# LEGISLATIVE COUNCIL

**Monday 2 December 2002**

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

## OMBUDSMAN'S REPORT

**The PRESIDENT:** I lay on the table the report of the Ombudsman 2001-02.

## PAPERS TABLED

The following papers were laid on the table:

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

Regulations under the following Acts—
- Legal Practitioners Act 1981—Fees
- Liquor Licensing Act 1997—
  - Dry Areas—Glenelg, Brighton, Seacliff
  - Oakbank School Exemption
- Trade Measurement Act 1993—Temperature Compensation
- Wrongs Act 1936—Personal Injury Liability

Authorised Betting Operations Act Review

District Council By-laws—
- Kingston—
  - No. 1—Permits and Penalties
  - No. 2—Moveable Signs
  - No. 3—Local Government Land
  - No. 4—Roads
  - No. 5—Dogs

By the Minister for Correctional Services (Hon. T.G. Roberts)—

Correctional Services Advisory Council—Report, 2001-02.

## QUESTIONS ON NOTICE

**The PRESIDENT:** I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos: 33, 39, 41 and 42.

### ALCOHOL INTERLOCK SCHEME

33. **The Hon. T.G. CAMERON:**

1. Since the introduction of the alcohol ignition interlocks for people caught over the limit, how many people have taken part in the scheme?

2. How many of these drivers have re-offended by drink driving?

3. Is the government considering a review of the alcohol ignition interlock scheme?

**The Hon. T.G. ROBERTS:** The Minister for Transport has provided the following information:

1. In the period 16 October 2001 to 7 August 2002, 57 drivers have taken part in the Alcohol Interlock Scheme—43 drivers currently have an interlock fitted to their vehicle and 14 drivers have completed their interlock period.

2. There is no record of any of the 57 drivers having been convicted of a further drink-drive offence.

3. As the scheme has only been operating for a relatively short period, there are no immediate plans to review its operation at this time.

### MOTOR VEHICLES, FATAL CRASHES

39. **The Hon. T.G. CAMERON:**

1. Could the minister please provide statistics for the year ended 30 June 2002 as to—

(a) The total number of fatal and serious injury crashes in metropolitan Adelaide;

(b) The total number of these that involved a driver aged between 16 and 25 where that driver was found at fault;

(c) How many crashes that involved a driver aged between 16 and 25 where that driver was found at fault involved—

(i) excessive speed;
(ii) criminal activity;
(iii) alcohol and/or other drugs;
(iv) an unlicensed driver;
(v) an unregistered vehicle; and
(vi) an unemployed driver?

2. Could the minister please provide statistics for the year ended 30 June 2002 as to—

(a) Those crashes which involved excessive speed and none of the other factors;

(b) Those crashes which involved excessive speed and one of the other factors;

(c) Those crashes which involved excessive speed and two or more of the other factors; and

(d) Those crashes which did not involve excessive speed, but did involve one or more of the other factors.

3. Could the minister please provide the official definition of 'speeding' or 'excessive speed used in the answers to the above questions?

**The Hon. T.G. ROBERTS:** The Minister for Transport has provided the following information:

Complete crash statistics are available at this time only for the 2001 calendar year, hence the information that follows is provided on this basis:

The Transport SA road crash register does not record whether drivers involved in crashes are:

1. involved in criminal activity,
2. driving an unregistered vehicle, or
3. unemployed.

This is due to the fact that these factors are not determined at the time road crashes are reported to SA Police.

When a road crash is reported, only a single 'apparent error', such as 'excessive speed', is attributed to the crash by the involved driver. The reporting of some 'apparent error' factors has been found to be highly subjective. For example, the error of 'inattention' is attributed to 43 per cent of all road crashes. This may be a reasonable cause, but it is likely also that people reporting a road crash would not incriminate themselves, and may use this factor as a reason for their error.

It is likely that a police officer attending a road crash would record a more accurate opinion of the 'apparent error' at the scene, though it may still be subjective. In instances where the police major crash investigation unit attends a crash, it is possible that the subsequent investigation may reveal a different causation factor. In these instances, the information is used to periodically update the Transport SA Road Crash Register.

(a) During 2001 the total numbers of reported fatal and serious injury road crashes in metropolitan Adelaide were 64 fatal and 632 serious injury crashes.

(b) During 2001 the total numbers of these that involved a driver aged between 16 and 25, where the driver was found at fault, were 21 fatal and 279 serious injury crashes.

(c) (i) 2 fatal and 12 serious injury crashes.
(ii) not recorded on crash report.
(iii) 1 fatal and 17 serious injury.
(iv) 0 fatal and 1 serious injury.
(v) not recorded on crash report.
(vi) not recorded on crash report.

2. It is not possible to report those crashes where the driver at fault was involved in excessive speed and a combination of the other factors, as these details are not recorded in the Transport SA road crash register.

3. There is no official definition of 'speeding' and 'excessive speeding' and the terms are not included in the 'Australian Standard AS 1348-2002 Road Traffic Engineering—Glossary of Terms'.

The two terms are often used interchangeably by the police to describe the cause of crashes when they are completing road crash reports. The two terms are used to describe:

(a) Speed that is in excess of the speed limit,

(b) Speed that is less than the speed limit but excessive for the prevailing conditions—and a crash results.

### CLUBS AND NOT-FOR-PROFIT ENTITIES

41. **The Hon. T.G. CAMERON:**

1. How many clubs and non-for-profit entities will be categorised under the government's proposed marginal tax brackets for the following levels of annual net gaming revenue, based on the government's figures—

(a) $0—$75 000;
(b) $75 001—$399 000
(c) $399 001—$945 000
(d) $945 001—$1 500 000
(e) $1 500 001—$2 500 000
(f) $2 500 001 and above?

2. How many hotels will be categorised under the government's proposed marginal tax brackets for the following levels of annual net gaming revenue, based on the government's figures—

(a) $0—$75 000;
(b) $75 001—$399 000
(c) $399 001—$945 000
(d) $945 001—$1 500 000
(e) $1 500 001—$2 500 000
(f) $2 500 001 and above?

**The Hon. P. HOLLOWAY:** The Treasurer has provided the following information:

1. Clubs and Not for Profit Entities—estimated 2002-03 data

| Annual Net Gambling Revenue | Number of venues |
|---|---|
| $0 to $75 000 | 23 |
| $75 001 to $399 000 | 34 |
| $399 001 to $945 000 | 19 |
| $945 001 to $1 500 000 | 7 |
| $1 500 001 to $2 500 000 | 14 |
| $2 500 001 to 3 500 000 | 1 |
| $3 500 001 and above | 0 |

2. Hotels—estimated 2002-03 data

| Annual Net Gambling Revenue | Number of venues |
|---|---|
| $0 to $75 000 | 62 |
| $75 001 to $399 000 | 155 |
| $399 001 to $945 000 | 73 |
| $945 001 to $1 500 000 | 44 |
| $1 500 001 to $2 500 000 | 71 |
| $2 500 001 to 3 500 000 | 48 |
| $3 500 001 and above | 42 |

Note that the answer differs slightly from the question to be asked in that information has been included for venues in the range $2 500 001 to $3 500 000 and $3 500 001 and above, rather than simply for venues $2 500 001 and above. This reflects the revised tax structure announced by the government on Tuesday 6 August 2002, which introduced an additional threshold above $3 500 000 NGR.

### ROYAL ADELAIDE HOSPITAL, PRE-OPERATIVE ASSESSMENT FORM

42. **The Hon. SANDRA KANCK:** In relation to the Royal Adelaide Hospital pre-operative assessment form (code MR 48.3) and the question which asks 'Do you have any reason to believe that you have been exposed to the AIDS virus?':

1. Why has it been deemed necessary to single out just one blood borne disease?

2. Is this information used more widely as a basis for statistical analysis by the Health Commission?

3. Does the Minister for Health consider that the other more common, blood borne diseases, such as hepatitis B, should be listed?

4. Is this question, in isolation from questions about any other blood borne disease, routinely asked on admission to other South Australian hospitals?

**The Hon. T.G. ROBERTS:** The Minister for Health has advised:

1. The form in question, the patient questionnaire, was developed 15 years ago when the day surgery unit opened at the Royal Adelaide Hospital (RAH). The original questions asked on the form were approved by the medical records committee at the time and have remained largely unchanged.

One of over thirty questions contained in the questionnaire asks '…Do you have any reason to believe that you have been exposed to the AIDS virus?' HIV/AIDS remains a significant risk to public health.

Another question asks '… Have you ever had jaundice, hepatitis or liver disease? Please specify.' HIV/AIDS is therefore not the only blood borne disease that patients are asked about prior to surgery at the RAH.

2. The form is for the internal use of clinicians at the RAH who need to make a medical risk assessment of the patient before surgery. The information obtained is collected on a confidential basis and is not used for statistical analysis by the Department of Human Services.

3. As in question 1, other blood borne diseases are listed on the form.

4. Other public hospitals would normally ask a patient if they might have been exposed to any blood-borne disease, such as HIV, before surgery. Medical officers taking a patient's comprehensive medical history on admission to hospital also ask questions about a patient's general health and past medical history.

Pre-operative questionnaires or consent forms used by day surgery units at the following hospitals all contain separate questions about HIV and/or AIDS and hepatitis:

- Flinders Medical Centre
- Modbury Public Hospital
- Mount Gambier Health Service
- Modbury Public Hospital
- North Western Adelaide Health Service (Lyell McEwin Health Service and The Queen Elizabeth Hospital)
- Royal Adelaide Hospital.

### SELECT COMMITTEE ON RETAIL TRADING HOURS

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

That standing orders be so far suspended as to enable me to move for the substitution by motion of a member on the committee.

Motion carried.

**The Hon. T.G. ROBERTS:** I move:

That the Hon. Ian Gilfillan be substituted in the place of the Hon. M. J. Elliott who has resigned from the committee.

Motion carried.

## QUESTION TIME

### MAGISTRATES

**The Hon. R.D. LAWSON:** I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Attorney-General, a question about magistrates.

Leave granted.

**The Hon. R.D. LAWSON:** South Australia has 35 magistrates and a Chief Magistrate who sit in the metropolitan area and also in regional South Australia. The former chief magistrate Mr Alan Moss was appointed earlier this year to preside at the Youth Court, and Mr Kelvyn Prescott was appointed Chief Magistrate. Mr Robert Field has been transferred from Adelaide to become the resident magistrate in Port Augusta, pursuant to a government commitment. As a result of those moves, there has been an extension in the waiting list in the magistrates courts, and the existing magistrates are having difficulty in coping with the increasing lists. My questions to the Attorney are:

1. Has the shortage of magistrates been reported to him?

2. What action does he propose taking to remedy the situation, and when will some action occur?

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

## BUDGET CUTS

**The Hon. CAROLINE SCHAEFER:** I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about budgets.

Leave granted.

**The Hon. CAROLINE SCHAEFER:** On Friday, the minister announced a cut of 40 jobs which he said were all TVSPs and approximately $4 million from the PIRSA-SARDI budget. He also refused to rule out a further cut in the budget because, in his words, 'of the drought funding that has been provided'. As we know the government offered a $5 million package for drought relief some time ago. Is this a pea and thimble trick? Will PIRSA and SARDI pay for the $5 million drought relief package? If not, why did he say that it was because of that drought package that he would need to make further budgetary cuts? What I am really asking is: is the $5 million a drought relief package or is it simply some PIRSA-SARDI budget that he has realigned and got quite a lot of publicity for doing so?

**The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries):** It is not a pea and thimble trick. It is one that the opposition is trying to pull. I did not announce 40 cuts on Friday. It was the Hon. Caroline Schaefer who was putting out press releases throughout this state re-announcing the decision that this government had made in the budget. At the time of the budget the Treasurer announced that a number of targeted voluntary superannuation packages would be offered throughout the state Public Service. Some 600 was the figure the Treasurer used in his budget speech. As I have indicated on a number of occasions, the share that Primary Industries and Resources SA will have of those 600 cuts is 40. That has been made plain on a number of occasions. That decision was made in the budget in July. The drought package has nothing whatsoever to do with that budget decision.

As a result of the drought package, an additional $5 million will be made available. I had better be careful with my words here, as the entire $5 million may not go through the PIRSA budget. There are some components of that, such as the $50 000 for roads in the north-east pastoral districts, that I am not quite sure whether it will go through PIRSA, Transport SA or some other department. However, the great bulk of the $5 million will go through the PIRSA budget, and it will be additional money. I do not really know where this story has originated, but it really is old news.

As part of its budget measures which were necessary to try to make the budget sustainable, given the quite unsustainable state in which it came to us from the previous government, the government announced that there would be some tough measures to bring the budget under control. The 600 jobs through targeted voluntary separation packages was announced at the time of the budget. There is nothing new in that. Because of the difficulties we now face with the drought, which will eventually impact upon the entire South Australian community, the government has provided additional funds. So the appropriation of the department has gone up to meet that additional expenditure.

**The Hon. CAROLINE SCHAEFER:** As a supplementary question, why did the minister on ABC Radio on Friday refuse to rule out that there would be further budgetary cuts due to the drought funding?

**The Hon. P. HOLLOWAY:** I am not sure what the interview was. When I was in the Riverland for the community cabinet meeting early last week, I did a long interview with Fleur Bainger, I think on Monday, and she asked me a number of questions in relation to the overall budget situation of the department. I certainly do not recall making the statement in the context to which the honourable member refers.

I also did another interview on Friday, up in your neck of the woods in Port Pirie, Mr President, following the comments that the Hon. Caroline Schaefer made on ABC Radio. I was simply responding to those comments and seeking to put the position. In relation to the drought package, all I can do is reiterate that the $5 million that the government is providing is additional money.

In relation to the drought, the only point I would make where it may have an impact is that, for some of the research institutions that we have in SARDI, the drought will put some additional pressure on their budgets because obviously they will not be producing as much seed as they have in the past. There may be some pressure on the individual budgets, but that is the only additional budgetary pressure of which I am aware.

**The Hon. D.W. RIDGWAY:** As a supplementary question, what departments will these 40 positions come from?

**The Hon. P. HOLLOWAY:** The 40 positions is the Primary Industries and Resources SA share of the overall cuts. They will be offered right across Primary Industries and Resources SA, as indeed the packages that will be offered will be offered right across government in accordance with the budget decision. I reiterate the fact that these packages are targeted and they are voluntary separation packages—

*The Hon. A.J. Redford interjecting:*

**The PRESIDENT:** Order!

**The Hon. P. HOLLOWAY:** —which means that nobody has to accept these packages. It is interesting that the opposition has some concern about the offer of TVSPs. It should know the procedure; after all, it offered 20 000 of them over the past eight years. So it has a bit of experience in it, and one might have thought it had learnt a bit about it. This is a very modest contribution compared to what the previous government was up to. They are voluntary. I can see that the honourable member opposite wants to ask me about the targeted part of it. Let me answer that as well. The targeted packages are as a result of the priorities that are set within the department.

**The Hon. A.J. Redford:** Which are?

**The Hon. P. HOLLOWAY:** They were all announced at the time of the budget.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. P. HOLLOWAY:** In relation to the SARDI part of the budget, cuts have been offered in the administration area. The budget priorities of the government, which is where these cuts will come from, are set out on page 4.30 of the Portfolio Statements. In SARDI, which comprises a little over one-third of all the employees of PIRSA, the executive officers have a very comprehensive system of reviewing the priorities of their research budgets so that those areas which have the lowest rate of return are targeted.

**The Hon. CAROLINE SCHAEFER:** By way of a further supplementary question, which programs are to be cut from SARDI as a result of these $4 million budgetary cuts? That should make it very simple.

**The Hon. P. HOLLOWAY:** The shadow minister does not seem to understand that there are 40 voluntary targeted separation packages in PIRSA. If 40 people voluntarily accept a separation package, that will achieve the budget savings targets of PIRSA.

*The Hon. A.J. Redford interjecting:*

**The Hon. P. HOLLOWAY:** Well, obviously they will not all come from one area because they will be offered across government.

*The Hon. Diana Laidlaw interjecting:*

**The PRESIDENT:** Order! The Hon. Ms Laidlaw has the call.

**The Hon. DIANA LAIDLAW:** Oh! I have the call to ask a question, not just to interject.

**The PRESIDENT:** No, you haven't got the call to interject.

**The Hon. DIANA LAIDLAW:** Thank you, Mr President. I could give the minister a lecture about how to operate TVSPs.

**The PRESIDENT:** You haven't got the call for that, either.

## TAXIS

**The Hon. DIANA LAIDLAW:** I seek leave to make a brief explanation—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. DIANA LAIDLAW:** —before asking the Minister for Aboriginal Affairs and Reconciliation a question about taxis using bus lanes.

Leave granted.

**The Hon. DIANA LAIDLAW:** The Labor policy for the taxi industry released in January this year stated that 'Labor in government will enable taxis to use bus lanes during peak hour traffic.' The bus lanes established on arterial roads over the past decade have all been dedicated for bus use only at all hours of the day or at selected times such as peak hour. When such lanes enter a signal operated intersection, the traffic light sequence gives buses priority ahead of other traffic with B-lights, which are triggered by a large or heavy bus or vehicle crossing detectors in the road pavement.

A strategic plan prepared by the former Liberal government in early 1991 identified 150 additional locations for bus priority purposes across the metropolitan road network and advanced a three-year funding program to begin this work. I note in relation to this strategic plan that the minister's answer of 27 August to a question I asked on 17 July refused to address the issue of funding beyond this financial year. This silence is disturbing, because I suspect that no-one with any interest in public transport in this state doubts that the implementation of the bus priority program on the road network and at intersections has had a significant positive impact on the increase in patronage of our bus system over recent years.

Meanwhile, I have been made aware of concern amongst bus operators, public transport consumer lobby groups and even road engineers that implementation of the Labor policy to allow taxis to use bus lanes and B-priority traffic lights at intersections will lengthen travel time on buses, frustrate the on-time running of services, and overall make it even more difficult for buses to compete with motor cars for, in particular, commuter travel.

As I know the minister was not responsible for the preparation of Labor's taxi policy and has already overridden the policy by bringing forward the date for the installation of security cameras in taxis, I ask him:

1. Does he intend to implement the Labor policy to enable taxis to use bus lanes during peak hour traffic?

2. If so, when does he plan to implement the policy, and will he do so on a trial basis, or immediately across the whole network?

3. Has he consulted with bus operators and the PTB regarding the implementation of this Labor policy, and what advice did he receive regarding the efficiency of bus operations, the time delays on current schedules and the longer times for trips requiring the issue of new timetables?

4. What assessment has he received from Transport SA regarding the capital cost impact of replacing vehicle detector systems at intersections and, also, the new signage that would be required to replace bus priority signs with transit lane signs?

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

## GRAIN HARVEST

**The Hon. CARMEL ZOLLO:** I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the 2002 grain harvest.

Leave granted.

**The Hon. CARMEL ZOLLO:** As all members are aware, the drought has had a dramatic effect on crop prospects, particularly in the Murray Mallee and upper north districts of the state. There has also been some concern that recent rain may not have assisted drought affected farmers who are harvesting crops. Can the minister provide information on the 2002 harvest and, in particular, how recent weather conditions have affected the harvest?

**The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries):** I thank the honourable member for her important question because, of course, the outcome of the grain harvest this season will have a significant impact on the economic fortunes of this state.

The grain harvest began in many districts in late October, several weeks earlier than normal, and it is now well under way in all the major grain producing areas of the state. I am advised that harvest has progressed unhindered for several weeks and is around 50 per cent finished. A few farmers in early districts finished harvesting in the past fortnight. Areas of the South-East around Bordertown and Keith started harvesting in mid-November, with areas further south and Kangaroo Island expected to start in the next few weeks, given good weather conditions. There was, of course, widespread rain on 24 and 25 November, which interrupted harvest operations. However, I am advised that grain harvested after the rain has shown no rain damage.

Cereal grain quality has been generally good, with good wheat protein and a surprising portion of the malting crop meeting malting specifications. I am advised that canola quality has been affected by the dry conditions, with oil content as low as 38 per cent recorded in some districts—much less than normal and an indication of the hard conditions this season. Available paddock feed for livestock is low in most districts, with many farmers lot-feeding core breeding stock using fodder and grain reserves, bought fodder, bought grain and other suitable and, in some cases, novel feeds. We

saw onions used when we visited the Murray Mallee earlier this year.

**The Hon. M.J. Elliott:** It would give a nice flavour for cooking. You could add some garlic as well.

**The Hon. P. HOLLOWAY:** I believe the sheep have to be weaned off onions a couple of weeks before sale to get the taste out of them, rather than put the taste in. But that is another story. I have a table which I seek leave to incorporate in *Hansard* which shows the preliminary 2002 crop production estimates compared to the five year average, and last year's crop production.

Leave granted.

Estimated 2002 production of the main South Australian Field Crops

| | Wheat | Barley | Oats | Triticale | Peas | Lupins | Canola |
|---|---|---|---|---|---|---|---|
| Production '000 t | | | | | | | |
| 5 Year Average | 3 529 | 2 089 | 155 | 133 | 181 | 99 | 198 |
| 2001-02 | 4 936 | 3 037 | 150 | 149 | 265 | 142 | 242 |
| 2002-03 (est) | 2 115 | 1 387 | 91 | 62 | 112 | 63 | 145 |

**The Hon. P. HOLLOWAY:** The table illustrates that the latest estimates for 2002-03 for the major crops—wheat, barley, oats, triticale, peas, lupins and canola—are down compared with last year and the five-year average.The area sown to crops is close to last year's (2001-02) record sowings. Farmers in some areas did not complete the intended seeding program due to poor opening rains. Export hay crop production has been significantly affected, reducing prospects of supplying hay export markets this season. In some districts, crop prospects are reduced to seed recovery, with little grain to spare for delivery to silos.

In conclusion, we certainly have had difficult conditions this year and, because those conditions have been experienced over so much of this country, it will inevitably result in some shortages and high prices in relation to feed.

**The Hon. A.J. REDFORD:** By way of a supplementary question, has the minister discussed this matter with his parliamentary secretary and, if not, why not; and, if he has, why was that information not given in the form of a ministerial statement?

**The Hon. P. HOLLOWAY:** I am very grateful that the parliamentary secretary has such a keen interest in rural matters and I am sure that, with such vital information, she, like I, would like that information to be shared with the public and other members of this house. If my colleague had not had such a keen interest and asked this information, then it would not have been available to members such as the Hon. Angus Redford.

**The Hon. A.J. REDFORD:** By way of a further supplementary question, the minister having missed the second part of my question, why was it not in the form of a ministerial statement if it was important?

*The Hon. P. Holloway interjecting:*

**The Hon. A.J. REDFORD:** Is that a refusal?

## SCHOOL CLASS SIZES

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

Leave granted.

**The Hon. M.J. ELLIOTT:** It has been reported in the last couple of days that the government, in seeking to implement its policy from the last election of reducing class sizes in junior primary schools, suddenly seems to have discovered that it needs extra classrooms to do this and that in some schools the classrooms are not available. I am wondering whether the minister can tell this place how many schools are suffering a shortage of classrooms and what the impact of that will be next year. Recognising that the Partnerships 21 scheme was putting pressure on schools that were considered to have too many classrooms—they were being asked to sell off surplus property and were not receiving any funding for those classrooms, which was putting pressure on schools to decommission classrooms and have them removed—will that policy continue, recognising that it may be possible in future that a reduction in class size may go to other schools which are not being offered it (at this stage it is only the disadvantaged junior primary schools), and that reduced class sizes may at some time in the future extend to primary and high schools? Recognising that, will the minister answer the following questions:

1. What is the current shortage of classrooms?
2. If the policy was extended across all junior primary schools, what would then be the shortage of classrooms?
3. If there was any significant reduction of class sizes in primary schools, what sort of problem would we have?
4. Will the current Partnerships 21 pressure on schools to pay for what are considered surplus classrooms on their properties continue?

**The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries):** The questions asked by the honourable member are important and I will refer them to the Minister for Education and Children's Services and bring back a reply as soon as possible.

## AUTISM

**The Hon. A.L. EVANS:** I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Education and Children's Services, a question about applied behavioural analysis.

Leave granted.

**The Hon. A.L. EVANS:** A member of the public has written to me to raise questions concerning the approach being provided through our education system to children with autism and Asperger's syndrome. I was advised through the South Australian Autism Association that our state has 300 primary school children suffering from autism. I understand that South Australian educators are aware of a program called

applied behavioural analysis, or ABA—a program specifically developed to assist children with these disorders to overcome learning difficulties. I understand the main point of contention with ABA is that many educators use ABA as a framework rather than as an approach to individually tailor a program that aims to assist children to overcome their learning difficulties during the early years of development. If the latter approach is taken, I have been told that children with autism have a better chance of eventually integrating back into general classes. The results of research on ABA were presented at the World Autism Congress held in Melbourne early last month.

The research exonerated ABA as an approach to improve early behavioural learning against other approaches, including special education. The summary findings stated that the average IQ in the group that received ABA intervention for 30 to 40 hours a week for up to four years improved dramatically compared to those groups receiving special education. My questions are:

1. Will the minister provide details of the level of resources and funding currently being allocated through the Department of Education, and Children's Services to effectively educate and support children suffering from autism and Asperger's Syndrome?

2. Has the minister investigated and evaluated the merits of the ABA program with a view to its being offered to children with autism as a specifically tailored intervention learning program? If not, why not?

**The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries):** I will seek a response from the Minister for Education and Children's Services and bring back a reply.

## GREEN PHONE

**The Hon. J.F. STEFANI:** I seek leave to make a brief explanation before asking the Minister for Regional Affairs some questions about the Green Phone issue.

Leave granted.

**The Hon. J.F. STEFANI:** In January this year the then shadow minister for Regional Affairs (Hon. Terry Roberts) voiced strong opposition to the Green Phone project, which had the full support of the member for Mount Gambier, Mr Rory McEwen. In the *Border Watch* dated 23 January 2002, the Hon. Mr Roberts was reported to have argued strongly against the role of development boards, which he explained were originally established as incubators for small business and were to foster small business and not compete against it. As shadow minister, the Hon. Mr Roberts was quoted as saying:

> You would expect that, if it is such a good idea, it would have been first offered to private enterprise.

The then shadow minister went on to say:

> Now that the venture has fallen apart, it seems that the players have run for cover.

Mr McEwen's response is strange, to say the least, because he said:

> Like many others, I am disappointed over the failure of this project. It was a good idea gone wrong.

Because of the conflicting policy position publicly enunciated by Labor on this issue, which strongly opposed the views and position taken by Mr McEwen, my questions are:

1. Now that Mr McEwen is due to become a de facto Labor minister, does the Minister for Aboriginal Affairs and Reconciliation still hold the same strong opposing views in relation to regional development projects such as the Green Phone concept?

2. Will the minister support an inquiry by the state Economic and Finance Committee, as proposed by Mr McEwen after the Green Phone venture, which had been supported by the member for Mount Gambier and had received $100 000 of taxpayers' funds, failed to deliver on the project and went into liquidation?

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** If the honourable member goes back through *Hansard* he will find that I asked a series of questions in this council in relation to Green Phone as it progressed, because there were people in the South-East, in the Green Triangle region, raising with me questions about the viability of the project. The parliamentary inquiry that was set up as a result of the issues being raised by the honourable member in his question has reported. Perhaps I will explain a little in relation to the functions of the Economic and Finance Committee, which are set out in section 6 of the Parliamentary Committees Act. They were:

> To inquire into, consider and report on such of the following matters as are referred to it under this act:
>
> (i) any matter concerned with finance or economic development;

I suspect that is the brief from which they picked up the inquiry. The report continues:

> This inquiry was intended to be preliminary in nature in response to concern surrounding the collapse of Green Phone Inc. The purpose of this inquiry was to acquire background information on the project and identify those issues that may have contributed to the demise of Green Phone Inc.
>
> Additionally, the committee intended to use this opportunity to determine if a more detailed investigation was warranted, particularly in relation to the Thirty-First report of the Economic and Finance Committee relating to government assistance to industry.

The report findings in relation to the conclusion and recommendation state:

> Notwithstanding several concerns already noted, the committee decided to draw no particular conclusions from its investigations. Specifically, the committee considered that it was not appropriate to undertake a full-scale inquiry given the ongoing investigations by the liquidator. In any case, the committee determined that an investigation would be more appropriately undertaken by the Office for Consumer and Business Affairs.
>
> On the basis of the information provided, the committee recommends that the Minister for Consumer Affairs considers referring this matter to the Office of Consumer and Business Affairs for investigation.
>
> Additionally, given the interest this project has generated in the local community and angst surrounding its demise, the committee is eager to see the matter resolved expeditiously and strongly encourages the liquidator to produce his final report as quickly as possible.

Although the report recommendations have not yet been taken before caucus for a caucus position, the recommendation has been made in a bipartisan way by the majority of the committee. So, as far as the inquiry is concerned, if the issue is picked up by the Office of Business and Consumer Affairs that would take it another step further given the information that the liquidator holds that was not made available to the final investigation by this committee. I would expect that that position will be supported by government.

The relationship between myself and the member for Mount Gambier is such that, at every step of the way in the setting up and the organisation of Green Phone, it became clear that there were some difficulties with getting the cooperation of the local community in relation to the lack of participation by the private sector in the setting up of Green

Phone. The fact that Green Phone collapsed may have had something to do with the lack of that broad participation that is expected within communities for projects like this to succeed. I am not opposing the concept of Green Phone, and I think it is unfortunate that it has failed because, within regional communities, it has a lot to offer. The conceptual position of holding funding and moneys in the community with a locally owned or community-based program like Green Phone has merit and, having some competition for the major IT companies such as Telstra and other major communication bodies, has merit in providing regional areas with an independent base.

The position in which the member for Mount Gambier found himself in relation to his assessment was his own doing, and I will leave him to explain his position in another place. Members may be able to, either by correspondence or in talking to the member for Mount Gambier in another place, derive more information from that. In relation to my position, I will be looking forward to the final deliberative report that takes into account the contribution that the liquidator will make.

**The Hon. J.F. STEFANI:** I have a supplementary question. Does the minister agree with the Labor candidate for Mount Gambier, Mr Maher, that the people of Mount Gambier and the South-East deserve something better than Mr McEwen's response to date?

**The Hon. T.G. ROBERTS:** I have not seen all the responses of the member for Mount Gambier. I know the candidate—

*The Hon. T.G. Cameron interjecting:*

**The Hon. T.G. ROBERTS:** I do know Mr Maher. I know him personally. Mr Maher is an honourable man and he made a very good candidate during the last election.

*The Hon. T.G. Cameron interjecting:*

**The Hon. T.G. ROBERTS:** I expect that the way in which the member for Mount Gambier replies to any criticism or questioning in relation to Green Phone would be the responsibility of the member for Mount Gambier alone.

**The Hon. A.J. REDFORD:** I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question coincidentally on the topic of Green Phone and the South-East Economic Development Board.

Leave granted.

**The Hon. A.J. REDFORD:** Approximately two weeks ago the Economic and Finance Committee handed down its 41st report, which was into the Green Phone 'fiasco', which has caused much concern in the South-East. The report concerned the demise of Green Phone Incorporated, which was a communications service provider set up to reduce telecommunications costs and to improve services in south-western Victoria. I raised some issues concerning Green Phone in November 2000, and the minister, then shadow minister, also raised a series of concerns way back then.

The purpose of the organisation was to arrange local call access, cheaper local calls, faster internet access, better e-commerce and direct telecommunications. It was funded by a grant from the federal government of $2.3 million, a grant from the Victorian government of $100 000, a grant from the South Australian government of $110 000, and an estimated $200 000 in grants from various councils throughout the South-East—a total capital input of some $3 million.

I note that the report from the Economic and Finance Committee was awaiting a liquidator's report, which I understand has been outstanding for some time. The committee recommended that an investigation would be more appropriately undertaken by the Office of Consumer and Business Affairs (OCBA), and encouraged the liquidator to move more quickly.

Late last week an article appeared in the *Border Watch* on this issue. The article is reported as saying:

> Wattle Range council won the backing of the South-East Local Government Association on Friday for confidentiality—

I congratulate council on that—

> to be lifted on all documents presented to the association in Naracoorte on 5 October 2001 by Limestone Coast Regional Development Board Chief Executive Officer Grant King. Wattle Range also won SELGA support for all meeting minutes relating to Green Phone to be forwarded to the state's Economic and Finance Committee, which is inquiring into the failed telco.

The article continued:

> And SELGA will ask the committee—

and by that it refers to the Economic and Finance Committee—

> not to wind up its inquiry into Green Phone until liquidator Peter Macks has tabled his final report.

Councillor Braes, who was on the board, who has been quite outspoken and who has demanded persistently over the past 2½ years that all the information be made available for public scrutiny, said:

> It would be a pretty strange state of affairs if the committee's work was completed without any input from SELGA representatives on the board.

I know that the minister has had a long-term interest in the issue of Green Phone and in the issue of regional development boards, and I know, too, that in the short time that he has been minister he has instigated a review of those boards. In light of that information, my questions are:

1. Will the minister refer the new information to the Economic and Finance Committee with a suggestion that it provide this parliament with a further report based on the evidence that is to be released by the South-East Local Government Association?

2. Have issues like Green Phone Incorporated been part of his review into regional economic development boards?

3. Does the minister have confidence that his successor, who dealt with Green Phone and supported it, will ensure that this additional information will be referred to the Economic and Finance Committee, having regard to the fact that probably by Wednesday he will no longer be the minister?

4. Does the minister agree that it 'would be a pretty strange state of affairs' if this information were not referred to the Economic and Finance Committee?

5. Has Green Phone delivered local call access, cheaper local calls and faster internet access?

6. Can the state recover its $110 000 investment in this program?

**The Hon. T.G. ROBERTS (Minister for Regional Affairs):** I congratulate the member on his fairly accurate summing up in the lead-in to this question in relation to the history of Green Phone, and its role and function within the community. Yes; many people in the South-East have been disappointed that Green Phone did not succeed in its charter, which was to provide cheaper phone calls and speedy internet access as well as to become an incubator for other IT ventures: that was also included in the programming for the setting up of Green Phone. Unfortunately, the aims and objectives were unable to be carried out in relation to those

functions, so the answer to all those questions which relate to the success of Green Phone in relaying those types of benefits to the regional community is no. The aims and objectives were not carried out because, in the end, Green Phone was not successful as a financial entity.

In response to referring the information, as the honourable member proposed, to the Economic and Finance Committee, I think any member can refer information to the committee, in relation to carrying out a brief. With regard to the $110 000 that the local community or the local government put in, while I have not read the full implications of the report, I am reasonably sure that, until the liquidator reports, there will not be any indication of what contributions will be returned. I suspect they will be very slim pickings.

The honourable member's other question was in relation to another Green Phone inquiry. I suspect that if the recommendations of the committee are taken up—and the committee recommends that the Minister for Consumer Affairs pick up the referral—

*The Hon. A.J. Redford interjecting:*

**The Hon. T.G. ROBERTS:** Well, it is quite possible—

*The Hon. A.J. Redford interjecting:*

**The Hon. T.G. ROBERTS:** I am not aware that the Economic and Finance Committee has ruled out picking up the brief as an option—

*The Hon. A.J. Redford interjecting:*

**The Hon. T.G. ROBERTS:** Probably the best way to move it would be to get it as a motion from the house, because there are many ways—

**The Hon. A.J. Redford:** I'll give notice.

**The Hon. T.G. ROBERTS:** Well, I could give a recommendation, but I am sure that if it were a motion of the house it would have more weight than would an individual's referral of a brief to a committee. There are many ways in which the Economic and Finance Committee can pick up briefs, and I am sure that if the information that the liquidator provides in their report is either not acceptable to the Economic and Finance Committee—

*The Hon. A.J. Redford interjecting:*

**The Hon. T.G. ROBERTS:** That is what I am saying: if the report is relayed to the Economic and Finance Committee and the results of the liquidator's recommendations are not acceptable, it can itself pick up the brief. There are many ways in which the openness the honourable member would like to see in committing that evidence to public scrutiny can be achieved. I know the honourable member has had, as have I, approaches from people who have had their reputations damaged by this episode and who would like to see all matters discussed publicly. I cannot speculate, but I would expect that the Economic and Finance Committee would finalise the issue on the completion of the liquidator's report and the committee's sighting of it. If the committee does not pick up the brief in the way in which the honourable member has suggested, there are many other ways in which that can be made public.

**The Hon. A.J. REDFORD:** Sir, I have a supplementary question. Will the minister speak with the new minister in order to encourage him, and everyone else involved in this process, to ensure that the information is put before the Economic and Finance Committee so that some people's reputations are cleared, without the threat of legal action for defamation and the like hanging over their head?

**The Hon. T.G. ROBERTS:** I can speak to the member for Mount Gambier in his capacity as minister when he is sworn in and, certainly, raise that issue with him.

## ENERGY EFFICIENCY

**The Hon. G.E. GAGO:** I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about energy efficiency.

Leave granted.

**The Hon. G.E. GAGO:** I understand that from the beginning of next year all new houses in South Australia will have to meet national standards for energy efficiency. What is being done to ensure that South Australian homes meet these national standards?

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** I can answer with some personal experience built into this, because I am at the moment carrying out renovations and extensions. I am sure that some honourable members have faced the problems I have encountered in relation to talking to the building industry about the building codes and encouraging energy saving programs in homes: it is almost like talking to the brick walls they put up! The Environment, Resources and Development Committee also has taken up this issue on many occasions, with respect to speaking to the peak bodies to see what encouragement they can give to their affiliates in relation to trying to make the design features of homes more amenable to energy saving, particularly with respect to solar heating and geothermal pumping for water which measures, although expensive initially, are energy saving in themselves.

Certainly, I must pay some tribute to the Democrats. They have over many years run a whole range of issues associated with energy saving, not just on the home block but also feeding the excess electricity that may be able to be stored, delivered and finally returned to the grid as a way of enabling concessions or cheaper power for individual consumers. Unfortunately, the building industry—and, in some cases, architects—are not encouraging individual home buyers, builders or renovators to build those concessional programs into the architecture of the homes.

The building code of Australia will be amended on 1 January 2003 to make new homes more energy efficient and to reduce greenhouse gas emissions. The new requirements will also apply to extensions to existing houses. The new national energy code for houses will require insulation for walls and ceilings; improved glazing and shading; draft control; use of air movement for cooling; and reduction of energy waste in airconditioning and hot water services. The requirements will vary for each of the three climate zones proposed for South Australia, which cover the far northern, central and southern areas of the state. The code establishes minimum requirements that can also be achieved by four star rating. Anyone involved in designing, building or approving houses will play a role in ensuring that new houses meet the new requirements. The housing industry also has an opportunity to take the lead by demonstrating best practices in housing design and higher energy savings.

The government will be working with the housing industry and the community to reduce energy consumption and greenhouse gas emissions in the building sector, which accounts for about 20 per cent of Australia's greenhouse gas emissions. Energy efficient homes will deliver potential cost savings to consumers through reduced electricity and gas bills. The Australian Building Codes Board and the Aus-

tralian Greenhouse Office are developing energy efficiency measures for all buildings under the greenhouse strategy, and it is anticipated that the requirements for commercial buildings will be introduced at the end of 2004. This government is pursuing the issue in a determined way and, hopefully, by education and persuasion, we will gain better results than we are achieving at the moment.

## NGARRINDJERI PEOPLE

**The Hon. SANDRA KANCK:** I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Ngarrindjeri people.

Leave granted.

**The Hon. SANDRA KANCK:** In August 2001 in the Federal Court Justice Von Doussa dismissed any claim that the Ngarrindjeri people fabricated their culture, as had been alleged. Following that statement from Justice Von Doussa, the senate passed a motion congratulating the Ngarrindjeri people on being vindicated. Last month, Tom and Wendy Chapman, whom Justice Von Doussa had found against, decided not to continue with their appeal against the finding. In October this year, the Alexandrina council made a sincere expression of sorrow and apology to the Ngarrindjeri people. It begins:

> To the Ngarrindjeri people, the Traditional owners of the land and waters within the region, the Alexandrina council expresses sorrow and sincere regret for the suffering and injustice that you have experienced since colonisation and we share with you our feelings of shame and sorrow at the mistreatment your people have suffered.

And it ends:

> The Alexandrina Council acknowledges the Ngarrindjeri People's ongoing connection to the land and waters within its area and further acknowledges the Ngarrindjeri people's continuing culture and interests therein.

My question is: in the light of the statements from Justice Von Doussa, the senate, and Alexandrina council will the South Australian government apologise to the Ngarrindjeri people for the hurt caused by the instigation, albeit by a Liberal government, of a royal commission into Ngarrindjeri beliefs?

**The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation):** I will take that question on notice and talk to my colleagues about a way to proceed. I have met with the Ngarrindjeri people and have reported to this house the progress made by the Alexandrina council, and I have commended the council in this house for the progressive way in which it has dealt with a whole range of problems created by the outcome of the royal commission. The council has been working very hard with the Ngarrindjeri people to put together a program of reconciliation within that community that is based on mutual respect for each other's organisational skills and programming. As we speak, the council is putting together development programs for the protection, enhancement and showcasing of the Ngarrindjeri people's culture within the Alexandrina Council.

I can report that, having had meetings with other councils in the area on the Fleurieu—and we have the Mayor of the Coorong Council in today—they are putting together very good programs for reconciliation and trying to build together opportunities for advancement through providing heritage protection and cultural displays that fit into tourism promotion and development. A lot of work has to be done on that—it is in its infancy—in building up those contacts. The other thing that needs to be worked on is early settlers' heritage, and that includes some of the worst aspects of heritage, including the role that sealers and whalers played in that area and some of the problems associated with that. We are in the early stages of putting together a program in relation to the broader community, but inherent in the question is the hurt that was done to individuals within that time frame that we are talking about.

I gave an undertaking to the Ngarrindjeri people that, at an appropriate time, I would provide a report on behalf of the government in relation to people such as Doreen and others who suffered a great deal during that period. Doreen Kartinyeri was one of the people in the forefront of a whole range of issues that confronted people. I think everyone has realised that it is no good looking back and that we must look forward for the reconciliation processes to work. Although Justice Von Doussa's report has certainly not received the coverage that the royal commission did, I do not think that I have ever been so disappointed as an individual in this chamber to see that front page—and I can still see it: 'Lies, lies, lies'—which did nothing for the reconciliation process within South Australia. In fact, it set it back some considerable time.

It is incumbent on all of us to work progressively forward to encourage councils such as the Alexandrina council, the Coorong council, the Murray Bridge council and others who are working with the Ngarrindjeri people to put these positive programs together so that the Ngarrindjeri people can not only display their culture and have it taught in schools in and around the area but they can also be part of a reconciliation program that feeds into the Fleurieu and links in with the Kaurna people. Hopefully, we can provide employment opportunities as well as showcase and display their heritage.

## LOCAL GOVERNMENT REFORM

**The Hon. T.G. CAMERON:** I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Local Government, questions about the effectiveness of open local government reforms.

Leave granted.

**The Hon. T.G. CAMERON:** In July this year, the state government announced that it would introduce a bill to prevent local government bodies from operating behind closed doors as often as they do, and that this was part of the state government's proposed open government plan. The changes will closely align local government to freedom of information laws by removing 'receiving specialist advice' as a reason to allow a council to go in camera. The bill will force councils to reveal prices paid for successful tenders, make councils review their list of confidential items at least once a year and forbid overcharging. Some aspects of the bill also require local government to place certain information on the internet.

These may all seem like good and sensible changes, but 16 local councils do not even have a web site; therefore, it seems unreasonable that this requirement is on the agenda. Open government is good government only when the infrastructure to be open is in place. It also highlights a lack of government commitment to information technology at the grassroots level. My questions are:

1. How many times did South Australian councils go in camera in 2001-2002?

2. Are any procedures in place whereby the state government determines whether local government going in camera

in any specific matter is suitable; and what checks and balances are in place to ensure that councils comply?

3. Does the state government have a strategy to assist local councils who do not have a web site to produce, publish and operate one? If not, will the government investigate the need for such a strategy?

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

## REGIONAL MINISTERIAL OFFICES

**The Hon. T.J. STEPHENS:** I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about ministerial offices.

Leave granted.

**The Hon. T.J. STEPHENS:** Two regional ministerial offices have been announced by the government at Port Augusta to service the north of the state and a regional office at Murray Bridge to service the Murraylands and Mallee. My questions are:

1. Will the outgoing minister provide the total cost for establishing these two offices, including a breakdown of any leasing arrangement, furnishing, security, communication, infrastructure and staffing allocation?

2. Given that the new Minister for Regional Development will have his ministerial office in Mount Gambier, and obviously a ministerial office in Adelaide as well, what will happen to the two regional offices based in Port Augusta and Murray Bridge?

**The Hon. T.G. ROBERTS (Minister for Regional Affairs):** I thank the honourable member for his question and for his ongoing interest in the setting up of our offices in regional areas. As previously announced, the state government is establishing regional offices in Port Augusta and Murray Bridge. They will be a point of contact with the government for regional communities and will provide information, advice and support across all portfolio areas. The offices will each be staffed by ministerial and administrative officers. The total cost is $0.459 million for this financial year.

At present, buildings have been identified, and negotiations are ongoing to finalise leases and to begin the fit-out of each office. A series of meetings will be held to complete this process. I know that I gave assurances that the time frames were short term when I last reported to the council. My understanding is that they are still short term for finalisation.

The work of the northern office has already commenced, with a ministerial officer already working on a number of local projects and accompanying my regional affairs adviser on a series of community consultation visits to various regions, including the Eyre Peninsula, the Flinders Ranges and the Mid North. It is my hope that the offices will be up and running, hopefully, before Christmas, but I am not too sure about the Murray Bridge office. Negotiations around the lease of a particular building are still ongoing, but I—

*The Hon. T.J. Stephens interjecting:*

**The Hon. T.G. ROBERTS:** No, it wasn't the one that burnt down; I can assure you of that. I will take the question on notice and bring back a reply.

## STANDING ORDERS SUSPENSION

**The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries):** I move:

That standing orders be so far suspended as to enable me to move that the order made on Thursday 28 November for the second reading of the Controlled Substances (Cannabis) Amendment Bill to be an order of the day for the next Wednesday of sitting be rescinded and for the order of the day to be taken into consideration forthwith.

Motion carried.

## CONTROLLED SUBSTANCES (CANNABIS) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

This bill was introduced in another place on 5 June 2002 by the member for Mawson, the former police minister (Hon. Robert Brokenshire). He is a committed supporter of stronger laws against drugs, and he is to be commended for this initiative. I also commend the Premier for his ministerial statement on this issue on 26 November and for the fact that his government has agreed to support the measure.

The purpose of this bill is to remove cannabis plants grown by artificially enhanced methods (commonly referred to as 'hydroponically') from the cannabis expiation scheme set up under section 45A of the Controlled Substances Act 1984. This bill is in the same terms as one introduced by the Liberal government in October 2001. It passed through the House of Assembly but had not passed through the Legislative Council when the parliament was prorogued before the state election. I seek leave to have inserted the balance of the second reading explanation in *Hansard* without my reading it.

Leave granted.

In 1987, the cannabis expiation scheme was implemented in South Australia, following the passage of the *Controlled Substances Act Amendment Act 1986*. The scheme provides for adults coming to the attention of the police for a 'simple cannabis offence' to be issued with an expiation notice and given the option of avoiding criminal prosecution and conviction by paying the specified expiation fee. 'Simple cannabis offence' means possession of a specified amount (up to 100 grams) of cannabis for personal use; smoking or consuming cannabis in private; possessing implements for the purpose of smoking or consumption; or cultivation of a number of cannabis plants within the expiable limit.

The rationale underlying the expiation scheme was that a distinction should be made between private users of cannabis and those involved in production, sale or supply of the drug. The distinction was emphasised at the time of introduction of the expiation scheme by the simultaneous introduction of more severe penalties for offences relating to the manufacture, production, sale or supply of drugs of dependence and prohibited substances, including offences relating to large quantities of cannabis.

Cannabis is the most commonly used illegal drug in South Australia and can cause a number of significant health and psychological problems.

Contrary to common public perception, it is *illegal* to possess or grow *any* amount of cannabis. The expiation scheme did *not* make it legal to possess or grow small amounts—it provides a mechanism for a person to pay an expiation fee and avoid a criminal prosecution and conviction and the adverse consequences arising from a criminal conviction. If the person fails to expiate, then the matter may proceed to court.

The *Australian Illicit Drug Report 1999-2000* indicates that the most notable trend in the preceding 10 years was the increase in hydroponic indoor production and a decrease in extensive outdoor cultivation. While the dictionary refers to hydroponic cultivation as 'the art of growing plants without soil and using water impregnated

with nutrients', cannabis cultivators predominantly use a variation of this technique. They grow their plants in pots with the plant root systems in a fine gravel-like base substance, with the enhanced water running through the base. One of the other key factors in the cultivation is the application of strong artificial lighting and heat to the plants. This is by far the most common form of cultivation. Within the cannabis cultivation industry, hydroponic retailers, and the police, this method of cultivation is identified as being 'hydroponic'.

Police information is that one hydroponically produced cannabis plant is now capable of producing (conservatively) about 500 grams of cannabis and it is possible to produce 3 or 4 mature crops per year. It is estimated that a daily user of cannabis is likely to consume 10 grams of cannabis per week. If one hydroponically grown cannabis plant yields an estimated 500 grams of dried cannabis, this would meet the consumption needs of a daily user for one year (Clements, K & Daryal, M (1999) *The Economics of Marijuana Consumption*. Perth: University of Western Australia). As the expiable limit applies at the time of detection, a grower is able to grow the expiable number of plants as many times a year as possible, provided they are only in possession of the expiable number at the time of police intervention. Given the potential cash yields, the ability to produce in excess of personal requirements within the expiable limit provides the opportunity to become involved in commercial production and distribution within the wider community. It provides the opportunity for small time producers to link to organised crime syndicates, with much of the 'backyard' product finding its way to the Eastern States in bulk quantities and being exchanged for cash or powder drugs for distribution in this State.

Police intelligence when 10 plants was the expiable limit was that criminal syndicates were using the 10 plant limit to foster commercial cannabis enterprises by hydroponically cultivating crops of 10 plants at different sites. While the reduction in the expiable limit from 10 plants to 3 did reduce the amount of profit within the expiable limit, police information was that people were still commercially cultivating within that limit.

In September last year, the Liberal Government amended the *Controlled Substances (Expiation of Simple Cannabis Offences) Regulations* to further reduce the number of cannabis plants for expiation purposes from 3 to 1. This decision was consistent with the advice of the Controlled Substances Advisory Council.

The intention of the cannabis expiation scheme was to reduce the impact of the criminal law on those persons who possess cannabis for their own use. However, the expiation scheme was not intended to encourage distribution of cannabis within the community.

As a community, we should not tolerate exploitation of the expiation scheme by hydroponic producers, which results in syndicated production or single profiteering. Removing the capacity to produce cannabis hydroponically will reduce the volume of the drug being produced, which will in turn reduce the incentive for the assaults, and often violent home invasions, associated with hydroponic crops. We should not stand by while the scourge of our society—the producers, the profiteers, the traffickers—wreak their havoc on families and individuals.

The Bill therefore removes the cultivation of cannabis plants by artificially enhanced means (commonly referred to as 'hydroponically') from the expiation system.

This Bill is not an attack upon the legitimate hydroponics industry which is, very rightly, keen to dissociate itself from the cultivation of illegal substances. I welcome the intimation of the Premier that the Government is examining a negative licensing regime which will ban certain persons from involvement in the sale or distribution of hydroponics equipment. We look forward to the results of that examination and to the Government's proposals flowing out of the recommendations of the Drug Summit. I urge members to support the bill.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

This clause provides for this amending Act to come into operation by proclamation.

*Clause 3: Amendment of s. 45A—Expiation of simple cannabis offences*

This clause amends the definition of 'simple cannabis offence' to exclude from the expiation scheme the cultivation of cannabis plants by the hydroponic method (i.e. in nutrient enriched water) or by applying an artificial source of heat or light. The new definition of 'artificially enhanced cultivation' encompasses both these methods.

*Clause 4: Transitional provision*

This clause makes it clear that expiation notices may still be issued after the commencement of this Act for the artificially enhanced cultivation of cannabis plants where the offences occurred before that commencement.

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

## VIVONNE BAY CONSERVATION PARK

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

That this council requests Her Excellency The Governor to make a proclamation under section 43(4) of the National Parks and Wildlife Act 1972 to vary the proclamation made under Part 3 of that Act on 4 November 1993 (*Gazette*, 4 November 1993, page 2175) so as to remove the ability to acquire or exercise pursuant to that proclamation rights of entry, prospecting, exploration or mining under the Mining Act 1971 or the Petroleum Act 1940 (or its successor) over the portion of the Vivonne Bay Conservation Park described as Sections 6 and 125, Hundred of Newland.

I indicate that the government has three motions on the *Notice Paper* dealing with removing rights under the Petroleum Act. This measure relates to Vivonne Bay Conservation Park, and the same reasons apply to the following motions in relation to Seal Bay and Lashmar conservation parks. Only three parks on Kangaroo Island allow some form of access under the Petroleum Act. I am moving motions on two of those. The third one is Seal Bay, in another part of the state on the West Coast, and that is covered in the second motion.

**The Hon. IAN GILFILLAN** secured the adjournment of the debate.

## SEAL BAY CONSERVATION PARK

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

That this council requests Her Excellency the Governor to make a proclamation under section 43(4) of the National Parks and Wildlife Act 1972 to vary the proclamation made under Part 3 of that Act on 4 November 1993 (*Gazette*, 4 November 1993, page 2175) so as to remove the ability to—

(a) acquire or exercise pursuant to that proclamation rights of entry, prospecting, exploration or mining under the Petroleum Act 1940 (or its successor); or

(b) acquire pursuant to that proclamation rights of entry, prospecting, exploration or mining under the Mining Act 1971,

over the portion of the Seal Bay Conservation Park described as Section 3, Hundred of Seddon.

As explained in relation to the first motion, this measure removes rights under the Petroleum Act 2000 from the portion of Seal Bay Conservation park as described, in addition to the Flinders Chase National Park. This measure would prevent any of that area from being subject to mining and exploration.

**The Hon. M.J. ELLIOTT:** I rise on behalf of the Democrats to support this motion and at the same time I indicate support for the first motion and the third, which has yet to be moved. They are similar measures to that which was passed last week in relation to another of the national parks on Kangaroo Island. As I said last time, this is welcome. There is no question that a number of parks have been exposed to exploration and significant potential effects in other ways, in this case, the potential for pipelines to be put through them.

Not only is there an increasing recognition that national parks are important for conservation but they are also

increasingly seen to have an economic value. With ecotourism being the fastest growing sector of the tourism market internationally and with, probably, Australia overall increasingly being seen as a safe place to be, these parks on Kangaroo Island are becoming increasingly valuable as an economic as well as an environmental resource. Whilst putting a pipeline through them might save a few dollars in the short term, it could do damage in the significant long term which would mean a much greater cost, not just to the environment but also to the community. I think that recognition is slowly starting to dawn. I hope it dawns across the rest of the state as well, because South Australia, undoubtedly, has major potential in terms of ecotourism.

I have spoken in this place on previous occasions about Kangaroo Island, but I must say that, when one looks across not just to the Flinders Ranges but also to Eyre Peninsula, I do not think that some people have recognised anything like what the real potential is there—as long as the quick buck is there now, whether it be mining, aquaculture or other industries. We need to ensure that we have all these industries working cooperatively and not have one impinging upon what is probably a much greater potential industry in the longer term. Unfortunately, too often governments and individuals look at very short horizons.

I used to have discussions with my grandfather, who was an original settler in one area of the state. He did a great deal of vegetation clearance, and so on, and I know in his last years he realised that he had gone too far. He never thought so at the time when he was clearing, but he started to talk about what he used to see, for example, the large flocks of budgerigars in the South-East—and I do not know the last time anyone saw a budgerigar in the South-East—and many other parrots which he used to see but which he had not seen for some time. I am paraphrasing what he said but, in his ignorance, he realised he had gone too far.

I think there is a dawning in the community, more generally, that perhaps we have gone too far in some areas. That is not to condemn what people did in the past. They were acting in a particular framework with a particular way of thinking and with particular knowledge. I think ignorance is no longer an excuse for some things we do, and short horizons must be looked beyond. I congratulate the government on not only this motion but also the other motions, and I invite them to look at other areas of significance to see whether or not joint proclamations in some national parks should not also be removed. That is important, ultimately, from an economic viewpoint, not just ecotourism. I do not think it does miners any favours, if they spend a fortune exploring the area and later get told that they cannot go there; nor does it help aquaculturalists if they spend an absolute fortune trying to develop a project, then to be told no later on.

That is something the ERD Committee has tried to make plain for a long time. We must have very clear rules which are put in place early. If we have rules that protect the environment, then, ultimately, they will protect business as well. When we do everything on a case by case basis and say that anything is possible, we get ourselves into trouble. I congratulate the government on this motion and the other motions before us, and I support them on behalf of the Democrats.

**The Hon. CAROLINE SCHAEFER** secured the adjournment of the debate.

## LASHMAR CONSERVATION PARK

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

That this council requests Her Excellency the Governor to make a proclamation under section 43(4) of the National Parks and Wildlife Act 1972 to vary the proclamation made under sections 30 and 43 of that act on 16 September 1993 so as to remove the ability to acquire or exercise pursuant to that proclamation rights of entry, prospecting, exploration or mining under the Mining Act 1971 over the land constituted by that proclamation as the Lashmar Conservation Park.

This motion has an outcome similar to the other two motions, but it is in the area of the Lashmar Conservation Park. The motion removes the ability to acquire and exercise pursuant to that proclamation rights of entry, prospecting, exploration or mining under the Mining Act 1971 over the land constituted by that proclamation as the Lashmar Conservation Park. As the honourable member pointed out, the government is recognising the need for protecting areas that have outstanding conservation values. Certainly, there is a move to recognise the economic value of many areas of our state.

South Australia is able to protect a number of areas from mining programs that have a short life. In terms of weighing up the value of a short-term mining or exploration program—as opposed to maintaining a section of our wilderness and, in some cases, areas that have been disturbed but are still worth preserving—governments must weigh up the long-term benefits against some of the short-term benefits that come with other programming. It is the government's view that, in the case of the three areas for which we have proclamation now, protection is required.

I am glad that the Democrats are indicating support. These motions have been moved in another place by the shadow minister for environment. I think that there is general agreement across the board for the protection—have these motions been moved in the other place?

*The Hon. P. Holloway interjecting:*

**The Hon. T.G. ROBERTS:** Not yet, but they will be. There is general agreement on a way to proceed in relation to getting general agreement by the major parties and the opposition to protect these areas.

**The Hon. CAROLINE SCHAEFER** secured the adjournment of the debate.

## UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT BILL

In committee.

(Continued from 28 November. Page 1549.)

Clause 3.

**The Hon. CAROLINE SCHAEFER:** I spoke to the amendment to clause 3 last week when we began the process of committee. The opposition insists on this amendment. The government, I understand, is objecting to this amendment. I must say that I am very surprised about that because, frankly, I would have thought that it was the most innocuous of all the amendments I have moved. The amendment merely seeks—

**The Hon. M.J. Elliott:** Are the others really dangerous, are they?

**The Hon. CAROLINE SCHAEFER:** No; they were all very decent amendments, unlike many others. This bill is about expediting the drainage system in the Upper South-East; and it does give the minister some exceptional powers

in order to allow him to do that. As I understand it, the only works to take place outside the actual project area, that is, the 200 metre strip, are those to be identified as key environmental features.

There is a description of a key environmental feature, and it covers a broad number of things: wetlands, water resources, native vegetation, natural habitats, environmental diversity, and other aspects of the environment that the project is intended to protect or enhance. That should be read in context with some of the powers of the minister, as follows:

(1) The minister has the power to do anything necessary, expedient or incidental to—
(a) implementing the project or performing the functions of the minister under this act; or
(b) administering this act; or
(c) furthering the objects of this act.
(2) Without limiting the operation of subsection (1), the minister may—
(a) enter into any form of contract, agreement or arrangement;
(b) acquire, hold, deal with or dispose of any real or personal property or any interest in real or personal property;
(c) seek expert or technical advice. . .
(d) carry out projects;
(e) act in conjunction with any other person or authority.

I have not argued that none of that should take place or that any of it should not take place. All I have asked is that a key environmental feature be identified in advance of work taking place. I find it almost impossible to believe that it would be too difficult to identify a key environmental feature. However, if it is too difficult to identify all environmental features in advance of the work proceeding, I make the offer that it could be identified in sections prior to entering into various properties or in sections for the minister to consider before it goes to another place. Given the rest of the minister's powers, I cannot see why he needs the power to intervene across what may be large sections of the Upper South-East without the landowner—and/or the former landowner in the case of repossessed land—even being informed in advance as to what those key environmental features are.

It is almost like one of those puzzles where you get a prize if you can give the answer but you are not allowed to know what the question is. I will be insisting on this amendment. One of the stumbling blocks appears to be that, as a result of this drafting, I have moved that they be identified by regulation made under section 4. I am not a lawyer and I have not sought parliamentary counsel advice on this. However, if it were to expedite the passage of this bill, I would be prepared to look at that identification being set up by the joint committee. All I am asking is that these features be identified in advance so that those who are attempting to get on with their lives in the area have knowledge of what works will be taking place, where and to what key environmental features.

**The Hon. T.G. ROBERTS:** My understanding is that the government has agreed to the position of the committee being able to examine those key areas. It is felt that that is all that is required.

**The Hon. CAROLINE SCHAEFER:** I will have to seek advice from parliamentary counsel. I do not think the committee looking at them, inspecting them or having a bit of knowledge about them is the same as their having to be identified in such a manner as the landholders can identify for themselves. My idea of using the committee would be that it be identified in writing so that the committee could inform the landholders in advance. I cannot see that that is really any easier than doing it by regulation.

I will support whatever needs to be done, provided that the land-holders know in advance what these key environmental features are. I do not want to do the anti public servant act here, because I think it is very often unwarranted, but there are occasions when an over-zealous authorised officer will find something that he or she considers to be a key environmental feature that no-one else necessarily thinks is one.

I have a vision in the most extreme case of perhaps someone having a small seasonal wetland which they might use for picnics, for stock water or for whatever is part of their management process and, for whatever reason, someone decides that that wetland needs to be drained into the greater drainage project, for instance. I would have thought it was nothing more than a courtesy for the people who are to be affected by that to have that key environmental feature—which is really a code for, 'Hey, let's be allowed to do what we like here,'—at least identified in advance.

**The Hon. R.D. LAWSON:** To assist the debate, although not having had an opportunity to discuss this with my colleague the Hon. Caroline Schaefer, would the government be prepared to accept an amendment which read, 'that are identified as key environmental features by notice published in the *Gazette*', rather than by regulation? It is understood that regulations have certain connotations and effects, but my colleague the shadow minister is indicating—and I certainly agree with her—that it would be appropriate to have some prior notification on the public record to which not only a parliamentary committee but also landowners could have reference.

**The Hon. A.L. EVANS:** It would help me if we could ascertain what the situation is there. The government informs me that the process that the Hon. Caroline Schaefer is recommending is a very long, drawn-out one and that it would hold things back a great deal. I really would appreciate to hear what the Hon. Caroline Schaefer has to say on that.

**The Hon. CAROLINE SCHAEFER:** I have just spoken with parliamentary counsel, and again I state that I am relatively inexperienced in this. However, I would be prepared to amend my amendment to read:

After 'Upper South-East' insert—
that are identified as key environmental features by the minister by notice in the *Gazette*, .

We would then delete 'by regulation made under section 4', if that would expedite things. To explain to the Hon. Mr Evans, this would mean that notice would need to be given in writing so that it was available to the public, but without the restrictions that are necessarily part of regulations. I hope that sufficiently waters down the process so that the minister is able to accept that.

**The CHAIRMAN:** Does the honourable member seek leave to put that in an amended form?

**The Hon. CAROLINE SCHAEFER:** Yes, sir.

Leave granted.

**The Hon. T.G. ROBERTS:** In a spirit of cooperation and unification on this issue, the government is prepared to accept an amendment like that. The issue related to the number of identifiable key areas that you would find in, say, a wetland or an area of the environment that has a number of key features. In other areas it may not be such a problem. Dry land farming, for instance, would have fewer such areas. However, the government is prepared to accept such an amendment, so we may have solved the Hon. Mr Evans's dilemma.

**The Hon. M.J. ELLIOTT:** This question of key environmental features is interesting. I remember attending a conference some years ago in Oregon called 'That ain't no wetland, that's a swamp'. This is the attitude that some

people bring to these issues. The Democrats are happy to support the amendment.

Amendment as amended carried.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 8, after line 32—Insert:

(5) For the purposes of section 12A, paragraph (e) of the definition of 'owner' is excluded.

(6) For the purposes of the determination of the value of land under section 12A(2)(b) or (3)(c), the value will be determined taking into account what price would be agreed between a willing but not anxious vendor and a prudent purchaser.

This amendment seeks to amend the definition of 'owner' in order to facilitate proposed new clause 12A, which I will move to insert later. I do not know why, but the definition of 'owner' allows for a squatter or a temporary dweller or a temporary lessee to be defined as an owner. For the purpose of providing compensation later in the bill, this particular definition of 'owner' is deleted but the remainder of the definition will remain. This is done in the spirit of what I seek to do in terms of compensation.

**The Hon. T.G. ROBERTS:** The government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 4 to 11 passed.

Clause 12.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 15—

Lines 12 to 14—Leave out subclause (4) and insert:

(4) Any person who has an interest in land that is affected by the vesting of the land in the minister under this section does not on the commencement of this section have a right to claim compensation from the minister or the Crown in respect of the vesting but may have an entitlement to compensation under section 12A.

Line 17—Leave out ', or his or her successor in title'.

Having sought the advice of parliamentary counsel, I understand that these are drafting amendments.

**The Hon. T.G. ROBERTS:** Supported.

Amendments carried.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 15, lines 28 to 32—Leave out subclauses (8) and (9) and insert new subclause as follows:

(8) The minister—

(a) should, pending the performance of work on land within a project works corridor, give consideration to the extent to which the land can be made available to the former owner of the land, or any other person who has been an occupier of the land, without adversely affecting the implementation of the project or the furtherance of the objects of this act, and may, as the minister thinks fit, enter into an agreement with a former owner or other person so as to allow some or all of the land to be used for a purpose approved by the minister; and

(b) should, in the implementation of the project by the performance of work on land within a project works corridor, give consideration to the extent to which any land can be kept for the use of the former owner of the land, or any other person who has been an occupier of the land, without affecting the implementation of the project or the furtherance of the objects of this act, and may, as the minister thinks fit, vary any agreement entered into under paragraph (a), or enter into some other agreement, so as to allow some or all of the land to be used for a purpose approved by the minister; and

(c) should, at the completion of all work on land within a project works corridor as part of the implementation of the project, give consideration to the extent to which the land can be returned to the former owner of the land without adversely affecting the furtherance of the objects of this act, including on the basis that the former owner agree to enter into a management agreement, or to grant an easement, (or both) providing for such matters as the minister thinks fit.

This amendment seeks to assure landowners (or, in the case of acquired land, previous landowners) that they will have access to and management of the compulsorily acquired corridor up until the drainage work begins on that property and immediately after it finishes so that there can be no doubt that once the corridor is compulsorily acquired they will have access to and management of that land. This seeks that assurance so that minimal disturbance to the management of the land is caused by the project.

Amendment carried.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 16, after line 25—Insert:

'former owner' of land means the person who was the owner of the land immediately before the land was vested in the Minister under this section and, to the extent to which that person remained as the owner of adjoining land immediately after that vesting, includes any successor in title;

This is virtually a drafting amendment and redefines 'former owner'. At the time at which the minister hands back the land at the end of the project, the title will revert to the previous owner or, if that owner has died, to their successor in title. This amendment takes the place of the former clauses that were deleted.

Amendment carried; clause as amended passed.

New clause 12A

**The Hon. CAROLINE SCHAEFER:** I move:

Page 16, after line 36—Insert new clause as follows:

Entitlement to compensation

12A. (1) Subject to this section, a person who, immediately before the commencement of this Act, was the owner of a parcel of land that included land within a project works corridor is entitled to claim compensation from the Minister after the expiration of the prescribed period if the person has suffered loss in the situation covered by subsection (2) or the situation covered by subsection (3).

(2) This subsection covers the situation where—

*(a)* the person is, at the expiration of the prescribed period, still the owner of land that, on the vesting of land in the Minister under section 12, was the remainder of the land in the relevant parcel (the 'adjoining land'); and

*(b)* despite any work undertaken by the Minister within the project works corridor during the prescribed period, the value of any land within that project works corridor returned to the person, or offered to the person, by the Minister after the commencement of this section, together with the value of the adjoining land, as at the end of the prescribed period, is less than the value of the land within the original parcel, as at the time immediately before the commencement of this Act.

(3) This subsection covers the situation where—

*(a)* the person is, at the expiration of the prescribed period, no longer the owner of land that, on the vesting of land in the Minister under section 12, was the remainder of land in the relevant parcel (the 'adjoining land'); and

*(b)* the person divested his or her interest in the adjoining land through a sale to a genuine purchaser at arms length for a value at least equal to fair market value; and

*(c)* the value of the land sold by the person, as at the time of sale, was less than the value of the land within the original parcel, as at the time immediately before the commencement of this Act.

(4) For the purposes of subsections (1), (2) and (3), if the owner of the adjoining land transfers his or her interest in the land to an associate during the prescribed period, the associate will be taken to have been the owner of the relevant land immediately before the commencement of this Act (and, subject

to this section, to be able to make a claim for compensation in substitution for the original owner).

(5) For the purposes of subsections (1), (2) and (3), the Valuer-General will determine—

*(a)* what will be taken to constitute a particular parcel of land; and

*(b)* any value of land, whether as at the time immediately before the commencement of this Act, as at a time of sale, or as at the end of the prescribed period.

(6) For the purposes of this section, there must be excluded from any determination of the value of land any component that is represented by, or attributable to, any value, or any costs, associated with any works constructed on the land before the commencement of this section.

(7) In determining the value of any adjoining land, the Valuer-General must make an allowance (in favour of the Minister) for any diminution in the value of the land in consequence of any development or activity undertaken on the land after the commencement of this section (and may make an allowance for any other factor considered reasonable by the Valuer-General).

(8) In determining any entitlement to compensation under this section, an allowance must also be made for any changes in the general market for land in the Upper South East.

(9) The allowance under subsection (8) will be made in accordance with any method or criteria specified by the Governor by proclamation made on the recommendation of the Valuer-General.

(10) The Governor may, by subsequent proclamation made on the recommendation of the Valuer-General, vary or revoke a proclamation under subsection (9).

(11) Subject to this section, the amount of compensation payable under this section to a particular person will be an amount that represents the loss described in subsection (2)*(b)* or subsection (3)*(c)* (as the case may be), after making any allowance required by this section, together with interest at the prescribed rate calculated over the prescribed period.

(12) Compensation under this section is to be determined by agreement or in default of agreement by the relevant court.

(13) The relevant court may, in determining a claim under subsection (12), adopt any determination of the Valuer-General in relation to a relevant matter (or may, if it thinks fit, adopt any alternative determination of value).

(14) In this section—

'prescribed period' means—

*(a)* unless a different period is prescribed under paragraph *(b)*—the period of 42 months beginning on the commencement of this Act;

*(b)* a period (being a period of between 36 and 45 months beginning on the commencement of this Act) prescribed by the regulations for the purposes of this definition;

'relevant court' means—

*(a)* where the amount of the compensation claimed is $150 000 or less—the Environment, Resources and Development Court;

*(b)* in any other case—the Land and Valuation Court.

This new clause seeks to give a landowner compensation, if applied for, only at the completion of the entire project. As has been vigorously argued previously, the people who have so far had drainage completed, with a couple of exceptions, have readily donated their land in the knowledge that at the end of the project there will be both material and environmental gain and that, in fact, under any system of valuation, they will have profited. There may, however, be the odd occasion when a net loss after valuation is suffered, and this new clause gives those who believe they have suffered net loss after the completion of the entire project the opportunity to apply for compensation and the project to be valued by the Valuer General; and, if a net loss has been suffered, it provides for payment of compensation with interest.

This has been included because, normally, compensation would be paid at the start of the compulsory acquisition but in this case the compulsory acquisition will take place almost immediately; and because, as I have said, virtually all landowners will profit, no compensation will be paid except for those few exceptions where a net loss occurs. The relevant court in this case where the amount of compensation claimed is $150 000 or less is the Environment, Resources and Development Court, and in any other case the Land and Valuation Court.

**The Hon. M.J. ELLIOTT:** I pose a few questions. I understand what is trying to be achieved. Let us say this is done at the time of completion. It may be that the benefits have not yet accrued. If one is lowering watertables and, hopefully, reducing salt, that may take time. If you do the valuation at the completion of the project, the full benefit has not yet accrued. It does not seem that the person gets compensation when in the long term there is more benefit to come. Alternatively, what happens if there continues to be a deterioration that may or may not be because of the project? Some areas are salinising. If the project is not done correctly, the salinisation in some areas could accelerate and the watertable could rise, although I know that is not the plan. Alternatively, some areas could be safe from further deterioration, but you do not see any obvious improvement. There are a few woolly areas around this: would the mover care to address those sort of issues?

**The Hon. CAROLINE SCHAEFER:** I understand that the person who would apply for compensation would have to do so within a prescribed period, that period being 42 months from the beginning of the commencement. It would need to be at the end of that time. I, too, put the position that someone who was at the end of the drain may take some time to assess whether they had made a net loss or net profit. My understanding would be that they would need to apply, but that there would be some time before the Valuer-General needed to take that piece of land into account. I agree that it is a bit woolly, but it is important that it goes in. Both Crown Law and the Valuer-General's advice has been sought. They believe it is possible to do what I wish to do and that there will be very few applicants under this amendment.

**The Hon. R.D. LAWSON:** I refer to the comment made by the Hon. Mr Elliott. Whilst it is undoubtedly true that at the time of completion of the project the ultimate benefit or detriment of the scheme may not be realised, it seems that at that point the potential will be reflected in an increase, or perhaps a diminution, in the value of the land. Notwithstanding that the full benefits have not been realised at that time, it will be possible for a valuer applying the formula laid down to indicate the increase or diminution in the capital value of the property.

**The Hon. M.J. Elliott:** Do you think so?

**The Hon. R.D. LAWSON:** Valuers have the capacity to make assessments of that kind. They are called upon in ordinary compulsory acquisition to value the benefit to be derived from the property owner for the building of a freeway, road or bridge, and that is part of the normal valuation exercise.

**The Hon. M.J. Elliott:** Changing watertables and salinity levels may be outside their experience.

**The Hon. R.D. LAWSON:** Indeed, which is why they will take account of other experts. The market takes into account this potential when market value is fixed, which is precisely what is being determined here. The standard test for the valuation, which is in subsection (6)—an amendment previously moved by the Hon. Caroline Schaefer—relating to value, taking into account what price would be agreed between a willing but not anxious vendor and a proven purchaser, those two parties would, when striking a price,

take account of all the factors that exist at that time and take into account the exigencies for improvement or otherwise.

I have a question for the minister in relation to this important amendment because without it this legislation, it seems, is fatally flawed in that it amounts to expropriation without compensation. Does the government (or the minister) have indications from particular landowners who will be affected by this proposal who believe that the value of their property will be diminished in consequence of the proposed works? If the government has received indications from any particular landowners (and I do not seek their identity), has there been any estimate of the likely compensation that might be payable if this clause is inserted?

**The Hon. T.G. ROBERTS:** The original concept for this project as agreed to by the landowners in the Upper South-East was that the land for the drainage component would be donated, because the benefits from the drains to the land-holders would far exceed the value of the land. Since many land-holders have already contributed land to the completed drains under this scheme, the bill did not allow for compensation for the remaining drainage alignments. This amendment has been discussed with the Valuer-General, and it is considered that the number of land-holders entitled to compensation would be small because the loss of the land for drainage works is more than offset by the increase in productivity that the drain provides for the remainder of the property.

So, it appears that there is general consensus about this project. With other projects we may run into that difficulty, but this project has general agreement. I think that the Valuer-General has taken into consideration some of the concerns that the Hon. Mr Elliott has had. Perhaps it is new territory in relation to valuation; I am not familiar with that. But the work has been done and there seems to be general agreement.

**The Hon. R.D. LAWSON:** The particular question I was asking the minister was this: acknowledging the general acceptance within the community of the appropriateness of this measure, have there been any particular landowners who have communicated with the minister saying that in consequence of this project their land will derive either no benefit at all or the benefit that it derives will be substantially offset by the loss of the land that they must provide?

**The Hon. T.G. ROBERTS:** There is one known instance where complex local hydrological conditions on a land-holder's property may be impacted by drain construction. The project's engineering staff are aware of this situation and are working towards ensuring a satisfactory solution. In this instance, it is essential that the drain be constructed in order to save properties and significant stands of native vegetation further upstream, where the land is already suffering from salinity damage. So, one landowner has been contacted, the particular hydrological formations that he has have been discussed, and it is a matter of dealing with the issue rather than an offer of compensation at this stage.

**The Hon. M.J. ELLIOTT:** Can I take it that any loss in value can only ultimately be taken against the value of the land that had been compulsorily acquired by the minister to carry out the works and that, if the loss exceeded the value of that land, there would not be compensation for that as well?

**The Hon. CAROLINE SCHAEFER:** My understanding is that the net value of the land would be taken into account after the land that was compulsorily acquired was returned to the property. The compensation would ultimately be on the net loss of the corridor, because that is all that has been compulsorily acquired.

**The Hon. M.J. ELLIOTT:** There is one property that I can think of that has land where the value may be measured not only in terms of agricultural yield. There is one property where a person may attribute value to wetlands that they have and claim that the works have impacted negatively on those wetlands, and then seek to claim that against any land that was temporarily acquired by the minister.

I think most people have thought in terms of works being put in and whether or not there has been an increase in agriculture values of adjoining land. But, if the scheme wants to lower some wetlands that have been artificially created, it is possible that somebody might be creative in the use of this clause in ways that perhaps were not originally intended or considered. I seek a reaction from both the minister and the Hon. Caroline Schaefer.

**The Hon. CAROLINE SCHAEFER:** My understanding is that this would be the commercial value of a property.

*The Hon. M.J. Elliott interjecting:*

**The Hon. CAROLINE SCHAEFER:** No. I have sought to have the value of the land assessed, just as the Valuer-General would assess any other parcel of land, and not necessarily any particular enterprise off the land.

**The Hon. M.J. Elliott:** Whether you use it for agriculture, aquaculture or the shooting of water buffalo, it is still a value.

**The Hon. CAROLINE SCHAEFER:** That is a value. The amendment provides:

> In determining the value of any adjoining land, the Valuer-General must make an allowance (in favour of the minister) for any diminution in the value of the land in consequence of any development or activity undertaken on the land after the commencement of the section. . .

That is what it says, and hopefully that covers it.

**The Hon. M.J. ELLIOTT:** Can the minister advise whether these matters have been taken into consideration by the government?

**The Hon. T.G. ROBERTS:** I am told that the circumstances that the honourable member has described have been taken into consideration.

New clause inserted.

Clauses 13 to 29 passed.

Clause 30.

**The Hon. CAROLINE SCHAEFER:** I move:

> Page 33, after line 31—insert:
> (c) a person to whom an order has been issued under division 2 of part 5 may appeal to the court against the order or any variation of the order.

This amendment allows for a person to appeal against an order issued by the minister. I have inserted this amendment partly because I have a basic belief that anyone must have a right to appeal in legislation. The government bill has a right of appeal against a management agreement decision only, not against an order issued by the minister. This would allow for an appeal to the ERD Court.

I have also moved it for the sake of expediency because we have seen suggestions in the press that the High Court may become involved in this case, and I would hope that by allowing a right of appeal in the ERD Court this might be a more expedient method of justice being done.

**The Hon. T.G. ROBERTS:** The government supports the amendment.

Amendment carried.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 34, lines 1 and 2—Leave out paragraphs (b) and (c) and insert:

(b) an appeal must be made—

(i) in the case of an appeal against an order or the variation of an order under subsection (1)(c)—within 14 days after the order is issued or the variation is made;

(ii) in any other case—within one month after the making of the decision,

unless the Court allows an extension of time;

(c) the making of an appeal against a decision or order does not affect the operation of the decision or order or prevent the taking of action to implement the decision or order unless the Minister or the Court determines that the decision or order should be suspended pending the outcome of the appeal;

This sets a time limit against which appeals may be made.

**The Hon. T.G. ROBERTS:** The government supports the amendment.

Amendment carried.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 34, line 7—After 'the decision' insert 'or order'

This is a drafting amendment.

**The Hon. T.G. ROBERTS:** The government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 31 to 41 passed.

New clause 41A.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 37, after line 33—Insert new clause as follows:

Parliamentary Committee

41A. (1) The Upper South East Project Parliamentary Committee is established.

(2) The functions of the Committee are—

(a) to take an interest in—

(i) the Minister's progress in constructing the works required to implement the Project; and

(ii) the effectiveness of what is being done to improve the management of water in the Upper South East; and

(iii) the extent to which the Minister is achieving various milestones in the protection, enhancement and re-establishment of key environmental features through the implementation of the Project; and

(iv) the manner in which the Minister's powers under this Act are being exercised; and

(v) the overall operation and administration of this Act; and

(b) as appropriate, to provide recommendations to the Minister in relation to any matter relevant to the administration of this Act; and

(c) to consider any matter referred to the Committee by the Minister, or by resolution of both Houses; and

(d) to provide, on or before 31 December in each year, an annual report to the Parliament on the work of the Committee during the preceding financial year.

(3) The Minister must, in connection with the operation of subsection (2), provide to the Committee quarterly reports on the implementation of the Project under this Act.

(4) The quarterly report that is provided at the end of the third year of the operation of this Act must include a detailed assessment of—

(a) the amount of work that remains to be done to implement the Project under this Act; and

(b) the appropriateness of bringing this Act to an end before the fourth anniversary of the commencement of this Act.

(5) The Committee is to consist of—

(a) three members of the House of Assembly appointed by that House; and

(b) three members of the Legislative Council appointed by that House.

(6) The Committee may (but need not) have the Minister as a member.

(7) The seat of a member of the Committee becomes vacant if—

(a) the member dies; or

(b) the member delivers a written notice of resignation from the Committee to the Presiding Member of his or her appointing House; or

(c) the member ceases to be a member of his or her appointing House; or

(d) the member is removed from office by resolution of his or her appointing House.

(8) The Committee will from time to time appoint one of its members to be the presiding member of the Committee.

(9) Four members constitute a quorum of the Committee.

(10) All questions to be decided by the Committee must be decided by a majority of votes of the members present and, in the event of an equality of votes, the member presiding at the meeting has a second or casting vote.

This seeks to establish a joint house parliamentary committee, namely, the Upper South East Project Parliamentary Committee. The aim of setting up this committee, which I would envisage would be a standing committee for such time as the project exists, is to open the process to public scrutiny through the auspices of a joint house committee and to require the minister to report on progress and on any difficulties and successes and/or failures of the project while it is taking place so as to avoid, hopefully, the delays that we have seen over the last six years.

**The Hon. M.J. ELLIOTT:** I have not heard any good arguments as to why this should not be referred to an existing committee. We have a standing committee of this parliament, of which the mover has been a member, namely, the Environment, Resources and Development Committee. This is core business for that committee. This is an environment, resources and development issue. I am surprised, given the member's own experience, that it has not been referred to that committee. There is a real danger that, if we set up a special committee for this, when parties do their selections for people to go onto it, there could be a few people who would use that committee for political purposes, and it would not be hard to guess the names. That would be really disappointing.

The ERD Committee's history is that there has never been a dissenting report in all its existence. It has been a very non-political committee. This is core business, and, if this committee is prepared to consider it, I will have an amendment prepared very quickly so that all the matters raised by the member—and I do not object to the content—can be referred to the ERD Committee. I do not think that setting up a select committee, which is likely to be highly political, is the way to handle a matter of this importance.

**The Hon. T.G. CAMERON:** I want to place on the record that I agree with absolutely everything that the last speaker said.

**The Hon. CAROLINE SCHAEFER:** To be perfectly honest with the committee, I had amendments drawn up either for a separate committee or for this matter to be referred to the ERD Committee.

**The Hon. M.J. Elliott:** Are there copies of that available?

**The Hon. CAROLINE SCHAEFER:** Not right here, but they are probably somewhere in my file. After some thought, I decided to go for a special committee. It is not something that I would die in a ditch for either way but—

*The Hon. M.J. Elliott interjecting:*

**The Hon. CAROLINE SCHAEFER:** They are. This is a very contentious bill and I hope that the minister will report to this committee in person at least three times a year. There is no obligation for a minister to report to any of our standing committees. I did sit on the ERD Committee, as did the minister, and it does some very good work but, when it comes to requiring a minister to report to it, it does not have the

ability to do that. I guess you could say it could be used for politics, but the other reasoning is that those who are vitally concerned are the ones who are most likely to put most effort into these committees. My only desire is for this to be seen by the people in the Upper South-East as their conduit for a voice.

**The Hon. M.J. ELLIOTT:** I move:

Page 37, after line 33—insert new clause as follows:

41A.(1) The Environment, Resources and Development Committee of the parliament is to consider—

(a) The effectiveness of what is being done under this act to improve the management of water in the Upper South-East, and to protect, enhance and re-establish key environmental features through the implementation of the project; and

(b) the manner in which the minister's powers under this act are being exercised; and

(c) the overall operation and administration of this act; and

(d) any other matter concerning the operation or administration of this act referred to the committee by the resolution of both houses.

(2) The minister must, in connection with the operation of subsection (1), provide to the committee six-monthly reports on the implementation of the project under this act.

(3) The six-monthly report that is provided at the end of the third year of the operation of this act must include a detailed assessment of—

(a) the amount of work that remains to be done to implement the project under this act; and

(b) the appropriateness of bringing this act to an end before the fourth anniversary of the commencement of this act.

(4) The committee must, on or before 31 December in each year, provide to the parliament a report on matters considered by the committee under this section during the preceding financial year.

I had no problems with what the member sought to achieve with her amendment, in terms of the level of parliamentary scrutiny of this legislation and what the minister does under the legislation that should take place.

The only disagreement that I have is which committee should do it. I do not think that we can justify setting up a special committee for it—not because it is not important, but because there is already in existence a standing committee for which, as I said, this sort of thing is really core business. It is a committee that I will not be with for much longer, but I have absolute confidence that that committee will do this job very well. As I said before, there is always a danger, when you set up a special committee to get onto an issue, that certain people stick their hands up and there are those who, perhaps, unfortunately, have barrows, rightly or wrongly, that they want to push.

I think it would be unfortunate if a tripartisan committee of the parliament, which has functioned in a non-political way, does not take up the role. We might end up (although this is, I am sure, not the member's intention in moving her motion) with a committee that, unfortunately, just politicises the issue a little more than it should be. There is always the danger that there could be a bit of point scoring and performance for the sake of a reporter who might be present at the time. I urge members to support my alternative amendment, which now is being circulated, and which members might want to take time to digest.

**The Hon. T.G. CAMERON:** I have a question, but I am not sure to whom I should direct it—perhaps the Hon. Terry Roberts, representing the Leader of the Government in the Council. Are there additional costs, and what are they, if we accept the amendment standing in the Hon. Caroline Schaefer's name, compared to the alternative standing in the name of the Hon. Mike Elliott?

**The Hon. CAROLINE SCHAEFER:** My experience with these sorts of standing committees (which are, in fact, no more than select committees), is that they would be provided with a parliamentary secretariat—so that would be existing staff—and I think the members receive as a sitting fee the princely sum of $12 a session. There are additional costs, but the impact on the parliamentary budget would be very minimal, I would have thought.

**The Hon. T.G. ROBERTS:** My understanding is that, when the matter was being discussed, the minister gave an undertaking that a special committee would be set up for the life of the project. I am tied to that. I understand what the Hon. Mike Elliott is trying to do in relation to referring to the select committee for consideration, on the basis that the politicisation of the standing committee may take place.

It appears to me (and one can argue a case for either the ERD Committee or the standing committee) that a case for a special committee would be that it could react at any given time if the minister wanted an investigation to take place, whereas ERD, in some cases, is tied by a process of prioritisation that is set either by parliament or by the members themselves. So, if the issue was further down the prioritisation paper, it may not be possible for it to take up the brief straightaway. Again, if there is an urgent matter, I am sure that the ERD Committee would shift its priorities to bring it up to take an appointment based on the urgency of the deliberations that are required.

I think the issue that the honourable member raises in relation to cost are probably nil or negligible. There would not be a lot of increase. It is not a highly paid committee. The sitting fee is one that members have always complained about. It has always cost more than $12.50 to meet, other than if the committee is meeting in Parliament House and it is on a sitting day. I think the fact that the minister is directly responsible to the committee and can have immediate contact with it at any given time, and that the committee reports directly to the minister, is a safeguard that is not provided with the ERD Committee. ERD is responsible to parliament, and not to the minister involved, in relation to whatever the project is.

**The Hon. T.G. Cameron:** Who would chair this committee?

**The Hon. T.G. ROBERTS:** The minister may be a member of the committee. However, it does not necessarily have to be that way: I understand that the committee could appoint a member of its own.

*The Hon. M.J. Elliott interjecting:*

**The Hon. T.G. ROBERTS:** If the danger is having on a committee someone with an alternative opinion, I think there are some benefits in that.

*The Hon. T.G. Cameron interjecting:*

**The Hon. T.G. ROBERTS:** I think that, based on the urgency of the issue, the minister or the committee would determine that. Of course, this issue has been urgent for a long time. We have had no response from any of the parliamentary committees other than, I think, the late response from the Economics and Finance Committee, which looked at it as an issue. Signals were being sent out very early that the Native Vegetation Council was having a lot of difficulties in dealing with this issue. I would think that a good policing committee set up specifically for the purpose would be familiar with the issues as they grew, and as members familiarised themselves with the issue their knowledge base would build up.

**The Hon. T.G. Cameron:** Who would sit on the committee?

**The Hon. T.G. ROBERTS:** Committee members would be nominated by the parties in the party room, I suspect.

**The Hon. CAROLINE SCHAEFER:** As it is set out under this amendment, it would be under the same auspices as any other select committee in this place: three members of the House of Assembly and three members of the Legislative Council. The committee may (but need not) have the minister as a member, and the committee will from time to time appoint one of its members to be the presiding member of the committee. Four members constitute a quorum. So, it is essentially under the same rules as any other parliamentary select committee.

**The Hon. T.G. CAMERON:** In relation to this matter, with the establishment of parliamentary committees, such as ERD and the various other committees (I sit on the Social Development Committee and, in fact, all members of this chamber are represented on one committee or another), if we are to set up committees of this nature with three representatives from each chamber, what is the procedure for nominating and electing those three members?

If we are setting up some kind of template here, and the government has given this proposal for the Caroline Schaefer committee the green light and says that it supports it and would prefer this kind of reporting mechanism instead of going through existing parliamentary committees, how will these three people be appointed to this committee, and how will we ensure that the council gets its proportional representation on these respective committees?

Normally, one would have thought that membership of a committee of this nature would be one Liberal, one Labor and one Democrat. However, we now have six Labor members, nine Liberals members, and three Australian Democrats on the floor. There are also three others—Nick Xenophon, Family First and SA First—who have equal representation, along with the Australian Democrats. So, if we are going to set up these committees, I would like to know what the processes will be either for electing or appointing people to the committees, or will it just be a question of whoever is able to put the deal together to set up the committee can nominate who sits on it? I would like some clarification from both the government and the opposition on this matter.

**The Hon. CAROLINE SCHAEFER:** I would envisage that this committee would be—

**The Hon. M.J. Elliott:** Do you want to go on it?

**The Hon. CAROLINE SCHAEFER:** Yes, if the honourable member would like.

*The Hon. T.G. Cameron interjecting:*

**The Hon. CAROLINE SCHAEFER:** It would be the same as the procedure for many of the select committees on which I have sat. Certainly, most of them are either upper house or lower house committees, but I do remember sitting on a committee on which the Hon. Mike Elliott also sat and which was presided over by the Hon. David Wotton. It was the natural resource management committee, a joint house committee. Generally those committees are represented by people who have an interest in them, in much the same way as, for instance, the Hon. Mike Elliott is on the select committee for shopping hours at the moment—

**The Hon. T.G. Cameron:** But under your proposal?

**The Hon. CAROLINE SCHAEFER:** There would be three from each house. They are appointed by the house. What would normally happen is that, if members in this chamber had a particular interest in it, they would be canvassed and, certainly in my case, they would be more than welcome to be a member of this committee. It is purely so that there is an open process and so that a report is sent to the people in the Upper South-East. That is my aim in moving this amendment. It does have a second purpose, that is, in some ways to protect the minister because, as we have all pointed out, the minister has unprecedented powers in this bill. The minister paid me the courtesy of briefing me on the bill, and I know that he, too, was uncomfortable with having powers such as this without there being a mechanism for reporting.

As I have said, the ERD committee would be perfectly able to do the same job but, in my view, there are a couple of reasons why a standing committee was perhaps more appropriate. First, the ERD committee at any given time has at least one and usually two inquiries under way. Certainly when I was a member of it—and I do not imagine it has changed—

**The Hon. T.G. Cameron:** I am past that argument and you responded to me.

**The Hon. CAROLINE SCHAEFER:** Another reason is timeliness.

**The Hon. T.G. CAMERON:** I return to my original question. Could someone outline to me what the processes are for the appointment of these people to this committee? We get up at the end of the week, and, if this chamber is to appoint these people, how will they be appointed? Maybe it has been set out in the legislation; I do not know. I would like someone to tell me how we will elect these three members.

**The CHAIRMAN:** My understanding is that the bill must be assented to before members can be elected.

**The Hon. T.G. ROBERTS:** My understanding is that a standing committee would be set up, but I am not sure whether a funding allocation has been made for it—

**The Hon. M.J. Elliott:** It is not called a standing committee in this amendment.

*The Hon. Caroline Schaefer interjecting:*

**The Hon. T.G. ROBERTS:** It would need a secretariat and support staff—

*Members interjecting:*

**The Hon. T.G. ROBERTS:** In relation to the selection, the general rule of thumb is one member from each of the major parties and one member from the Democrats. If one of the major parties or the Democrats was prepared to forgo their position in relation to a new committee, then an invitation would be given to one of the Independents, but that is on an informal PR basis. There are no hard standing rules on it, but—

*The Hon. T.G. Cameron interjecting:*

**The Hon. T.G. ROBERTS:** I understand that, yes, and we are a part of that changing world. What I will do is report progress—

*The Hon. T.G. Cameron interjecting:*

**The Hon. T.G. ROBERTS:** No, I will report progress so that negotiations can take place about the standing committee, report back to the minister and have some discussions. We can put it on motion and perhaps we can get an agreement on a way to proceed.

Progress reported; committee to sit again.

## CRIMINAL LAW (FORENSIC PROCEDURES) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 November. Page 1525.)

**The Hon. T.G. CAMERON:** SA First supports this bill. In our opinion, it contains adequate safeguards. However, if any more were proposed, we would consider supporting those. This bill enables the police to test up to 9 000 criminals, and we may well be introducing procedures which, as I speak, could enable unresolved crimes to be resolved, particularly crimes such as rape.

This bill amends the act so that our forensic procedures complement the commonwealth model. If our provisions do not satisfy the commonwealth government's provisions, we may not be declared a corresponding jurisdiction and we would lose access to the national database, which I think everyone would wish to avoid.

A person who has been convicted of a crime (no matter how minor) and imprisoned will be required to undergo DNA sampling. If the person does not consent, a senior police officer or a court may authorise testing, depending on the likely intrusiveness of the procedure. Retention orders may be sought where a protected person has been compelled to give DNA and their guardian requests that it be destroyed. If there is a reasonable suspicion that the guardian is involved in the crime or is covering up, then no way. Volunteers who give DNA and who subsequently become suspects may have their DNA transferred from the volunteers database to the suspects database. This prevents police from having to make two separate applications for data.

When I looked at some of the debate on this issue it appeared that Mr Brokenshire and Mr McEwen from the other place had considered the question of a national crime facility and DNA evidence and testing when they were in the UK on a parliamentary trip. One of the examples that Mr Brokenshire cited was the unsolved rape and murder of a 14 year old girl 21 years ago.

That crime had been solved using this technology. I think the point being made by Mr Brokenshire was that DNA testing becomes more accurate as technology develops, and establishing a database now could result in crimes which are currently unsolved and which will remain unsolved with current technology being solved with more advanced procedures in the future. He went on to argue that the cost is worth it, as it pays for itself by freeing up the police to solve other crimes. There were a number of different views on this. Mitch Williams, for example, accused the government of not been draconian enough for him on this issue. He made reference to the Police Association's President accusing the Rann government of misleading the public by promising to get tough on law and order but delivering the weakest DNA legislation in the nation.

He went on to inform the house that the primary use for DNA evidence in Britain is to allow the police to short-circuit the investigation, to focus and collect evidence on the most likely suspect, that the DNA is automatically destroyed and that any person who is arrested must be DNA tested. I have quite a bit of material in relation to some of the clauses, but I will not go into that. Suffice to say that, in my opinion, the bill probably contains adequate safeguards, but I would be more than happy to look at any more if they were proposed. My understanding is that 9 000 criminals will be tested through this procedure and, if this procedure helps solve just one unsolved rape case, then it will be well worth it.

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

## EDUCATION (CHARGES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 November. Page 1507.)

**The Hon. T.G. CAMERON:** This bill extends the sunset clause from 1 December 2002 to 1 December 2003 to allow schools to collect compulsory materials and service fees while, in the minister's words, 'the government undertakes a comprehensive investigation of the most appropriate mechanisms for levying materials and service charges in public schools'. Given the nine months that this problem has been sitting there, I do not know why this matter has not been dealt with before. However, I rise to support the government's position. I can recall that, when the Hon. Nick Xenophon approached me with an amendment in relation to this, I was prepared to support giving schools the power to collect these fees, whereas the Hon. Nick Xenophon did not really want to go down that path. He eventually did, and put in a sunset clause. I remember that when we talked about it his words to me were, 'If you support this sunset clause, Terry, and Labor happens to win the next election, it will force them for once to finally act in an honest manner in relation to these issues.'

I did not go along with him at the time, although I supported his amendment. Of course, all that has come to pass. After nine months in office, the government has realised that it may want to deal with this matter in a manner different from how it previously dealt with it because of budget implications, if it goes ahead and scraps this. I am more than happy to support the government. I hope it is able to come up with a solution to resolve this matter, because my original reason for supporting the amendment—and I think I might have mentioned this previously—was when my former wife asked me for money for school fees for three children. I can recall squealing at the cost of it.

To my surprise, she pointed out to me that most of her friends, who were earning considerably more than we were, had decided that they should not pay this fee; that it was not really compulsory. It seemed to me that some of the smart alecs and smarties, who could well afford to make this contribution towards their children's education, were sitting back and allowing other families, who could not afford it as much as they could, to pay it. It had become a little bit of a joke. The good, honest, decent people in our society were paying the school fees whereas the smarties, who could afford to pay, were not paying. I support the government's bill. I wish them well in their endeavour to try to sort this one out.

**The Hon. M.J. ELLIOTT:** The Democrats opposed the introduction of compulsory school fees. As I have said on previous occasions, my children are in the public system; I taught in the public system; and I have a commitment to it. I think it is important that, just like public housing, we should have a commitment to public education. We have seen in the last decade public housing turn into welfare housing, and there is a very real danger that, to some extent, public education could turn into welfare education as well. What I see happening is that, increasingly, pressure is going on to schools to continue to raise their fees, and in the wealthier eastern suburbs, for instance, the fees for schools are getting much higher, although of course at this stage there is both a compulsory and a voluntary component.

What I am seeing happen is precisely what I predicted would happen once we introduced the notion of a compulsory

fee. Many people paid the fees (that were not compulsory) for years and now that they are getting a note telling them how much is compulsory and how much is not they are paying the compulsory part and not the rest. I predicted that this would happen, and the feedback I am getting is that it is happening. It is too hard to predict what will happen next. The schools will say that they are losing even more money than they were from the few who did not pay and that they need the level of the compulsory fee to be raised. It will create significant divisions within the public system, and there will probably be two sets of losers. The losers will be those schools which are in the poorer suburbs and country schools, where obviously there is a range of differences.

If anything puts the public system under too much pressure, so that effectively some wealthier public schools become de facto private schools, that leaves the rest of those, which are truly public, increasingly struggling, and those will be the country schools and the schools in the poorer socioeconomic areas of the metropolitan area. I think it is important that we have a strong public system and that it is supported adequately and properly from funds. We should have a public system so good that parents are not taking their kids out of public schools and putting them into private schools because they think their children might be better off.

I have not done so because I believe that my kids have had an excellent education. My first two children have gone to university, and I have every confidence that my third child will do the same. There has been nothing wrong with the education they have received through the public system, but I am concerned that increasing pressure has been building for some time. Unfortunately, part of that pressure, I think, reflects this push for compulsory fees. I believe that it has been the thin end of the wedge, and that, as I predicted, resistance is now coming from parents to pay the non-compulsory component. The next bit will be a request for the compulsory component to be upped, and then the game is well and truly up in terms of dividing it into the wealthy public schools and the rest, and there will be losers all around from that.

I just wish that people would stop and think that the simplest answer is not always the best one. If one looks at human nature one can predict how people will react to some things. People just have to stop looking for simple answers. The simple answer was compulsory fees because, in some areas, a small number of fees was not being collected. The current path we are going down has created a bigger problem. The Democrats will oppose the second reading of this bill. This government has had adequate time already to carry out a review. It has been elected for quite a while now. Simply buying another 12 months because it has not done the job is a reflection, I think, of its competence more than anything else.

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

## GENE TECHNOLOGY (TEMPORARY PROHIBITION) BILL

Adjourned debate on second reading.

(Continued from 22 August. Page 760.)

**The Hon. CAROLINE SCHAEFER:** The opposition will not be supporting this bill, which provides a moratorium on all dealings with genetically modified plant material for five years. The Hon. Mr Gilfillan's bill allows for continued research—that is, dealings—in secure environments. This means that research on genetically modified plants can continue in glasshouses but not in open field trials for the next five years. Field trials are a vital component of research. Research of this kind generally takes eight to 13 years to become a commercial reality: beginning as a small plant in a laboratory, progressing to assessments in glasshouses and then onto extensive and varied field and paddock trials, that is, provided the crop poses no unmanageable risk to human health or the environment.

Much GM research currently being undertaken in South Australia has already proceeded beyond the glasshouse stage of research; so, this bill, in effect, makes all GM field trials illegal, and current and new GM research could not proceed. GM field trials, in not just canola but grape, potato, carnations etc., would not be able to proceed. The $35 million National Centre for Plant Function Genomics at Waite Campus (which this government claims as its major achievement for primary industries) would be severely hampered. The GM research project being undertaken at the genome centre is biotic stress and productivity in cereals and involves GM research to develop new cereal varieties that tolerate soil and climatic conditions, such as salt and drought, which are often found in Australia.

Surely, no-one would want to pass up the opportunity to be the world leader in the development of drought and salt tolerant cereals. The Centre for Genome Plant Research promises significant benefits for Australia's $8 billion grains industry, and it will provide over 100 jobs in South Australia. If this moratorium goes ahead the centre would lose at least five years research and development, with the possible transfer of the project and its research capabilities to another state. I am sure the aim of this bill is to take a cautionary approach because of perceived market reluctance, but it would have the effect of discouraging science. We either continue down the path of collaborating on GM research with our national and international competitors and sharing any resultant intellectual property or be prepared to risk not being able to buy the intellectual property from those same competitors in the future. The bill does not allow any relaxation of the moratorium in response to changes in market forces over that time. It does not indicate how it would enforce the proposed moratorium. This bill is inconsistent with the government's priorities for industry investment, which is based on maintaining a leading plant biotechnology research and development capability.

The Hon. Mr Gilfillan supports his call for a moratorium by claiming that primary producers are anti GMOs. However, no two groups are agreed on which path to take. Basically, growers do not want to use GMOs now because research and field trials have not been concluded. They do not want to take a risk, but they want research to continue. In the recent South Australian Farmers Federation survey sent to all South Australian members, 25 per cent responded. Of those 25 per cent, 80 per cent said that they did not want commercial GM crops, but 66 per cent indicated that they wanted GM plant research to proceed.

A recent article in the *Australian* quoted organic wine producer David Bruer from Langhorne Creek, who made it quite clear what many in the wine industry think when he said:

> Rejecting gene technology is crazy. I would be incensed if there was a disease resistant plant and I couldn't use it.

David Bruer was referring to Australian efforts to engineer a grape variety which is resistant to the devastating fungal pathogen powdery mildew. By speeding up the process of crossbreeding, the introduction of a resistant gene in table grapes would potentially save growers $30 million a year that is currently spent on spraying vines with sulphur and other fungicides. I am sure that those who have multiple chemical sensitivity would also embrace such a development. For most primary producers, the concern is not health or risk; it is whether or not there will be market resistance.

Future markets for GM or non-GM food cannot be predicted. There may well be niche markets for non-GM products, or alternatively the non-GM preference may well fizzle out as consumers gain a better understanding of health benefits, etc. The opposition believes that we should keep our GM and GM-free options open, and over the next few years monitor what is happening in the national and international markets in terms of whether people are willing to pay the price for GM free or alternatively GM advantaged food. We need to have the future capability to participate in both GM and non-GM food production and exports if and when significant marketing advantages can be demonstrated.

What the opposition, instead, proposes is to maintain faith in the existing national regulatory framework of the commonwealth's Gene Technology Act and South Australia's Gene Technology Act 2001. The commonwealth and all state and territory governments recognise the potential benefits and risks of gene technology and have set up the Federal Office of the Gene Technology Regulator (OGTR). Some of the issues that have already been addressed (I have deliberately used canola in my examples because it is the only GM crop close to being ready for commercial release in South Australia) are as follows:

- A code of practice for GM canola field trials, with a quality assurance system, has been adopted by all organisations carrying out trials in Western Australia and is equally applicable here.
- National regulatory processes are in place to control GM laboratory and field experimentation, commercial release and food labelling for all food product.
- Detailed delivery segregations, identified preservation and traceability systems are already outlined and would respond to the needs of gradually increasing sowing areas.
- Ongoing integrated weed management systems will continue to preserve the effectiveness of herbicide use at a farm level.

As an example, much fear has been created by the concept of super weeds being created by the crossing of GM canola (that is Roundup resistant canola) with other brassica weeds. This is physiologically unlikely to happen. They would be knocked out by spraying with a broadleaf spray, not Roundup. There are already herbicide resistant weeds which have evolved naturally, having nothing to do with GM and which are managed by good husbandry, such as tillage, alternative herbicide use and rotation.

There is no consistent evidence of market premiums being gained for non-GM canola in mainstream Australian markets such as Japan, China, India or Pakistan. Other markets may offer opportunities for niche quantities of non-GM product. But it should be noted that, while the EU will not import, for instance, GM canola, the EU is in fact a net exporter of canola, and it continues with its own experimentation with plants such as GM potatoes. One cannot but wonder whether this is more about trade barriers than about health and market advantage.

There is a potentially detrimental lack of understanding and a misconception about the processes and relationships between issues like biotechnology, genetic modification and unchallenged conventional plant breeding. There is an opening for increased public understanding, and we all—government, opposition and scientists—have a duty to promote open and informed debate. So the opposition intends to support the ongoing work of the OGTR. Of interest, the OGTR has recently postponed the release of GM canola crops pending further research on GM canola. This cautious approach demonstrates that, on a national level, reckless action will not be taken. It will also effectively delay commercial release for at least another season.

I note from the interim select committee report, which was tabled the week before last in the other place, that the committee appears to have come to exactly the same conclusion as the opposition's position on this bill, that is, that the committee:

> . . . has confidence that the gene technology regulator will effectively assess and manage potential adverse impacts of GM plants on the health of South Australians and the South Australian environment, including impacts which might be different in South Australia to other parts of Australia and other countries.

Another nationwide regulatory body, the Australia New Zealand Food Standards Council, has responsibility for decisions relating to the safety and labelling of genetically modified food and implementing its decisions through the food standards code. The safety assessments carried out by ANZFA ensure that the GM food is as safe as its conventional counterpart and is substantially the same as its conventional counterpart in nutrition, allergenicity, toxicity and other physical properties: there is no difference to the consumer between GM and non-GM food.

Identifying GM foods for consumers involves guaranteeing the origin and identity of such foods. This is a complex and difficult task, especially where there are long food supply chains, multi-ingredient foods and multiple and varying sources for the food or its components. A labelling standard for genetically modified foods has been developed that protects public health and safety and provides consumers with the information they need without burdening industry with unjustified costs, unreasonably increasing food prices or imposing unwarranted restraints on trade.

The fact that labelling standards and identification testing for GM presence have already been developed is an important consideration in this debate. The question must be asked whether Australia can successfully supply both GM and non-GM crops to markets. In both cases the consumer goods need to meet purity specifications. In the case of non-GM crops, this does not mean total freedom from admixture with GM crops. The regulatory processes in importing countries which recognise a distinction between GM and non-GM are increasingly specifying what their standards are for unintended presence of GM material in non-GM shipments to claim non-GM status.

Indicative figures from countries that have declared a position are: Australia and European Union, 1 per cent tolerance for unintended GM ingredients; Japan, Korea and Argentina, 5 per cent threshold for GM presence; in other markets, such as the USA, Mexico and China, there is little or no attempt to discriminate on the basis of GM or non-GM. There are no standards established. In these countries, particular importers, perhaps looking to supply niche markets by sourcing non-GM consignments, are likely to operate to standards in place in other countries. It is interesting that

Canadian exports of non-segregated canola have increased over the past few years by 25 per cent.

Of relevance to this debate is that it is possible to test for as little as .1 per cent GM presence. The common strip test ($1 to $10 per sample) can detect 1 per cent GM presence; the more sophisticated ELISA test ($20 per sample) has a limit of detection of .3 per cent; and the ultimate test of the PCR based on genetic analysis ($200 to $600 per sample) is to .1 per cent. So the concept of GM-free or zero GM needs to be put into the context of what is measurable. I believe that with the availability of proper testing and codes of practice we have advanced beyond the concept of GM-free zones.

In the absence of an objective measure, it would be best to define the standard as the limit of detection: that is, a finite, measurable purity standard. If concerned sections of the industry, such as organic canola growers, wish to continue with a concept of GM-free in spite of testing standards, then a separation distance of 3 to 5 kilometres between crops would be advisable, as established by the findings of Dr Reiger (CRC for Weed Management). Using the most sensitive of PCR test strip, which I have outlined, it was confirmed that there is zero pollination between canola crops on a commercial production scale beyond 3 kilometres from the pollen source.

Alternatively, another system would easily allow for the co-existence of non-GM and GM by alternating seasons of planting GM and non-GM crops so that pollen outcrossing could not occur. The use of geophysical information systems (GIS) technology would have a place in a system of coordinating to further reduce the potential for outcrossing. Adjoining farmers could log proposed crop rotations to a GIS register to help provide a regional view of critical areas. Negotiations could then be established to remove or reduce potential outcrossing. This type of system would need, of course, to be driven by growers and would sit outside the regulatory framework. Western Australian farmers have moved a long way towards such a system.

The opposition is very keen to see South Australia's options totally open and supports the effort to achieve true co-existence. While market uncertainty over GM food continues, differentiation in terms of GM and non-GM commodities and international markets may well be a fact of life. Decisions will have to be made by agricultural and food producers as to whether they supply GM or non-GM products, mixed markets, or a combination of both. There are Australian quality assurance schemes already in place that demonstrate that it is possible to manage the adoption of gene technology in agriculture to meet market requirements.

It is likely that quality assurance during production stages (rather than product standards at the end point) will increasingly be required mainly to avoid the need for testing every shipment for every standard of product. The documentation that would then accompany shipments would provide the quality assurance and traceability requirements at the end market. This would involve being able to label a product comprehensively and truthfully and being able to provide evidence to prove it. There would need to be traceability systems in place with each of the three current farm production methods (conventional, GM and organic) required to conform.

A recent development in Australia has been the formation of the Gene Technology Grains Committee with the primary aim of developing common principles for establishing effective supply chain management. The grains industry (right across Australia) is working on a strategy to implement traceability and identify preservation systems which will enable not only GM or non-GM products but a variety of quality categories of products to be handled separately so that market requirements can be met to obtain premium prices.

The GTGC represents the entire grain supply chain, including, among others, scientists, growers, industry, and the commonwealth and state governments. I think it is worthwhile my naming some of the participants to show how wide the representation on this committee is. They are: the Australian Bulk Handlers Association, Australian Fodder Industry Association, Australian Oil Seeds Federation, Australian Oil Seeds Products Group, Avcare, Canola Association, Grains Council of Australia, Organic Federation of Australia, Seed Industry Association of Australia, Aventis, Du Pont, Monsanto, Agforce, New South Wales Farmers Federation, Pastoralists and Graziers Association, South Australian Farmers Federation, Victorian Farmers Federation and Western Australian Farmers Federation, AWB Ltd, Cargill, CSIRO, Grain Pool of Western Australia, Grains Research and Development Corporation, National Agricultural Commodities Marketing Association, University of Western Australia and, as I have said, representatives from all state governments and the commonwealth government.

On 1 August this year, the Gene Technology Grains Committee released its discussion paper entitled 'Strategic Framework for Maintaining Coexistence of Supply Chains', which provides a basis for growers to choose to deliver organic, GM or non-GM crops to the marketplace. Coexistence measures implemented are to be based on customer and regulatory requirements; be flexible, practical and cost effective; be science based and supported by risk assessment; and incorporate industry, government, regulatory and research initiatives. Participants in one supply chain will be responsible for implementing measures that prevent their activities from unduly interfering in the operation of another supply chain. A traceability-identity arrangement will result in a certifiable paper and/or electronic trail which covers pre-farm, on-farm and post-farm sectors of the grain supply chain in order to meet market requirements and comply with domestic and export regulations.

It is envisaged that a code of practice will be adopted. Beginning at seed production, the code will cover the process of production, harvest, storage and delivery, and assist both growers and bulk handlers to comply with technology provider guidelines. Growers will be able to provide evidence which allows certification that their product is organic, GM or non-GM, ultimately leading to possible niche premiums and marketing benefits. By doing this, the code is expected to make it easier for supply chain stakeholders to introduce GM crops. Currently, the GTGC is negotiating with the Australian Quarantine Inspection Service (AQIS) and Joint Accreditation Systems Australia and New Zealand to ensure that the code will meet international standards and provide a level of security that can be certified by AQIS for export purposes.

In addition, the code of practice will provide an audit trail that aims to meet the needs of domestic food manufacturers to comply with ANZFA GM standards. This would then allow further market access, both domestically and internationally, for Australian agriculture. The key challenge of the proposed system is how to fulfil compliance in a cost-effective manner. Australia presently has a timely opportunity to design and implement a supply chain management system that is industry-wide and aims to meet the goal of cost efficiency.

The Australian grain industry is already confident that it has the capacity to implement systems to maintain coexistence of different production systems and supply chains to meet market demands and ensure consumer choice. I am amazed that none of these recent developments have been mentioned by either Mr Gilfillan or the minister. Both seem to be stuck on the idea of GM-free zones.

In conclusion, South Australia does not need to go out on a limb as the only GM-free state, and we do not need to stall our research by supporting a moratorium at this point in time. We continue to have faith in the national regulatory processes and will be guided by OGTR. We actively support ANZFA's labelling regime and the need to build consumer confidence. Confidence in gene technology will increase with open communication between growers, scientists, regulators and consumers, and we see that the Office of Gene Technology has a crucial role in achieving this. The opposition endorsed the individual grower's right to determine what technologies they will employ. It appears that appropriate controls can be established to provide for the secure and successful segregation of GM trials and non-GM crops and we await the release of the Gene Technology Grains Committee's strategic framework for the coexistence of organic, conventional and GM production systems in Australia.

In the meantime, we have in South Australia some of the best scientists in the world. We need to work with them to encourage good scientific research. We need to stay in touch with the rest of the world and the rest of the nation when it comes to gene technology research. Whatever good things come out of this research, at least some of them can be applied directly in this state. We need to act in the state's best interests for the long term, while keeping a watchful eye on market developments throughout the world. Since there is no chance for the commercial release of canola or any other crops for at least another 12 months, let us assess the rapidly developing regulatory system before putting our state in a position where we could lose and not gain market advantage. We oppose the bill.

**The Hon. IAN GILFILLAN:** I thank the members who contributed to the debate and accept that both were worthy contributions to what is quite a vexed issue in South Australia at this stage. I will also quote from the interim report of the Select Committee on Genetically Modified Organisms, principally because I believe there are some aspects in it, although it is an interim report, with which I partly disagree, but it indicates where it is going. I will take the quotes in the order that they appear rather than dodge about. Page 3 refers to how South Australia assesses the impact of GM plants, and at point 3, in relation to the committee, it states:

> Will not further consider or report further on issues in relation to how South Australia assess the impact of GM plant technology, including where the impacts might be different in South Australia to other parts of Australia and other countries.

I feel uneasy that the committee has surrendered immediately to another authority and it may well be that the gene technology regulator is the body that has competence, but why should not a select committee set up specifically in South Australia look at impacts where they might be different in South Australia to other parts of Australia and other countries? On page 4 it states:

> The committee has confidence that the national regulatory scheme will effectively assess and manage potential adverse impacts of GM plants on the health of South Australians and the South Australian environment.

Although I do not belittle the competence of the Gene Technology Regulator, it is the responsibility of our South Australian committee to look specifically at areas that are peculiar to South Australia. On page 14 in the middle of the page are some comments regarding biotechnology Australia as follows:

> According to a recent survey conducted for the Commonwealth government agency Biotechnology Australia, Australians in different states as well as regional and metropolitan Australians have different attitudes towards GM foods and crops.

That is a masterpiece of understatement. It further states:

> Another survey also recently conducted for Biotechnology Australia found that the Australian public are finding it difficult to understand gene technology issues because of a lack of quality information and the amount of conflicting misinformation being put out by activist groups.

I emphasise 'misinformation put out by activist groups'. What arrogance Biotechnology Australia has to subjectively stamp material put forward by someone with whom they disagree as misinformation. This is the sort of point scoring that has belittled the debate and it certainly has belittled the view I hold of Biotechnology Australia. I regard that now to be quite clearly a biased organisation, and therefore its findings should be questioned. On page 22, under 'Market access impacts: Certifying the GM status of crops', the report states:

> Once a GM crop is licensed for commercial growth anywhere in Australia by the Regulator, particular markets are likely to impose the need to certify the GM status of any variety of that crop or other crops grown in Australia. Such certification will be sought by buyers to satisfy them that particular market sensitivities to GM commodities are met, or that overseas or domestic labelling requirements for GM food can be met.
>
> For the necessary certification to be provided, a rigorous segregation system which actively segregates along the production to export chain and an identity preservation system for documenting the process would be needed.

I certainly agree that that is identifying a comprehensive issue and shows the first signal that the committee is clearly aware of, and intends to move along analysis of, markets both in the domestic and the international scene. Further on the same page, on assessment and management of market access impacts, the report states:

> However, under the Commonwealth and State and Territory Gene Technology Acts the Gene Technology Ministerial Council has the power to issue a policy principle requiring the Regulator to recognise areas designated under state law for the purpose of preserving the identity of GM crops or non-GM crops for marketing purposes. This would enable, but not oblige, States and Territories to enact legislation to designate GM-free areas in which the growing of particular GM crops could be prohibited, or to designate GM areas in which only GM crops may be grown. Areas would only be recognised by the Regulator if declared for the purpose of preserving the identity of GM or non-GM crops for marketing purposes. The Regulator cannot act inconsistently with a policy principle issued by the ministerial council.

Quite clearly, these two paragraphs identify the justification and reason for our bill. I emphasise the fact of requiring the Regulator to recognise areas designated under state law for the purpose of preserving the entity of GM crops or non-GM crops. It leaves it flexible, so that there could be scope for both areas of GM and areas of non-GM which would and should be preserved as discretely separate areas. It certainly recognises that there is acceptable scope for the bill that I have before the council. It is clearly widely known that the Australian Barley Board (ABB) has identified very strongly the sensitivity of its market, and that is identified in this report on page 23, where one of the dot points states:

- If Australia continued to produce low levels of GM crops and most of its trading partners expanded their adoption of GM crops, Australia could lose some opportunities to expand (or even maintain) its market shares over time, both in its primary crop markets and downstream commodity markets.

This actually identifies an area of concern that I think others critical of a moratorium have raised; that is, that for some reason we would be missing out on a market by not having the GM product immediately available. The fact is that no GM promoters to this date has promoted the GM product on the basis of increased consumer demand: it has been on lower costs, supposedly, to the producers. So, I question why that particular dot point is relevant at this stage. However, what is relevant is this:

ABB Grain Limited stated in the *Stock Journal* and in the newsletter that:

- Saudi Arabia requires a GM-free certificate with every shipment of grain and has indicated that it may refuse to trade barley with ABB if Australia produces any commercial grain crops in the future.

That is, any commercial grain crops, not just barley. The report continues:

- Saudi Arabia is the world's biggest importer of barley, and has purchased more than one million metric tonnes of feed grade barley in the past 12 months from ABB Grain, making it a significant market.
- Other Middle East customers, as well as those from Taiwan, China and Japan also seek certification from time to time to assure them that particular shipments are free of GMOs.

Significant buyers of barley within Australia, particularly from the malting and brewing industries, which use malting-grade barley, have advised that they are not interested in GM grain. It is pretty clear that we have sensitive world markets not just for the introduction of GM barley in this particular case, but for any GM crop.

As I mentioned before, I do not support the committee's interim conclusion that it will not further consider the impacts on the health of South Australians or the South Australian environment, and will handball that to the national regulatory scheme for GMOs and the regulator. I think it is an obligation on the committee, and I am sorry that it has reneged on it.

I turn to page 27, 'Market Access Impacts for South Australia'. I think this is where the committee has a very important role, and I am hoping that it will fulfil its obligations. The report states:

The Committee:

1. Has found that there are conflicting reports and views regarding the market access impacts for South Australia from the widespread release of GM crops into agriculture in South Australia or elsewhere in Australia.
2. Is seeking further advice regarding market access issues before it can further consider and report on whether market access impacts for South Australia exist, and if they do exist if and how South Australia should assess and manage such impacts.
3. Will seek further advice on and will consider and report further on the following issues:
   - Whether the widespread release of GM crops into agriculture in South Australia or elsewhere in Australia will have significant market access impacts for South Australia crops and commodities.
   - If so, what are the significant market access impacts for South Australia.
   - If so, is there the need to implement mechanisms in South Australia to manage market access impacts and what is the feasibility and what are the implications associated with management mechanisms e.g.
     - Establishment of rigorous and cost effective segregation and identity preservation systems.
     - Declaration of GM or GM free areas.
     - The need to implement mechanisms in South Australia to assess changes in market access impacts in the future.

These are vital, and I hope, but do not have total confidence, that the committee will have the time and energy to diligently research these issues. My point—and the purpose of the bill—is that we cannot wait for perhaps indeterminate findings somewhere down the track to expose South Australia to the detrimental effects of introducing GM crops.

Finally, on page 29 of the report, under the heading,'How South Australia assesses the impact of GM plants', the article states:

The Committee has confidence in and endorses the processes in place within the South Australian Government to provide advice to the Regulator regarding the impacts of GM plants and the management of the impacts, particularly where the impact might be different in South Australia.

You may recall, Mr Acting President, that in fact just a little earlier in the report the committee stated that it is not interested in assessing that the impact might be different in South Australia from either health or environmental aspects. So, I do not know what the doublespeak here is, but I continue with the quote:

The Committee also has confidence in the leading role taken by the Department of Human Services in the development of this advice to the Regulator.

I would have thought it was up to the committee to have assessed that: taken evidence and made their own judgment. I would be very interested to know just what the South Australian government is doing specifically in providing advice to the Regulator; who provides that advice; and who gets to see it, either before or after it goes to the Regulator. So, I move on from that interim report and wish the committee well, but I believe that we cannot wait for the possibly uncertain conclusions it may come to.

I now want to reinforce some early arguments. I do not intend to take up the time of the council to repeat the many arguments that went into my introduction of the bill which included such problems as segregation; the problems of the legal relationships with the purveyors of the seed; and major agribusinesses. These are matters that honourable members can check back for themselves. I want to add more recent issues. In particular, one is an email which I received on 28 November. The heading of this email was: 'GM Crop Trials Must Stop—British Medical Association'.

The Hon. Caroline Schaefer placed great emphasis on how desperate it would be for South Australia to continue with trials. It is, in a way, a defence of last resort. Those who attacked our bill in the early days right across the board have now backed away from saying that a moratorium is a bad idea because 80 per cent of the farmers who responded through the Farmers Federation indicated clearly that a moratorium was a good idea. However, they have argued that we should continue to have open field trial plots. We have argued that open field trial plots adjacent to normal farms will contaminate in the same way as a released GM commercial crop. This email, which relates to a situation in the UK, is relevant here. From the *Scotsman* of Tuesday 19 November, and under the heading 'Crop trials must stop, say doctors', it reads:

Senior doctors have demanded an immediate halt to genetically modified crop trials in a move that piles pressure on the Scottish Executive to reconsider its controversial backing for the program. The British Medical Association (BMA) has warned that insufficient care is being taken to protect public health and that there has been a lack of public consultation about crop trials despite the steady increase in the number of them.

The demand that there should be a moratorium on any further planting of GM crops on a commercial basis is made in a submission to the Scottish parliament's health committee. The BMA's warning about the dangers of continuing with trials will be seen by anti-GM crop campaigners as giving powerful weight to their argument that the issue must now be reconsidered by Ross Finnie, the environment minister.

I think that statement stands on its own. Members will recall that I indicated that the Insurance Council of Australia has shown very little enthusiasm for taking up the insurance of genetically modified crops, and I will quote from a submission that was made to the Select Committee on Genetically Modified Organisms by Ruth Russell and Denise Tzumli. Page 7 of that submission quotes the Insurance Council of Australia, the peak body representing the insurance sector of Australia, from its submission on 'Crop Insurance—Genetically Modified' to the House of Representatives Standing Committee on Primary Industries and Regional Services. The submission stated:

ICA is aware that general technology companies may have difficulty obtaining insurance. . . Far more research is needed by insurers/reinsurers to gain an appreciation of the risk profile of this relatively new (for Australia) technology. . . There is a perception amongst insurers that genetic engineering is dangerous, characterised by an extremely diversified risk profile of a new technology. . .

General insurers are reluctant to accept incalculable risks where it is difficult to predict what loss scenarios will arise. This is particularly true with risks involving lengthy periods before manifestation of latent injury or damage occurs such as in the case of asbestos. In relation to availability of insurance through Swiss Insurance, ICA makes several key points, of which point 7 is:

'If one single genetic engineering loss manifests itself not only at the seed manufacturer's but also at the farmer's and the foodstuffs industry, different underwriting liability covers could be triggered simultaneously.'

The Australian Local Government Association, at its conference in Alice Springs in early November, passed a motion calling on the federal and state governments to give councils power to declare local government areas free of selected GMO crops. The New South Wales Local Government Association made its opposition to the release of GM canola loud and clear at its AGM at Broken Hill. I have been advised, again by email, that in the *Bendigo Advertiser* on the 13th of last month a moratorium was favoured by Paul Weller, the Victorian Farmers Federation President, and there is a clear indication of profound farmer concern and enthusiasm for a moratorium.

In concluding the debate, I think that the issues are so concerning to the continued marketing of the product in South Australia that it is beholden on us to move as soon as possible to impose a moratorium. Whether there is pressure for the introduction of GM crops next year or the year after is not the issue. The issue is that we have in place the mechanism to protect South Australia's marketing reputation. To argue that five years is inflexible: as we all know legislation in this place is being amended session by session. There is no reason why this issue could not be revisited if, in a few years time, the scene has changed. Equally, there is no reason, if it were deemed advisable, that the moratorium could not be extended. I urge honourable members to support the second reading of the bill so that we can promote the best interests of the farming economy of South Australia.

The council divided on the second reading:

AYES (5)

| | |
|---|---|
| Cameron, T. G. | Elliott, M. J. |
| Gilfillan, I. (teller) | Kanck, S. M. |
| Stefani, J. F. | |

NOES (13)

| | |
|---|---|
| Dawkins, J. S. L. | Gago, G. E. |
| Gazzola, J. | Holloway, P. (teller) |
| Laidlaw, D. V. | Lawson, R. D. |
| Redford, A. J. | Ridgway, D. W. |
| Roberts, T. G. | Schaefer, C. V. |
| Sneath, R. K. | Stephens, T. J. |
| Zollo, C. | |

Majority of 8 for the noes.

Second reading thus negatived.

## UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT BILL

In committee (resumed on motion.)

(Continued from page 1601.)

New clause 41A.

**The CHAIRMAN:** When the committee last met, we had progressed to proposed new clause 41A. There was a proposition by both the Hon. Caroline Schaefer and the Hon. Mr Elliott to insert a new clause 41A. I understand that the Hon. Mr Elliott now wishes to do something slightly different.

**The Hon. M.J. ELLIOTT:** I seek leave to withdraw the new clause that I previously moved to insert.

Leave granted; amendment withdrawn.

**The Hon. M.J. ELLIOTT:** I move:

Page 37, after line 33—Insert new clause as follows:

ERD Committee to oversee operation of act

41A.(1) The Environment, Resources and Development Committee of the parliament—

(a) is to take an interest in—

(i) the minister's progress in constructing the works required to implement the project; and

(ii) the effectiveness of what is being done to improve the management of water in the Upper South East; and

(iii) the extent to which the minister is achieving various milestones in the protection, enhancement and re-establishment of key environmental features through the implementation of the project; and

(iv) the manner in which the minister's powers under this act are being exercised; and

(v) the overall operation and administration of this act; and

(b) may, as appropriate, provide recommendations to the minister in relation to any matter relevant to the administration of this act; and

(c) may consider any matter referred to the committee by the minister, or by resolution of both houses; and

(d) must provide, on or before 31 December in each year, a report to the parliament on the work of the committee during the preceding financial year.

(2) The minister must, in connection with the operation of subsection (1), provide to the committee three-monthly reports on the implementation of the project under this act.

(3) The three-monthly report that is provided as the end of the third year of the operation of this act must include a detailed assessment of—

(a) the amount of work that remains to be done to implement the project under this act; and

(b) the appropriateness of bringing this act to an end before the fourth anniversary of the commencement of this act.

I seek leave to amend my amendment, as follows:

After 'committee' insert 'under this act'.

Leave granted; amendment amended.

**The Hon. M.J. ELLIOTT:** Therefore, proposed new subclause (1)(d) will read:

must provide, on or before 31 December in each year, a report to the parliament on the work of the committee under this act during the preceding financial year.

To make it clear, the work that is being done by the committee and which it is reporting on each 31 December is the work that comes under this bill and not other work. It is only for clarification. I do not think that I need to further comment at this stage. As I said, essentially, I wanted to pick up what has been proposed by the Hon. Ms Schaefer, but the work should be referred to the ERD Committee rather than establishing a new joint house committee.

**The Hon. DIANA LAIDLAW:** I strongly oppose this amendment, although I have just learnt that my colleague the Hon. Caroline Schaefer is going to accept it. It was put to my party room that this was to be a new joint committee, and I strongly support that for two reasons. First, I believe that it gives the local member an opportunity to be involved, and I understand that was respected by the government and the minister; and, secondly, as a member of the ERD Committee, I believe that the committee has some enormous tasks and references before it, and it is not necessary for the committee to get involved in the nitty-gritty of a very difficult and heated debate and to muddle its other work.

I think that for the Hon. Mike Elliott to come into this place as he retires from the committee in this parliament and not to even consult the other committee members and their work program and to shove this issue across to them is unacceptable behaviour. In terms of the committee, he could have at least consulted the members in this place to see whether we wanted to accept the reference and whether, in terms of our other broad responsibilities, we could manage to carry them out properly as well as take on this issue.

Thirdly, I have mentioned that, as a former planning minister, I have very strong views about Mr Brinkworth's past practices, especially if I took this matter to cabinet and my view did not prevail. I believe that the way in which he has acted in the past without planning approval is absolutely unacceptable and despicable. I want that put on record now and that I am completely prejudiced in terms of his actions, and that, if this matter is referred to the committee, either I must withdraw and not be involved in the committee deliberations or Mr Brinkworth must deal with me at that time, as I wish I had dealt with him previously.

**The Hon. T.G. ROBERTS:** If this amendment is carried, I think that we are in for a very enlightening time when this referral hits the ERD Committee. I think that the proponent of the project in the Upper South-East has encountered a lot of obstacles, and he has managed to put the D9 through all of them. I think that there is one obstacle he is about to hit that he may have to take into consideration in relation to the ERD Committee: with the former minister for environment and planning at full steam, the D9 might even stall. I will be interested to see that.

**The Hon. M.J. Elliott:** The irresistible force and the immovable object.

**The Hon. T.G. ROBERTS:** Yes. In relation to the ERD, the government has come to a compromise on this, in conjunction with the shadow minister and the Democrats, to facilitate a process that is in line with the committee's deliberations. As I have said, we were amenable to either the standing committee or the setting up of a special provision in relation to the ERD Committee. To get a consensus to move this bill forward, we have agreed to an inclusion in the ERD Committee—

*The Hon. Diana Laidlaw interjecting:*

**The Hon. T.G. ROBERTS:** That is possible. In relation to where it goes from here, certainly the first obstacle for the people progressing this may be a reaction by the members in another place, but that is something we will have face. If we have to go to a conference, so be it. We are supporting the composite amendment.

**The Hon. CAROLINE SCHAEFER:** With the exception of one of my colleagues, the opposition will accept the—

*The Hon. Diana Laidlaw interjecting:*

**The Hon. CAROLINE SCHAEFER:** As the honourable member would know, having carried a number of bills, it is very difficult to consult when you are halfway through. We will accept this amendment. There was discussion as to which committee it would be referred: whether it be a separate committee or to the ERD Committee. My preference would still be a separate committee. However, it was pointed out to me that, under the terms of that particular amendment, the committee would not have been answerable to any standing orders and it would not have had any standing within the parliament. At such short notice, I believe it is important that that be the case. However, I am concerned that this amendment does not stipulate that the report needs to be tabled in the parliament, and I believe—

**The Hon. M.J. Elliott:** That's the minister's report.

**The Hon. CAROLINE SCHAEFER:** The minister's report. Therefore, the ERD committee would be taking a report from the minister but with no obligation to hand that report on. My whole reason for wanting a committee was so that the minister's actions and progress (or otherwise) would be easily accessible to the public. I cannot see that that has happened under this particular amendment, and therefore I seek leave to move a further amendment that would make it compulsory for the minister's report to be tabled in both houses of parliament after they present to the ERD Committee.

**The CHAIRMAN:** Is the Leader of the Democrats supporting this proposal?

**The Hon. M.J. ELLIOTT:** Yes, I am happy with it.

**The CHAIRMAN:** Is the government supporting the proposal?

**The Hon. T.G. ROBERTS:** Yes.

**The Hon. Diana Laidlaw:** Every three monthly report has to be tabled in the parliament?

**The Hon. CAROLINE SCHAEFER:** Yes. May I say how very sorry I am that Mr Tom Brinkworth's name has been brought into this debate. What I have been trying to avoid is this becoming a personal debate in order that the drain can progress with a minimum of conflict, so I am extremely disappointed that, at this stage, that has become part of the debate. I move to insert the following new subclause:

(4) The minister must cause a copy of the report provided to the committee under subsection (2) to be tabled in both houses of parliament.

The Hon. Caroline Schaefer's new clause negatived; the Hon. Caroline Schaefer's amendment to the Hon. M.J. Elliott's new clause as amended carried; the Hon. M.J. Elliott's new clause as amended inserted.

*[Sitting suspended from 6.02 to 7.45 p.m.]*

Clause 42 passed.

Clause 43.

**The Hon. CAROLINE SCHAEFER:** I move:

Page 38, lines 16 to 24—Leave out this clause and insert new clause as follows:

Expiry of Act

43. (1) Subject to a proclamation under subsection (2), this act will expire on the fourth anniversary of the commencement of this act.

(2) The Governor may, by proclamation, fix a day on which this act will expire that is earlier than the day that applies under this subsection (1) (and this act will then expire on the day fixed by proclamation).

(3) A day fixed under subsection (2) cannot be earlier than the day immediately following the end of the prescribed period under section 12A.

(4) When this act expires—

(a) any management agreement in force immediately before the expiry will be taken to be an agreement between SEWCDB and the owner of the land immediately before the expiry of this act and thereafter—

(i) the agreement is binding on each owner of the land from time to time whether or not the owner was the person with whom the agreement was made and despite the provisions of the *Real Property Act 1886*, and on any occupier of the land; and

(ii) the parties to the agreement may agree to amend it from time to time, or to rescind the agreement; and

(iii) the note entered under section 15(4) of this act will remain until the Registrar-General is satisfied, on application by SEWCDB or the owner of the relevant land, that the agreement has been rescinded, and the Registrar-General may remove the note from the relevant instrument of title, or make a note as to the rescission of the agreement (as the Registrar-General thinks fit); and

(b) a licence in force immediately before the expiry will be taken to be a licence granted by SEWCDB under Division 2 of Part 3 of the *South Eastern Water Conservation and Drainage Act 1992*; and

(c) any requirement imposed by an order under Division 2 of Part 5 of this act will continue to have effect and will be enforceable by SEWCDB (including by taking any action required by the order or otherwise authorised under this act) as if this act had not expired but as if any relevant reference to the minister were a reference to SEWCDB; and

(d) if an order under Division 2 of Part 5 of this act has been noted against an instrument of title, or against land, in accordance with section 26, then that section will continue to apply in relation to the order until the order is revoked under that section but as if any reference to the minister in that section were a reference to SEWCDB.

(5) The Governor may, by proclamation made on or before the expiry of this act, transfer any asset, right or liability of the minister that relates to the implementation of the project or the operation of this act—

(a) to SEWCDB; or

(b) to another person or body (if the other person or body has agreed to the transfer).

(6) Subsection (5) does not limit the ability of the minister to take any other action to deal with outstanding assets, rights or liabilities before the expiry of this act.

(7) The Governor may, by proclamation, make any other provision of a saving or transitional nature consequent on the enactment of this act.

(8) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this section, apply to the expiry of this act.

(9) In this section—

'SEWCDB' means the South Eastern Water Conservation and Drainage Board established under the *South Eastern Water Conservation and Drainage Act 1992*.

This is a sunset clause that ensures that the legislation lapses after a prescribed date; therefore, if the project is not completed at that stage, the minister of the day will need to revisit both houses of parliament for permission to extend. My purpose in moving this amendment is (1) as a spur for the project to be completed in an expedient fashion, and (2) to further open the process to the scrutiny of the parliament and, therefore, hopefully, the public. Further, when the act expires, this amendment reverts all management of the program, that is, the ongoing program of desalinisation in the Upper South-East, back to the South Eastern Water Conservation and Drainage Board, including the collection of levies. However, one hopes that, with management agreements and the expedient completion of this work, levies will no longer be necessary by that stage.

**The Hon. T.G. ROBERTS:** For the same reasons, the government will accept that amendment.

New clause inserted.

Schedule 1.

**The Hon. T.G. ROBERTS:** I move:

Page 39, after line 31—Insert:

The line shown on Rack Plan 894 lodged in the Surveyor-General's Office at Adelaide.

This relates to an addition to be included under Part B of Schedule 1, which also forms part of the 'project works corridor' scheme under the bill.

**The Hon. CAROLINE SCHAEFER:** The opposition accepts this amendment. It is a small addition to the previous drainage plan, as I understand it, and is as a result of concerns raised by land-holders in the area. We accept this amendment.

Amendment carried; schedule as amended passed.

Schedule 2.

**The Hon. T.G. ROBERTS:** I move:

Clause 1, page 40—

After line 17—Insert:

(3a) A power or function delegated under subsection (3)(b) may, if the instrument of delegation so provides, be further delegated.

After line 21—Insert:

(ab) by striking out from section 21(1) 'other than' and substituting 'including';

These amendments relate to the same issue, which is of a technical nature.

**The Hon. CAROLINE SCHAEFER:** The opposition accepts these amendments.

Amendments carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

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

That this bill be now read a third time.

**The Hon. CAROLINE SCHAEFER:** By way of completing this bill, I want to add that it is a contentious bill. The fact that there has been very little contention in this place does not mean there has not been considerable debate outside of here to try to put forward a plan which will be both expedient and practicable but which will still respect the rights of landowners in the Upper South-East area. I would particularly like to thank parliamentary counsel for assisting me in what were quite technical amendments. In particular, the amendment to do with compensation was relatively unusual and we were asked to do it in very quick time. I would like to acknowledge that. I also put the government on notice that we will be watching very carefully to see that this drain is completed in an expedient and fair fashion, and we will be the very first to criticise if that is not what happens.

Bill read a third time and passed.

## CRIMINAL LAW (FORENSIC PROCEDURES) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1602.)

**The Hon. CARMEL ZOLLO:** I rise to make a short contribution. I was pleased to hear the shadow attorney-general commend the government for bringing forward this bill. South Australia enacted the Criminal Law (Forensic Procedures) Act 1998 after national discussion in various forums about the parameters of the state's powers to demand DNA tests of those accused or suspected of crime. Under the current legislation forensic samples can be taken from persons convicted of serious offences, that is, a criminal offence punishable by imprisonment for five years or more. The court must also take into account factors such as the seriousness of the charge and the likelihood of the person's engaging in serious criminal conduct. Prisoners can be DNA tested, but only if they have been sentenced to gaol for more than five years and only after specific application by the Director of Public Prosecutions. The law is not retrospective.

During the 1998 federal election campaign the coalition promised the creation of CrimTrac, which would create and maintain a national DNA database. This resulted in the commonwealth legislation, the Crimes Amendment (Forensic Procedures) Act 2001. The states' and territories' legislation, already inconsistent with each other, was rendered inadequate to deal with this development. In accordance with the model provisions developed in 2000, this bill amplifies and extends the circumstances under which DNA samples may be taken. The bill provides that the existing DNA powers can be exercised on an offender retrospectively, provided that the offender is still in detention. In addition, any prisoner who has been convicted of an offence, no matter how minor, will be compelled to supply a DNA sample.

The categories of information to be held in the DNA database are: crime scene index, missing persons index, unknown deceased persons index, serious offenders index, volunteers unlimited purpose index, volunteers limited purpose index, suspects index and statistical index. Each is defined and additional indices can be created by regulation.

The bill before us also makes amendments proposed by SA Police and the DPP based on the workings of the 1998 legislation—I guess amendments arising from the operations of the act. The government believes that the bill represents a major step forward in the legislative structure dealing with the ability of police to use forensic procedures and DNA evidence as a tool in criminal investigation. The South Australian database provisions and cross-matching rules must complement the national legislation. Without this South Australia may not be declared a corresponding jurisdiction for the purpose of accessing the national database and, therefore, any investigations would be unable to benefit from the advantage offered by the CrimTrac DNA database.

Part of the Labor Party's election platform was to extend DNA testing to all prisoners, regardless of their offence. This legislation fulfils one of the Labor Party's promises. It is not the intention of the legislation to build a database of identifiable DNA profiles of all or randomly selected members of the public. The bill contains a number of important provisions that require the destruction of forensic material if the legal authorisation for its retention expires or concludes.

The bill provides that destruction of the sample requirement is satisfied if the means of identifying the sample with the person from whom it was taken is destroyed. DNA extracted for forensic purposes does not contain genetic information on the person's make-up or characteristics, except for their sex. The opposition has raised the issue that DNA testing should be extended towards all criminal offences and that the proposed legislation does not go far enough. I know that the Attorney-General in the other place has stated that South Australia's proposed legislation goes as far as it can to ensure South Australia's access to CrimTrac, the national DNA database.

This is the commonwealth position and has been confirmed in a letter from Senator Ellison, the federal Minister for Justice. Queensland and the Northern Territory have not been admitted to CrimTrac on this basis. The government believes that it is very important that we have access to the information collected by the other states and territories, and that we give these states access to our profiles, also. The legislation allows DNA testing for serious offences.

Apart from the comments of the Hon. Robert Lawson during this debate last week, the shadow minister in the other place also raised the issue publicly that there would not be adequate funding for this commitment. We should remember, of course, that this legislation was introduced after the budget was handed down; and, obviously, funding now needs to be (and it will be) provided, and commitments have been made to that effect. The government is committed to the cost-effective expenditure on the criminal justice portfolio, and that is what this legislation is all about. It does not sacrifice protection while still enabling us to be part of the CrimTrac scheme. Of course, we all recognise the need to have in place measures that are designed to ensure the integrity of the DNA system. I am pleased to add my support to this legislation.

**The Hon. M.J. ELLIOTT** secured the adjournment of the debate.

## EDUCATION (CHARGES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1603.)

**The Hon. R.I. LUCAS (Leader of the Opposition):** I know that members are looking forward to this contribution. For those members who have been around for a while, this issue of materials, services and charges within schools has been debated on at least half a dozen occasions in the last eight years or so. Mr President, you and other members, on a number of occasions, have spoken eloquently on the issue of materials, services and charges. To be fair, if members look at past contributions in relation to this bill, they will probably acknowledge that the Liberal Party's position on this issue has been consistent.

Again, to be fair—whilst it is a different point of view, I have not heard the Hon. Mr Elliott speak (if he has spoken), but I would be surprised if he has changed his mind on this matter in recent years—at least one can say that the position of the Hon. Mr Elliott and the Australian Democrats on this issue has been consistent. What we are seeing in relation to this legislation is the stunning hypocrisy of the Labor Party and the Labor government in relation to the compulsory collection of school fees, if I can use that shorthand version.

The message that people should get from recent election results not only in South Australia but nationally and in other states over the last eight years—and I do not limit it to recent results—is that the people of an electorate, whether it be in

South Australia, other states or federally, basically want to see honesty in their ministers, politicians and governments. Where people have seen parties—including my own—say one thing prior to an election and do something different afterwards, they have expressed their view in the strongest possible terms. As the Liberal Party has tried to highlight in the brief eight months of this government, right from the state budget, we have seen broken promises and explicit written guarantees in relation to new taxes and charges. The Labor Party promised no cuts in health and education, and no privatisation. Across the spectrum we have seen a number of significant commitments, given by this government and this party, broken by Premier Rann, his ministers and the Labor caucus.

**The Hon. A.J. Redford:** They're just not listening.

**The Hon. R.I. LUCAS:** As my colleague the Hon. Angus Redford said, they are just not listening to what the people of South Australia have been saying to all politicians, that is, 'You campaign for years and years on a particular issue, you win our votes because of the commitments and promises you make in the period leading up to an election and then callously, recklessly and arrogantly you throw aside your own beliefs, your own views, during the period straight after an election.' As I said, if the Labor Party has not heard the message that has resonated throughout Australia over the last eight years, then the government's continued arrogance and a continual breaking of its promises and commitments to constituencies will ensure that, even with its arrogance, the people of South Australia will express their view at the time of the next election. There can be no more explicit indication of a broken commitment to a key constituency than this issue of the compulsory collection of school fees. On at least three or four separate occasions the Liberal government introduced, through regulations under the Education Act, mechanisms for the compulsory collection of school fees. On every occasion, the Labor Party and the Australian Democrats voted against the compulsory collection of school fees and, where their power allowed it, threw out those regulations.

I do not intend to delay the proceedings tonight by going over all the contributions that members of the Labor Party made at the time. Mr President, my respect for your position as President precludes me from mentioning any contribution on this issue that you might have made. However, I want to look at the contributions that, in particular, the then shadow minister for education, the then Leader of the Opposition in the Legislative Council and some other members made in relation to this issue. After the regulations had been disallowed on a number of occasions, the former government sought to introduce amendments to the act (in essence, it was a continuation of that which we are debating tonight in relation to the sunset clause) via the Education (Council and Charges) Amendment Bill debated in late 2000.

Sometimes politicians and political parties can be mealy-mouthed, sit on the fence and try to appeal to both sides of an argument on debate. However, even on this issue, one cannot accuse the Labor Party of sitting on the fence. Its leader of the opposition, the Hon. Carolyn Pickles (on 28 November 2000 and on a number of other occasions during the debate on the bill), made the Labor Party's position explicit. Her first five words in speaking to the second reading debate were: 'The opposition opposes the bill'—as explicit as that. She went on to say:

> The issues presented in the bill by the government are not new; in fact, they are quite the opposite. They are unimaginative and potentially harmful to the future of this state and the children who rely on government to deliver a quality, accessible and affordable education. The extensive and detailed debate in the House of Assembly is an indication of the level of disquiet and serious community concern about the government's proposals.

In committee on 7 December 2000, the leader of the opposition opened her contribution with the following words:

> The opposition opposes the amendment for the reasons that the Hon. Michael Elliott has just indicated. This is a radical change for the education system in South Australia and it is something that we have opposed on a number of occasions in this chamber. I am not sure whether honourable members understand the difficulties in the schools at the present time. It is now that they have the mess, and it is now that they want to call a halt to this—not in two years.

The leader of the opposition was addressing the sunset clause, which was introduced in late 2000 and was due to expire in late 2002—as I said, the subject of this urgent piece of legislation that is being rushed through the parliament at the moment. The then leader of the opposition went on to say:

> We do not know which party will be in government in two years. I assure honourable members that, if it is a Labor government, we will review this whole issue of fees and charges long before 2002. In fact, I have heard that the election might be held in March next year.

Later, the leader said:

> The opposition has been consistent on this issue. There is still a muddle with the GST, and the opposition has consistently opposed it. I do not think that a sunset clause will offer any help to the schools that are struggling to make some kind of logic of this issue. It is now that there is a problem. It is the principals who have been jacking up and constantly contacting the shadow minister for education and local members about this issue. It is now that we have the problem. If the honourable member will be against a materials and service charge in a couple of years, he should be against it now. I urge him to rethink his rather strange amendment.

Again in committee, the leader of the opposition said:

> The comments made by the Hon. Mr Lucas are ridiculous. At least we are consistent. We have consistently opposed it on every occasion and we will oppose it today. We will oppose the third reading of this bill.

Later, the leader said:

> I did so with a lot of opposition from some schools, because I fervently believe in a free education. . . I believe that free education is a right of all South Australian children in state schools; it is something that we [the Labor Party] have supported. We understand the realities of voluntary payments by parents, but I must say that I am shocked at the amount that parents are being expected to pay now. I know that at some schools children simply do not go to functions, because parents cannot afford it. I do not want to see two classes of education in our state. It is already happening.

There is more of the same, but I will not read the whole of the contribution of the leader of the opposition. The only other contribution to which I will refer is that of the Hon. Paul Holloway, who was equally passionate in putting his party's very strong opposition to this whole notion of compulsory collection of school fees. He expressed his opposition equally unequivocally and vehemently when he said:

> That is why the opposition fundamentally opposes this bill. It contains elements of the Partnerships 21 system which has been debated elsewhere. However, in relation to fees, the great concern of the opposition is the system that we now have for the year 2001. If the Hon. Michael Elliott had read out all the information, he would have read out the great difficulties that schools now face. They have already set their budget for the year 2001 and suddenly, at the last moment, they receive this package of information that tells them what will be in and what will be out of the charges.

Later, the Hon. Paul Holloway said:

> The opposition rejects this bill and the whole mess that has been created by the government. We should not let it go through, at least until some of the issues that have been raised by principals throughout the state, city and country have been addressed. The amendment

moved by the Hon. Nick Xenophon to put a cap on it reminds me of the amendment that he moved during the ETSA sale process, where the idea was that we would lease our electricity assets, but for the period after 25 years the lease would have to come back to parliament after the next election to get approval.

The Hon. Nick Xenophon then interjected: 'There is no comparison.' Then the Hon. Paul Holloway, just to summarise neatly his trenchant, vehement opposition to this legislation, said:

There is a comparison in the sense that, once you make a decision, once you sell, once you go down a particular track, it is like Humpty Dumpty—it is a bit hard to put the pieces back together again. If this bill goes through and the system is put in place, once the government tinkers with all the problems created by the GST, it will be hard to unravel it again.

There have been many other contributions over the years and, as I said, I have only referred to the two made by the former leader of the opposition, now the Leader of the Government in the Council, as clear and unequivocal indications of the Labor Party's promises and commitments to the people of South Australia on this issue of the compulsory collection of school fees.

When the former government tried to explain that this was not just a black and white issue and that there were difficult concepts to be considered in relation to whether or not a voluntary collection system meant that some parents who could afford to pay were choosing deliberately not to pay and, therefore, leaving the rest of the parent community to pay an even higher school fee for materials and services charged to make up for the bad debts, the Liberal government was ridiculed by the Hon. Mr Holloway, the Hon. Carolyn Pickles and other Labor spokespersons. They argued all along that this was about free education. They argued all along that it was wrong and it was ridiculous to have a system whereby the government and the department provided a framework within which schools could make decisions to collect the fees that they levied.

When the Liberal Party put the position that, for decades, under Labor governments and Liberal governments, there had been a system of school fees or materials and services charges and that the system would not survive without that support from school fees or materials and services charges, again, politics were played by the Labor Party and it relentlessly used this to leverage political support from the teachers' union, parents and teachers, by making it clear that their policy was that they did not and would not support compulsory collection of school fees in South Australian schools.

The Australian Education Union, many teachers and some parents believed that commitment made by the Labor Party during eight years in opposition. They would have had a clear expectation that, upon election to government, the Labor Party would implement its policy of outright opposition, trenchant opposition, to the compulsory collection of school fees or materials and services charges within our schools. This evening we are seeing a bill being rushed through in the dying days of this parliament to try to minimise the publicity in relation to this hypocrisy from Mike Rann, these ministers and the Labor Party. It is a bill to continue for at least a further 12 months the compulsory collection of school fees within South Australia.

As I said at the outset of my contribution, the people of South Australia have spoken loud and clear in relation to dishonesty by ministers, governments and political leaders. They are seeing, as demonstrated amply by this piece of legislation, blatant hypocrisy and dishonesty from a party elected on a platform of opposing the compulsory collection of school fees, now coming to the parliament in the dying hours and days of this session and saying, 'We want to continue this system of the compulsory collection of school fees.' They have been in government for eight months.

Not only on this issue but on many others, an increasing number of people within education—teachers, and school council members—are most concerned at the incompetence of the current Minister for Education, her incapacity and inability to take the hard decisions, and her unwillingness to keep the commitments that she and her party made when in opposition, not just on this issue but on others such as absolutely no cut-backs in terms of the total education budget—a clear commitment that has already been broken in the first Rann budget.

We now have a continuation of the former Liberal government policy for at least a period of another 12 months. I predict that, before the expiration of this 12 month period, we will see this Minister for Education, fast developing a reputation as the most incompetent minister we have seen in education, come back to this parliament and permanently break the Labor Party promise in relation to the compulsory collection of school fees. I had seven years as a shadow minister and four years as a minister—therefore 11 years thinking seriously about this issue—so I did not come to the parliament with a knee jerk response, thinking that this would be enormously popular, because we knew the Labor Party, the Democrats, the teachers union and others would oppose the notion of compulsory collection. We did not do it because we thought it would be popular but because we had considered the policy responses for nearly 10 years and decided that in our view there was really only one option.

The only other alternative was that, if you had unlimited buckets of money, the voluntary fee component could be provided by way of grant to government schools. In the absence of that there was really only one option, namely, to do what the principals associations and the peak parent council (SAASSO) put to me as minister in a collective view, namely: 'Please provide us with the framework for the compulsory collection of our school fees or materials and services fee.' That is what the Liberal government did at the time. It was not a popular decision but a difficult decision that we believe ultimately was in the best interests of education in the absence of having unlimited buckets of money to expend and one, frankly, for which there was no viable alternative option.

The Labor Party response indicated the reverse, and we now see the commencement of the breaking of a fundamental commitment and promise from the Labor Party on the issue. My views on the background of the collection of the materials and services charge have been more than adequately outlined on other occasions and I will not go through the history. I refer to the contribution I made on one of the disallowance motions on 26 August 1998, wherein I outlined the views of the Liberal government and my own personal views in relation to this issue. That more than adequately explains the Liberal Party view on it. I conclude by saying that at least on this issue we can say to the Australian Democrats that they have maintained their policy position. They have stuck to their principles, although this is a principle with which we in the Liberal Party disagree. The Liberal Party, equally, has stuck to its policy—to its principles—on this issue, and we have been consistent on the issue. It is the Labor Party, the Labor government led by Premier Rann and Minister White, who, as I said, in an act of utter hypocrisy have now clearly

and explicitly broken a promise that they made to the people of South Australia.

**The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries):** I thank all members for their contribution to the debate. The Hon. Terry Cameron indicated that he would support the bill, and I thank him for that indication. The Hon. Mike Elliott made a number of points in his speech, the most important being that, once fees were introduced, it was going to change people's behaviour. There is a ratchet effect, if you like that, once fees were introduced, with part of them being compulsory and part not compulsory, people's behaviour was clearly going to change.

I thank the Leader of the Opposition for quoting from my earlier speech when I said that this would be a bit like Humpty Dumpty: once the egg is broken, you will not put the pieces back together again. I think my comments were right on that occasion, because it is very difficult—

*Members interjecting:*

**The Hon. P. HOLLOWAY:** Of course, but I said it is like Humpty Dumpty. The Hon. Mike Elliott is opposing the government's bill, and I accept that. I am saying that the point was essentially right. It was a point which I made earlier, which the leader quoted and one of the points which the opposition had made: that once you went down this track it would change. It is a ratchet effect.

**The Hon. R.I. Lucas:** We had fees for decades.

**The Hon. P. HOLLOWAY:** Yes, but they were voluntary. Once they were made compulsory, it changed the whole environment. This bill is all about extending the current arrangement for a further 12 months. That is the arrangement for the materials and services charge. It is consistent with the global budget arrangements for 2003 and will provide some continuity for schools while the government reviews the new funding arrangements in the light of Professor Cox's report on the Partnerships 21 scheme, which the government recently released. As was pointed out by the minister in another place, school budgets next year will be the same as the 2002 budgets, although they will be adjusted for enrolment variation, inflation and extra education resources announced by the government.

**The Hon. A.J. Redford:** You promised more money for education.

**The Hon. P. HOLLOWAY:** And indeed there was, in the 2002-03 state budget. It is the case that, unlike global budget resources, school fees are raised by the schools themselves and do not form part of the state budget. But they are an important part of the resources available to schools, so the purpose of this bill is to give the schools some stability by giving them extension. In that time, the government will conduct a review of the various options for school fees. As was pointed out in the second reading explanation, when this act was amended back in December 2000, I think it was, provision was made for a review of certain parts of the act, but that review did not take place because of the election.

*The Hon. A.J. Redford interjecting:*

**The Hon. P. HOLLOWAY:** Because the answer is, as I said before, that unfortunately there is a ratchet effect with this. You can move in one direction, but moving back is not quite the same. As I said, I think the Hon. Mike Elliott essentially made the same comment during his speech. I can understand why the Leader of the Opposition would want to go back over it. Nevertheless, this government has to deal with the situation in which we have found ourselves. There are some important issues to be raised. We have had Professor Cox's new report in relation to the funding of schools, and the government will need to review this matter over the next 12 months. So, for that reason, we have introduced this bill.

I indicate that there is an amendment that I have listed on file which I will be moving as part of the bill because the previous clause expired on 1 December. We had hoped to have this bill passed last week but, unfortunately, that was not possible. Therefore, I have tabled an amendment in my name which will ensure that the provisions of this act will be continuous. The fact that this bill will be assented to after 1 December will not affect the continuity of the act. Again, I thank members for their indication of support, and I will answer any questions on the bill during the committee stage.

The council divided on the second reading:

AYES (13)

| | |
|---|---|
| Dawkins, J. S. L. | Evans, A. L. |
| Gago, G. E. | Gazzola, J. |
| Holloway, P. (teller) | Lawson, R. D. |
| Lucas, R. I. | Redford, A. J. |
| Ridgway, D. W. | Roberts, T. G. |
| Schaefer, C. V. | Stephens, T. J. |
| Zollo, C. | |

NOES (4)

| | |
|---|---|
| Elliott, M. J. (teller) | Gilfillan, I. |
| Kanck, S. M. | Stefani, J. F. |

Majority of 9 for the ayes.

Second reading thus carried.

In committee.

Clause 1.

**The Hon. R.I. LUCAS:** What consultation has been conducted with the Australian Education Union, which, of course, has been an outspoken critic of the compulsory collection of the materials and services charge? What has been the attitude of the AEU to this legislation?

**The Hon. P. HOLLOWAY:** I do not believe that there has been a great deal of consultation on this with the AEU. That is my advice. I am not able to—

*Members interjecting:*

**The Hon. P. HOLLOWAY:** I said I do not believe there has been a great deal of consultation with the Australian Education Union. The Department of Education and Children's Services did consult stakeholders about the future of the compulsory materials and services charge through the Resources Working Party on which principals, the Australian Education Union, governing councils and parent clubs were represented. I am advised that members of that working party expressed different views. My advice is that representatives of the principals and teachers argued against a compulsory charge.

**The Hon. J.F. STEFANI:** Can the minister advise the chamber whether the views expressed by the union, publicly printed by the *Advertiser*, which were strongly opposed to some of the policy directions taken by the government, have now been resolved? They indicated to me, and to anyone who read them, that there were strong disagreements between the government and the union.

**The Hon. P. HOLLOWAY:** I am not quite sure which article the honourable member is referring to or how long ago it was published. It is difficult to make a comment. All I can say is that, from time to time, the government will not always agree with the AEU but, by and large, this government has a good working relationship with that union. As for the

particular article the honourable member is talking about, I am not quite sure when it was or what it was referring to.

**The Hon. R.I. LUCAS:** Can the minister confirm that the Minister for Education, the Hon. Trish White, has not, as minister, met with the Australian Education Union, the president John Gregory or senior executive members on the critical issue of this legislation?

**The Hon. P. HOLLOWAY:** I am advised that she has not met specifically with them about the bill, but that she has met with AEU officials at a number of meetings where this issue has been broadly raised, along with other issues.

**The Hon. R.I. LUCAS:** Can I get a specific indication from the minister as to whether the issue of this legislation, which has been rushed through this parliament, has been discussed by the minister with the president or a senior executive member of the Australian Education Union?

**The Hon. P. HOLLOWAY:** I repeat the answer I gave: this legislation not specifically, but the issue has been raised at a number of meetings that they have had with them, but not the specific legislation. That is my advice.

**The Hon. R.I. LUCAS:** If the issue was discussed, the Australian Education Union might perhaps have been encouraged to believe that the attitudes expressed by the Labor Party for the last eight years—that it was opposed to the compulsory collection of school fees—remained the position of the Labor government and the Minister for Education and Children's Services. That is why I specifically asked about this legislation—not the issue, because the issue has been discussed for decades in South Australia, as I indicated in the second reading debate, and I suspect the Hon. Mr Elliott might have indicated this too. It is not a new issue. This is not something generated in the last year or so. The issue of school fees, or material services and charges is not new. It has been around for decades, under Labor and Liberal governments.

I do not intend to delay the committee any longer other than to express amazement at the arrogance of the Minister for Education and Children's Services who, on a critical issue like this, would not pick up the telephone or sit down and have a meeting, more particularly, with the president of the AEU, Mr John Gregory, and talk through this piece of legislation, which is being rushed through the parliament in the dying days. I say again: this government has not heard the message of the people of South Australia in relation to people wanting to see honesty and integrity in terms of the keeping of election promises from Labor politicians and Labor governments.

**The Hon. P. HOLLOWAY:** I think it is worth reminding the committee that this bill really only changes the bill from 2002 to 2003, so it is essentially a holding pattern for a period of 12 months until a number of things can happen, one of which is the digesting of the review from the Cox report and the other is some analysis of the impact of this over the longer term. Essentially, this is a holding pattern until the whole question of the materials and resources charge can be reviewed.

**The Hon. M.J. ELLIOTT:** Can I take it that perhaps, after this examination, the minister might come back to this place and say that Humpty is not broken after all?

**The Hon. P. HOLLOWAY:** As I said, that was my prediction of 12 months ago, and I would have thought from the comments made today by the Hon. Mike Elliott that he sort of agreed that once the fees had been introduced it would have what I referred to earlier as a ratchet effect: that it would change things. That was my observation 12 months ago, and I guess we will have to see whether or not that is right. This review can look at a whole series of options in relation to funding of schools, I would imagine, and I guess we will have to wait until we get those results.

**The Hon. M.J. ELLIOTT:** I want to put it clearly on the record that I do not want any of my comments, at any stage, to be construed that I ever suggested that Humpty was broken. My suggestion was that the introduction of a compulsory and a voluntary component would lead to increasing resistance—and I have spoken to parents this year who so far have paid all the fees but are considering holding back on them. I am receiving feedback from some schools that they are seeing that. My concern is that, as each year goes by, that situation will continue and, in fact, the government, by allowing this to continue for an extra 12 months, is taking a situation that is just starting to be a little unstable—Humpty is starting to rock, perhaps—and allowing that instability to increase. I think that it is irresponsible. I do not suggest that we have gone past a point of no return at this stage. It concerns me greatly that the government appears to have sat on its hands since it was elected and then, suddenly, days before this was due to expire, before the sunset clause was about to kick in, it said, 'We have to get this through straight away, and we will do it for another 12 months.' That is just dismal government.

**The Hon. R.I. LUCAS:** Can the minister confirm that the resources working party (which, on the basis of past working parties, would be departmental officers, middle management level and AEU officers, probably at a working level, rather than the president), equally, was not provided with a copy of this legislation and asked to comment but, rather, there might have been a general discussion about school fees and the impact on resources for schools?

**The Hon. P. HOLLOWAY:** The advice I have is that the resources working party started discussing this matter some time ago. Obviously, the actual working of the bill (which, after all, is not really a particularly complicated piece of legislation: it just says remove 2002 and replace it with 2003) was not put before them. But the issue of the future of the compulsory materials and services charge had been discussed, or first raised with the committee, some time ago.

**The Hon. R.I. LUCAS:** The minister indicated at the outset that varying views were expressed about this issue, as opposed to the legislation. Can the minister indicate which stakeholders supported the compulsory collection of fees and, in particular, was he suggesting that all four principals associations were opposing the compulsory collection of school fees?

**The Hon. P. HOLLOWAY:** It is my advice that the committee had looked at a whole lot of ways in which these materials and services charges might be funded. I am advised that it did not necessarily get down to a case of a show of hands for or against the particular items: it was more a matter of discussing options. I think the information that I gave earlier was, basically, that representatives of principals and teachers argued against a compulsory charge, and that would have included the AEU.

**The Hon. R.I. LUCAS:** I do not intend to prolong the debate, but I just want to place on the record that, at the time of the introduction of the compulsory collection framework, the four principals associations, together with the peak parent body (SAASSO), officially supported the policy of the compulsory collection of school fees. As I indicated in my second reading contribution, it was on that basis that I said to them that I was prepared to take the position that the then

Liberal government did take, and to introduce either regulations or legislation at the time. It may well be that the four principals' associations—

*An honourable member interjecting:*

**The Hon. R.I. LUCAS:** It may well be that the four principals' associations have formally changed their policy position. In any event, the point I record is that I think that it would be worthwhile checking whether the four principals' associations have changed their policy position or whether individual working party representatives who happen to be principals expressed the view that the minister has just indicated.

**The Hon. M.J. ELLIOTT:** Following the questions asked by the Hon. Mr Lucas, it appears from what the minister is saying that options were discussed. Can the minister tell the committee whether or not any of the principals' associations—SAASSO or the AEU—were informed that this bill was to be introduced prior to its introduction into parliament?

**The Hon. P. HOLLOWAY:** I am advised that the minister did telephone some groups in relation to the introduction of the bill, but I do not have the information as to exactly which ones. In relation to SAASSO, I do have the information that they did favour a compulsory charge. However, my advice is that the minister did—

*The Hon. M.J. Elliott interjecting:*

**The Hon. P. HOLLOWAY:** Yes, I am advised, although I do not know who he is.

**The Hon. A.J. REDFORD:** Can the minister acknowledge that this legislation is inconsistent with statements made by the then opposition prior to the last election?

**The Hon. P. HOLLOWAY:** I do not have a list of the promises here, but whatever the government said, for example—

*The Hon. M.J. Elliott interjecting:*

**The Hon. P. HOLLOWAY:** Obviously the Hon. Carolyn Pickles made her comments in a different situation and at a different time. This government has to determine what to do in 2003, given the report from Professor Cox in relation to the future of funding. We have to deal with the situation in relation to the funding of schools and, of course, the future of Partnerships 21, on which I am sure the Hon. Mike Elliott will have a view. I am sure, too, that he would understand that it is a fairly complicated subject. Those decisions were made, and I should have thought that of all people in this house the honourable member would appreciate that it will take some unravelling so that we can get to a situation where the funding of schools in this state is on a more equitable basis—

*The Hon. M.J. Elliott interjecting:*

**The Hon. P. HOLLOWAY:** Surely the Hon. Mike Elliott would know that with Partnerships 21 we were moving towards a two-tiered education system in this state. We had a different set of treatment for one school as opposed to another. If I recall correctly, the Hon. Mike Elliott was one of the most outspoken—and rightfully so—in relation to the fact that we were moving to this two-tiered system. The honourable member would be well aware that this government has been seeking to have a system where students within our public school system have the same opportunity and not be dependent on some funding system that applies for different schools.

**The Hon. A.J. REDFORD:** Noting the minister's answer, particularly in relation to the so-called 'different environment' and the production of the Cox report, does the minister acknowledge that what was said by the Labor Party prior to the last election is inconsistent with what is contained in this legislation? A simple yes or no will do.

**The Hon. P. HOLLOWAY:** It is what happens during the 2003 year when the government examines and makes a decision on it: that will tell whether it was consistent with the policies made—

*Members interjecting:*

**The Hon. P. HOLLOWAY:** As I indicated, this is a holding motion. This is to enable a review of the materials and service charges to be undertaken, and, ultimately, during the next year, the government will make a decision on the future funding of schools in this area.

**The Hon. A.J. REDFORD:** Will the minister agree with the proposition that this bill is inconsistent with what was said by the Labor Party prior to the last election?

**The Hon. P. HOLLOWAY:** I do not think it is necessarily incompatible. What we are seeking with this bill is simply to buy time. It is saying that we will continue with the current system for 12 months until we have had the opportunity to review the funding arrangements into the future.

**The Hon. A.J. REDFORD:** This is simple: will the government apologise for breaking the election promise?

**The Hon. CARMEL ZOLLO:** Mr Chairman, I rise on a point of order. I think this question has now been asked four times, so perhaps it can be ruled out.

**The CHAIRMAN:** I think this is a different question.

**The Hon. A.J. REDFORD:** I did ask the same question three times and, if the member wants to read *Hansard*, I received three different answers, but this is an entirely new question.

**The CHAIRMAN:** I have taken that point.

**The Hon. A.J. REDFORD:** Will the government apologise for breaking the pre-election promise?

**The Hon. P. HOLLOWAY:** No, this government will not apologise for the action that it has taken. After all, the system for 2002 was set in place by the previous government. As I pointed out earlier, we will extend the system for 12 months, which will enable the government to complete the review of the Cox report into Partnerships 21, which I believe was an undertaking of the government before the election.

**The Hon. A.J. REDFORD:** Will the minister acknowledge that this is an example of this government's honesty and accountability in government policy?

**The Hon. P. HOLLOWAY:** What more can I say? I can only repeat the answer that I have given, that is, that this government is simply seeking that the current arrangements continue for a further 12 months so that it can review the report from Professor Ian Cox. It flagged during the election campaign that it would seek a report on these funding issues. Obviously, it has not had the opportunity yet to finalise that and bring that into play, but it will look at that over the next 12 months, and, at the end of the next 12 months, when that has been undertaken, the honourable member can make an assessment as to whether or not he believes that the government has honoured its promises.

**The Hon. A.J. REDFORD:** The minister, to use his words, referred to the process of 'digesting the Cox report'. Will the minister explain what he proposes or what the government proposes in so far as digesting the Cox report is concerned, with some timing information as well?

**The Hon. P. HOLLOWAY:** The Cox report has been publicly released. It is my advice that the government is seeking submissions from the public. I do not have any advice on when the submission period closes, but once the

government has had the opportunity to consider those submissions it will make a decision.

**The Hon. A.J. REDFORD:** When do submissions close?

**The Hon. P. HOLLOWAY:** Unfortunately, we do not have that advice with us at the moment. I will have to correspond with the honourable member, if he wishes.

**The Hon. A.J. REDFORD:** When can we anticipate a formal response to the Cox report, particularly in relation to this issue of school fees?

**The Hon. P. HOLLOWAY:** The obvious answer is that it has to be before this time next year; obviously, that is why the government is seeking the 12 months. So, it will be before that time. As the Leader of the Opposition himself said, the issue of materials and service charges is a complex one, it has been around a long time, and it should be thoroughly examined.

**The Hon. A.J. REDFORD:** This may be a forlorn request, but would it be remotely possible to have the government's response some time before the budget next year?

**The Hon. P. HOLLOWAY:** : I am advised that minister White has indicated that it will be in the first half of next year.

**The Hon. A.J. REDFORD:** Can I take it that there is a remote possibility that we will receive a response before the budget next year?

**The Hon. P. HOLLOWAY:** That does follow, yes.

**The CHAIRMAN:** I remind honourable members of their commitments under standing order 366. We have had a fair discussion, and there has been a lot of probing and in-depth questioning.

Clause passed.

New clause 1A.

**The Hon. P. HOLLOWAY:** I move:

After clause 1—Insert:

Commencement

1A. This act will be taken to have come into operation on 1 December 2002 and sections 106A to 106C (inclusive) of the *Education Act 1972* (as in force immediately before that date) will be taken not to have expired.

I indicated in my second reading response that I would be moving this new clause, and I explained my reasons for doing so at that time. The provision in the bill expired on 1 December, so for this date of 2003 to continue it is necessary to move this new clause to ensure that clauses 106A, 106B and 106C continue to operate.

**The Hon. R.I. LUCAS:** Did the government receive advice from parliamentary counsel or crown law that this provision would be required, given the delay in the passage of the legislation?

**The Hon. P. HOLLOWAY:** We did receive this advice from parliamentary counsel.

**The Hon. R.I. LUCAS:** From the opposition's viewpoint, we will not oppose the new clause.

**The Hon. A.J. Redford:** Sloppy government!

**The Hon. R.I. LUCAS:** As my colleague the Hon. Mr Redford indicates, the whole bill is an example of sloppy government. However, based on advice from parliamentary counsel (and similar advice has been provided to the opposition) we understand that, if the legislation is to be passed—as appears likely, based on the second reading vote—this new clause is required. I therefore indicate that we will not oppose the new clause.

New clause inserted.

Clause 2 and title passed.

Bill reported with an amendment; committee's report adopted.

Bill read a third time and passed.

## TERRORISM (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 28 November. Page 1539.)

**The Hon. R.D. LAWSON:** I rise to indicate the Liberal opposition's support for this measure. The issue of terrorism has of course been brought into very sharp focus in the world since 11 September last year and even more poignantly in this part of the world as a result of the Bali bombing on 12 October this year. However, terrorism is not new. The activities of terrorist groups around the world have given rise to alarm, harm and many criminal acts for some considerable time. The activities of the IRA in Northern Ireland and the PLO precede some considerable number of years those of al-Qaeda. We support the proposition that the commonwealth government should have power to address this international and national interest. Accordingly, we support the reference of state powers—

**The PRESIDENT:** Order! There is too much audible conversation; Mr Lawson is having trouble making himself heard.

**The Hon. R.D. LAWSON:** —the reference of powers to the commonwealth. It is not usual in our constitutional arrangements for states to refer powers to the commonwealth. In fact, when one looks at the history of it, one finds that it is quite exceptional. Section 51 of the Australian Constitution gives the commonwealth powers to make laws for the peace, order and good government of the commonwealth with respect to a large number of enumerated matters, such as the defence power; postal, telegraphic, telephonic and other services; currency; census and statistics; quarantine; bankruptcy; marriage and divorce; and invalid and old age pensions, to mention just a few. However, as I mentioned earlier, there is no express reference to power to deal with terrorism, nor does the commonwealth have general power to make criminal laws.

The Commonwealth Criminal Code applies only in relation to commonwealth matters. So, it is necessary; if the commonwealth parliament is to have effective power to pass laws which apply in every part of Australia and which also apply elsewhere in the world to which commonwealth law stretches, it is appropriate that we in this state follow the lead of other states and refer power to enable the commonwealth parliament to pass those laws.

I think I am correct in saying that to date only the state of New South Wales has passed laws to this effect, although other states have indicated an intention to do so. Indeed, a national agreement was entered into at the Council of Australian Governments' meeting on 5 April this year. One of the resolutions passed at that meeting, which was attended not only by the Premier of this state but also by the Prime Minister and other premiers and chief ministers, was:

. . . to take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power of specific, jointly agreed legislation, including roll-back provisions to ensure that the new commonwealth law does not override state law where that is not intended and to come into effect by 31 October 2002.

I interpose that clearly that target date will not be met. The resolution and the communique continues:

The commonwealth will have power to amend the new commonwealth legislation in accordance with provisions similar to those which apply under the Corporations arrangements. Any amendment based on the referred power will require consultation with and agreement of states and territories, and this requirement is to be contained in the legislation.

The communique specifically mentions the provisions which apply under the Corporations arrangements. It is certainly true that the most recent reference of power by states to the commonwealth occurred in relation to the Corporations Law of Australia. It was there deemed entirely appropriate that in the 21st century we should have one national law applying to corporations, the activities of which very often stretch beyond the boundaries of any one state. So it is with the activities of terrorists. In relation to any act of terrorism, there might well be a plot formed in one jurisdiction or perhaps between jurisdictions; explosives may be manufactured or purchased in another jurisdiction; they may be transferred through other jurisdictions; and finally they are used in a jurisdiction, within which, prior to the terrorist act, no criminal activities had been committed.

This bill does adopt a somewhat unusual measure in that the power referred to the commonwealth is defined by reference to an act that the commonwealth has already passed, that is, specific provisions relating to terrorism. They are contained in the schedule to the bill. A more usual type of reference of power is that contained, for example, in the South Australian Commonwealth Powers (Family Law) Act 1986. Section 3 of this act provides:

(1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the parliament of the commonwealth, are referred to the parliament of the commonwealth for a period [which is specified], namely:

(a) the maintenance of children and the payment of expenses in relation to children or child bearing;

(b) the custody and guardianship of, and access to, children.

It was entirely appropriate at that time that the South Australian parliament referred to the commonwealth parliament those powers to enable the Family Court and our family law provisions to operate effectively. However, as I say, on this occasion we have not adopted that particular type of reference of power. We now propose to refer to the commonwealth powers which it has already enacted in the criminal code of the commonwealth.

There has been, not only in the federal parliament but also in this parliament, quite some debate about the specific provisions of the commonwealth law. The law is certainly extraordinary in the breadth of its prohibitions. It creates offences such as engaging in a terrorist act; doing an act in preparation for or planning a terrorist act—and 'terrorist act' is defined, and I will return to that definition; providing or receiving training connected with a terrorist act; possessing things connected with a terrorist act; collecting or making documents likely to facilitate a terrorist act; directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting for a terrorist organisation; training or receiving training from such an organisation; getting funds to or from such an organisation; providing support to such an organisation; or financing a terrorist act.

The commonwealth has very comprehensively addressed the activities of terrorists so far as recent history shows them to be. The definition of 'terrorist act' is widely defined by reference to certain action. However, the most important element is that 'action' is not included as a terrorist act if it falls within the following descriptions: advocacy, protest, dissent or industrial action which is 'not intended to cause serious harm, that is, physical harm to a person, to cause a person's death or to endanger the life of a person, or to create a serious risk to the health or safety of the public or a section of the public'.

The commonwealth parliament has sought to quarantine from the definition of 'terrorist act' acts that might be described as legitimate forms of protest, and we certainly support that approach. That reference is revocable by the state government by a simple mechanism of a proclamation. Unlike some referring legislation, this is not time limited and, whilst it is appropriate that the South Australian government maintain the capacity to withdraw from a scheme of this kind, one would have to say that, in practical terms, the likelihood of a state's withdrawing from a national cooperative scheme of this kind is rather remote. Once we refer these powers to the commonwealth, I think it is fair to say that, in most practical purposes, the parliament of this state will no longer have any exclusive jurisdiction to deal with matters of terrorism.

However, it is important that the provisions of section 109 of the Constitution, which provide that commonwealth law that conflicts with state law will for the extent of the inconsistency, prevail. That section has been appropriately dealt with here so that the South Australian criminal law will continue to have concurrent operation with the commonwealth power over terrorism. That means that in any one incident in South Australia, for example, which involves one of those terrorist acts to which I have referred, it will be possible for both the commonwealth or state authorities to launch a prosecution.

Again, that is an appropriate measure. I indicated that it is rare for parliaments of the states to refer powers to the commonwealth, and it is important that we should ensure that this reference is effective. I regret to report that it would appear to me—and this matter will be explored in committee—that an amendment moved in the House of Assembly by the Attorney-General will create some constitutional uncertainty about the effectiveness of this legislation. This is a matter upon which I give notice that during the committee stage I will be seeking some answers to questions.

By amendment in the assembly, there was inserted a new subsection (6) of proposed section 4 of the act. This subsection deals with the manner in which the commonwealth provisions can be amended. It provides that an amendment of the terrorism legislation—that is, a part 5.3 of the commonwealth criminal code—or an amendment of the criminal responsibility legislation—and that is defined as the provisions of chapter 2 of the commonwealth criminal code—is not covered by the reference unless it is made in terms that have been approved by a majority of the group of states, the Australian Capital Territory and the Northern Territory, and also approved by at least four states.

I was somewhat surprised to see the Attorney introduce this amendment into our legislation which, in effect, seeks to control the way in which commonwealth legislation is amended. I would have thought the conventional and proper view was that the requirement for a state agreement to future amendments of offences should be contained within the commonwealth legislation itself. In his contribution in the committee stage the Attorney indicated that the commonwealth did not agree with the state's action in incorporating the amendment to which I have referred.

The Attorney suggested that he had been seeking from the commonwealth authorities—in particular the commonwealth Attorney-General—a statement of the legal advice which the commonwealth had on this issue. At the time of the commit-

tee stage in the other place, that advice was apparently not forthcoming. I will be asking the minister to indicate whether that advice from the commonwealth has been received, what is the nature of that advice and what action, if any, is proposed to address this important constitutional issue. The last thing we want to have is any question about the constitutional validity of the legislation. No doubt if alleged terrorists are charged under this legislation, they will seek—quite entirely appropriately—to take advantage of whatever legal defences they might have. If such a defence includes an attack upon the reference of state power, it will be unfortunate if the prosecution would go off on a technical legal point.

It is our belief that the state parliament should do everything in its power to avoid such constitutional risk. I would have thought that, if the provisions relating to the amendment of these commonwealth powers are contained in the commonwealth legislation, one would avoid risk of that kind. I would also have thought that it would be possible by intergovernmental agreement to deal with this matter, and that is the way in which it has been done in relation to, for example, the corporations agreement and certain other pieces of comparable legislation, and I will be asking the minister to indicate why that course has not been adopted on this occasion.

In the committee stage of this bill in another place a number of comments were made about the specific provisions of part 5 of the commonwealth act relating to terrorist offences. It was suggested by the Attorney-General during the course of the debate that these provisions might catch that topical organisation known as the Black Shirts. I would not have thought that the Black Shirts, a group of vigilante type people protesting against the provisions of the Family Law Act and the practices of the Family Court, could be defined as a terrorist organisation or that their acts could be defined as terrorist acts within the meaning of this legislation.

The Black Shirts are engaging in a form of protest, which many people would regard as offensive, but I would not have thought that there is any question that their acts could be defined as terrorist acts under the commonwealth law. I think it is quite clear that their acts fall within the exception to which I have referred: namely, advocacy, protest, dissent, and not intended to cause serious harm to a person or to cause serious risk to the health or safety of the public. In my view it is alarmist to suggest that this group's actions would come within the definition of a terrorist act: that is, an action or threat of action made with the intention of: advancing a political, religious or ideological cause; coercing, or influencing by intimidation, the government of a country or of a foreign power; or intimidating the public or a section of the public.

The bill also refers to an action which causes serious harm that is physical harm to a person; or causes serious damage to property; or causes a person's death; or endangers a person's life; or creates a serious risk to the health or safety of the public; or seriously interferes with or disrupts information systems, telecommunications systems, financial systems, essential public utilities, a transport system, or the like. The off-the-cuff example given by the Attorney-General was neither helpful nor correct.

In my view the Attorney also responded inappropriately to a hypothetical example put by the member for Waite (Mr Martin Hamilton-Smith). Mr Hamilton-Smith posed the example of whether an elderly couple, walking their dog past a bar, or the governor's residence, or Parliament House who reports to another party that there is a police officer at the front gate from 4 o'clock to 6 o'clock every afternoon and that second party passes that information on to a third party, and then ultimately to a fighting component of a terrorist force which commits an act and uses that information, is guilty of an offence under this act.

I would have thought that that action by this couple (apparently innocently and not for the purpose of advancing some terrorist act which they knew was to be committed) could not, by any stretch of the imagination, be deemed to be a terrorist act within the meaning of this legislation. The Attorney-General said that division 101.1 could be used in conjunction with the commonwealth criminal code in relation to the elderly couple walking their dog and aiding and abetting a conspiracy.

That is, once again, in my respectful view, an alarmist and inappropriate response, and an ill-considered response. When one looks at the offences, one might ask: how is this elderly couple with their dog directing the activities of a terrorist organisation? They are certainly not members of a terrorist organisation, nor are they recruiting, training, gaining funds or providing support to a terrorist organisation, nor are they financing such activities. Nor, in terms of division 101.1, are they engaging in a terrorist act.

The provisions of part 5 of the code must be examined in relation to chapter 2 of the Commonwealth Criminal Code, which sets out the general principles of criminal responsibility for the purpose of this part of the criminal code and also for all other parts of the criminal code. These are general provisions relating to, for example, general principles of criminal responsibility and the elements of offences—things such as the elements of fault and the requirement to prove intention, knowledge, recklessness or negligence in certain circumstances. They also define the defences available—for example, intoxication. I note with interest that the drunk's defence will apparently apply to terrorist offences.

**The Hon. R.I. Lucas:** Mr Atkinson supports that, doesn't he?

**The Hon. R.D. LAWSON:** Yes, the government has supported that, although there was no mention of that in the speeches.

**The Hon. R.I. Lucas:** Did he mention that on the Bob Francis show?

**The Hon. R.D. LAWSON:** I have not yet heard him mention that on Mr Francis's excellent program. These general principles also include things such as whether the defence of ignorance or mistake are available; whether the offence of an attempt has been committed; what constitutes an attempt, incitement or conspiracy; the legal burden of proof; the standard of proof; and the geographical application of commonwealth offences. So, there is a very extensive code which is incorporated in the reference of power. This is, as I have said, what has been defined as the criminal responsibility legislation.

The legislation passed by the commonwealth parliament is, of course, a result of the sort of compromise that comes out of the Australian Senate, and one might criticise legislation on that account. It is certainly not the same legislation as was introduced by the commonwealth government. But, it seems to me to be an important principle that where there is a national issue, such as terrorism, and a state is prepared to refer its power to the commonwealth, it is really referring the power and giving to the commonwealth parliament the jurisdiction to pass an effective law in respect of that particular subject matter. It seems to me it is not for us to go over and once again analyse and parse the commonwealth law or criticise it. Obviously, we have to be satisfied that it is an

effective and appropriate law but, to say that it is not exactly the same law that we as a parliament would have passed, is nothing to the point.

In committee I will certainly pursue with the minister some of the examples provided by the Attorney for actions that he suggests are terrorist acts, and I will also be pursuing with him the question of the constitutional effectiveness and desirability of the amendments that were passed at the government's insistence during the committee stage in the other place.

**The Hon. IAN GILFILLAN:** The Democrats oppose the referring of these powers to the commonwealth government. We have for a long time held the view, often in common with members of the Liberal Party and certainly with the previous attorney-general (Hon. Trevor Griffin), that one should always be very uneasy at surrendering powers to the commonwealth parliament. They very rarely come back and it is a gradual erosion of the autonomy of the state.

A rather gentle parable in relation to this whole matter was told to me the other day, and it is the story of a young child with a candle. She was not the only child with a candle—there were many. On this day it was quite windy and the child was scared to see the wind blowing out the candles. Thinking quickly the girl found a jar, placed a candle inside and placed the lid on top. Proud of her achievement in protecting her candle from the wind, she showed her friends how she had managed to keep her candle alight, despite the wind. Little did the poor girl know that by sealing the candle in the jar she was slowly starving her tiny flame to death. That may sound a simple, innocent and emotive parable with which to lead into our second reading contribution to this bill, but that parable has some relevance to us—particularly to thinking members who have some concerns for human rights and the freedoms that our society so rightly prides itself on—in dealing with these events.

The events of 11 September last year and Bali earlier this year were a tragic reminder that we cannot take our lifestyle for granted. We share the grief of those who have lost loved ones and fully believe that those who perpetrated these acts must be brought to justice. Democrat Senator Andrew Bartlett, the federal parliamentary leader, had this to say in responding to the attack in Bali:

> I remind all Australians, though, that this attack on innocent holidaying civilians was not the action of a particular religious or ethnic group. It is almost certain that many Muslims were also killed in this attack. I make the plea that all Australians recognise that this is the act of violent, hate-filled extremists who deserve no nationality and represent nobody but themselves. No religion should be held to blame for this attack. The attack is against the principles of Islam, of Christianity and of any religions. The people who perpetrated this attack are the ones who deserve to be, and must be, punished.

This bill proposes to refer certain powers to the commonwealth in regard to fighting terrorism. In addressing the bill we must answer two questions: first, is the issue of fighting terrorism properly dealt with at a national level; and, secondly, do we have confidence in the commonwealth to deal appropriately with the challenges that terrorism presents? The first question is easily dealt with. Terrorism as we face it today is an international issue and, hence, the commonwealth is the most appropriate body to address the matter. The second question is more problematic. It is difficult, when the measures that are employed in an attempt to combat terrorism erode those values of our society that we are trying to defend against terrorists. It is important that, when we are protecting our candle from the wind, we do not starve our flame of oxygen.

The Democrats expressed grave concerns about this legislation when it was debated in the commonwealth parliament. The original bills introduced were ill conceived and poorly defined. It was identified that the original definitions of terrorist activities would also encompass legitimate protest and activism within our community. In fact, quite a lengthy submission by the Law Council of Australia to the Senate Legal and Constitutional Legislation Committee earlier this year was quite damning in its analysis of the earlier drafts of the legislation. I would like to read a couple of paragraphs from the executive summary, as follows:

> The Law Council of Australia considers that the time frame which has been provided for lodgement of submissions in this inquiry is grossly inadequate and has severely curtailed public participation and consultation. The process by which the bills have been referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 3 May 2002 has, in effect, prevented any proper public scrutiny of and debate in relation to these complex and far-reaching bills.
>
> The Law Council is concerned that critical aspects of the proposed legislation are inconsistent with fundamental aspects of the rule of law and with core international human rights obligations, and that there is no demonstrated necessity to enact elaborate terrorism offences and proscription provisions in order to give effect to Australia's international legal obligations in relation to terrorism. In significant respects, the legislation fails to strike an appropriate balance between the enjoyment of human rights and fundamental freedoms and legitimate concerns for national security.

That very succinctly summarises our view. In spite of the fact that the original legislation was amended, the fact remains that this has been rushed into parliament in the commonwealth and it is now being rushed into our parliament, and it smacks very much of the *Tampa*: it is the popular flavour of the month to look as if we are doing something constructive; however, it is a knee jerk reaction. Knee jerk reactions do not produce anything other than maybe favourable reception on popular talkback radio and perhaps some headlines. Very rarely does it produce long-term, sustainable, democratic human rights-oriented legislation.

In the lengthy and erudite contribution by the Hon. Rob Lawson, he questioned some of the argument by the Attorney-General in another place, with the mention of Black Shirts and of elderly couples walking dogs. If we are even raising those sorts of issues as being in some way in doubt in the way in which this legislation may be applied in extremis (because that is how it will be), it will be rushed into implementation by squads of people who will feel immune from the niceties of the protections of a democratic society.

I am impressed to hear and read some of the comments that have been made by the member for Mitchell in another place, Mr Kris Hanna. I think his criticism has been courageous and, although obviously not what the Labor Party, the government, wants to hear, it is the counterbalance to the lemming-type approach that populations and parliaments are inclined to get swept up in if there is this strong populist incentive to drive us to what may well be regrettable legislative steps.

The Democrats are particularly concerned about the powers to proscribe organisations. We join with the Law Council of Australia in being opposed to these powers given to the commonwealth Attorney-General, to proscribe an organisation to be a terrorist organisation. This is compounded by the criminalisation of membership where a person who is either a formal or informal member of such an organisation is automatically guilty of an offence. This, which is effective-

ly guilt by association, is a substantial departure from our traditional concept of justice. In fact, in its report the Law Council of Australia commented:

> A serious departure from the principle of proportionality unnecessary in a democratic society, subject to arbitrary application, and contrary to a raft of international human rights standards, including the right to personal liberty, the right to a fair trial, protection against arbitrary interference with privacy, freedom of expression, freedom of association and rights of participation.

Parallels have been drawn between these moves and the Communist Party Dissolution Act of 1950. The government should be focusing on activity rather than association. His Honour Justice Michael Kirby, speaking at the Law Council of Australia's 32nd Australian Legal Convention in Canberra on 11 October 2001—a speech entitled 'Australian Law after 11 September 2001'—included the following passage which I quote:

> Given the chance to vote on the proposal to change the constitution, the people of Australia, fifty years ago, refused. When the issues were explained, they rejected the enlargement of Federal power. History accepts the wisdom of our response in Australia and the error of the overreaction of the United States. Keeping proportion. Adhering to the ways of democracies. Upholding constitutionalism in the rule of law. Defending, even under assault, the legal rights of suspects. These are the way to maintain the love and confidence of the people over the long haul. We should never forget these lessons. . . every erosion of liberty must be thoroughly justified. Sometimes it is wise to pause. Always it is wise to keep our sense of proportion and to remember our civic traditions as the High Court Justices did in the Communist Party Case of 1951.

As recently as last week we had the Prime Minister advocating a first-strike policy in regard to fighting terrorism. I must say this is the kind of rhetoric which we have come to expect from Mr Howard and, predictably, our neighbours reacted very quickly to it: I quote some excerpts from the ABC's news reporting. In response, a spokesman from Indonesia's foreign ministry said that Australia did not have the right to launch military strikes in other countries. He said that states 'can't flout international law and norms willy-nilly'. A spokesman for the Thai government said that no country should do anything like Mr Howard suggested. Each country has its own sovereignty that must be protected.

The Philippines National Security Adviser, Roilo Golez, said that Mr Howard's comments were completely unacceptable. This is a very surprising statement to say the least; in fact bordering on shocking. I cannot believe that it would come from a supposedly friendly country in the neighbourhood. You are talking about a region with very strong government, the ASEAN region. This is the 21st century not the 19th century.

It is also very interesting to have heard on the TV news tonight Mr Howard, as nimbly as he possibly could, trying to back step from that original statement. I hope that these people who heard the original statement by Mr Howard realise that he did not carry the people of Australia with him when he made that outrageous claim that we would be proactive and pre-emptive in attacking other people's countries.

If we are going to take a stand, how can we then deny other countries who may see reason to attack us in Australia? Indeed, this is the 21st century not the 19th, nor is it the 20th any more. It would seem that we have learned nothing from the bloodiest century in history. Terrorism is a global problem and we must go to the heart of the problem and address the things that cause people to turn to terrorism.

Unless we want to wall ourselves up in our own country in some kind of 'fortress Australis', and I believe very few would want that, we must work together with our neighbours to develop a coherent and coordinated strategy to address the threat of terrorism and social instability in the Asia-Pacific region. This forms a key part of the Democrats' approach to combating terrorism. Again, I quote Senator Bartlett:

> We must address the causes of terrorism, not just its devastating effects. We must honestly look at the implications of the foreign and economic policy of our nation and of other nations around the world and whether appropriate, honest and just changes to those policies can assist in reducing some of the causes of terrorism.

The referral of state powers to the commonwealth should never be done lightly. While combating terrorism is one area that could be justifiably referred to the commonwealth, the Democrats do not have confidence in the current commonwealth and proposed state legislation to address the threat of terrorism without unduly compromising the very ideals we are seeking to preserve.

It is interesting to pick a couple of phrases out of the second reading explanation of the Attorney-General in the other place which was inserted into *Hansard* without being read, if I remember correctly. It states:

> One other matter should be noted. The commonwealth wants to be able to make general amendments to chapter 2 of the Criminal Code, that is, to the provisions that set out the principles of criminal responsibility, without the agreement of the states.
>
> The principles are of general application to offences against the Criminal Code. They are not directed specifically or substantially to the terrorist offences. It is appropriate that the commonwealth be able to amend Chapter 2, but the state would have concerns about the commonwealth unilaterally amending these provisions in so far as they apply to the referred terrorism offences. This is because such amendments could significantly change fundamental elements of the terrorism offences.
>
> Conclusion. It is highly desirable that the referral legislation be uniform and the government does not believe we can afford to delay this legislation. It is vital that we have legislation in place that will allow Australia to deal effectively with the threat of terrorism.

The Democrats do not agree with either of those phrases. There is no logical justification to say that we must have legislation in place in the course of two or three months that will have any effect on what may or may not be the implications of terrorism, if terrorism is a particular threat to Australia. As the Attorney indicated, there are serious doubts about the comfort for South Australia in giving the commonwealth those powers to make those changes he identified in his second reading explanation. In an earlier part of his speech, the Attorney-General said, under the heading 'Content':

> The terrorism offences set out in the bill and the commonwealth act are broad.

I'll say they are broad! There is virtually no edge to them. They could go wherever the government of the day would like to define them. That is my objection: it is not what the Attorney-General said. He continued:

> That means that the state is referring a broad criminal law power, normally the province of the state, to the commonwealth. For example, the definition of 'terrorist act' in the legislation is as follows. . .

And it goes on and on. It is not hard, particularly with a legal mind, to find little corners and nooks and crannies that would include, at a stretch, several members of this place, dare I say it, without implying that any of them would be in the least bit likely to commit or to be guilty of an act of terrorism. We all become more liable or more vulnerable of being caught up in this broad net. It is a treacherous net and, in our view, it achieves nothing.

Members would do well to read an excellent article by Mr Burnside QC in the latest Law Society journal in which he analyses the embarrassment and the shame that has been brought on Australia by our dealings with asylum seekers. He analyses in some detail the social stresses and strains that produced the people coming to Australia looking for refuge, and the stresses and strains that produce climates in societies in which terrorism is lauded and martyrdom becomes a badge of honour for those people.

It is not comfortable to say this, but those terrorists are not seen by their communities or their families as evil criminals. They are seen as heroes, they are seen as saints. They are seen as the sort of people that Christians over many centuries have revered, and they are being revered in certain corners. So, although we say, with some conviction, terrorists do not express the religion of Islam, we cannot say that terrorists are in it for their own good, particularly those who are prepared to lay down their lives for it. We must find out the reason they are prepared to make that sacrifice. That will be the way that we can dramatically change the threat to the world, and the threat to Australia, by diminishing the reason and the justification, and the honour and glory that these people will have if they are determined to inflict these acts of criminality on innocent people.

**The Hon. Sandra Kanck:** That won't help Mike Rann's re-election chances, though.

**The Hon. IAN GILFILLAN:** I am not sure that I should pick up the interjection from my colleague because I would like to conclude my speech on a higher level than Mike Rann's re-election, and I do not think that our voting pattern on the bill will be determined specifically on that. The honourable member raises the point that I have tried to thread through the Democrat contribution. We have a duty to resist populist politics because the end result of this particular thrust of populist politics is the most dramatic erosion of the foundation of the cornerstones of the Australian society of which we are so proud, in which we enjoy so many freedoms. We will not continue to enjoy those freedoms if we are pushed by fearmongers, by sensation mongers, warmongers, into introducing legislation like this and hearing the sort of bush parrot cry from our Prime Minister and leaders of our country. Those are the steps which are going to produce the most severe deterioration of Australian society, far more than the possible risk that may occur through perceived terrorist threat.

I feel it is important that we have a constructive debate in this place about how to deal with what is perceived as a new threat, and certainly a changing world awareness, but, if it is only going to be polarised on who is going to be able to get the strongest trumpet call to get the biggest populist response, it will not be a constructive debate. The inevitable impact that we have experienced already from terrorist acts is that, unwillingly, the comfortable western societies, the affluent western societies, have had driven into their awareness and conscience that there are other people in the world who live by different standards and far less amenable qualities of life, who are part of our globe, part of our life structure, and we can no longer ignore them.

Not only can we no longer ignore them because of terrorist threats, but we can no longer ignore them because they are now treating us totally eyeball to eyeball on the political scene. That latest response from ASEAN should be a signal to Prime Minister Howard, and to any other people who offer to lead our country, that we are not a superior culture, we are not a superior people, and we must treat those people with care, affection and consideration. If we can adapt ourselves to that role, then I believe we will not need to be a nation running in fear, trying to catch up by accepting what is really sensational politics. So, I indicate the Democrats are opposed to the second reading of this bill.

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

## ADJOURNMENT

At 9.59 p.m. the council adjourned until Tuesday 3 December at 2.15 p.m.