

There were Democrat amendments about 10 years ago to the Waterworks Act 1932, which allowed the government to increase the price of water per kilolitre, based on the level of water consumption. This means a base consumption rate of water could be calculated for normal, everyday use such as toilets, showers and washing. A much higher rate could then be charged for higher water use. We could even have several tiers with an intermediate rate and, perhaps, a higher rate for heavy water users. This would, in effect, negate the need for water restrictions and subsequent penalties, as well as increasing available water in South Australia. My questions are:

1. Has the minister considered using section 65B of the Waterworks Act 1932 as a water-saving strategy for the state? If not, why not?

2. Why has the government failed to implement any public water saving strategy as a matter of urgency?

3. Does the minister consider the cost of water is currently too cheap in South Australia, particularly for heavy users?

4. What is the government doing to conserve water in this state?

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

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister consider the use of water flow restriction devices which are fitted in showers particularly and control the flow of water through the shower system, thus reducing by at least 40 per cent the flow of water which generally goes straight down the drain and is wasted?

The Hon. T.G. ROBERTS: When I was a member of the ERD Committee we looked at a whole range of energy and water saving devices. It appears that there is a lot of discussion about making all of these devices available to architects and designers of homes for implementation and for people to consider at the time they are making decisions to put them in. Unfortunately, we found that there was not a lot of promotion by the peak bodies or individual organisations, either for new home building or the changeover that the honourable member refers to. I would hope that, after the question has been referred to the minister, he will start a promotional program

which will encourage people to involve themselves in these activities.

MATERNAL ALIENATION PROJECT

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 concerning the maternal alienation project.

Leave granted.

The Hon. A.L. EVANS: A member of the public recently contacted me raising concerns about the project, publicly launched on 20 September 2002 and funded by government agencies. I understand from the information provided to me that the overall aim of the project is to build a body of information that will add weight to a new social theory called maternal alienation. For some time, the legal system has generally accepted the concept of parental alienation as one that is totally without gender bias and therefore applicable to either gender.

Maternal alienation is a theory which shifts the bias more towards women to the detriment of men. Concerns have been raised with me that this new social theory appears to use anonymous case studies that are critical of men, but it appears that no evidence has been presented to defend the accuracy and quality of these case studies. My questions are:

1. Can the minister explain the criteria used to assess the maternal alienation project?

2. Is the minister aware of any policy changes to incorporate maternal alienation concepts into departmental policies?

3. Can the minister provide details of funding and resources provided through the minister's department to support men and/or fathers experiencing family trauma?

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

WATER SUPPLY, ERNABELLA

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about water supplies to the Aboriginal community at Ernabella.

Leave granted.

The Hon. T.J. STEPHENS: This morning my office received two urgent telephone calls, one from Dr Martin Kelly, a doctor at Ernabella, and another from Mr Dudley Bagg, the essential services officer at Ernabella. The Ernabella community is without water. The situation is so serious that the school is closed, there are no showers, no toilets can be flushed and, at the clinic where the doctor is trying his best to meet the needs of his patients, there is no water to even wash hands between consultations. In fact, there is no water even to wash down medicine.

All the water in the reservoirs has been used, and the one pump that is still functioning—of the six pumps available to the community—is pumping at two litres a second. The minimum pumping requirement for water for basic drinking purposes is five litres per second. I understand that the specific reason Ernabella has no water is that the current state Labor government decided not to upgrade the power system at Ernabella in this year's budget.

Due to several lightning strikes last year, there have been ongoing transmission line problems, and surges of power to the bore pumps has resulted in the pumps being burnt out. I understand that Dr Kelly has correctly approached the local member, the member for Giles, and I assume that she will be just as anxious as I to lobby for urgent attention to address this situation. I have been informed that, if water were to be carted in within the next 24 hours, the community would need the equivalent of 10 road trains to meet their needs.

Obviously what is really needed is a number of pumps to be installed immediately and the personnel to carry out the installation work. The word around Ernabella is that one pump is on its way and could be installed by Saturday. Is the minister aware of this desperate situation? Will the minister give an undertaking here and now that he will ensure that additional pumps will be flown up immediately and that they will be operational by at least this weekend? As a matter of urgency, will the minister also seek, through his ministerial colleagues, to reinstate immediately the funding for the upgrade of the power station and transmission line, in order to reduce the voltage which keeps burning out the pumps?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I did have a meeting yesterday with Nganampa Health to discuss a whole range of problems associated with water, not only quantity but also quality, within the lands. We have been given evidence on a number of occasions that the quantity as well as the quality of the water is a problem. The quality in some bores is well below the World Health Organisation's standards for water quality.

I gave an undertaking to Nganampa Health to work with DOSAA, the Pitjantjatjara Council and the AP Council to get the available data that is stored on the lands in various places in relation to the quantity and quality of bores at not just Ernabella but throughout the lands, because water is of critical importance in those areas. Members would know the problems over the Christmas period at Indulkana, if not this time last year then two years ago, when the water was of such poor quality it was seen to be a danger and risk to health and was unable to be used for drinking. It was able to be used only for grey water requirements. There has to be a total look at the problems associated with quantity and quality within the lands, and I will give an undertaking for that to happen.

In relation to the particular problems at Ernabella—and I know that honourable members do not like hearing about the longstanding problems associated with water which have been neglected over a period of time—they result from past neglect. It is not simply a situation that has arisen in the past week.

The member for Giles, as the honourable member said, is aware of it. I understand that some remedial measures are being taken at the moment. When it was reported to me, I immediately asked DOSAA for a report to make recommendations to work with the communities to ascertain what the problem is. The report that was—

The Hon. A.J. Redford: They are not interested in reports; they want water.

The Hon. T.G. ROBERTS: What the honourable member is saying is that, first, you need pumps and, secondly, an assessment needs to be made of the electrical requirements—

Members interjecting:

The Hon. T.G. ROBERTS: I am not quite sure; we have two recommendations coming from the one question. One is to cart water and the other—

The Hon. A.J. Redford: What is happening tomorrow? What are you doing?

The Hon. T.G. ROBERTS: If the honourable member wants to know what is happening tomorrow, I suggest that

perhaps he contacts the people who are now working on the problem to fix it. The honourable member has asked: 'What is the government doing?' A program is being put in place; people are looking at the issue not only—

The Hon. Diana Laidlaw: Yes, looking at it.

The Hon. T.G. ROBERTS: No, and working on it; and they will have a program, hopefully, that I can report to the member. If they had pumps—

Members interjecting:

The Hon. T.G. ROBERTS: It is not just pumps; other problems are associated with it. I will give a complete report to the council tomorrow by way of a ministerial explanation and bring back a reply. It is not a situation that will be fixed even if the pumps and the infrastructure are supplied: it is the quality and quantity of water that needs to be addressed in the lands in an effective way that is lasting; there is not just a simple single solution. It will not be only the Ernabella community that will have problems with water this summer; other communities will have similar problems. The government will have to work with those communities to ensure that clean, potable, safe water is delivered to them.

COOBER PEDY

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Energy, questions about electricity charges.

Leave granted.

The Hon. J.F. STEFANI: Members would be well aware that, during the election, promises were made by the Labor Party. In fact, on the first day of the Labor campaign, Kevin Foley, the then deputy leader of the opposition and shadow treasurer, said:

> If you want cheaper electricity, you vote for a Mike Rann Labor government.

In addition, in the 'Pledge to you card' signed by the Hon. Mike Rann, there was a promise to fix the electricity system and to ensure that an interconnector to New South Wales would be built to bring in cheaper power. I have been informed that the electricity charges for the Coober Pedy area, which is not to be connected to the electricity grid and which is required to generate its own power, will increase by 2.7 per cent from 1 October 2002 for commercial and industrial businesses, and from 1 November 2002 for residential consumers.

I have been further advised that the state government, through Energy SA, has authorised a 25 per cent increase in electricity charges, which will commence from 1 January 2003. Given that the Coober Pedy area is not serviced by a normal electricity grid, my questions are:

1. Will the minister explain why he has authorised two increases in the charges of electricity in the Coober Pedy area?
2. On what basis has the minister authorised a 25 per cent increase, which will apply from 1 January 2003?
3. Does the minister acknowledge that the people in remote areas such as Coober Pedy already pay much higher electricity charges than their counterparts in the metropolitan area?
4. Finally, will the minister explain to South Australian voters, who were promised cheaper electricity, including the people in Coober Pedy, why the Labor government has not kept its promises and honoured the pledge made by the Hon. Mike Rann?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The promise made by this government was that the Labor government would, by its actions, ensure that electricity prices were lower than they otherwise would be, and indeed they are. I remind this council—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I remind this council that last year, when the first tranche of customers were deregulated, prices for businesses in this state increased between 30 per cent and up to 100 per cent in some cases. There were absolutely massive electricity increases to the businesses of this state. Some years ago, in selling ETSA and the electricity system in this state, the previous government set the structure and that dictated the price of electricity in this state.

The Hon. R.I. Lucas: You had a plan.

The Hon. P. HOLLOWAY: Yes, we did have a plan, and we are addressing it. As I said, 30 to 100 per cent increase in charges last year—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! The Leader of the Opposition will come to order.

The Hon. P. HOLLOWAY: —and since this government came to office it has given a high priority to addressing the electricity issues that we inherited. The first thing we had to do was get some gas supplies into this state. The only way we could solve the electricity crisis in this state was to ensure that we had adequate fuel to power the generators at lower cost. Last summer, the station at Torrens Island was using oil half the time. Fancy burning oil! How expensive can you get! That was because of the constraints on gas. This government has set about to ensure that there are adequate gas supplies in this state, and we have done that. That is the first thing that we had to do.

Members interjecting:

The Hon. P. HOLLOWAY: I suggest that the honourable member get the latest electricity supply newsletter.

The PRESIDENT: Order! The Hon. Angus Redford knows better than to interject in that manner. I do not want to hear it again.

The Hon. P. HOLLOWAY: If the honourable member gets the latest electricity supply newsletter, which I notice has come in this morning, he will read about how the Minister for Energy in another place has taken a very prominent role in trying to get some reform of the national electricity market. That was the market that the lot opposite completely stuffed up. We know what happened in relation the SNI connector into New South Wales. That lot did everything they could to oppose it.

The Hon. R.I. Lucas: Where is it?

The Hon. P. HOLLOWAY: You lot prevented it. It is all your baby. They backed Murraylink, and those people are now in the courts taking legal action. The structure of electricity in this state is as the Liberal Party designed it. It is their creation. That is why they got thrown out at the last election. This government is doing its best to repair that situation. Since it took eight years to wreck it, it will take some time to deal with it.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.J. Stephens: Selective memories.

The Hon. P. HOLLOWAY: Memories, is it? It is a memory that it was a government body. Who privatised it? It is no longer in the government.

Members interjecting:

The PRESIDENT: Order! Members of Her Majesty's Loyal Opposition will come to order, as will members on my right.

The Hon. P. HOLLOWAY: If members opposite read the electricity supply newsletter, they will see how my colleague Pat Conlon has taken a prominent role in trying to get the reforms that the previous Liberal government should have secured in making the national electricity market work properly, so it can outlaw some of the practices that have created the price problems that we have at the moment. I suggest that people read that latest newsletter.

The honourable member asked some questions in relation to power in Coober Pedy. It is my understanding of electricity generation in Coober Pedy that it is undertaken by the local government body there. There is a wind generator up there but largely the town's power is generated by diesel. I have seen the plants up there, and the diesel fuel that is used for those generators is subject to a considerable rebate. I believe that most of this state puts forward a significant sum to subsidise the cost of fuel that is used by those generators.

I think that the Coober Pedy area is a very special case and, to get an answer to that question, I will have to refer it to the Minister for Local Government, because the power in Coober Pedy is generated by its own local council, which also supplies the water. I will get that information from the Minister for Local Government, who is responsible for the grants that subsidise electricity in the Coober Pedy area. I will refer the question to the Minister for Energy to see whether he wishes to add anything further to my response.

Again, I make the point that this state's electricity system and the national electricity market—and members should remember that South Australia was the lead legislator in relation to the national electricity market—sadly, were designed by the previous government and by the now Leader of the Opposition in particular. Unfortunately, as we have all discovered, it is a lot easier to get yourself into trouble than it is to get out of it.

REPLIES TO QUESTIONS

NGAANYATJARRA PITJANTJATJARA YANKUNYTJATJARA WOMEN'S COUNCIL

In reply to **Hon. R.D. LAWSON** (15 October).

The Hon. T.G. ROBERTS: I advise that: The review of the NPY Women's Council was an initiative of the funding agencies from South Australia, Western Australia, Northern Territory and the commonwealth. The funding agencies involved were the commonwealth Departments of Family and Community Services, Health and Ageing and the Aboriginal and Torres Strait Islander Commission (ATSIC) and the state Departments of Human Services (SA), Territory Health (NT) and the Disability Services Commission (WA). The Department of State Aboriginal Affairs (DOSAA) does not provide funding to the NPY Women's Council.

The First meeting of funding bodies was held on 17 May 2002 in Adelaide and a steering group was formed to develop terms of reference for the proposed review. The NPY Women's Council chairperson, Lala West and director, Maggie Kavanagh were members of the steering group that subsequently accepted and signed off the terms of reference in June 2002.

On 30 September 2002 cabinet approved the transfer of responsibility for the Anangu Pitjantjatjara Lands Inter-governmental Inter-agency Collaboration Committee from the Department of Human Services (DHS) to DOSAA. Under this new arrangement I will through DOSAA, have input into the review.

The Parliamentary Select Committee on Pitjantjatjara Land Rights was established to inquire into and report on:

- The operation of the Pitjantjatjara Land Rights Act 1981;
- Opportunities for and impediments to enhancement of the cultural life and the economic and social development of the traditional owners of the AP Lands;
- The past activities of the Pitjantjatjara Council and Anangu Pitjantjatjara Executive in relation to the AP Lands;
- Future governance required to manage the AP Lands and ensure efficient and effective delivery of human services and infrastructure;
- Any other matters established.

I am advised that the review of the NPY Women's Council focuses on the following issues:

- Organisational processes and data
- Human resources
- Service planning and development
- Service delivery
- Policy development
- Accountability and quality mechanisms
- Identifying operational issues experienced by the organisation

Although the parliamentary select committee was established some time after the decision to conduct a review of the NPY Women's Council there will still be opportunity for the review to take into account outcomes of the parliamentary select committee.

Outcomes of the parliamentary select committee inquiry will be reported to the chief executive of DOSAA in order to ensure appropriate information is provided to the review steering committee.

I am advised that the anticipated cost of the review is $110 000. This cost is shared by the following organisations as funders of the NPY Women's Council:

· Department of Family and Community Services (C/wealth)	$20 000
· Department of Health and Ageing (C/wealth)	$20 000
· Department of Human Services (SA)	$20 000
· ATSIC (SA)	$10 000
· ATSIC (WA)	$10 000
· ATSIC (NT)	$10 000
· Disability Services (WA)	$10 000
· Northern Territory Health (NT)	$10 000

HOUSING, TENANT ADVISORY SERVICE

In reply to **Hon. SANDRA KANCK** (24 October).

The Hon. T.G. ROBERTS: The Minister for Housing has advised:

1. Was the Labor Party's election policy that all rental tenants have access to tenant advocacy and information services that are consumer-focused and independent?

The Labor Party's election policy *Housing a basic right* promised to provide all rental tenants access to tenant advocacy and information services that are consumer focussed and independent. The government is committed to improving outcomes for tenants, as protection for tenants of rental properties is central to achieving social justice in the community.

2. If so, what progress is being made on implementation of that promise?

The government continues to provide funding for an information and advocacy service for public housing tenants, including tenants of the Aboriginal Housing Authority. The service, named 'Housing Advice and Support SA', is run by Anglicare. It has recently extended its service to include tenants living in community housing. The service is consumer focussed and well-regarded by tenants. A ministerial community housing organisations grant fund provides the funding for this service.

In addition, the public housing appeals unit exists, which provides an avenue of administrative review for tenants of the South Australian Housing Trust and the Aboriginal Housing Authority in relation to policy decisions.

In relation to private tenants, the residential tenancies branch of the Office of Consumer and Business Affairs provides a landlord and tenant advisory service. Matters pertaining to the rights of private rental tenants are the responsibility of the Minister for Consumer Affairs.

It also is worth noting that delegates to the annual Australian Labor Party convention held in mid-October 2002 reiterated support for the establishment of a broad based tenant advocacy body or such other acceptable agency as would be negotiated with appropriate housing sector representative organisations.

Discussion regarding this commitment will occur within the framework provided by consultation for the state housing plan, a

process announced by the Minister for Housing on 8 November 2002.

3. Will this require legislation?

The existing services for tenants of public rental properties will not require any legislation to continue to provide the excellent service they already deliver.

Broader issues arising from the state housing plan consultations, including any potential statutory measures, will only be apparent as that process develops in 2003.

4. If so, when can we expect appropriate legislation to be introduced to the parliament?

N/A.

DRY ZONE, VICTORIA SQUARE

In reply to **Hon. T.J. STEPHENS** (15 October).

The Hon. T.G. ROBERTS: The Premier has provided the following information:

As you know, there have been problems associated with alcohol and substance abuse in Victoria Square and several other 'hot spots' in particular, and the city as a whole, for many years.

The dry zone has been one response to these problems and state cabinet has agreed to a 12 month extension of the trial dry zone.

A recent evaluation of the dry zone organised by the council did not produce enough information for us to properly consider the value of the dry zone.

An integral part of the package agreed to by the previous government when the dry zone was initiated, was a stabilisation centre in Whitmore Square. I am advised that after lengthy delays, work on the stabilisation centre will proceed and the centre will soon be operational. Other support services to the dry zone are also essential and we will be doing all we can to make sure that these services are put in place.

A 12 month extension of the trial city dry zone will give us a further period of time to investigate additional options for dealing with the causes and effects of substance abuse and related problems in the city.

TEACHERS, CONTRACTS

In reply to **Hon. R.I. LUCAS** (27 May).

The Hon. P. HOLLOWAY: The Minister for Education and Children's Services has provided the following information:

The previous government's policy of employing large numbers of teachers on contract cost the teaching workforce morale and stability.

There is no immediate cost associated with the conversion of contract staff to permanency. However, the effect it has had on the personal morale of teachers and stability in school communities is priceless.

This government values its teaching workforce and realises that we risk losing some of our best educators if we cannot offer them stability in their employment.

The cost to the future of the teaching profession without this move is immeasurable for what is essentially a cost neutral exercise.

STATUTES AMENDMENT (ENVIRONMENT PROTECTION) BILL

Adjourned debate on second reading.

(Continued from 18 November. Page 1363.)

The Hon. M.J. ELLIOTT: On behalf of the Democrats, I support the second reading of this bill. I have been a long-time critic of the EPA, but then the EPA is a fairly broad term. We have both the Environment Protection Authority and the Environment Protection Agency. One problem determined by the Environment, Resources and Development Committee was that we had these two bodies that, essentially, were separate. However, the Environment Protection Authority, theoretically, had all the power but the employees of the Environment Protection Agency were all employees of the Crown and, more than that, employees of the minister and, in many cases, were not even keeping the authority informed as to what was going on. I recall that the difficulties arising from the cast metal plant in Mount Barker had been occurring for a couple of months before it was brought to the attention of the authority.

The government says that, by way of this legislation, it seeks to revamp the EPA as an independent authority and to give it stronger powers to enforce tougher environmental standards in South Australia. The community generally would welcome that. Over the last couple of years in particular, the authority has lifted its game by becoming more insistent on the agency's providing better information than it has in the past. The authority was failing because it was being kept in the dark for much of the time about what was going on. Too many bureaucrats underneath the EPA were making decisions and not keeping it informed because they felt that they knew better. That situation has improved recently, but I think the move to bring the agency staff directly under the authority is a good one.

It is not my intention to go through the bill clause by clause. We will have a chance to debate individual clauses if necessary in committee. I support the bill as a whole. I raised several issues with the government during briefings. I will indicate the sorts of issues that I raised and the responses I received. One issue that I raised related to the requirement to monitor licences. I asked whether or not the resulting information could be made available to the public. I received the following response from the minister:

> Yes. Section 109 of the act sets up the public register. Regulation 15 of the Environment Protection (General) Regulations 1994 states that where the Authority considers it appropriate information as to the results of tests or monitoring or evaluation undertaken in compliance with conditions of a licence is required to be included in the public register.
>
> Currently, the public is able to access this information at the EPA during ordinary office hours. The EPA intends to put this kind of information up on its web site.
>
> General monitoring information in relation to air quality and water quality is currently available on the EPA web site. An example is water quality monitoring undertaken along South Australian beaches to identify any problems that may affect the health of bathers and marine life. Members of the public can visit the 'coast and marine' section of the EPA site.

The web site address is provided. A couple of questions arise from the response that I received, and I hope that the minister will respond in his reply or in committee. The first relates to the question of the results of monitoring. If testing and monitoring are required, why should it not be mandatory that the results be made publicly available, and for what reason would they be withheld?

I can think of a number of examples where the results of monitoring would have been helpful. There has been an ongoing saga in relation to the Hensley foundry. The community is deeply suspicious of whether the standards that have been set are actually being met because the results of the monitoring are not being made public. Quite simply, either they are complying with the standards (the licence conditions) or they are not. In my view, it should be a matter of public record whether or not the standards are being met.

If the EPA decides that it is acceptable to allow conditions not to be met and is giving extra time, that should be known publicly. So, my first question is: what is the government's view regarding all the information obtained from the monitoring of licences being made available? If its view is

that it should not all be made available, I would like to know why.

The web site is an issue that I have pursued in this place during question time on several occasions. I have related the story of how I went in to look at the register. The sort of register that I expected to see was a series of folders and I thought you would open them up and there the information would be. However, I was told, 'The register isn't like that; it's in all of our filing cabinets. What you want is somewhere in our filing cabinets. You have to tell us what you want, and we will get it for you.' I do not think anybody in this place, when we voted on that clause, thought that a public register would comprise information that is held in files ordinarily and, if you want to see it, you have to lodge a request and they will provide it. They also wanted to charge me some exorbitant amount for the time it took to get it. Again, that certainly was not the idea of a public register. The former government announced that it was establishing a web site, but it is clear that there is still a lot of stuff not on it, and I would like an indication during this debate as to the time frame within which the web site will be completed and also what will be on the web site at that point.

Another question I posed during the briefings was: can the Environment Protection Authority prosecute on the likelihood that serious environmental harm will occur? It is quite perverse at the moment that there can be two situations where perhaps equipment is not being well maintained and the operator might be aware that it is not well maintained. In one case a pipe bursts and in another case it does not. If it bursts and causes damage, the operator can be hit with incredibly heavy fines; if it does not burst, he is not subject to the same penalty. Why is it that it is necessary for actual harm to be done before a severe penalty is imposed? I would have thought it would be sufficient to demonstrate that there was real negligence.

The response to the question was: first, there needs to be an act of pollution for the general offences under the Environment Protection Act 1993 to apply. However, the act of pollution—defined simply as 'discharge, emit, deposit or disturb pollutants' under section 3 of the act—does not need to cause actual, serious or material environmental harm for sections 79 and 80 of the act to apply. These sections also apply if pollution occurs which involves potential harm to the environment and the health and safety of people, and results in potential loss of property of a stipulated amount. In short, without an act of pollution—but not necessarily pollution that causes actual harm to the environment—these offences cannot be proved.

The next question that I raised was: what kind of control does the Environment Protection Authority have over activities that cause environmental harm but have not yet done so? That is a variation on the previous question. In response, I was told that certain powers are provided to the Environment Protection Authority to proactively regulate activities that may cause environmental harm. The licensing system accommodates a proactive approach by the regulator. Licences are required for activities considered capable of causing serious environmental harm. They are used to set operating conditions that regulate how a company must operate in undertaking its activities. My experience in the past has been that licences have been constantly breached, on an ongoing basis in some cases, without any other action having taken place. I ask the minister whether there has been any change of policy and whether there is a clear instruction as to what is expected to happen when licence conditions are breached.

The next point is environment protection orders. EPOs may be issued for any activity that has the potential to cause environmental harm. This obviously requires the regulator to observe the potentially harmful activity and to address the matter.

Finally, criminal proceedings can be initiated in the event of noncompliance with EPOs and licence conditions. Can the minister tell us, either during his second reading response or during committee, how many occasions criminal proceedings have been issued in South Australia in relation to a breach of EPOs and a breach of licence conditions? As I said, I will address a few of these issues during the committee stage if they are not fully addressed at the end of the second reading, but the Democrats support the second reading of this bill.

The Hon. A.J. REDFORD secured the adjournment of the debate.

SOUTH AUSTRALIAN METROPOLITAN FIRE SERVICE (FIRE PREVENTION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 November. Page 1365.)

The Hon. J.S.L. DAWKINS: I rise on behalf of the Liberal Party to speak in support of a bill that follows on from earlier amendments put to the parliament in 1999 at the request of the Metropolitan Fire Service. The nature of the legislation and the rapid approach of the serious fire danger season requires bipartisanship on this issue. The concerns of the Metropolitan Fire Service with respect to undergrowth and fire prevention are addressed by this bill, as it gives the MFS and its designated officers greater powers.

In 1999, section 60B was added to the South Australian Metropolitan Fire Service Act 1936. It provides:

> This section gives councils the power to require the owner of land on which there is 'inflammable undergrowth or other inflammable or combustible materials or substances' to take specified action to remedy the situation within a specified time. Previously, this power had been provided by council by-laws.
>
> The section as drafted does not allow councils to require the clearing of undergrowth until it has cured sufficiently to be considered to be flammable. Hence, the danger of the outbreak of fire must already be present before the enforcement of remedial action can be commenced. This is considered by both the South Australian Metropolitan Fire Service (SAMFS) and the Local Government Association (LGA) to be unsatisfactory.
>
> The logistics of inspecting all properties within a council district after the undergrowth is cured to a flammable state, issuing, where appropriate, rectification notices and policing compliance, guarantee that the hazard will continue to exist well into the fire danger season.

I understand that liaison has occurred between the SAMFS and the LGA on this matter and that both organisations are anxious that this anomaly be rectified before the 2002-03 fire danger season commences.

Some metropolitan councils have not always been as diligent as they might be in ensuring that people keep vacant blocks clean. Whilst bushfires are the domain of rural and peri-urban areas, vacant land in the metropolitan area can be the cause of devastating fires when not sufficiently cleaned up. The attitude of not clearing a block because it will only need to be cleared again later must change. Early spraying in springtime with an appropriate spray can stop weed and, hence, fuel-load growth and hinder further regrowth. Without such measures, the fire risk in the metropolitan area can begin

as early as September. Accordingly, there is need for expediency with regard to this bill, and the opposition supports it.

At this stage, I refer to the debate in the other place, where both the member for Heysen and the Speaker made some comments about the words 'flammable' and 'inflammable'. In fact, they were both unhappy about the use of the word 'flammable' because they did not believe that it exists in the English language. I will raise this at the committee stage when the minister has an adviser at his side.

However, this issue needs to be clarified because, as someone who has been a volunteer with the CFS over a number of years, I have heard people use both words. I know what 'green fuel' is in the community, and I know what 'dry fuel' is, and I think that needs to be clarified in the bill. There is confusion among some people about what the words 'flammable' and 'inflammable' mean, and some firefighters have a different view to others. However, I will raise that issue at the committee stage, because I think it is important that that be clarified.

I note that the minister in the other place said that he was in the hands of that house. He also said:

> . . . if the other place decides that the grammar is better one way or the other and names it, it will not fuss me.

I think that the minister was keen to rectify the current situation, and I share that view. The opposition supports this legislation.

The Hon. IAN GILFILLAN: The Democrats support this measure. In South Australia, we are fortunate that we are not exposed to some of the unpleasant natural phenomena that beset other parts of the world: earthquakes are a very rare occurrence here; cyclones are virtually unheard of; and snow is an infrequent delight. However, as much as we love our natural environment and climate in South Australia, we realise that, as with every other place on earth, there are bound to be some drawbacks in living here as well.

One of the few things that prevents our state from ever becoming a physical paradise is the perennial summer danger of bushfires. It is our curse and, as we know only too well from the experiences of the 1980s, we ignore it and the risk of it at our peril. Amending any legislation that deals with fire prevention, therefore, is of crucial importance to South Australians. Other bills may affect livelihoods, but a bill that affects the Country Fires Act or the Metropolitan Fire Service Act may, in future, prove to be a matter of life and death.

Currently, local government has the authority to require people to remove or deal with inflammable undergrowth and material on a property. This is a power that we formally conferred on local government in 1999. This bill seeks to extend those powers to include undergrowth or material that is likely to become flammable, or inflammable. It deals with the obvious anomaly that the material must be a fire risk before the council can act. This bill is a logical conclusion to the intention of the original bill and, with minimum delay, I believe it should be implemented.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the Hon. John Dawkins, the Hon. Ian Gilfillan, and other members who will not be speaking in the debate, for their support for this important but brief bill. The Hon. John Dawkins raised some issues in relation to the word 'flammable' as opposed to the word 'inflammable' in the bill. The honourable member indicated that he would raise this issue, so I had the opportunity to speak to Commander John Bradley from the SAMFS, who is here as one of the government's advisers on this bill. He informs me that it was agreed by all firefighting organisations in Australia and New Zealand some 30 years ago that 'flammable' was the preferred word to avoid confusion.

Normally, the prefix 'in' before an adjective indicates the opposite of the word. However, we have the unusual situation in the English language where the words 'flammable' and 'inflammable' mean the same thing. In the debate in the other place, it was pointed out that the word 'flammable' is an Americanism, but I am advised that it is listed both in the *Macquarie Dictionary* and in the *Concise Oxford Dictionary*, and the two words are used interchangeably.

We can understand why the firefighting organisations would have agreed with that. Certainly, if the word 'flammable' is used everybody understands what is meant; if the word 'inflammable' is used there might be some confusion in relation to that because, as I said, that prefix 'in' to some people whose knowledge of English was not great, might think it meant the opposite. For that reason, I think it is probably preferable that we should use 'flammable'. We have the shadow attorney there: I did not go into the Latin roots of the word, but perhaps that is just as well! It probably comes from the word 'flamus' I suspect, in Latin. Anyway, I think there are probably good reasons why this bill does change the word 'inflammable' to 'flammable', because that is consistent with the language used by all firefighting organisations in Australia and New Zealand, and has been for some years.

It is important that this bill go through as speedily as possible. We are facing a very dangerous fire season this year because of the extreme dry conditions through some of our more fire-prone areas, such as the Adelaide Hills. It is important that the bill is passed and I thank honourable members for their cooperation in enabling this bill to have a speedy passage.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.S.L. DAWKINS: I refer to my second reading contribution, and I do not wish to cause any delay, but, in relation to the wording, we need to make sure we have clear terminology. As I said earlier, I think there is some confusion. I would not dispute the fact that firefighters themselves use the word 'flammable' and know what they are talking about. But I think there are some other people in the community, including honourable members of the other place, who perhaps have a different view. The minister talked about 'inflammable' being understood as the negative; however, the member for Heysen, in another place, has said 'inflammable' comes from the fact that material is liable to become inflamed. What I am keen to do with this legislation, and it may well be that the fire services can advise us properly in this regard, is ensure the terminology is clear, and that everybody understands what is being referred to when we are talking about what I call 'green fuel' or 'dry fuel'.

The Hon. P. HOLLOWAY: Green fuel and dry fuel are not mentioned here. The reason the bill is needed is to change the definition from 'flammable undergrowth' to 'undergrowth that is likely to become flammable'. I guess undergrowth that is likely to become flammable might be green fuel, if I can put it that way, whereas when it dries out it becomes dry fuel.

The Hon. J.S.L. DAWKINS: I am not trying to be difficult here. All I am saying is that the purpose of this bill is to give a capacity to deal with fuel before it cures, when it

is actually still in a green state. All I am asking is that the terminology is clear, because there is obviously some confusion about what the two words, particularly 'inflammable', mean. As I have said, I am pretty sure I know how firefighters refer to it but there are other people and legislators who have had some concerns about the use of the word 'flammable.' The reason I raised the words 'green fuel' and 'dry fuel', and I know they are not in the bill, is that we need to make sure that people understand what we are talking about.

The Hon. P. HOLLOWAY: The use of the word 'flammable' really is to reflect this agreement by all firefighting organisations that, to avoid confusion, the word 'flammable' will be used. The Hon. John Dawkins has referred to the fact that there is some confusion, and I think the point is that, whereas people might be confused about the word 'inflammable', they are much less likely to be confused about the word 'flammable'. That is why, throughout the act, not just in this section, the amendments change it to 'flammable'. So that wherever the word relating to inflammability appears in the act the word 'flammable' is used in all cases to try to avoid that confusion.

The Hon. J.S.L. DAWKINS: Perhaps, minister, the thing that will satisfy me greatly, and I am sure that the adviser will advise you well on this matter, is an assurance that, in his view, there is no confusion amongst the firefighting practitioners.

The Hon. P. HOLLOWAY: My advice is that that is the reason for it and that 'flammable' is the word that will create less confusion. That is exactly why we are seeking to replace it here. Those members of parliament who might regret the change of language from time to time, I guess, need to be overtaken by reality.

Clause passed.

Remaining clauses (2 to 4) and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 19 November. Page 1390.)

Clause 4.

The Hon. R.D. LAWSON: In the discussion on this clause, the minister indicated that the purpose of inserting the new subsection, which will provide that the act does not apply to documents or information held by an officer of an agency otherwise than in the person's capacity as an officer, was merely for clarity. He indicated that the amendment had resulted from crown law advice and not as a result of any case that had arisen. The Hon. Angus Redford pointed out that the opposition was somewhat suspicious of the fact that the government was seeking to insert a provision into the law which merely reflected what the current law is.

During the adjournment, I have had a briefing from officers from the office of the minister whose bill this is, together with crown law advice, and that advice has confirmed that this clause is merely declaratory; in other words, it merely declares what the existing position is. I thought it appropriate that I indicate those matters to the committee.

The Hon. P. HOLLOWAY: When we last debated this bill, the honourable member asked whether the Ombudsman had responded to this amendment. I am advised that the answer is no. The honourable member may well be correct that this amendment is essentially declaratory, but that is exactly like his amendment to include members of parliament. That was a declaratory amendment; it did not strengthen anything but just set out the position as it was. Essentially, the government is simply seeking to make absolutely sure that the position is clear that personal correspondence will not get caught up inadvertently in the FOI net.

The Hon. A.J. REDFORD: I refer to page 1390 of *Hansard* where I asked a series of questions in relation to this clause. I am happy to go through them again. Does the minister have a response to those questions?

The Hon. P. HOLLOWAY: We cannot find the *Hansard* reference. Perhaps the honourable member could repeat the questions.

The Hon. A.J. REDFORD: Normally modesty would forbid me from quoting myself, but it may be quicker to do so. On the last occasion, I asked the following questions: who asked for the insertion of this section? What was the basis upon which they requested it, because there may be other ways of dealing with the problem that the minister identified?

I ask this next question in a very neutral fashion, and I am not criticising the government per se: is there a risk of the documents being handed around from department to department so that they are actually held by a public servant but not in their official capacity? I recall that the honourable member was highly critical when certain documents involving the inquiry by Mr Tim Anderson QC were not made available at a particular point in time. Why is the new subsection not expressed in terms that refer to personal documents? That can be both as an individual and in a corporate sense, rather than the manner in which it is currently before us.

The Hon. P. HOLLOWAY: I am advised that it came out as part of the review process. A review process for this bill was announced by the government, under the control of Minister Weatherill in another place.

The Hon. A.J. Redford: That is what you said last time.

The Hon. P. HOLLOWAY: That is right.

The Hon. A.J. Redford: So, it just fell out of the sky?

The Hon. P. HOLLOWAY: You can ask all you like. It came out as a result of the review process. What difference does it make which particular individual it was in the review process? They might not be able to remember which individual raised it at the time. The important point is that it came out of that review process. As to the basis on which it was suggested, it was for clarification of the situation to ensure that it was made crystal clear.

I imagine that someone has raised a concern as to whether we can be sure that personal documents do not get caught up inadvertently. I am purely speculating, but I assume that there was some debate about it, and it was decided that, if we put in a clause like this, we could clarify it. As to whether there is a risk of documents being handed around, my advice is no. I guess we saw an example involving the member for Morialta in another place, when some documents went missing from her vehicle. They were allegedly stolen. I guess that those things can happen from time to time in government, but I think members seem to be suggesting that this could create some sort of loophole. In relation to that, certainly my advice is: 'No, it is not believed so'.

The final question raised was: 'Why was it not expressed in different terms?' The answer is that, obviously, this is what parliamentary counsel believed was the best way of achieving

the legislative objective: different draftspeople will draft clauses in different ways.

The Hon. IAN GILFILLAN: I do have concerns about the clause and was intending to support the opposition's amendment, but I have listened to the Hon. Robert Lawson's explanation as to how he has at least rethought or maybe is still rethinking the matter. I find the wording abstruse and not clear to me in my role as a layperson. I do not believe it to be irrefutably clarifying the intention of the act; and it can stand, I believe, certainly as a potential device whereby a sensitive document or information escapes FOI by being in the custody of an officer who is not such an officer as applied to that agency from whom the FOI request is lodged.

That may or may not be of much help to the committee, but it indicates that I am still uneasy that the amendment does add rather than offer what may well be a loophole for a government or an agency which is calculating ways of dodging FOI.

The Hon. R.I. LUCAS: I have some knowledge of this section of the act based on my time in government. I have to say that I am grateful for the Hon. Mr Lawson and the advice that has been provided to him that this section is really just clarifying existing crown law advice; and from what the minister has said, he is confirming that. I would have some concerns if that were not the case. For example, I know that as a minister for eight years I had within my ministerial office information which was not of a public nature, that is, not provided through any of my departments. For example, on occasions of polling, there was information that had been provided to me by political organisations such as the Liberal Party and, in some cases, polling information that had been provided by non-public sector agencies—that is, business groups, individual businesses, or business people who might have commissioned polling. That information was provided to me as an individual and was part of my personal files within my ministerial office.

For example, in the case of a Labor government, if there was any suggestion that Labor Party polling which had been provided to the current Premier and which was sitting in his office was able to be accessed by way of FOI—it might be interesting now that we are in opposition—then I would have thought that that was not what the freedom of information legislation was intended to access. The advice that I had in government from crown law was that that information was not accessible by FOI legislation, and I think that is entirely appropriate. The advice that the Hon. Mr Lawson and the Hon. Mr Holloway have put on the record is that that is still the crown law view, and that all this provision is seeking to do, in essence, is to reaffirm the existing crown law view. On that basis, I have no concern with the position put by the Hon. Mr Lawson.

However, I would be concerned if crown law had advised the government that there was a problem with the current drafting and the sorts of documents that I have indicated might be accessible under freedom of information legislation. That is not the case based on the advice the Hon. Mr Holloway has put on behalf of the government and the Hon. Mr Lawson has put as a result of being briefed by government officers. On that basis, I have no concern with the positions being put obviously on behalf of our party. I am not sure where the Hon. Mr Gilfillan was heading with his comments, but if someone can identify that there is some loophole or something such as that different from the circumstances that I have outlined—I cannot immediately see that there is—then there may well be worthwhile further discussion about what we do or do not do in relation to this particular part of the act. Certainly, in the circumstances that I have outlined, in my view, there is a very strong argument that those sorts of documents should not be and are not accessible under freedom of information legislation.

The Hon. P. HOLLOWAY: It may well be that crown law opinion is that it is covered, but, after all, that is just an interpretation of law, and we know that, from time to time, courts will take a different view in relation to such matters. Indeed, if crown law advice (as good as it is) were right every the time, then we would not have so many amendments coming through parliament all the time. The fact is that courts do take different interpretations on matters and we are continually amending legislation because of that very fact. It is one thing for crown law to say, 'Yes, it is our best view of the law as it stands at the moment that these documents are exempt under the legislation,' but what the government is simply seeking to do is to make it crystal clear and beyond doubt.

The Leader of the Opposition has said that, yes, he agrees that personal documents—and he gave an example—should not get caught up in FOI applications. However, it is my understanding that, in the past and under his government, there have been cases where it was at least necessary to get crown law advice in relation to some of these issues where things had become mixed up.

If it ever reached a stage of someone challenging that, I suppose it is possible that the courts might take a different interpretation and then we would have to amend it. I would have thought that it was prudent, as this bill does, to put an amendment in which simply says:

> This act does not apply to documents or information held by an officer of an agency otherwise than in the person's capacity as such an officer.

In other words, if it is a minister holding documents in a personal capacity or, as in the example the leader gave, they were sent to him because he was an official within the Liberal Party, then that would not apply. I would have thought that it would be commonsense to accept this amendment to make it absolutely crystal clear. I do not dispute the fact that the advice is that it is essentially declaratory that that should be the position. The best guess is that it is the position under the current act: let us make it absolutely clear.

The Hon. A.J. REDFORD: Just so I can make myself perfectly clear, that is, I do not think that, to date, any of us in this chamber are agin the principle, which is that personal documents should not be the subject of freedom of information. One could think of all sorts of examples. Another example is that we have all been presidents or secretaries of social clubs or sporting clubs and none of those documents should be the subject of FOI either. I think what we are a little concerned about is the expression of the words.

I am bound by the ultimate decision made by the shadow minister managing the bill, and it may well be that, when one reads this clause in juxtaposition with the objects, it will not cause the sort of problems that I am perhaps a bit sceptical about. I acknowledge that I have just had a discussion with an officer of the Crown and also with parliamentary counsel, but I can assure the honourable member that we are not trying to be difficult; rather, that we achieve the desired outcome and that it is not any broader than that.

The Hon. IAN GILFILLAN: For the sake of the Leader of the Opposition, I just clarify the point that I am not concerned about this clause if it is protective. If its intention is to be protective of information that should not be discov-

ered or accessed, that is a reasonable motive. I cannot help but also consider that it could be used as an evasive tactic, that a particularly sensitive document of which there may be only one copy could be moved to a public servant in another department or agency and thereby it becomes immune from discovery through FOI by virtue of this clause. I respect the opinion of the Hon. Robert Lawson and the Hon. Angus Redford and, if both of them have had discussions with crown law and their fears are allayed, I am not likely to jump up and down. But I indicate that that is what I feel is the potential risk of this clause.

The Hon. P. HOLLOWAY: I will have a last go on this and then we should move on to the vote. It is up to the Hon. Ian Gilfillan to determine which way he wishes to vote on it. The legislation provides that it does not apply to documents or information held by an officer of an agency. If an agency has a document, it is an official record. Documents held by agencies are official records. We are really only talking about officers, so we are talking about the personal records of officers, and it goes on to state 'otherwise than in the person's capacity as such an officer'. As to this idea of records going around agencies, if it is an agency document then it is an official document and properly should be, and would be, subject to FOI application. All that we are seeking to address here are documents or information held by an officer otherwise than in the person's capacity as such an officer.

Amendment carried; clause as amended passed.

New clause 4A.

The Hon. P. HOLLOWAY: I move:

After clause 4—Insert:

Amendment of s. 18—Agencies may refuse to deal with certain applications

4A. Section 18 of the principal act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) An agency may refuse to deal with an application if—

(a) the application is for access to a large number of documents or necessitates a search through a large quantity of information; and

(b) the work involved in dealing with the application would, if carried out, unreasonably divert the agency's resources from their use by the agency in the exercise of its functions (even if the period within which the application must be dealt with were extended under section 14A).;

(b) by striking out from subsection (2) 'substantially and'.

At some stage we are going to have a substantive debate on this clause in relation to fees and charges for FOI applications. This provides that an agency may refuse to deal with an application if it seeks access to a large number of documents or necessitates a search through a large quantity of information and the work involved in dealing with the application would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

We had significant debate at the second reading stage about costs under the FOI Act. The principle of the FOI Act is to make us a more free and open society and to make governments more open and accountable, but there must be some limit on the cost of the structure. FOI has proved its worth in many ways down the years, but there must be some ultimate limit on the cost of FOI applications because, if one has no limit at all, in the extreme case the whole of government could be doing nothing other than processing information. So, to make the FOI Act practical, to make it work, we need to have some sort of limitation to prevent a vexatious or frivolous use of information that would divert massive resources of a department for no apparent benefit.

It is one thing if the government is withholding a known report or document, but it is another thing if a person is on a fishing expedition seeking thousands and thousands of documents that would take an enormous amount of effort to collate for no apparent purpose. In trying to address the issues that were raised in the second reading debate, we have come up with a solution by which we can deal with FOI requests that may be excessive, and essentially that is what this clause is about. It provides agencies with the right to refuse applications if the application is for access to a large number of documents or necessitates a search through a large quantity of information and the work involved in dealing with that application would unreasonably divert the agency's attention. Most members would understand that there must be some limitation on the resources that are devoted to FOI. There cannot be a blank cheque, and this clause seeks to place some reasonable limitation on that.

The Hon. IAN GILFILLAN: In discussion on this amendment it is important that we refer to a later amendment of mine to clause 8, as follows:

(2aa) No fee or charge is payable under this act by a member of parliament in respect of an application under part 3 for access to documents.

I was part of an informal conversation with the minister and the minister's staff earlier in which we explored the possibility of a no-charge situation when reflecting on the potential for members of parliament to mischievously attempt to choke up the procedure with excessive requests for FOI.

I must make the aside here that, in a way, that is a reflection on the integrity of MPs, and it really ought not to stand unless proven by a case that is established to have been the case; and from that point of view it is not fair to legislate on the basis that members of parliament are going to abuse their freedom of information access. In the conversation with the minister and his staff, I assumed that the clauses that are currently before us as the government's amendment may, in some way, make it easier or more comfortable for the government to abolish fees completely.

However, I was informed quite clearly in the last couple of days that that is not the case: that the government had no intention of abolishing fees. It is therefore my intention to oppose these amendments because, if the government still intends to charge and it sticks to its cap of $350 there would not be very much accurate costing of an FOI request before the $350 cap would be met and, quite obviously, these amendments would be totally unnecessary and, in fact, another hindrance to agencies fulfilling their FOI obligations. That is the reason I will be opposing this amendment; although I was part of a conversation with the government in an attempt to get the government to remove any charges or fees applicable to MPs on FOI.

The Hon. R.D. LAWSON: Will the minister indicate the deficiency that the government perceives in the existing section 18, which already provides that an agency may refuse to deal with an application if it appears, etc., to substantially and unreasonably divert the agency's resources from its use by the agency in the exercise of its function—language that is very similar to the language employed in the clause, which is the subject of the current proposed amendment.

The Hon. P. HOLLOWAY: I think that the Hon. Ian Gilfillan mentioned that there had been a number of discussions as to how one gets around this particular issue related to FOI. Everyone agrees that FOI is important. We believe that if the bill is passed it will be the most progressive piece of FOI legislation in the country. It certainly goes a lot further

than FOI action has to date, but I think that, equally, all people would agree that there must be some practical limit in dealing with FOI. As pointed out, this amendment just looked at a number of options in relation to fees and charges. I really do think that it was looked at in that context; so, it is not just this clause: it must be looked at in terms of other clauses relating to fees.

The Hon. R.I. Lucas: What is wrong with the existing section 18?

The Hon. P. HOLLOWAY: As I said, we looked at amending it if other amendments were made to other clauses. It really had to be looked at as part of a package. We have moved the thing, but if no-one likes it let us get on with the debate.

The Hon. A.J. REDFORD: For the benefit of those avid *Hansard* readers I draw their attention and the attention of members to the FOI report that was tabled in October 2000 in which the committee looked at this issue of vexatious applications. We heard quite a lot of evidence from people from the public sector and other sources about this particular issue. In fact, my recollection is that we did not receive any suggestion that there had been any abuse on the part of members of parliament. However, we did receive the following evidence from the Ombudsman:

> I am suggesting that, if we have a situation where some applicants are doubling up their freedom of information applications and we are getting freedom of information applications from different people about the same information and we know that, for all practical purposes, it is going to the same person, that is an abuse of process. There is no provision in the act for the Ombudsman to deal with it in the same way as he can deal with it under the Ombudsman Act where complaints are vexatious or there is an abuse of process.

That comment was made by the Ombudsman and, to be fair, I should draw the attention of members to it. In Ireland and New Zealand specific sections in the legislation deal with applications that are considered vexatious. In its report, the committee said that there was a specific issue in relation to WorkCover. I think that a particular group, the whistle-blowers group, was making life exceedingly difficult for WorkCover. I know that the committee looked at that evidence with some degree of sympathy, and, Mr Chairman, you would well remember that.

Some of the applications we identified included the compilation by agencies of large numbers of documents that are not paid for or viewed by the applicant; similar applications lodged by a particular applicant, which involve considerable agency resources; applicants not being prepared to narrow the nature of the information required; and deliberate attempts by particular interest groups to tie up the resources of an agency by lodging numerous related applications. Indeed, that experience was also shared by the Queensland government. Members of the committee looked at the section and said, 'Look, we believe that the existing section should cover all those.'

It is interesting to note that what the government has chosen to do with this amendment is add; and I think that the net effect or the net difference between the two provisions is that if there are a lot of documents, or a search through a large number of documents, one can seek to avoid the application. I would be very interested to know why the government did not look at simply either the existing section 18 or, alternatively, include a vexatious provision. The issue was clearly identified in the Legislative Review Committee report. The minister has said on numerous occasions that the government has gone through this report with a fine-tooth comb, yet for some extraordinary reason it has come up with this response.

I must say that I am a bit mystified as to why the government has chosen this course when, in fact, the Legislative Review Committee said, 'If this is a problem'—and I would suggest that if it is you would need to justify it—'why do you not bring in a vexatious provision rather than something of this nature?'

The Hon. P. HOLLOWAY: Obviously, no-one likes the amendment; perhaps we could have a vote on it.

The Hon. R.I. LUCAS: As the Hon. Mr Holloway has indicated, it would appear that the amendment is not going to be passed during this debate. It may well be that there is further discussion between the houses in relation to this whole issue of charges, etc. As the Hon. Mr Ian Gilfillan has said, an amendment could be passed later that provides that there is no charge at all for members. Certainly, if there is some argument that clause 18 is deficient in some way, and that this new provision or a redrafted new provision of clause 18(1) would give a greater sense of comfort with a new package of amendments, the opposition, I am sure, would be prepared to have a look at that redrafting.

I can accept the situation if there is a 'no cost' scenario as outlined by the Hon. Ian Gilfillan, but if, for example, I, as the shadow treasurer, were to request every document relating to the 2002-03 budget that exists in all government departments and agencies, such a request would involve hundreds and possibly thousands of documents and would unreasonably divert the resources of public sector agencies. Between the houses, crown law might be able to consider it and provide better advice as to what (if any) deficiency it sees in the existing section 18 which would prevent that sort of a request from proceeding. The redrafted section 18(1) or an alternative drafting might give a greater sense of comfort if there is to be a total package in relation to cost and access.

New clause negatived.

Clause 5 passed.

Clause 6.

The Hon. P. HOLLOWAY: I move:

> Page 7, after line 31—Insert:
>
> (15a) In publishing reasons for a determination, a relevant review authority may comment on any unreasonable, frivolous or vexatious conduct by the applicant or the agency.

This amendment is self-explanatory.

The Hon. R.D. LAWSON: The opposition supports this amendment on the same basis as previously mentioned by the leader, that is, that it is really part of a package, an important part of which is the Hon. Mr Gilfillan's proposal relating to fees. We support this amendment, but between the houses it may be appropriate that this be amended as well depending on the final package.

The Hon. IAN GILFILLAN: I have no objection to the amendment, but as I said earlier I believed it was part of the government's preparation in conversations that I had with the minister where I mistakenly understood the government to be prepared to abolish all fees. Obviously, this amendment will be carried, but I will have less sympathy for it if the government doggedly sticks to charging fees, which I think is repressive, and I think that provision should be abolished. If the government shows goodwill in that respect, the Democrats will more enthusiastically support this amendment.

Amendment carried.

The Hon. R.D. LAWSON: I move:

> Page 8, lines 7 to 11—Leave out subclause (1) and insert:

(1) An agency that is aggrieved by a determination made on a review under division 1 may, by leave of the District Court, appeal against the determination to the District Court on a question of law.

This is the first of a series of amendments relating to the right of appeal to the District Court. Currently, persons dissatisfied with determinations under the Freedom of Information Act—whether that be the agency or the applicant—are entitled to appeal to the District Court on both the merits of the matter and a question of law. However, what the government seeks to do by way of its amendment is to restrict appeals to the District Court to questions of law only. The reason given for this is to reduce opportunities for appeal because the government says that there are already ample opportunities for review, determination and appeal.

We do not believe that the government's proposal will achieve any greater simplicity or reduce the amount of litigation. Paradoxically, the insertion of clauses of this kind actually generates more litigation and certainly more cost. For example, experience in the taxation jurisdiction shows that, where appeals are limited to a question of law only, the first question that always arises on appeal is whether it is a question of law or a question of fact.

This is the sort of issue that lawyers love to debate. An appeal which might be seen to be a fairly simple matter actually turns into two appeals. On the first day of the appeal, a party will say that there is no question of law, that it is a question of an appeal on the facts. So, there will be a protracted debate about whether there is a question of law or a question of fact. The tribunal will inevitably reserve judgment to determine this important question. If the tribunal rules that there is a question of law, obviously the matter proceeds; if the tribunal rules that no question of law can be identified, the matter does not proceed.

The cases on this question are enormous. There are thousands of cases in the law books about this preliminary issue of whether an appellant has identified a question of law or a question of fact. In the taxation jurisdiction, I believe they have now done away with it because it is the most barren controversy which is productive only of additional legal costs, and it also means additional time. The trouble with these issues is that in tax matters it is always the Taxation Commissioner or in the case of the state government it will always be the agency which has the funds and resources to raise and pursue an issue of this kind. This means that it makes it more difficult for a citizen who is dissatisfied with a determination actually to get redress through the courts. So, far from restricting litigation, restricting costs and getting on with the business, when you impose restrictions of this kind you create greater complexity, more cost and more delays.

For that reason, we will oppose the limiting of citizens' rights of appeal simply to questions of law. My amendment does not allow an agency to appeal on anything other than a question of law. One might say that that contradicts the submission I have just made in relation to restrictions on matters of law but, if the government is wedded to the idea that the court should only determine questions of law, let the government live by that stricture and limit government agencies in their appeals to questions of law and allow the citizen to have the right that the citizen already enjoys to go to the District Court on either a question of fact or a question of law.

So, the logic of our position is that we do not believe in restricting citizens' rights and do not support the restriction of citizens' rights. If the government says the rights of government agencies should be restricted to questions of law, so be it, and we are happy to limit government agencies to questions of law.

The Hon. P. HOLLOWAY: The government's proposal is to limit appeals to the District Court only on a question of law. There are already in place three merits review mechanisms for applicants. The first is the internal review by the agency, the second is conducted by the Ombudsman—or, as the case may be, the Police Complaints Authority, that is, an external review—and, finally, the District Court. The introduction of a review on a point of law only to the District Court is a mechanism to streamline the procedure and to bring to a close a very long and drawn-out process. I think we have seen plenty of occasions where it can take a long time to go through what documents are in or out before it goes to internal review, external review and, finally, the court.

The government's clause is not designed to restrict appeal opportunities. There are ample merits appeal mechanisms available to an applicant, and we believe it is fitting that the courts deal with points of law only. I point out that this proposal is also one of the recommendations made by the Legislative Review Committee report. The recommendation was that the Ombudsman undertake all external reviews and that the right of appeal to the District Court be limited to 'errors of law'. I also point out that this proposal brings us into line with other jurisdictions. For example, the commonwealth, Western Australia, Victoria, Queensland and the Northern Territory all have appeal rights to a higher authority on a question of law and not on questions of merit. So, I believe the case for sticking with the original government bill is very strong.

The Hon. IAN GILFILLAN: The Democrats agree with the government and with that revered Legislative Review Committee report, which has almost achieved biblical status. It has been quoted on both sides of the chamber as Holy Writ. The shadow attorney used the phrase 'law or fact' to be determined. The danger is merit. I believe that the argument of merit is difficult for a court to specifically determine and that the Ombudsman, who receives a reasonable number of issues to be determined on merit, is the appropriate body to make that decision. Therefore, I indicate our opposition to this amendment and to the consequential amendments which hang on the same principle.

The committee divided on the amendment:

AYES (10)

Dawkins, J. S. L.	Evans, A.L.
Laidlaw, D. V.	Lawson, R. D. (teller)
Lucas, R. I.	Redford, A. J.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	Stephens, T. J.

NOES (8)

Elliott, M. J.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P. (teller)	Roberts, T. G.
Sneath, R. K.	Zollo, C.

PAIR(S)

Cameron, T. G.	Kanck, S. M.

Majority of 2 for the ayes.

Amendment thus carried.

Progress reported; committee to sit again.

UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT BILL

Adjourned debate on second reading.

(Continued from 20 November. Page 1430.)

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats to support the second reading of this bill. In relation to the overall scheme that will be administered under this legislation, I have to confess to a level of nervousness in terms of whether it will be ultimately done well.

There is no question that there have been significant changes in water accumulation in the South-East, particularly the Upper South-East, for a range of reasons. For example, laser levelling has led to significant run-off, and water that would normally lie in one place has moved to other places. Rising watertables have occurred due to vegetation clearance, which has slowed the downward percolation of water; therefore, the surface accumulation is probably greater than it would otherwise have been. Massive increases in salinity have occurred in some parts of the South-East, and significant accumulation of salt has occurred not only in the Mount Monster area but also in other areas.

So, there are problems that need to be addressed. A very simplistic solution would be to site drains in the middle of the Coorong, and that would be the end of it. I think that some people thought that the original drainage scheme might achieve that; indeed, it might have, but that would have been an environmental disaster in that water would have entered the end of the Coorong in a different pattern from the way that it had done previously.

For the most part, the major source of fresh water for the Coorong used to be from the Murray River, and it used to come from, obviously, the Murray River end. The southern end of the Coorong was hyper saline much of the time but occasionally breakthroughs of water occurred from the South-East. There were flushes of water, but they followed a particular pattern.

Simply putting a set of drains in at the end of the Coorong and letting them run whenever they chose to would not have duplicated the natural patterns of the variation of salinity, particularly at the southern end of the Coorong, and would have spelt the end for the seagrasses that grow there. A very large bird population is dependent upon those grasses, which have a root that the birds feed upon. The Coorong mullet and goodness knows what else could also have been affected.

I am not questioning the need for drainage or, necessarily, the decision to site it at the southern end of the Coorong, although a little more should have been directed out through other drains in the vicinity of Kingston, where a drain exits, and some of the works that have been constructed are not far from that drain. It may be an advantage if the very saline water that is coming from around the Mount Monster area could be run out through the drain near Kingston.

Discussions I have had with the government indicate that the plans have become increasingly sophisticated, and water will not simply run whenever; the system will choose when and where water will run, and it will even try to separate streams of salt water and fresh water. As long as the government is receiving advice from people with the relevant expertise, and the system is properly managed, the Coorong may be assisted rather than threatened. However, I add the qualification that it must be managed properly.

It is no good if everybody is doing their own thing, because the problem, in part, was created in this way—by each person clearing and by each person laying a levelling. So, these problems will not be solved by people doing their own thing either. We can argue (and I am sure we will) about whether or not the government's plan is a good one. However, at the end of the day, there can be only one plan: there cannot be a multitude of plans for fixing up the South-East. Everybody must do what everybody else in the state does: enter into the debate, and win the debate by argument and not by any other means.

Insofar as this legislation concerns setting up a single scheme to handle the water budget of the Upper South-East, I am supportive of the measure and, insofar as it is necessary for the minister to have the powers that are within this act to ensure that that happens, I will support that, too. At this stage, I indicate the Democrats' support for the second reading.

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

CRIMINAL LAW (FORENSIC PROCEDURES)(MISCELLANEOUS) AMENDMENT 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 detailed explanation inserted in *Hansard* without my reading it.

Leave granted.

1. History of the Proposals

In 1992, the Standing Committee of Attorneys-General referred the question of the law dealing with the power of the State to demand forensic samples from those accused or suspected of crime, most notably those samples which would yield DNA evidence, to the Model Criminal Code Officers' Committee (MCCOC). MCCOC is made up of the nominees of Attorneys-General from each Australian jurisdiction. In 1993, the Australian Police Ministers' Council (APMC) considered a report by the National Institute of Forensic Science into the use of DNA technology (The Esteal Report) and resolved to set up a committee, chaired by the Chief Justice of Victoria, to make recommendations to APMC. The reference included the adequacy of existing legislation. MCCOC and the Esteal Committee worked together on the common issues. Both Committees concluded that new legislation was required and that it should be consistent across Australia.

The Model Code Committee prepared a set of Model Provisions in the form of a Bill. The Model Provisions were submitted to the Standing Committee of Attorneys-General (SCAG), which approved them in principle. So did the Esteal Committee. As a result, legislation was passed starting from the 1995 Model in Victoria, the Northern Territory and at the Commonwealth level. South Australia implemented the 1995 recommendations by enacting the *Criminal Law (Forensic Procedures) Act*, 1998. This legislation was, predictably, not consistent. In particular, the Northern Territory and Queensland gave police far wider powers than the Model suggested.

However, as is common in this field of criminal investigation and accompanying law, events unfolded faster than anyone thought possible. The key event was that, at the 1998 Commonwealth election, the Coalition promised the creation of a Commonwealth entity called CrimTrac, which would, among other things, create and maintain a national DNA database or, more accurately, a series of DNA indices. The database provisions contained in the 1995 Model Provisions and, therefore, in the South Australian Act, did not anticipate this event and were, therefore, rudimentary and inadequate to deal with this development.

The October 1998 SCAG meeting decided that MCCOC should prepare a discussion paper because the APMC proposals addressed a number of controversial matters that were not well-supported in consultation on the 1995 Bill. Following consultation with the Police Commissioners Working Party on the DNA database and the office of the Commonwealth Privacy Commissioner, MCCOC prepared a discussion paper, which was approved for release by SCAG in May 1999.

After the receipt of written submissions, SCAG made decisions about key issues addressed by the Model Bill at its July and

November 1999 meetings. The Model Bill was redrafted to reflect those decisions. It was finalised and released publicly in February, 2000. During the preparation of the Bill, MCCOC had detailed discussions with officers from the CrimTrac Project Team, law enforcement agencies and the Federal and NSW Privacy Commissioners' offices to simplify and improve the data-matching rules that are contained in the Model Bill.

In that regard, it may be noted that, since the 2000 Model Provisions have been made available, Victoria has amended its legislation, New South Wales has passed the *Crimes (Forensic Procedures) Act, 2000*, the ACT has passed the *Crimes (Forensic Procedures) Act 2001*, Queensland has enacted the *Police Powers and Responsibilities and Other Acts Amendment Act, 2000* and the Commonwealth has passed the *Crimes Amendment (Forensic Procedures) Act 2001*. The Commonwealth Act is of very particular significance, because CrimTrac is a Commonwealth body governed in its operation by Commonwealth legislation and practice. It may be noted that the legislation in Australia has very substantially followed the Model Provisions except for amendments made to the Queensland legislation. Queensland has given the police far more power than the Model provisions suggest, despite the contrary recommendations of a Queensland Parliamentary Committee advocating the enactment of the Model Provisions.

It is a major premise of Government policy in introducing this Bill that it is not prepared to sacrifice acceptability into the national scheme in general and CrimTrac in particular on the altar of local expediency. While the Government has been and remains open to constructive debate and suggestions about how the Bill may be improved, it will not accept amendments which will place in jeopardy its participation in the national scheme.

2. *The Proposals*

The development of CrimTrac and the legislative requirements associated with it has made it a necessity for South Australia to pass amendments to the *Criminal Law (Forensic Procedures) Act*, 1998 so as to implement detailed proposals that enable the South Australian legislative scheme to complement that which governs the CrimTrac DNA database at the Commonwealth level. If this is not done, criminal investigation in South Australia will suffer from a lack of a modern and important investigatory tool. The Bill also makes considerable amendments to the South Australian legislation proposed by SAPOL and the DPP after the enactment of the 1998 legislation.

The proposed amendments in the Bill are detailed and complex. The Bill is a very substantial revision of the original Act. Substantial work has been done within Government to obtain the best outcome for criminal investigation and civil rights within this State and within the framework required by the Commonwealth for participation in its CrimTrac initiative. This latter point is vitally important. If the South Australian data base provisions and cross matching rules do not complement those in place in CrimTrac and contained in the Commonwealth legislation, there is a clear possibility that South Australia will not be declared a corresponding jurisdiction for the purposes of accessing the national database.

I now turn to the substance of the Bill.

Consent Procedures

During the course of drafting the proposals in relation to volunteers demanded by the cross-matching rules of the data base, it became apparent that the volunteers rules contemplated by the Model Bill were inappropriate when applied to people who undergo forensic examinations as witnesses or victims (the volunteer provisions of the Bill will be detailed below). In these cases, the key consideration is that the person does not undergo a forensic procedure so that he or she provides a sample of him or herself—such as DNA for inclusion on the data base. The purpose of these proceedings is to take from the person subject to the examination of sample of another person entirely—hair, perhaps, or semen—which will serve to help identify the perpetrator of the offence. In such cases, the person the subject of the examination is in effect a part of the crime scene. It is clear that the sorts of protections and safeguards appropriate to those who are volunteering to have their own DNA placed on the data base are inappropriate and, in some cases, positively counterproductive. It was therefore decided to have a separate procedure for them to be known as 'Category 1 (Consent) Procedures'. These procedures are applicable where it is not proposed to put the result of the procedure on the DNA data base. If it is proposed to put the result of the procedure on the DNA data base, the appropriate mechanism is the 'Category 2 (Volunteer) Procedures'.

It so happens that this Part will also solve another problem that came to light during the drafting of the Bill. The police wanted to have clarification of their legal authority to carry out a forensic procedure on a child victim of crime or a victim of crime who is unconscious. In the terms of the Bill, these are 'protected persons'. The forensic examination of a child (or indeed, any person) is not 'medical treatment' and is therefore not covered by the *Consent to Medical Treatment and Palliative Care Act*. The invention of the Category 1 (Consent) Procedure will also, therefore, clarify this area of the law.

The provisions proposed are quite simple and, with one exception, do not require further explanation. That exception concerns complications that may arise where, for example, the victim is not competent to consent to the procedure and hence the consent of the parent or guardian is required. The most obvious example of that situation would be a child who is suspected of having been the victim of child sexual abuse. In that case, the normal thing would be for the parent or guardian to give consent. But it may be the case that it is not practicable for police to get that consent because of the time involved or the unavailability of the parent or guardian may mean that vital evidence is degraded or lost. It may also be the case that the parent or guardian is reasonably suspected of having been involved in the suspected crime or there is a reasonable suspicion that they may be shielding someone else. In such cases, a senior police officer is authorised to authorise the carrying out of the forensic procedure concerned.

As is the case with volunteers, there are provisions which deal with the case where a protected person objects even though the parent or guardian consents or the senior police officer authorises the procedure. The same age limit of 10 years applies. These provision mirror the volunteer provisions and are designed to ensure a correct balance between the needs of criminal investigation and the rights of self-determination and personal autonomy. Put simply, if a victim of a suspected sexual offence, for example, who is 15 years old, does not want to undergo the specific forensic procedure in question, that wish should be respected.

Volunteers

The 1995 Model Provisions did not deal explicitly with 'volunteers'. They dealt specifically with suspects and some serious offenders. The South Australian Act deals in more detail with such consensual takings than did the Model Provisions. In particular, although s. 16 deals with the requirements of informed consent in relation to the situation in which *a suspect* is asked to consent to being tested, section 7(1)(a) (and succeeding sections) deals with the consent of a person who is not a suspect. The principal aim of this part of the legislation was to provide for some minimum standards to be observed in relation to the quite voluntary taking of samples from, for example, *victims or witnesses*. But there is a another category, called for convenience, '*volunteers*', which requires special provision for the purposes of the cross-matching rules. The Bill must for the first time regulate the taking of forensic samples from what the Model Bill called 'volunteers' because there is, on the DNA database, provision for the cross-matching of samples taken from volunteers. This category deals with people who are not suspects, but who voluntarily agree to supply a forensic sample (for example, a DNA sample) usually for the purposes of elimination from an inquiry or inquiries generally, but in any event for placement on the DNA data base, either generally or for a specified purpose. They may or may not be potential suspects. For ease of reference, these procedures will be called 'Category 2 (Volunteers) Procedures'.

There may be general purpose volunteers and limited purpose volunteers. General purpose volunteers are those who agree to have a DNA sample placed on the DNA database for unlimited cross-comparison purposes. For example, a convicted child sex offender may, on release from prison, decide that he would rather have his DNA recorded for elimination purposes so that police do not investigate his whereabouts every time a related offence is recorded in the area in which he lives. Limited purpose volunteers are those who agree to supply a DNA sample for a purpose specified by them. An example may be the elimination of a person from inquiry into a particular crime (such as the mass testing by consent of the population of the small remote NSW town of Wee Waa). The Bill provides that the use that may be made of the volunteered sample should be in accordance with the consent by which it is given.

The Bill provides for the meaning of informed consent for volunteers. Police will be required to read out to the volunteer a written statement, in a form approved by the Attorney-General, which will include an explanation of the forensic procedure sought to be carried out, the fact that there is no obligation to consent, the fact that any DNA results will be placed on a DNA database and the right to impose conditions on the usage of that material. It is im-

portant that members of the public are kept fully informed so that if asked to cooperate with police, consent is real and confidence in using DNA to solve crime is not undermined. There is also be provision for the electronic recording of the informed consent process for volunteers of both kinds. Similar and analogous provisions are set out for the case in which the volunteer is a protected person in which case the consent will be given, if at all, by a parent or guardian.

Where a person is a protected person within the meaning of the Act, the parent or guardian gives informed consent on behalf of the protected person to undergo the forensic procedure concerned. Even with that consent, however, if the protected person objects to the taking of the forensic sample, it cannot be taken. However, the Bill adds that the refusal of the protected person volunteer may be overridden if the protected person is a child under 10. Children of or about that age may well refuse to do anything on principle. Anyone who has tried to get consent from a child to have their inoculations knows that. It is not desirable that a child of, say, seven, who may be the victim of a child sexual abuse offence, should be able to effectively block investigation because the child does not want to be examined and does not understand the significance of what is going on.

Suspects

The current Act contains detailed provisions in relation to the liability of a suspect to undergo a forensic procedure. Logically enough, these now become 'Category 3 (Suspects) Procedures'. It is proposed that this category of procedure undergo the most thorough revision.

As is the case with volunteers, it has been decided that the detailed recitation of the statement that must be read to the suspect in order to gain informed consent should be incorporated into a form to be approved for the purpose by the Attorney-General and, as a result, the Act will now contain a more general statement of the principles of informed consent on which that form will be based. It is proposed that this Part be amended in some detail, and the import of those details will be explained later.

The most thoroughgoing changes in the current regime occur, however, where the suspect does not consent. Under current legislation, police cannot obtain a DNA sample from any non-consenting suspect without prior court authorisation. Under this Bill, there are three major changes proposed:

- First, the range of offences suspected which will give rise to a liability to be DNA tested is proposed to be expanded. The current law limits the offences to indictable offences. It is proposed that the range be increased to include a list of 11 summary offences which are listed in the Schedule to the Bill.
- Second, it will no longer be necessary to obtain a court order or an order from a senior police officer in order for a DNA sample to be taken. It is proposed that it will be possible for the sample to be taken routinely by buccal swab or finger-prick.
- Third, current law requires that, if a DNA sample is to be taken, there must be some evidence that the taking of the DNA sample will yield some evidence relevant to the offence of which the suspect is suspected. In the case of DNA taken by buccal swab or finger-prick that need no longer be the case. The DNA sample can be taken whether it is relevant to or will further the investigation or not.

These are major changes to the legislation dealing with the DNA testing of suspects and reflect the determination of the Government to broaden the use of this effective criminal investigation tool.

Offenders

The current South Australian legislation, in accordance with the 1995 Model Provisions, provides for the taking of forensic samples, particularly DNA samples (but also other samples, for example, finger prints), from persons convicted of serious offences. This is done via ss. 29 and 30 of the Act, which, in relation to DNA, refer to the need for the court to take into account such factors as the seriousness of the charge and the propensity of the person to engage in serious criminal conduct. For DNA purposes, a serious criminal offence is an indictable offence punishable by imprisonment for five years or more: that is, generally speaking, a major indictable offence. A key to the operation of the current provision is that it is prospective from the date of commencement, not retrospective. These powers are retained and, together with new powers, become 'Category 4 (Serious Offenders) Procedures'.

The 2000 Model Provisions proposed that these powers be amplified and extended. The Bill provides that the existing DNA powers can be exercised on an offender *whether that person was convicted of the offence before or after the commencement of the amendments proposed*, provided that the offender is still in detention. That recommendation is taken up by the Bill.

In addition, the Bill will, if enacted, significantly widen the liability of prisoners to compelled DNA testing (i.e. testing without the need for consent or an order). The effect of the Bill will be that any prisoner who has been convicted of an offence, no matter how minor, will be liable to compelled DNA sampling if he or she is sentenced to effective imprisonment or is serving a term of imprisonment. This change fulfils a Labor election policy.

In addition, the Bill provides that any person convicted of a serious offence as defined (that is, an indictable offence or one of the listed summary offences) will be liable to DNA testing.

The Bill also contains provisions about informed consent and a form approved by the Attorney-General, which mirror those provisions contained in other Parts of the Bill dealing with other categories of procedure. If the person concerned does not consent or is a protected person, procedures are proposed dealing with authorisation of the procedure either by a senior police officer or a court depending, in essence, on whether the procedure is intrusive or not.

Retention and Assimilation Orders

The Bill proposes two major improvements to the 2000 Model Provisions—retention orders and assimilation orders.

Retention Orders

Retention orders are a trifle recondite. They deal with the situation in which a person is a protected person, consent has been given by the parent or guardian, the forensic sample has been taken and the parent or guardian then requires the sample to be destroyed. Police may have a reasonable suspicion that the request for the sample to be destroyed is a case in which the parent or guardian is reasonably suspected of having been involved in the suspected crime or there is a reasonable suspicion that they may be shielding someone else. In such cases, a magistrate is authorised to authorise the retention of the sample and its results despite the destruction request by the parent or guardian. The usual procedural safeguards are proposed.

Assimilation Orders

It is possible for a volunteer to become a suspect and it would not be sensible to require police to make another application to obtain the same forensic data. It is therefore sensible to have a provision that allows the straightforward conversion of material obtained on volunteer status to be converted into material obtained on suspect status. The Bill therefore provides that, where a magistrate is satisfied that there are reasonable grounds for suspecting that the volunteer has committed a criminal offence and there are reasonable grounds for suspecting that the forensic material obtained from the volunteer as a volunteer will be of value to the investigation of that suspected offence, the magistrate may make an order allowing the conversion and use of the sample on a suspect basis. There are the usual procedural provisions dealing with the right to be heard and represented on the application and the ability of police to make the application by fax or telephone.

Destruction

The Model Provisions and the South Australian Act contain a number of important provisions which require the destruction of forensic material if, in general terms, the legal authorisation for retention expires or concludes. This is an important protection for the innocent and for the public. It has not been and is not the intention of the legislation to build a database of identifiable DNA profiles of all or randomly selected members of the public. After the first legislation was passed, however, MCCOC was advised that the destruction requirement posed extreme difficulties from a scientific point of view because they referred to destruction of the sample taken. The problem is that, once the sample has been taken, stored and subjected to the various processes of analysis in a laboratory, it is very difficult indeed to track down all traces of the sample and destroy them all.

The key to destruction from a protection of rights point of view is the identifiability of the sample and the resulting analysis. The Bill therefore provides that destruction of the sample requirement is satisfied if all means of identifying the forensic sample with the person from whom it is taken or to whom it relates are destroyed.

The Databases and Permissible Matching

It is important that the legislation accurately describes and defines the DNA databases and the ways in which that information may be used. The various categories of information that may be held in DNA databases—that is, the definition of the DNA database system—are as follows:

a crime scene index;
a missing persons index;

an unknown deceased persons index;
a serious offenders index;
a volunteers (unlimited purposes) index;
a volunteers (limited purposes) index;
a suspects index; and
a statistical index.

In addition, there is provision for the creation of another index or other indices by regulation. Each of these categories requires appropriate definition. For example, the volunteers indices is defined by reference back to the statutory provisions regulating the taking of samples from the volunteers described above.

It is necessary to provide for the uses to which the indices may be put. This is not a simple thing to do. Both the Model Provisions and the Commonwealth and NSW legislation have chosen to do it by a table. That table is to be found in the Bill. It conforms, with one very minor exception, exactly to the same table in the Commonwealth legislation. That exception is as follows. The Bill provides that DNA from unknown deceased persons may be matched against DNA from unknown deceased persons. This seeming oddity is designed to cater for the situation in which investigating authorities want to match DNA from incomplete body parts to see whether or not they are from the same deceased person.

It is also necessary to make comprehensive provision for the protection of the integrity of the databases. To this end, it is necessary to enact a series of criminal offences, punishable by a maximum of $10 000 or two years imprisonment for (shortly described):

- storing identifying DNA information obtained under the Act on a data base other than the data base set up by the Act or a corresponding law or doing so temporarily for the purpose of administering the data base;
- supplying a forensic sample for the purpose of storing a DNA profile on the data base or storing a DNA profile on the data base where those actions are not authorised by the Act;
- not ensuring the destruction of identifying information in the DNA database system where the Act requires it to be destroyed;
- accessing information stored on the DNA database otherwise than in accordance with rules authorising access;
- matching information stored in the various indices within the DNA database or accessing that information otherwise than in accordance with the matching rules or access rules; and
- disclosing information stored on the DNA database otherwise than in accordance with authorised disclosure.

Hair Samples

Section 13 of the Act prevents a person taking a hair sample from removing the root of the hair without the consent of the subject. This provision was in accordance with the 1995 MCCOC Model Provisions. Despite the fact that the Model Provisions and the South Australian legislation were the subject of widespread consultation, including with forensic laboratories, such as the National Institute of Forensic Science, it was only after the South Australian Act was passed in 1998 that strong submissions were received to the effect that the taking and examination of hair roots were essential for hair comparison purposes.

Accordingly, the 2000 Model Provisions permit the taking of hair roots. However, it is submitted that they go too far. DNA samples can be taken from hair roots, which are a non-intrusive procedure. However, taking DNA from hair roots is an undignified and painful way of gaining the sample, and, moreover, it does not yield the same quality of sample that is taken by mouth swab. It is a painful and undignified way of getting a possible DNA sample which will not provide a sufficient result in 5%-10% of cases and there are other and better ways of achieving the same end. Therefore, the Bill provides that hair roots can be taken without the consent of the suspect or offender, but only for the purposes of hair comparison tests. Of course, if the person consents to the DNA sample being taken in that way, the hair root sample can be taken.

Amendments Arising From The Operation of the Act

Police and the DPP made submissions for detailed changes of the legislation after some experience in the operation of the Act. Some of these suggestions are proposed to be enacted in the Bill.

- Where an interim order is made by telephone, the Act requires that a copy of the record of the order must be given to the respondent. The Act does not say when. It has been suggested that it could be taken to mean that the copy of the order must be given before the test is carried out. That would be very inconvenient and is not what was intended. It was intended that the respondent get a copy of the order so that he or she will have notice of what was done for the purpose of challenge later in the court if he or she so desires. The Bill proposes to make that clear.
- It was noted that the Youth Court is not authorised under the Act to make final orders. There is no reason why that should not be so, if the authority of the Court is restricted to the making of final orders where the suspect is a child.
- The police have noted that an application for a final order can be made only by (a) a police officer in charge of a police station; (b) the investigating police officer or (c) the DPP. The police want police prosecutors to be able to do it 'for reasons of expediency and efficient work practice'. The list was originally constructed in that way because it was thought that these would be the people who would be likely to be able to depose and give evidence, if necessary, as to the states of belief that are required to be shown in order for orders to be made. This is, therefore, an operational matter. If experience has shown that police prosecutors can do the job, there is no reason why the appropriate amendment should not be made.
- It was also noted that the data base provisions in s 49 of the current South Australian legislation refer only to the offence in relation to which the forensic procedure was carried out and therefore leave open the interpretation that lesser included offences or lesser offences to which the offender later pleads or is found guilty would not be included. The matter is arguable, but it should not be left doubtful and so the amendments to the data base provisions of the Act make it clear beyond argument that such offences are included.

Conclusion

This Bill represents a major step forward in the legislative structure dealing with the ability of police to use forensic procedures and, in particular, DNA evidence, as a tool in criminal investigation. The ability to link up with the Commonwealth initiative, CrimTrac, is essential. The development of national data bases, especially DNA data bases, represents major progress in the fight against crime, particularly transborder crime. The Bill is not simple—but it is submitted that the issues are complex. Any legislation that attempts properly to balance the needs and requirements of efficient criminal investigation with the rights and liberties of the subject will not and should not be simple. A great deal of work has gone into these proposals, both in this State and on the national scene. In addition, the Bill proposes to fulfil election promises made by the Government.

I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

This clause amends the definition of "intrusive forensic procedure" so that buccal swabs will no longer fall within that definition. It also inserts a definition of "serious offence" (which is a concept that is particularly relevant to the taking of DNA samples from suspects and convicted persons—see clauses 11 and 21). In addition, the clause makes various consequential amendments to other definitions set out in section 3 of the principal Act and provides that, for the purposes of the Act, forensic material is to be taken to have been destroyed if it is no longer possible to identify the person from whom the material was taken or to whom it relates.

Clause 4: Amendment of s. 5—Non-application of Act to certain procedures

This clause amends section 5 to clarify the exemption relating to samples taken under other laws for the purpose of determining the concentration of alcohol, or a drug, in a person's blood.

Clause 5: Amendment of s. 6—Application of this Act

This clause is consequential to new Parts 2A and 2B.

Clause 6: Repeal of s. 7

This clause repeals section 7 consequentially to other changes in the measure.

Clause 7: Repeal of ss. 8 and 9

This clause repeals sections 8 and 9 (which are general provisions on the manner of consenting to a forensic procedure and the ability to withdraw consent) because—

- the manner of giving consent is now to be specified separately for each category of forensic procedure;
- the issue of withdrawal of consent is now proposed to be dealt with in Part 6.

Clause 8: Substitution of s. 13

This clause substitutes a new section 13 in the principal Act requiring specific consent if hair is to be used for obtaining a DNA profile of a person the subject of a forensic procedure.

Clause 9: Insertion of Parts 2A and 2B

This clause inserts new Parts 2A and 2B in the principal Act dealing with category 1 (consent) procedures and category 2 (volunteers) procedures.

The Parts identify preconditions for treating a forensic procedure as category 1 or 2 (clauses 13A(2) and 13E(2), respectively). In both cases, the person who is to be the subject of the procedure must not be under suspicion (the only way in which a forensic procedure may be authorised on a person under suspicion is under Part 3 of the measure). If no DNA profile of that person is to be placed on the DNA database system, then the procedure may be authorised as a category 1 procedure. If, however, a DNA profile of the person is to be stored on the DNA database system, then it must be authorised as a category 2 procedure.

Each Part then sets out the requirements for authorising the relevant procedure. Because the carrying out of a category 2 (volunteers) procedure on a person will result in the person's DNA profile being stored on the DNA database system, Part 2B requires what is referred to in the measure as an "informed consent".

In addition, both Parts provide that where the procedure involves (in the case of a category 1 procedure) a person who is not competent to consent to the procedure, or (in the case of a category 2 procedure) a protected person, the procedure must not be commenced and, if commenced, must not be continued if the person objects to or resists the procedure.

Generally these Parts require consent for a forensic procedure to be carried out. The only exception to this is where—

- the procedure is to be carried out on a person who is under 16 years of age or is otherwise incapable of giving consent to the procedure; and
- it is impracticable or inappropriate to obtain consent to the procedure from a person who might consent on the person's behalf because of the difficulty of locating or contacting that person or because that person (or a person related to or associated with him or her) is under suspicion in relation to a criminal offence; and
- the carrying out of the procedure is justified in the circumstances of the case.

In this circumstance the procedure can be authorised by order of a magistrate (although it may be noted that, being an authorisation under Part 1, no DNA profile may be stored on the database in this case).

Clause 10: Substitution of heading

This clause is consequential to the introduction of different classifications for forensic procedures under the principal Act.

Clause 11: Substitution of Divisions 1 and 2

This clause substitutes new Divisions 1 and 2 in Part 3 to ensure that the Part is worded consistently with new Parts 2A and 2B and to allow DNA testing (by buccal swab or fingerprick) of persons suspected of committing a "serious offence", without the need for consent or an order.

Clause 12: Amendment of heading

This clause is consequential to the introduction of different classifications for forensic procedures under the principal Act.

Clause 13: Amendment of s. 17—Classes of orders

This clause is consequential to the introduction of different classifications for forensic procedures under the principal Act.

Clause 14: Amendment of s. 18—Order may be made by appropriate authority

Paragraphs *(a)* and *(c)* of this clause are consequential to the introduction of different classifications for forensic procedures under the principal Act. Paragraph *(b)* gives the Youth Court power to make a final order where the respondent is a child.

Clause 15: Amendment of s. 19—Application for order authorising forensic procedure under this Part

Paragraph *(a)* of this clause is consequential to the introduction of different classifications for forensic procedures under the principal Act. Paragraph *(b)* gives a police prosecutor power to apply for an order under the Part.

Clause 16: Amendment of s. 21—Representation

This clause amends the requirements relating to who may act as an appropriate representative for a protected person in proceedings for an order under the Part. The amendment would mean that a person described in paragraph *(b)* could only act as an appropriate representative if there were no available person of a type described in paragraph *(a)*.

Clause 17: Amendment of s. 23—Making of interim order

Paragraph *(a)* of this clause is consequential to the introduction of different classifications for forensic procedures under the principal Act.

Paragraph *(b)* is consequential to the substitution of section 13 (which allows a DNA profile to be obtained from a hair sample if specifically requested by the person) and to the amendment to the definition of "intrusive forensic procedure" that will result in buccal swabs being categorised as non-intrusive procedures. These two changes mean that DNA profiles will be able to be obtained from non-intrusive procedures, and paragraph *(b)* ensures that the current situation (whereby a procedure resulting in a DNA profile being obtained may only be ordered if the suspected offence is an indictable offence) will continue.

Paragraph *(c)* is consequential to proposed new Division 8 (see clause 21).

Clause 18: Amendment of s. 24—Respondent to be present at hearing of application

This clause is consequential to the inclusion of the Youth Court under clause 14.

Clause 19: Amendment of s. 26—Making of final order for carrying out forensic procedure

Paragraphs *(a)* and *(b)* of this clause are consequential to the introduction of different classifications for forensic procedures under the principal Act.

Paragraph *(c)* is consequential to the substitution of section 13 (which allows a DNA profile to be obtained from a hair sample if specifically requested by the person) and to the amendment to the definition of "intrusive forensic procedure" that will result in buccal swabs being categorised as non-intrusive procedures. This is discussed above in relation to clause 17 of the measure.

Clause 20: Amendment of s. 28—Action to be taken on making order

This clause proposes minor amendments to ensure the wording of section 28 of the principal Act is consistent with that used throughout Part 3 and to clarify when a copy of the record of an order needs to be given to the respondent.

Clause 21: Substitution of Divisions 8 and 9

This clause substitutes a new Division 8 in Part 3 of the principal Act (providing for interim orders to automatically become final orders where a person has become a person to whom Part 3A applies) and inserts new Part 3A dealing with category 4 (offenders) procedures.

New Part 3A, like the Parts dealing with other categories of procedures, identifies preconditions for treating a forensic procedure as a category 4 (offenders) procedure. The specified preconditions are as follows:

- That the person who is to be the subject of the procedure is not under suspicion;
- That the person is a "person to whom the Part applies". This is defined in proposed section 30(3) as being a person who is, after the commencement of the provision—
  - serving a term of imprisonment or detention in relation to an offence (whether the offence occurred before or after the commencement of the provision); or
  - detained as a result of being declared liable to supervision by a court dealing with a charge of an offence (whether the offence occurred before or after the commencement of the provision); or
  - convicted of a serious offence or declared liable to supervision by a court dealing with a charge of a serious offence;
- That any DNA profile of the person derived from forensic material obtained by carrying out the procedure is to be stored on the offenders index of the DNA database system. This requirement means that, if the intention was to store a DNA profile of the person on one of the volunteers indexes of the database, the procedure could not be authorised under this Part but would have to be authorised under proposed Part 2B.

The Part then sets out the requirements for authorising category 4 (offenders) procedures. In general, such procedures may be authorised by informed consent or may be authorised by order of an appropriate authority. In addition, the Part provides that, if the person in question is serving a term of imprisonment or detention or has been declared liable to supervision and is being detained, then the person may be fingerprinted or a DNA sample obtained (by buccal swab or finger-prick) without obtaining the person's consent or an order.

Clause 22: Repeal of s. 32

This clause proposes the repeal of section 32 of the principal Act which limits the application of Part 4. Part 4 is now to apply to category 2, 3 and 4 procedures except where otherwise specifically provided.

Clause 23: Insertion of Division

This clause inserts a new Division in Part 4 dealing with obstruction of a category 3 or 4 procedure that has been authorised otherwise than by consent under the Act. This issue is currently dealt with in Part 3 of the principal Act but structural changes to the Act resulting from the measure mean the issue is now more appropriately dealt with in Part 4.

Clause 24: Substitution of ss. 35 and 36

This clause repeals sections 35 and 36 and proposes to replace them with a new section 35. The proposed new section covers the matters currently dealt with by sections 35 and 36 but makes consequential changes to the wording of the provisions.

Clause 25: Amendment of s. 37—Right to have witness present

This clause clarifies who may be an appropriate representative for the purposes of section 37(2).

Clause 26: Amendment of s. 38—Audiovisual record to be made

This clause—

- changes references to "video" records to "audiovisual" records (to allow for digital recording methods); and
- changes the reference to "the investigating police officer" to the "Commissioner of Police" (because this provision will now apply to persons who are not "suspects" and, in such a case, there will not be an investigating police officer).

Clause 27: Insertion of Division

This clause moves the exemption of liability provision (currently section 44 of the Act) consequentially to the introduction of Part 4A.

Clause 28: Substitution of heading

This clause inserts a new Part heading into the principal Act. Part 4 currently deals with the manner in which forensic procedures are to be carried out and the manner in which forensic material obtained as a result of such procedures is to be dealt with. These topics are now proposed to be dealt with in two separate Parts (the latter becoming Part 4A).

Clause 29: Amendment of s. 39—Person to be given sample of material for analysis

This clause—

- removes references to "the investigating police officer" (because this provision will now apply to persons who are not "suspects" and, in such a case, there will not be an investigating police officer);
- changes subsection (3) consistently with the new definition of "forensic procedure".

Clause 30: Amendment of s. 40—Access to results of analysis

Clause 31: Amendment of s. 41—Access to photographs

These clauses change references to "the investigating police officer" to the "Commissioner of Police" (because these provisions will now apply to persons who are not "suspects" and, in such a case, there will not be an investigating police officer).

Clause 32: Insertion of heading

This clause is consequential to the restructuring of Part 4 into two separate Parts.

Clause 33: Amendment of s. 42—Analysis of certain material

Paragraph *(a)* of this clause is consequential to proposed Division 8 of Part 3 (see clause 21). Paragraph *(b)* deals with analysis of material obtained as a result of category 4 (offenders) procedures. Currently, under section 29(2) of the principal Act, these types of procedures cannot be carried out until the time for appeal has expired. Under the proposed changes, the procedure can be carried out, but the material obtained cannot be analysed until such time has expired.

Clause 34: Substitution of Divisions

This clause repeals the current sections 43 and 44 of the principal Act (the subject matter of which are now covered elsewhere in the measure) and inserts new provisions as follows:

- Division 3
  - proposed section 43 deals with "retention orders", which authorise the retention of material obtained from a category 2 (volunteers) procedures after destruction has been requested in certain circumstances;
  - proposed section 44 deals with "assimilation orders" which authorise forensic material obtained from a category 2 (volunteers) procedure to be treated as if it were material obtained from a category 3 (suspects) procedure in certain circumstances.
- Division 4
  - This Division specifies the destruction requirements for forensic material obtained as a result of category 2 (volunteers) procedures, category 3 (suspects) procedures and category 4 (offenders) procedures.

Clause 35: Amendment of s. 45—Effect of non-compliance on admissibility of evidence

This clause proposes amendments to clarify the meaning of section 45(1).

Clause 36: Amendment of s. 46—Admissibility of evidence of denial of consent, obstruction, etc.

This clause makes minor amendments to ensure section 46 is worded consistently with other provisions.

Clause 37: Insertion of Part

This clause inserts new Part 5A dealing with the DNA database system. The Part—

- specifies the information that can be stored on each index of the database;
- authorises the exchange of information with other jurisdictions (where there are corresponding laws);
- creates offences relating to the database;
- provides for the removal of information from the database where appropriate; and
- regulates access to and use of the database.

Clause 38: Insertion of s. 46F—Withdrawal of authority to carry out forensic procedure where that authority is based on consent

This clause provides for the withdrawal of consent to a forensic procedure (currently dealt with in section 9 of the principal Act).

Clause 39: Amendment of s. 47—Confidentiality

This clause makes a couple of minor amendments (by way of clarification) to the current confidentiality provision in the Act and adds confidentiality requirements relating to the DNA database system.

Clause 40: Amendment of s. 48—Restriction on publication

This clause is consequential to other changes to the principal Act.

Clause 41: Substitution of ss. 49 and 50

This clause repeals the current database provisions and substitutes new provisions as follows:

- Proposed new clause 49 provides for forensic material lawfully obtained in other jurisdictions within Australia to be retained and used here even if the material was obtained in circumstances in which this measure would not authorise the material to be obtained, or in accordance with less stringent requirements than are provided for by this measure.
- Proposed new clause 50 ensures that the *State Records Act 1997* does not apply to forensic material or the DNA database system.

Clause 42: Substitution of Schedules 1 and 2

This clause repeals Schedules 1 and 2, which are no longer necessary and replaces them with a new Schedule relating to the definition of "serious offence".

Clause 43: Transitional provision

This clause contains transitional provisions ensuring that—

- the amendments apply to forensic procedures carried out after commencement of the measure; and
- that DNA profiles stored on the current database can be transferred to the DNA database system established under new Part 5A.

SCHEDULE

Schedule to be Inserted in the Principal Act

The Schedule lists summary offences that are to be included in the definition of "serious offence".

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

ADJOURNMENT

At 5.05 p.m the council adjourned until Tuesday 26 November at 2.15 p.m.