LEGISLATIVE COUNCIL

Tuesday 3 December 2002

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

ASSENT TO BILLS

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

Constitution (Ministerial Offices) Amendment,

Law Reform (Delay in Resolution of Personal Injury Claims),

Legislation Revision and Publication,

Ombudsman (Honesty and Accountability in Government) Amendment,

Stamp Duties (Gaming Machine Surcharge) Amendment,

Statutes Amendment (Attorney-General's Portfolio),

Statutes Amendment (Corporations—Financial Services Reform),

Statutes Amendment (Stamp Duties and Other Measures),

Statutes Amendment (Transport Portfolio).

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to the following question, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: No. 20.

SPEED CAMERAS

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

1. How many hours has the government authorised for the Police Security Services Branch to operate speed cameras for the financial years 2001-2002?

2. How many hours were authorised for the financial years:

(a) 1999-2000; and

(b) 2000-01?

3. How much was the Police Security Services Branch paid for its services for the years:

(a) 1999-2000;

(b) 2000-01; and

(c) 2001-02?

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

1. and 2. The government does not authorise the hours that Police Security Services Branch is to operate speed cameras. The Commissioner for Police authorises these operators.

3. The Speed Camera Operations Unit of Police Security Services Branch received the following funding from SAPOL (2001-2002 estimated).

(a) $1 820 004

(b) $1 866 850

(c) $1 873 000 (estimated).

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2001-02—
- Corporation of Mitcham
- Corporation of West Torrens
- District Council of Berri-Barmera
- District Council of Coorong
- District Council of Elliston
- District Council of Le Hunte
- District Council of Renmark-Paringa
- District Council of Streaky Bay
- District Council of Tatiara

pursuant to section 131(6) of the Local Government Act 1999.

By the Minister for Agriculture, Food and Fisheries (Hon. P. Holloway)—

South Australian Sheep Advisory Group Ministerial Statement

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

Reports, 2001-02—
- Carrick Hill Trust
- History Trust of South Australia
- Windmill Performing Arts Company.

SOUTH AUSTRALIAN SHEEP ADVISORY GROUP

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: The Sheep Advisory Group was formed in 1998 and, since that time, has provided advice on matters affecting the sheep industry in South Australia to various ministers responsible for primary industries. On 19 November, I tabled a copy of the 2002 annual report submitted to my office by the South Australian Sheep Advisory Group. Since tabling that report, I have discovered that there are a number of errors in the financial statements contained in the report. Accordingly, I have now tabled an updated report to replace the one previously tabled.

Additionally, my investigations have highlighted a serious breakdown in procedures for the Sheep Industry Fund from which the Sheep Advisory Group operates, in that they have not been submitted to the Auditor-General for audit purposes since its formation in 1998. This is despite the fact that auditing at least once in each year is a requirement of the Primary Industry Funding Schemes Act 1998, under which the Sheep Industry Fund is established. I have also discovered that there are in fact four other industry funds established under that same act, being the cattle, pig, apiary and deer, which also have not been audited appropriately.

The prudent management of industry funds is critical for ongoing success of industry development in this state. It is disturbing to note that such an oversight has occurred. In response, I have asked that responsibility for the future financial management of industry funds be moved into the corporate finance area from the operating division of PIRSA, where the accounting arrangements were previously undertaken. In future, all industry fund financial statements will be prepared by qualified accounting staff and will be submitted to the Auditor-General in accordance with the legislation.

I have been advised that, to date, none of the above funds have been audited by the Auditor-General since their implementation by the act. In relation to the amended statements contained in the revised annual report, these will be submitted immediately to the Auditor-General, and I expect to be in a position to table revised audited financial statements in the new year.

SHACKS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to shack freeholding made in another place by my colleague the Hon. John Hill.

QUESTION TIME

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: Yesterday I asked what programs would be cut from PIRSA and, in particular, SARDI as a result of the $4 million cut to the PIRSA budget. The minister indicated by way of his reply, first, that priorities are set within the department, and then went on to say:

> . . . 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.

They are his words. He then went on to indicate that I did not know what I was talking about, because he said:

> 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.

We all know that programs are dependent on staff to progress them, so is the minister suggesting that there are 40 people within PIRSA who are doing nothing and are superfluous to requirements? If not, what programs will be cut?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): No, I am not suggesting that there are 40 people within PIRSA who are not doing anything. Forty is the targeted number of people from within PIRSA to meet the government's overall budget target of 600 targeted voluntary separation packages, which is part of the budget savings of government.

In relation to the actual budget cuts, I believe that they were detailed on page 4.30 of the Portfolio Statements. I do not have those statements in front of me now, but they provide a breakdown of the various areas where there would be cuts. There were some cuts from consultants, some from the corporate area in relation to PIRSA, and there would also be some savings, as we have now seen, from some of the lower priority areas of research. As I have also indicated to this council on a number of occasions, from the budget savings it made the government was able to find $12 million to fund the plant functional genomic centre at the Waite campus, which will work—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: No, there was no provision in the budget for that, in spite of what the shadow minister says. It was $12 million over the next few years in relation to that program. As a result of that, it was indicated at the time that, with the additional money from the commonwealth and from Adelaide University, approximately 100 additional jobs would be provided in the research area for that. To fund this and a number of other areas—and I am quite happy to repeat them—there was the targeted exploration initiative where funding ran out on 30 June this year; funding for the National Heritage Trust programs ran out on 30 June this year; there was no forward projection for funding FarmBis beyond 30 June 2003-04; and, from 30 June next year, $1 million is missing from the additional funding needed for fisheries compliance officers.

There are a whole lot of areas where, in its forward estimates, the former government did not provide adequate funding. In short, those forward estimates lacked total financial integrity in many areas, and this government has had to restore that integrity by ensuring that that money is available into the future.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, we have had to make cuts to do that, but the former treasurer would just make promises into the future and let the future look after itself. Perhaps he anticipated, quite correctly, that he was about to lose the next election and thought, 'We will leave it to the next government to pick up the mess that I leave it.' It is regrettable that there are any cuts. If I had my wish, there would be no cuts at all within primary industries or indeed any other part of government. The tragedy is that we have to make the finances of this state sustainable.

The Hon. CAROLINE SCHAEFER: I have a supplementary question. What programs is the minister cutting?

Members interjecting:

The Hon. P. HOLLOWAY: It is a pretty simple answer. I said that, if members look, they will see that the cuts are outlined on page 430 of the Portfolio Statements. In relation to where the particular staff will come from, as I have indicated, at this present time the management of the department is inviting people to apply for targeted voluntary separation packages. That process from within—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I wish the Leader of the Opposition was here yesterday. He offered 20 000 of them, so he should know. It is one thing about which I will have to defer to him: if it comes to offering targeted voluntary separation packages, the leader certainly knows much more about it than I. He had practice with 20 000 of them. I have a much more modest number than that. I indicated the process being used by the department. At present, they have been having discussions within the department and they will be offered through the department to people working in low priority areas. When that process has been completed—

The Hon. R.I. Lucas: You have no idea.

The Hon. P. HOLLOWAY: Actually, I have every idea. I will not tell the Leader of the Opposition where they are. There are proper processes to be followed in relation to this. I believe in consulting with the work force and the relevant unions involved, and that process is being undertaken at the moment. The first invitation has been made, but until that process of discussions with the work force and the unions involved is totally completed, I certainly will not be providing those details. However, that information will be made available eventually.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I will tell the honourable member what we do not know: we do not know who will accept them. The leader offered 20 000 TVSPs, yet he has not figured out that they are voluntary—the 'V' in 'TVSP' stands for 'voluntary'. It depends who accepts them. We do not force people to accept them—they are 'V' for 'voluntary'. I suggest that the Leader of the Opposition wait a little longer.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.J. STEPHENS: I have a supplementary question.

Members interjecting:

The PRESIDENT: Order! I am having difficulty hearing. I believe the Hon. Mr Stephens has a supplementary question.

The Hon. T.J. STEPHENS: Given that we offered 20 000 separation packages, is the leader acknowledging that that was not enough and that we should have offered more?

The Hon. P. HOLLOWAY: This government has made a decision in its budget to offer 600 targeted voluntary separation packages because we believe that that is an appropriate number in relation to the situation facing the budget now. The previous government was judged over eight years—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: It does not necessarily mean that at all, but the people of this state made their judgment on the policies of the previous government on 9 February this year when we had an election.

The Hon. DIANA LAIDLAW: I have a supplementary question. If the minister and the department receive more applications on a voluntary basis for targeted separation packages within PIRSA, in which areas will he instruct the bureaucracy not to accept those applications?

The Hon. P. HOLLOWAY: As I understand the process, the offers are made until the number is accepted. There will be a targeted—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: There is targeting: they are targeted voluntary separation packages, but in the targeted areas. They will be offered in targeted low priority areas, and it is up to people whether they wish to accept them.

The Hon. R.I. LUCAS (Leader of the Opposition): I have a supplementary question. What targeted areas?

The Hon. P. HOLLOWAY: Obviously that depends on the department.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: In case the Leader of the Opposition does not understand the Public Sector Management Act, policies in relation to the administration of departments under the Public Sector Management Act are in the province of the chief executive officer. The minister approves the process. I know the Leader of the Opposition would desperately love this information, but he knows that processes have to be gone through, and that is exactly what will happen. Unlike the previous government, we will do it properly with appropriate consultation.

PRISONS, DRUG USE

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

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation. I cannot hear. The Hon. Mr Lawson has the call. I ask the honourable member to start again.

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

Leave granted.

The Hon. R.D. LAWSON: On 25 November, Mr John Paget, the CEO of the correctional services department, was interviewed by Leon Byner on Radio 5AA. During the course of that interview, Mr Paget said:

> If we respond in a draconian way on a drug like cannabis, we run the risk of driving somebody from cannabis into heroin use.

Mr Paget went on to say that the use of heroin, especially by injecting users, would lead to the spread of hepatitis C and HIV in the prison population. Mr Paget then described the department's harm minimisation strategies. He said that there were three components: supply, demand and harm reduction. On the subject of supply reduction, he said:

> We've got to reduce the amount of injecting by intercepting the flow of injectable drugs and intercepting the flow of injecting devices and tattooing devices and the like.

As regards demand, Mr Paget said:

> It's about education. It's about the drug and alcohol courses we run for people.

Referring to demand, he also said that the department would be expanding the methadone maintenance course, reducing the demand and getting people off the need for the drug. Mr Byner then interjected with the very pertinent question:

> Where do prisoners get the means to inject safely any of these substances that might spread hep C or AIDS?

Mr Paget responded:

> You've come to a very controversial point. There's a whole literature that says, to inject safely, you've got to have injecting rooms in the prison system. Now, that debate has been going on. We don't have them. They have them in some European jurisdictions, like Switzerland and Germany.

My questions to the minister are:

1. Does he support the policy of not having a draconian policy against cannabis use in prison? By draconian, I mean a zero tolerance policy in relation to cannabis.
2. Can he explain what drug and alcohol courses are run in the prison system for prisoners since the abolition of the therapeutic drug unit after the budget cuts?
3. Can he explain the methadone maintenance course that is conducted in the prison system? How many users are there of that program? What funds are spent on it?
4. Does the government support the establishment of safe injecting rooms within the prison system in South Australia?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his important questions in relation to drugs in prisons. As I have explained before in answering similar sorts of questions, drugs are difficult to keep out of prisons. It is a problem not just for South Australian prisons: it is a problem facing prisons worldwide and nationally.

Each state has difficulties in keeping drugs out of prisons, but in this state we have random searches and also, I understand, targeted monitoring of people who have a history of drug use and abuse and who may be the targets of visitors who would be inclined to bring drugs into prisons, and they are watched very carefully. There are also the drug detection dogs, and DCS has recently spent considerable time and effort upgrading the skills and effectiveness of the DCS dog squad. The DCS annual report noted that in 2001-02 the dog squad carried out 3 397 drug searches in 458 areas inside the prison. With their management skills, correctional services officers and others are able to implement programs that detect drugs within prisons in a number of ways, but it is impossible to stop the problems associated with drugs in prisons completely, because of the desperation of those prisoners who enter the prison with a drug dependency that needs to be met.

It can be met in part by replacement programs, which involve replacing an illegal drug of dependence such as heroin with a prescription drug of dependence such as methadone. I do not have the answer to the honourable member's question about the amount of funds being made available to the methadone program. I understand that that

program has only recently been set in place. After consultation with the department I will also endeavour to bring back an answer regarding the number of prisoners who are availing themselves of that program.

I understand that drug and alcohol counselling is progressing in an educative way. I do not have in my briefings the technical details the member is seeking, but I will endeavour to bring back a reply on how many prisoners are availing themselves of those drug and alcohol courses. I do know that there is counselling for exiting prisoners through the units at Yatala where prisoners are able to live in an environment that tries to model the outside world and provides an opportunity for them to try to lead normal lives before exiting. Having visited recently and spoken to some of the inmates concerned, I know that those programs are very successful. Again, it would be good if the state were able to expend more money on those programs, but they are quite costly.

One of the problems we have is where on release prisoners go back into the same climate as the one from which they entered. Having broken the law while under the influence of drugs or alcohol or while on prescription medication, they go back into that climate and, if their peer group is using drugs as a way of life, there is nothing we can do without exit counselling to stop an exiting prisoner from entering that same climate. If that is the case, many end up going back into prison for committing offences similar to those for which they entered. The honourable member has put his finger on a very difficult management area within prisons. As problems within the community become more widespread, obviously the management programs within the prisons need to be able to keep up with the increasing numbers of prisoners finding their way into the prison system after committing crimes associated with or while under the influence of drugs or alcohol.

It is a growing problem and, if we are to come to terms with it, certainly we will have to not only deal with the bricks and mortar, that is, the capital expenditure of prisons that lend themselves to rehabilitation, but also work hard to provide the in-house support for prisoners who want to avail themselves of programs that bring them off drugs in a humane way. Unfortunately, not only in South Australian prisons but also in many other prisons, most programs require prisoners to avail themselves of programs of nil consumption of drugs, that is, go cold turkey. In some cases for many prisoners that is very difficult to do.

It is a complicated area of management within prisons. Hopefully, over time and with increases in programs and regimes, we can work our way through some of the problems. We are talking to the commonwealth in relation to the drug and alcohol foundation, in order to try to gain more money from the commonwealth in relation to these problems, but it is difficult and budgets are restricted.

The Hon. T.G. CAMERON: I have a supplementary question. Will the minister inquire and report back to the council which drug is considered to be the most addictive, methadone or heroin?

The Hon. T.G. ROBERTS: My lay understanding of it is that they are equally addictive drugs. The only difference is that one is available on prescription and is managed under supervision of the medical and pharmaceutical professions. The other is an illegal substance, and you are breaking the law if you are caught in possession of it.

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: I think if you are caught in possession of methadone, which you are not entitled to without a prescription, you can be charged with being in possession of a drug.

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: I will get more than a lay understanding, build on that, and get a professional reply to the question.

The Hon. R.D. LAWSON: I have a supplementary question. Will the government rule out the establishment of safe injecting rooms in the prison system?

The Hon. T.G. ROBERTS: The information I have been given by the management of our prisons is that there is no provision for a needle exchange or safe injecting house within the prison system. Currently, we have no intention to introduce them. However, we will always be looking at ways to prevent the spread of disease among the prison population and better manage these health problems. Of course, if the prison system is going to be the incubator for AIDS and its spread into the broader community, then it is a subject to be discussed by the broader community and advice given to the government in relation to a way in which to deal with it. At the moment we have real problems with hepatitis C and other communicable diseases. It is not just an issue for the management of prison systems. It is a management problem for the whole community.

The Hon. A.J. Redford: So you are not ruling it out.

The Hon. T.G. ROBERTS: Well, over time, governments will have to engage the community as to how the community sees fit for prisons to be managed.

PRIMARY INDUSTRIES DEPARTMENT

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

Leave granted.

The Hon. CAROLINE SCHAEFER: I have before me page 430 of the budget document to which the minister has referred on a number of occasions. I notice also that he has sent for that particular document. The programs outlined for cuts to Primary Industries, all of which have been previously discussed in estimates, and at various stages in my budget speech, actually add up to $2.665 million, not $4 million.

I think that the detail to which the minister refers is a dot point, which states, 'Reprioritisation of research activities in the South Australian Research and Development Institute', and which is commonly known as SARDI. I have asked the minister this question on a number of occasions, but I will ask it again: what programs will be cut from SARDI, because there is no mention of that? Further, on page 431, the work force FTEs are estimated. The estimated result for 2002 is 1 295. The estimated result for 2003 is 1 278, leaving a net loss of staff of 17. How does the minister explain this?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): It is a pity that the shadow minister did not ask all these questions during estimates when I had the departmental officers with me; I believe that it was all explained at the time. It is also a pity that, when she was the minister, the honourable member did not ask questions about the funding of such bodies as the Sheep Advisory Group Fund, for example. As I indicated in my statement earlier today, the funds of that group had not been audited by the Auditor-General since 1998. As a result of going through the

books of the department in some detail, I discovered that, in fact, that group had not been audited since 1998, and I am now correcting that situation.

I think that indicates that I have been asking some questions about the finances of this department that, perhaps, should have been asked by others. However, in relation to the particular detail in the budget, of course, that figure of 17 in relation to jobs is a net figure. Forty TVSPs will be offered. Obviously, there would be some additions to staff, as well as losses, in relation to the activities of the department, as is always the case with these things. In relation to the cuts within SARDI, I do not know how many more times I have to say it, but I will repeat it: the department has a very sophisticated system and it analyses all its research programs for its more than 400 employees.

All of the research programs are audited for their return and effectiveness and, in relation to the reprioritisation (as it has been referred to in the budget papers), clearly, the targeted areas would be those that have the least return, and that is presently being worked through by the department in conjunction with the officers. All that information will be made available when the process—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I have every idea, but I will not discuss it now.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Leader of the Opposition would love to know. He would desperately want me to discuss it, but there is a procedure.

An honourable member: Name one.

The Hon. P. HOLLOWAY: I will not name one. I will tell the honourable member all of them. I will not name one: I will name them all at the right time. When it is appropriate I will name them.

Members interjecting:

The PRESIDENT: Order!

KESAB TIDY TOWNS AWARDS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about the KESAB Tidy Towns Awards.

Leave granted.

The Hon. R.K. SNEATH: The 25th annual KESAB Tidy Towns Awards were held last night. This was an important opportunity to recognise the hard work that many regional communities put into improving their local environment and image. I am particularly interested to see how Port Vincent fared, because I know that the Hon. John Gazzola has a beach resort at Port Vincent and he recently spent—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.K. SNEATH: —a lot of time mowing his lawns and paving. I understand that he has also spent a fair bit of time—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.K. SNEATH: —picking up stubbies and fish heads off the lawn. Will the minister name the successful regions and outline the criteria for the awards?

Members interjecting:

The PRESIDENT: Order! The minister has the call. We do not want a long discourse on the Hon. Mr Gazzola's renovations.

The Hon. T.G. ROBERTS (Minister for Regional Affairs): Thank you, Mr President. I am sure the honourable member would invite me if we both had time to be there. I understand the honourable member's interest in regional affairs, particularly in the Tidy Towns categories in which KESAB makes its awards. The Governor of South Australia, Her Excellency Marjorie Jackson-Nelson, and the Minister for Environment and Conservation (Hon. John Hill), along with artist Jack Absalom, presented the awards before 300 guests at AAMI Stadium, Football Park last night. The categories for the KESAB awards included waste management minimisation; litter control; sustainability; beautification; neutral resource management; reduce, reuse and recycle; graffiti management; catchment; and coastal care. I am not quite sure into which category the honourable member's modest shack fell, although I am sure that, if it did fall into a category, he would have won an award.

I would particularly like to acknowledge Mount Gambier, which received both the Premier's award and the KESAB Tidiest Town for 2002. Mount Gambier was highly rated in all areas of assessment, namely, for its overall physical appearance; community involvement; approach towards waste management; heritage and cultural activities; environmental improvement; graffiti control; and natural resource management. The town has been eligible for awards since 1978 and has rated highly each year in the large town category, either winning, sharing or being a close runner-up. I understand that the honourable member comes from Clare, which is also a town that has a lot of pride in being a tidy town.

KESAB's Tidy Towns Director Ross Swain commended Mount Gambier by saying:

> In addition to the overall appearance, the number of new and ongoing initiatives had contributed to the town's success.

I congratulate all those involved in the Tidy Towns competition throughout the state. Those towns participating in that competition and taking pride in their appearance add to the way in which South Australia sees itself. The work done by the Minister for Tourism and the latest book *Secrets* is a credit to the state. It shows up a whole range of areas within the state that make up what we regard as our best kept secrets. We certainly do not stand a chance against the Queensland, New South Wales and, in some cases, Victorian tourism hot spots. South Australia's country areas do their best to keep their towns tidy to present themselves for tourism development where possible.

GUN CONTROL

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the leader of the government in the parliament a question about hand gun buyback and community prevention schemes.

Leave granted.

The Hon. IAN GILFILLAN: I ask the question directly of the leader of the government as I feel that both these issues would have been major decisions made by the government as a whole and not just individual ministers because of their significance—supposedly—to crime prevention in this state. Law and order is one of the key planks of the current conservative Labor government. It makes great play of being tough on crime and tough on the causes of crime. However, when it comes to preventing crime by any method other than increasing prison terms or throwing more people into prison, in the opinion of many people this government has failed to

act. This morning in the *Advertiser* there was an article entitled, 'The law-and-order government cuts crime fighting fund.' It states:

> The State Government will not honour three-year crime prevention agreements signed by 18 councils and it has confirmed cuts to funding will be made.

Members interjecting:

The Hon. IAN GILFILLAN: It's nice to feel we have strength on this side of the chamber on this point. Further to this, the government has indicated in media reports that it will not support the national scheme to ban the more than 200 models of hand guns. The federal Minister for Justice, Chris Ellison, said on ABC Radio:

> They're really going to have to work out whether they're dinkum in achieving hand gun law reform because the Prime Minister is, and the premiers of New South Wales, Queensland and South Australia will have to answer to the Australian people if this one in a lifetime opportunity at hand gun law reform falls over.

Minister Conlon, responding on behalf of the government in a press release of 28 November, said:

> South Australian taxpayers shouldn't be burdened with paying several million to pay for a promise the federal government made without any evidence that it would make SA safer.

An Australian Institute of Criminology Issues and Trends publication of 1999 entitled 'Firearm-related violence: the impact of the Nationwide Agreement on Firearms' notes:

> It has been almost two years since each state and territory in Australia implemented the Nationwide Agreement on Firearms. In 1997, Australia recorded 85 fewer firearm related deaths than in 1996 (50 fewer if one excludes the victims of Port Arthur from the 1996 total).

Australian Crime—Facts and Figures 1999 (also by the Australian Institute of Criminology) reported that there was a decrease of almost 30 per cent in the number of homicides by firearms from 1997 to 1998, and that trend (which is continuing) is directly related to the buyback of rifles and long firearms. My questions to the Leader of the Government, representing the government on these matters, are:

1. What evidence does the minister need to convince him and the government that gun controls work?

2. Does he agree with local government that crime prevention programs are effective?

3. How can the community have any confidence that this government is sincere in cutting down the rate of crime when two measures, tried and proven to be effective, are strangled by lack of funds?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Regarding the latter question about funding of the buyback scheme for guns, it is my recollection that the rifle buyback scheme (which was announced by the Prime Minister after the Port Arthur massacre) was funded by the commonwealth through a special levy. Regarding the use of hand guns, my colleague the Minister for Police and, I think, all state police ministers have made it clear that, if the commonwealth is serious about achieving this objective—and according to the quote read by the honourable member who asked the question, the Prime Minister is serious about this—one would expect the commonwealth to make as significant a contribution in relation to this matter as it did after the Port Arthur massacre.

It is also my understanding that one of the biggest sources of illegal hand guns in this state is through people in one way or another bringing them in from overseas. My colleague the Minister for Police and his colleagues in other states have called upon the Prime Minister to do more to prevent the illegal importation of hand guns into this country. Indeed, another source of hand guns of which I have become aware from reading the newspapers is that some of them are stolen from military and other establishments in this country. So, there are a number of sources of hand guns and, if one is serious about addressing this problem—and I think most members of this place are; we do not want illegal hand guns getting into the hands of the wrong people in this country—there are a number of ways in which it must be tackled.

I am sure that, at the recent conference, my colleague the Minister for Police was able to put a balanced view on behalf of this state as to how we might address this problem. The government has considered this matter. I will refer the question to the Minister for Police who I am sure would be delighted to bring back a reply and explain in more detail than I can the position of this government in relation to gun control. However, I point out that there is a lot more to this question than just state legislation. Whatever legislation we have in this state, if people (particularly criminals) are importing illegal hand guns from overseas, clearly this is one source which the federal government has the responsibility to address.

The Hon. J.F. STEFANI: By way of a supplementary question: will the Leader of the Government table the legal opinion which the government has obtained in relation to the contracts and agreements that the government has signed with local government authorities regarding crime prevention strategies?

The Hon. P. HOLLOWAY: I will refer that question to the Attorney-General for his response. It is certainly not the usual practice of governments to table legal advice. In all my time in parliament, that has been the practice of all governments. The principle is that crown law advice is not generally tabled in the parliament and, of course, there are very good reasons why that is the case. However, I will refer the question to the Attorney-General.

HAMPSTEAD REHABILITATION CENTRE

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 Health, questions about the Hampstead Rehabilitation Centre.

Leave granted.

The Hon. T.G. CAMERON: Patients with spinal injuries have to remain in the Hampstead Rehabilitation Centre because affordable accommodation with wheelchair access is unavailable to them. Patients who have been paid compensation by either the Motor Accident Commission or WorkCover are often moved out into serviced apartments or hotels with wheelchair access. However, patients without compensation have no choice but to stay in the spinal unit if their former houses are not wheelchair-accessible. The Director of the Hampstead Rehabilitation Centre, Dr Ruth Marshall, was quoted in the *City Messenger* as saying:

> . . . patients were stuck there unless they were on compensation payments. They can't leave the hospital because there's nowhere for them to go.

Dr Marshall said that those still in the spinal unit were taking up bed space that was needed for new patients. She said:

> They need to get out of the hospital. I've got a queue of people waiting to get in.

Dr Marshall claimed that living out of the unit was cheaper than staying in hospital. She said:

It costs $700 a day for the in-patient rehabilitation program—even the Hyatt is cheaper than staying here.

Hospital is a very artificial environment. Some of the patients at the Hampstead Rehabilitation Centre can be in hospital for six months or longer, and that is an awfully long time to be away from home and loved ones. My questions to the minister are:

1. How many patients with spinal injuries at the Hampstead Rehabilitation Centre are currently unable to leave because affordable accommodation with wheelchair access is not available or their current homes are inaccessible to wheelchairs?

2. Will the minister, as a matter of priority, direct the Department of Human Services to investigate and implement a strategy to speed up modifications for wheelchair access to the homes of patients with spinal injuries?

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

The Hon. J.F. STEFANI: Will the minister provide that information to the council in relation to any outsourced nursing care that is engaged by the government at the Hampstead Centre?

The Hon. T.G. ROBERTS: I will also refer that question to the minister in another place and bring back a reply.

CROWN LAW ADVICE

The PRESIDENT: The Hon. Mr Stefani asked a question about crown law advice. I am advised that parliamentary practice does not allow that to happen. I will provide clarification, as follows:

. . . seeking information about matters which are in their nature secret, .e.g, cabinet decision, crown law advice to the government.

So the question is, in effect, inadmissible, and the minister can take his own advice on that matter.

BROKEN CREEK FISH KILL

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the recent fish kill incident in Victoria's Broken Creek.

Leave granted.

The Hon. J.S.L. DAWKINS: During the last week, I have been made aware of a major fish kill incident in Broken Creek, which flows into the Murray River in north central Victoria. A report in the 27 November issue of the *Riverine Herald* at Echuca said:

Rotting fish and murky water in Rice's Weir pool in the Lower Broken Creek have been dubbed a man-made disaster by farmers and fishermen in the area.

More than 150 cod have been retrieved from the area near Barmah since Saturday.

I interpose to say that I understand the number that has been retrieved has risen to more than 170. The report goes on to state:

Tests yesterday by the Department of Natural Resources and Environment (NRE) fresh water ecology department found that the creek had virtually no oxygen. The lack of oxygen is believed to be caused by rotting duck weed (azolla) found 10 days ago and possibly linked to low water flows in the weir pool.

I have also received a letter from Mr Peter Teakle of Renmark in relation to the fish kill. Mr Teakle has an interest in the national aquatic resources of the Murray-Darling Basin. I quote from his letter as follows:

I have been appalled this week by the news of the catastrophic fish kills occurring in the deoxygenated waters of Broken Creek, which is a tributary of the Murray just below the Barmah Forest. Management of Broken Creek falls under the jurisdiction of the Goulburn-Broken Catchment Management Authority and Goulburn-Murray Water that invokes an experimental nutrient management strategy.

Our local Riverland community has been shocked to learn that the mortalities included large numbers of Murray cod, which is the icon of the River Murray system. The matter raises two issues that need to be aired with some urgency. First, will the clean up include flushing the putrid, stinking end product from 60 kilometres of this stream into the River Murray? And, secondly, what effect will the mortalities have on the future of the already fully exploited stocks of Murray cod? Who is to be held accountable for this Murray cod kill?

To raise these matters at the highest level, it would be appreciated if you would raise a question from the floor of the house along the lines of: What safeguards does the SA government have in place to ensure that the water quality in the River Murray will not deteriorate to a state that will trigger a fish kill of this level in the waters of the river, its tributaries and backwaters, and what remedial actions would be taken if there was such an event?

I acknowledge that the minister will, no doubt, want to refer matters of water quality, particularly the results of the flushing of Broken Creek, to the Minister for the River Murray. However, I have some questions directly relating to the fisheries portfolio, as follows:

1. Will the minister indicate whether PIRSA Fisheries officers are aware of this incident?

2. If so, what action have they taken to monitor the investigation of the fish kill incident by the Victorian Department of Natural Resources and Environment and that state's Environment Protection Authority?

3. Will the minister raise this fish kill incident with the Murray Darling Basin Commission, particularly in regard to the commission's native fish management strategy?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his very sensible question and I think his latter suggestion is a very good one. It is appropriate that this matter should be raised at the Murray Darling Basin Commission meeting because what happens in the Broken Creek or Broken River will obviously have an impact on the river as a whole. I saw some reports in relation to this kill, but I have not yet received any further information in relation to it. Clearly, we would be very concerned if Murray cod could be killed in such a significant stream as the Broken River, which passes through Benalla, as I recall, and is fed by the maintains above Mount Buffalo. If water in that creek is not of sufficient quality that Murray cod can be killed on the scale reported in the press, certainly that is of great concern.

All the steps that this government has taken in relation to the River Murray over the past 12 months have been directed towards trying to improve water quality in the river. The minister for the River Murray has fought particularly hard to increase environmental flows down the River Murray, which are ultimately the only real guarantee we get that water quality within the River Murray will not deteriorate further.

As my colleague the Minister for the River Murray has pointed out, the conditions within the River Murray are alarming. We have reports that the level of water in the lakes will be the lowest it has been for many years and that will cause a lot of difficulties for irrigators along the lower part of the river. As the levels get so low and the levels in Lake Alexandrina recede, the tide will go out significantly from

where it is now. Not only will there be a lot of problems for rural industries along the creek but also clearly it will have some impact in relation to natural ecosystems, and that will impact on the fish.

In summary, this government, through the Minister for the River Murray, has taken a series of actions, as did previous ministers. This is a matter on which one would hope that this state has a great deal of bipartisanship and that all members of this parliament will fight hard for additional water flows down the River Murray to improve the quality of water within the river.

One of the steps that this government is taking to protect the native fish stocks within the Murray River is not just to remove gill nets, which we have done, but also to phase out fishing for native species from 30 June next year. If I heard correctly earlier today, the shadow minister for primary industries moved disallowance of that motion, which would enable native fish to continue to be targeted within the river beyond 2003, so I hope that we will persuade her of the folly of such action.

EDUCATION, FURTHER

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the minister representing the Minister for Employment, Training and Further Education a question about budget estimates.

Leave granted.

The Hon. R.I. LUCAS: After many months, the opposition has received under freedom of information a copy of the 'Transition to government' briefing folder provided to the incoming Treasurer. Under the action brief 'Structural position of the budget and implications for the forward estimates' a number of statements are made that relate to the further education budget. I want to refer briefly to two sections: one refers to the use of targeted voluntary separation packages (TVSPs), and the briefing note says:

> Similarly, VSPs are provided to TAFE lecturers and teaching staff that are no longer required, but savings are redirected to enable new staff to be employed in new courses being established or courses where demand has increased. It may be more appropriate for DETE to seek funding of its surplus teacher pool and for shifts in the provision of TAFE services through the budget process, rather than using VSP schemes in this way.

Earlier in attachment 3 there is a reference to unavoidable cost pressures included in the Treasury whole-of-government analysis, and I refer to two budget lines: 'User choice 2000-01 carry-over effect' of $4 million in 2001-02; and 'User choice net of anti-growth funding' of $8 million in 2001-02, $8 million in 2002-03, $10 million in 2003-04, $12 million in 2004-05 and $14 million in 2005-06. My questions are:

1. In relation to the use of VSPs, has there been any budget decision in this most recent budget that has taken away from the minister's portfolio the savings from 2002-03 onwards that were generated from the use of voluntary separation packages, or was the minister entitled or allowed to retain those savings within her portfolio?

2. In relation to the two budget lines referred to in my explanation on user choice, was any of the additional funding provided to the broader portfolio made available to the TAFE institutes, and was any of that funding overlapping with the claimed $17 million in deficits being held within TAFE institutes throughout the state as at 30 June this year?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I will refer that question to the minister and bring back a reply.

FISHERIES ACT

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the Fisheries Act review.

Leave granted.

The Hon. J. GAZZOLA: The minister has announced previously that a series of public information meetings will be held throughout the state in early December and February next year so that people with an interest in the Fisheries Act will have the opportunity to talk about the discussion paper and have their questions answered. Will the minister please provide an update on the timetable for these meetings?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The consultation phase of the Fisheries Act review begins in earnest tonight with the first public meeting to be held at Port Pirie, and you, Mr President, will be pleased to know that it is to be held at the Spencer TAFE. I am sure that you, sir, would love to be back in Port Pirie tonight but, unfortunately, I suspect you will be here having to listen to some of the speeches from members opposite. For those residents of Port Pirie who have a keen interest in fishing—as many of them do—I am sure that they will have the opportunity to attend that public meeting this evening.

Further regional meetings will be held at Berri on 10 December; in Ceduna on 12 December; in Mount Gambier on 5 December and in Port Lincoln on 4 December. A meeting will also be held in Adelaide in Enterprise House at Unley on 16 December, and further meetings are planned for February next year.

These meetings will give regional stakeholders an opportunity not only to ask questions of those participating in the Fisheries Act review but also to raise and discuss issues to be considered as part of it. A number of issues about future fisheries management have been raised as part of the review, including ecological sustainability development; food safety; biosecurity; and future access arrangement for all sectors of our community. So, Mr President, I urge all interested people to attend these meetings, or those that are to be held next year, and to have a say in the review of this most important piece of legislation, the Fisheries Act.

DRUGS SUMMIT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Health, a question in relation to Drugs Summit recommendations.

Leave granted.

The Hon. M.J. ELLIOTT: In June this year the government convened a drugs summit. This was a proactive and progressive step to address the drug situation in the state. There were contributions from all stakeholders in the community. Many stakeholders believed that the summit and its recommendations would at last offer real hope of drug reform in the state.

Among the issues that were debated was a proposal that there be a ban on hydroponically grown cannabis related to the expiation scheme. That matter was put before the conference and was overwhelmingly defeated. What the conference did not know was that an hour before the confer-

ence voted on this the Premier held a press conference, announcing that there would be a ban on growing cannabis by hydroponic means.

The concern that has been expressed is that, despite the government's intentions, a consequence of the ban on hydroponically grown cannabis is that it will not cease to be grown but will cease to be grown by small-time growers—those who grow for themselves and for their close friends—and that the whole market will be handed over to organised crime, as well as there being a push for other drugs to be made available through organised crime. My questions to the minister are:

1. Why did the Premier announce that hydroponically grown cannabis would be removed from the expiation scheme when the drugs summit, which he established, clearly voted against such a recommendation?

2. On what evidence was that announcement made?

3. Of all cannabis plants seized, how many of those in fact come from people growing only one or two plants?

The PRESIDENT: I am taking it that this question is not specifically on the bill. It is of a general nature.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): In relation to the latter issue, I note that there is a bill on the *Notice Paper* at the moment that the government has announced it will support. I suggest that a good time to raise this issue will be during that debate. The Hon. Robert Lawson introduced that bill yesterday, and the government has indicated that it will support it, as it did in the lower house when it passed through it and, if all members of this parliament are agreeable, we will hopefully pass the bill this session.

The Hon. Diana Laidlaw: Will the minister be here to answer questions on the bill?

The Hon. P. HOLLOWAY: If I am not, I am sure my colleague the Hon. Terry Roberts will be available to answer questions in relation to that.

Members interjecting:

The Hon. P. HOLLOWAY: Yes, I have done it. Good. As to the other details in relation to the Drugs Summit, I will refer those questions to the Premier and bring back a reply.

REPLIES TO QUESTIONS

ASSAULT PENALTIES

In reply to **Hon. T.G. CAMERON** (26 August).

The Hon. T.G. ROBERTS: The Attorney-General has provided the following:

1. Since 1 July,1997, there have been:
   (a) 7 691 defendants convicted for 8 363 charges of common assault where the victim was not a member of the defendant's family (maximum penalty two years);
   (b) 1 923 defendants convicted for 2 122 charges of common assault on a member of their family (maximum penalty three years).

In the situations referred to in (a) above, the highest penalty since 1 July, 1997, was 21 months, so no-one has received the maximum penalty.

In the situations referred to in (b) above, the highest penalty since 1 July, 1997, was 30 months, so no-one has received the maximum penalty.

This information is about cases where common assault was the sole charge. There are many cases in which common assault is one of several charges heard simultaneously. In a number of these cases, the penalty applied has been a global penalty, taking account of all charges and exceeds the respective two and three year maximum penalties for common assault.

In assessing these figures, note should be taken that in approximately 25 per cent of cases, a guilty plea was entered. Where this happens, the judicial officer is obliged to discount the penalty from that which would have otherwise been given.

2. Increasing the maximum penalty applicable to an offence by, for example, legislating to nominate aggravating factors that attract a higher maximum, will have the effect of increasing the sentencing standard applicable to the aggravated offence and hence increase the applicable sentence across the range of offending covered by the offence.

3. Guideline sentencing aims to ensure consistency and transparency in sentencing. The bill currently before parliament does not refer to the level of any sentence at all. It is directed entirely to the process whereby sentencing standards or guidelines are to be set.

DRUGS AND CRIME

In reply to **Hon. M.J. ELLIOTT** (10 July).

The Hon. T.G. ROBERTS: The Attorney-General has provided the following:

In answer to the first part of your question the government is aware of the research conducted by the Australian Institute of Criminology.

The South Australian government is participating in this national research program in partnership with the Australian Institute of Criminology. The Drug Use Monitoring in Australia (DUMA) project collects a wide variety of data including: class characteristics; sources of financial income; prior criminal activity; drug use history; and, drug market utilisation. This information is collated through interviews with police detainees and the collection of urine samples.

In answer to the second part of your question, both this government and its predecessor supported initiatives that fit the description of an intervention program.

The police drug diversion initiative refers people found with an illicit substance for personal use to education and treatment programs.

Police drug action teams work in partnership with local communities to address drug issues.

In the last budget, the government committed about $1.4 million per annum to continuing the role of the drug court. Through the illicit drug strategy, a community resilience project is being established in Murray Bridge to strengthen that community's capacity to manage risk factors and address drug problems in the community. Across government there are a range of programs designed to prevent entry into, and effective response to, illicit drug use, such as the whole school drug strategy.

The crime prevention unit of the Attorney-General's Department has programs operating that target people at risk of engaging in criminal activity, including an early intervention project that is addressing community risk factors known (on the basis of research) to contribute to criminality and a mentoring program for indigenous young people engaging in, or at risk of, engaging in crime.

These programs are an example of some of the government's initiatives for the prevention of crime that we think is related to experimentation, contact and engagement with drug use.

All of the programs identified in this answer are being evaluated, which will further contribute to the body of research on the nexus between drugs and crime, and effective interventions.

EQUAL OPPORTUNITY

In reply to **Hon. R.D. LAWSON** (26 August).

The Hon. T.G. ROBERTS: The Attorney-General has providing the following:

There are two ways in which an exemption can be claimed under the Equal Opportunity Act, 1984 (EOA).

1. By formal application to the Equal Opportunity Tribunal pursuant to section 92 of the EOA. Exemption applications may be granted or dismissed after a public hearing. The exemption applies only to the person who seeks it.

2. By relying on an exemption contained in the EOA if a complaint is lodged with the Commissioner for Equal Opportunity. The act contains a range of exemptions that make acts of discrimination lawful in prescribed circumstances. If an exemption can be successfully made out, the complaint is dismissed by the commissioner. This type of exemption applies automatically if the relevant circumstances can be demonstrated.

The Equal Opportunity Act has always contained the ability for employers to employ people from a particular group if they are able to demonstrate that there is a genuine occupational requirement that

this occur. There have been no changes to this provision in the EOA since its inception in 1984.

In this instance the Department of Education and Children's Services ('DECS') is referring to section 34(2) of the EOA. This section provides that it is not unlawful to discriminate in employment if it is a genuine occupational requirement that a person be of a particular sex. DECS has claimed that the exemption applies to the appointment of teachers in very specific and limited circumstances and has sought to clarify when school principals can appropriately use the exemption to appoint a staff member of a particular gender.

Any organisation can recruit staff on the basis of sex without breaching the EOA if it can show that it is a genuine occupational requirement that the person be of that sex. It is therefore unnecessary to take action to extend the terms of the exemption to other community organisations, sporting groups and businesses because they can already claim the exemption if the circumstances support it. The same law applies to DECS as applies to other organisations.

In answer to your specific questions:

1. It is not necessary to extend the exemption as it already applies to all employers who can show that it is a genuine occupational requirement that a person be of a particular sex. In any event, the EOA does not give the Minister power to grant or extend exemptions.

2. The Commissioner for Equal Opportunity already produces various publications explaining the provisions of the EOA. In addition any member of the community can contact the commissioner's office to obtain information about the application of the EOA to their particular circumstances.

TRAINING AND SKILLS DEVELOPMENT BILL

Adjourned debate on second reading.

(Continued from 27 November. Page 1521.)

The Hon. A.L. EVANS: This is an important bill concerning training and skills development. It establishes a new authority, the Training and Skills Commission, as the peak government authority on policies, planning, funding and quality in vocational training and education. The bill for the most part is non-controversial and Family First is in favour of it in many respects. The biggest source of contention in the bill relates to Australian workplace agreements (AWAs). The bill operates to exclude the use of AWAs in training contracts.

Family First believes in freedom of association and the widest possible option for the individual, but not if these individuals are going to experience unfair working conditions or be inadequately protected in the work environment. So, out of necessity, I felt compelled to examine the pros and cons of AWAs. In doing so, I have tried not to get caught up in the ideological fixations of each party but rather look at the merits, if any, of AWAs as a lawful instrument governing contracts of employment.

My desire is to bring some balance to the debate. On one hand I hear that AWAs have nothing good to offer, that there is a potential for employees to be exploited through unfair terms of employment and inadequate protection. The opposing view is that AWAs provide another choice for employees and we should not take away that choice. An AWA allows the individual needs of the employer and the employees to be met. For example, some awards do not allow trainees to work part time.

Of the contracts of training that currently exist in this state, 5.6 per cent use AWAs. Within that percentage, 42 per cent are in the abattoir industry, 19 per cent are in the food and beverage industry and the balance is made up of a variety of industries. An AWA is an agreement between an individual and an employer which sets out the conditions of employment. While the contract of training governs the training and employment requirements, the AWA as a required industrial instrument sets out the employment conditions applicable to that relationship.

An AWA is not a public document but the employee is free to show it to whomever he or she chooses. Every AWA is subject to review by the Employment Advocate, which is a commonwealth Public Service agency. Under the commonwealth Workplace Relations Act 1996, the Employment Advocate is a statutory office holder. Under section 83B1 of that act, the Employment Advocate is appointed by the Governor-General for a term of up to five years. In other words, as an executive appointment, the Employment Advocate is considered an independent office holder.

The employer must send every AWA to the Employment Advocate, where an assessment is made of the terms of the AWA and a global test is applied. Under this test, a determination is made as to whether the AWA on an overall basis passes the no-disadvantage test. In making this determination, a comparison is made between the AWA and the award that would have applied if the agreements were not in place. If there is no award, then a designated award is determined by the Employment Advocate.

If the Office of Employment Advocate (OEA) does not believe that the AWA meets the no-disadvantage test, the OEA may try to secure legally binding undertakings from the employer to protect employees. If the employer refuses to provide these undertakings, the matter is referred to the Industrial Relations Commission for determination. Section 83BB(2) of the act provides:

> In performance of his or her functions the Employment Advocate must have particular regard to:
>
> (a) the needs of the workers in a disadvantaged bargaining position (for example, women, people from non-English speaking backgrounds, young people, apprentices, trainees and outworkers).

I understand that the Employment Advocate takes this responsibility very seriously. A new employee must be given at least five days to consider an AWA before signing. An existing employee must be given at least 14 days. If an employee has not had an AWA for the required number of days, the Employment Advocate must refuse the approval of the AWA. Once the AWA has been signed and sent to the OEA for filing, the office sends the employee a letter which further explains the AWA approval process. The letter invites the employee to contact the OEA if they have any questions or believe that the legal requirements have not been met. The OEA does not approve an AWA until 14 days after this letter is sent to the employee explaining the AWA process. This time is allocated to ensure that the employee has ample opportunity to seek further advice and information if required.

An employer is also required to explain the effect of the AWA to the employee between the time the employee is given a copy of the AWA and when they sign it. The Workplace Relations Act 1996 contains provisions to prevent one party forcing another to enter into an AWA. It is against the law to apply duress or to make false statements to persuade an employee to enter into an AWA or to dismiss an employee because the employee refuses to enter into an AWA.

Over 280 000 AWAs have been approved since their introduction in 1997. Given the safeguards which appear in

the federal legislation and the rigorous process engaged in by the OEA, I am struggling to accept the argument that AWAs are unfair on young people entering into contracts of training. Some examples of apparent unfairness have been pointed out to me. One that got my attention was the group of trainees who were not paid until the end of the first quarter. I understand that a determination was made by the OEA that, on an overall basis, there was no disadvantage—these people were in fact paid 10 per cent more than the standard rate and all their parents were aware of, and had signed off on, the terms of employment.

I am also reluctant to support the removal of AWAs where the consequence is that some young people will miss out on apprenticeships. It is generally accepted that if AWAs are excluded some trainees would miss out on apprenticeships as a result. The precise number of those who would miss out is unclear. A letter from the Hon. Tony Abbot MP, Federal Minister for Employment and Workplace Relations, points out that the number is 1 700. However, I understand that some of these trainees would come under an award and, therefore, the number could be lower. Whatever the number, there are some young people who will miss out, and that is unacceptable to Family First, particularly given the rising rates of youth unemployment in this state. I cannot be a part of something that could increase unemployment in this state.

Another major area of concern for me is the strong likelihood that the removal of AWAs could be unconstitutional. I understand that the federal government has legal advice indicating that this legislation could be invalid to the extent that it is inconsistent with federal legislation. The government has said that it has its own crown law advice indicating that the position is not so black and white. I have sought a copy of that advice but have been refused. For the record, I also sought a copy of the advice referred to by the Hon. Tony Abbott, and this was also refused. Section 109 of the Commonwealth Constitution provides:

> When a law of a state is inconsistent with the law of the commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistencies, be invalid.

My office has made its own independent inquiries on this issue. On our advice, there is a strong argument that this bill, if passed, would be unconstitutional to the extent that it is inconsistent with federal legislation. This is clearly a question relating to the validity of this aspect of the bill. I understand that the federal government is serious about its intentions to challenge this bill, if passed. That would involve extremely expensive litigation in the High Court. Family First supports the second reading of this bill, but has serious reservations concerning the exclusion of AWAs, for the reasons I have stated.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contributions to the debate on this bill and for their support for its intent, which is to further the state's economic and social development through quality education and training. Like other members of the council who have spoken on the bill, I look forward to its enactment. I also understand that there has been quite a lot of discussion with and involvement of the Independent members. As the Hon. Mr Evans has pointed out, discussions have been consistent and well placed, and the honourable member has drawn his position out of being in receipt of the most up-to-date information that an individual can have.

As members know, there is one point of contention in the bill, and that is about the use of Australian workplace agreements for the employment of apprentices and trainees under contracts of training. We have heard from the Leader of the Opposition on this matter, and it is incumbent on me to state the government's position. The Leader of the Opposition tabled a letter from the commonwealth Minister for Employment and Workplace Relations, who reported that the commonwealth believed that the proposal to exclude AWAs for employment of apprentices and trainees in South Australia would be invalid to the extent of any inconsistency with the commonwealth's Workplace Relations Act. The leader also asked that I indicate the nature of the advice that the government had taken on this matter.

I say to the council that the initial advice was that which was given to the previous government last year, when it introduced the bill into another place with the same effect as the current bill. According to that advice (which was dated 13 November 2001), it is arguable that the state could make a law to exclude persons who are subject to an AWA from entering into contracts of training.

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: It is not the government's policy to—

The Hon. T.G. Cameron: How are independent members supposed to make a judgment?

The Hon. T.G. ROBERTS: You consistently make—

The Hon. T.G. Cameron: The legal opinions upon which you make a decision you refuse to show anyone. You—

The Hon. T.G. ROBERTS: The honourable member knows probably as well as anyone here that you could ascribe two different positions from one legal opinion on any single given subject.

The Hon. T.G. Cameron: That is what we've got. We've got two opinions, and we can't have a look at either of them.

The Hon. T.G. ROBERTS: You assume there is another opinion after you consult the first lawyer, and you then make up your own mind, which you are doing now. You are quite within your rights to do that. You could also avail yourself to a lawyer of your own choice, if you want to make a—

Members interjecting:

The Hon. T.G. ROBERTS: And it will be unbiased; it will be clear cut, I am sure. According to that advice dated 13 November 2001, it is arguable that the state could make a law to exclude persons who are subject to an AWA from entering into contracts of training. The advice went on to say that, if the government made such a law, there would be a risk that it could be challenged and held to be invalid. This is the advice of the previous government, on which basis it saw fit to exclude AWAs from the legislation. It is the advice on which this government reintroduced the bill in the form put by the previous government. The potential for a challenge has been confirmed by subsequent advice to the government. We are willing, nevertheless (as was, presumably, the previous government), to argue the case.

Let me outline the basis for the current government's position on this matter. First, it is a matter of principle. The unequal power and balance between employer and individual employee is at the heart of Labor's opposition to AWAs. I wish to acknowledge and thank the leader of the Democrats for his very considered comments on that point last week in this council. The negotiations of AWAs and the complexities involved in attempting to regulate terms and conditions of employment are not matters that any fair-minded society would delegate to the young and inexperienced. The current

government therefore supports collective approaches to industrial matters. Australian workplace agreements effectively exclude collective bargaining and the wisdom that brings to the negotiation of employment conditions. Secondly, and equally as important, the commonwealth Workplace Relations Act effectively dismisses the state's role in overseeing the employment component of traineeships. I draw the attention of honourable members to section 170VR(1) of the commonwealth act, which provides:

> Subject to this section, an AWA prevails over conditions of employment specified in state law, to the extent of any inconsistency.

Taken at face value, that means that, if state training legislation (such as this bill) sets conditions relating to the employment of trainees, they can be overridden by an Australian workplace agreement. Legislation to regulate apprenticeships and traineeships is the responsibility of the state government. We have a responsibility to ensure that the bodies we ask to monitor and regulate the system are empowered to effectively carry out the functions assigned to them.

It has been suggested by the leader opposite that to exclude AWAs from the bill would put at risk over 1 700 apprentices and trainees who have entered into contracts of training since January 2001. I simply say that that is not the case. The transition provisions of the bill ensure that all existing apprenticeships and traineeships will continue. It has also been suggested that not allowing AWAs will put at risk future jobs. I simply say to the council that the bill does not prevent employers from taking on employees under AWAs, and it does not prevent employers from training their employees in non-trade areas. Employers do not need a contract of training to do that. To that extent, the bill does not attempt to displace the commonwealth act. The bill provides that employers who choose to take people on under AWAs will not receive the sanction of the state training authority and the training will not be paid for by the state as part of the contract of training system.

I could continue, but I shall conclude my remarks by noting that we are discussing an important feature of the bill, but it is only one feature. The bulk of the bill and what it promises to achieve for the state is rightly supported by the council as it was in another place, and I would hope that is the case. I again thank members for their support of the bill, and I look forward to its passage and enactment.

Bill read a second time.

In committee.

The Hon. T.G. ROBERTS: I understood that this bill would go into committee on the basis that the request for information made by the Hons Mr Cameron and Mr Evans was not able to be met. I was of the understanding—

Members interjecting:

The Hon. T.G. ROBERTS: I do not want to progress it if members opposite are not comfortable with progressing it.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: I thank the opposition for its cooperation.

Clauses 1 to 35 passed.

Clause 36.

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

> Page 25, line 14—After 'certified agreement' insert:
> or an Australian workplace agreement

As the Hon. Mr Evans and the minister have indicated, there appears at this stage to have been only one contentious issue in the debate on this legislation, and that is the subject of this amendment, namely, the issue of Australian workplace agreements. I do not intend to repeat all the discussion that I offered on behalf of the Liberal Party in the second reading debate. The minister has put the government's ideological position on this, the Hon. Mr Elliott has put his position, and there has been a long debate in another place as well. I thank the Hon. Mr Evans for his consideration of this issue—

The Hon. M.J. Elliott: You guys conned him!

The Hon. R.I. LUCAS: I think it is offensive to the Hon. Mr Evans to say that the Liberal Party has conned him.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: I thought we started this debate in good spirit, and the Hon. Mr Elliott, as appears to have been his trend and custom in recent weeks, introduces an element of unsavoury bitterness into this issue.

The Hon. M.J. Elliott: AWAs are like that. They are a disgrace.

The Hon. R.I. LUCAS: I think it is unfair of the Hon. Mr Elliott to suggest that the Hon. Mr Evans could in any way be duped, or misled—

An honourable member: Conned!

The Hon. R.I. LUCAS: —or conned, to use the word of the Hon. Mr Elliott, on this issue.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Well, you are in this place. The Hon. Mr Elliott can put the other side of the story if he wishes, and so too can the government. However, it has been suggested that the Liberal Party in some way has conned the Hon. Mr Evans. The inference is that in some way we have misled and been deceptive with the Hon. Mr Evans on this issue, and I think that is an unnecessary insult in relation to the ability of the Hon. Mr Evans to make his own judgment on behalf of—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No, it is not an insult to me. I have been insulted by the Hon. Mr Elliott for 17 years, and I can assure the Hon. Mr Elliott that—

The Hon. M.J. Elliott: It has been reciprocal!

The Hon. R.I. LUCAS: Well, it is true; I can give as good as I get.

The CHAIRMAN: Order! I think both members should address the bill and stop exchanging insults after 17 years.

The Hon. R.I. LUCAS: I can assure you, Mr Chairman, that I was addressing the bill until the unfortunate insult from the Mr Elliott was interposed into this debate.

The Hon. M.J. Elliott: How long ago was that?

The Hon. R.I. LUCAS: About three minutes.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: It is good of the Hon. Sandra Kanck to show some loyalty to her leader at the moment. It has been a rare commodity in recent years. But I will not be diverted, Mr Chairman. I wanted to congratulate the Hon. Mr Evans on his contribution to the second reading stage of the legislation. As the Hon. Mr Evans has indicated, and those from the Liberal Party side of the debate, both in another place and in this place, have sought to indicate, a critical test, the no-disadvantage test, has to be applied in relation to these issues. An independent body, an independent person, is there to try to provide protection to people involved in Australian workplace agreements. This is not a decision to be taken by business people. This is not a decision to be taken by politicians, whether they be Labor, Liberal or Australian Democrat. A specific body, a specific individual, is charged with the responsibility of—

The Hon. M.J. Elliott: What is his background?

The Hon. R.I. LUCAS: If the Hon. Mr Elliott wants to sledge the Employment Advocate, let him—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: No, the Hon. Mr Elliott can stand up and sledge the Office of the Employment Advocate if he wants to. He has already attacked the capacity of the Hon. Mr Evans to make an independent decision. He can attack the capacity of the Office of the Employment Advocate as an independent office to provide independent advice; that is up to the Hon. Mr Elliott. But I will not engage in the sort of bitter, negative criticism in which the Hon. Mr Elliott appears to be engaging. I want to address this issue. I am not interested in the politics; I am not interested in the negative criticism: I am interested in the issue that has been addressed by the Hon. Andrew Evans.

As I said, and as he has outlined, there is a body, an individual person, available to protect those involved in Australian workplace agreements, and, in this case, we are talking about young people generally involved in these particular arrangements. The no-disadvantage test has to be applied to ensure that—in the words of the independent umpire, in the judgment of the independent umpire—there is no disadvantage in relation to employment arrangements, in this case, for the young person. What is driving the Liberal Party essentially in relation to this issue—

The Hon. A.J. Redford: Fairness.

The Hon. R.I. LUCAS: —is fairness—is the issue the Hon. Mr Andrew Evans has identified in his second reading contribution closing remarks; that is, when he indicated that he will not be party to anything—and I am paraphrasing his words—that may well lead to some young people losing jobs. I know essentially that that is what is driving the Liberal Party in relation to this issue as well. Yes, there is a legal stoush. As the Hon. Terry Roberts has indicated, the federal government has its legal opinion, the state government has trotted out its legal opinion and the Hon. Mr Evans has taken separate and independent legal advice. As the Hon. Terry Roberts has indicated to the Hon. Mr Cameron, the Hon. Mr Evans has taken separate, independent legal advice, and that again—I am paraphrasing—is supportive of the notion that there may well be an issue in relation to the constitutional validity of the legislation.

What I can say in relation to part of the crown law advice read by the Hon. Terry Roberts is that, having been in government for eight years and having seen crown law advice on many occasions, sometimes you get what you would call a strong piece of crown law advice. They are never black and white about it, it is always 'on the one hand' or 'on the other hand'. Sometimes you get strong crown law advice which says that there is a strong probability that this is the view or a strong likelihood that this is the view. When crown law is on very weak ground, at the very weak end of the continuum, you get a phrase consisting of three words: 'It is arguable'—

An honourable member interjecting:

The Hon. R.I. LUCAS: No: 'It is arguable.' Whenever as a minister you received advice which said, 'It is arguable,' you knew that that was the best you were going to get from crown law. You knew that you were not batting at the strong end of the legal advice continuum when crown law advice began with: 'It is arguable.' This debate, as the Hon. Terry Roberts has indicated, will progress beyond the legal advice. As he has indicated, evidently neither the federal nor the state governments will show their legal advice. The Hon. Mr Evans has taken his own separate, independent legal advice on this issue. Obviously, from his viewpoint, he has considered the issue. He has not only considered the federal government legal advice and the state government legal advice—or what he has been told about it—but has also taken his own separate and independent legal advice.

From the Liberal Party's viewpoint, we think that it is an important issue; we accept that. However, the more important issue is the one that the Hon. Mr Evans has identified, that is, whether the banning of Australian workplace agreements would potentially lead to the loss of jobs for young people, and how that would help the unemployment rate for young people in South Australia. We see that issue as being at the heart of what the Hon. Mr Evans has identified, and it is certainly central to what the Liberal Party is talking about. We do not want to see a measure that may well lead to these employment arrangements not being able to be pursued (whether it be 1 700, 1 400 or 1 000 positions) because of an ideological opposition from the union movement, from the Australian Labor Party and from this Labor government. We do not think that is good public policy or in the best interests of young people. For those reasons, we strongly urge the committee to support the amendment that we have moved.

The Hon. T.G. CAMERON: As I said in my second reading contribution, my position was to support the government in relation to this bill. However, I am having second thoughts with respect to the amendment that is standing in the name of the opposition. I want to clarify my position for the committee.

First, I am an enthusiastic supporter of this bill. Apart from the amendment that the opposition has moved, I do not think I have heard anyone in the council argue against the bill. I think the reason for that is fairly obvious: it is a combination of a bill that was prepared by the previous government and tidied up by the current government with the insertion of this amendment regarding AWAs.

I am trying to resolve my position, and I am still in two minds on it. What are we dealing with? My position is that I supported the bill in its entirety. In the absence of the legal debate that is now raging about the legality, or illegality, of the government's position and/or the opposition's amendment, I attempted to ascertain precisely the legality of the situation.

We all know that you can consult a number of lawyers and you can receive a number of different legal opinions. I would like to place on the record my appreciation to the minister, the shadow minister and the federal minister (Hon. Tony Abbott), who contacted my office to explain the legal reasons upon which they were relying.

I am not a lawyer, nor is the Hon. Andrew Evans. Out of the three Independents, only the Hon. Nick Xenophon has the advantage of a law degree. From time to time, it is necessary for the Hon. Andrew Evans and me to seek legal advice in relation to these matters. Unfortunately, I do not have my old comrade Trevor Crothers, who was a great bush lawyer, sitting next to me to advise me. I do understand—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I am pretty sure I know what your advice would have been. You are usually pretty loyal to the government.

The Hon. T.G. Roberts: Hear, hear!

The Hon. T.G. CAMERON: I apologise—to his own party—the government—when it was in office. However, despite a meeting with the shadow minister, the minister and detailed discussions with some of my staff who had discussions with the Minister for Employment and Workplace

Relations' office, I still find myself in a position where, on the one hand, I am being asked by the government to support this bill and, on the other hand, by the opposition to support the amendment, in the absence of any legal opinion. A poor, struggling backbencher like me is hardly in a financial position to go off and seek paid legal opinions on these matters, despite the fact that it would probably be tax deductible. So, there is an absence of any informed opinion from either the government or the opposition—although on this point I must say that at least the federal government was prepared to outline the reasons why it believed this bill to be illegal and upon what sections and definitions of the federal act it would be relying upon. In the conversations I had with the minister, once again these famous words, 'it is arguable' came up. I have been around this business in unions for too long not to understand precisely what 'it is arguable' means. When you are given that as your form of defence by your lawyer it means you are on shaky ground.

I find myself in the position of having a great deal of sympathy for the government's position. But if at the end of the day what we are really considering here is a situation where the government will say, 'Look, we've got a legal opinion from crown law. We can't tell you what's in it or show it to you; all we can advise you is that they've advised us that we have an arguable case,' almost any lawyer will give you that opinion, provided you are prepared to pay the bill.

Another of my concerns is that, after seeking separate legal opinion and trying to check the veracity of the statements that we received from the federal minister's office—and this was before I heard of the opinion that was received by the Hon. Andrew Evans—it seems to me that quite clearly the weight of legal opinion is that this is against sections 33(1), 33(7) and 33(6)(b) of the federal act, and with my limited legal knowledge I could tentatively arrive at that opinion. What worries me is that if this is a hairy chested exercise by the government as some kind of PR stunt to pull on the federal government and 'We'll show them; we'll take this matter to the High Court and sort this out,' I am not interested in that course of action.

I have been advised that that course of action could involve a cost of anywhere between $10 million and $20 million. Well, what concerns me is that, if this bill is passed without amendment, it is absolutely certain that it will be challenged by the federal government and, win, lose or draw, we will have an extremely hefty legal bill. I still invite the government to adjourn this matter and address this question of legality, and it will probably get my vote, but in the absence of that the only alternative I have at this late hour is to direct a couple of questions to the shadow attorney-general, if I may. The question I would like to address to him is, 'Could I have his legal opinion?' I can see that it may be a little biased and he sits with the opposition but generally when it comes to legal opinions lawyers will stick pretty close to the mark, and I expect that he will, too. I ask the shadow attorney-general whether he will comment on the legal debate that is taking place in relation to AWAs. In his opinion, would an action taken by the federal government against the state government, on the bill as it now stands, succeed or fail and, if so, why?

The Hon. R.D. LAWSON: I am happy to respond to the honourable member's question. It does seem to me that the provisions of this bill discriminate against employees employed under one form of employment instrument under the commonwealth's Workplace Relations Act. The provisions of this bill discriminate against those who are employed under Australian workplace agreements. It disqualifies them from participating in the benefits of this particular scheme, whereas it favours those who are employed under two other forms of instrument, namely, a federal award or an enterprise agreement (which is described as a certified agreement). This is clearly a discriminatory provision within the South Australian law.

It seems to me that it is clearly inconsistent with the federal Workplace Relations Act, which applies across the board to employees under the federal scheme. I heard the Hon. Andrew Evans in his presentation mention section 109 of the Constitution, which provides that, if there is an inconsistency between a state act and a commonwealth act, the commonwealth law will prevail to the extent of the inconsistency. It is my firm opinion that, if a challenge were undertaken under this legislation as it presently stands without the leader's amendment, it is likely that it would be struck down and the benefits of it would be denied to those South Australian workers who could otherwise participate.

The Hon. T.G. CAMERON: I thank the shadow attorney-general for his answer. It is precisely the same legal opinion that I received in relation to section 109, the reasons and the likely outcome. I have a question for the minister. Will the minister outline what other state governments in Australia—and I note that they are all Labor state governments—have moved to introduce legislation along the same lines as South Australia; or are they, in fact, operating under the federal act?

The Hon. T.G. ROBERTS: The current position is that all states allow AWAs, but I suspect the situation would be the same as what we are doing. They would be looking at the circumstances in which they find themselves in relation to their legislative powers. It is most unusual in the committee stage for members to ask questions and opinions of members on the other side, but I take the point the honourable member makes. I would ask him a question: would it make any difference if we adjourned this bill on motion while he sought his own counsel? Would that make any difference to the honourable member's position? If the answer is no, we will continue.

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: I am not sure whether adjourning would achieve anything. There were a couple of questions inherent in the leader's reply, and it is incumbent on me to answer the inherent questions. Some difficulties have been reported by government officials who have to deal with apprentices and trainees in relation to their contracts of training. It is reported to me that apprentices and trainees have been dismissed unlawfully by employers who have relied on the wording of the AWA and/or the advice of an AWA broker. There are questions of levels of advice given by those people who are put in responsible positions of advising people who—

The Hon. R.I. Lucas: It is unlawful.

The Hon. T.G. ROBERTS: Well, bear in mind that most people who are employed as apprentices and trainees are young people. Those young people tend not to have a lot of negotiating power within their relationships industrially and to tend to rely on the advice of their absent parents and/or friends. The current climate is that union membership is dropping. Many years ago, when I was an apprentice and a union member, I was able to check out my rights with the shop steward—

The Hon. R.I. Lucas: That was the last millennium.

The Hon. T.G. ROBERTS: I am just saying that if we want to look at our training skills and training base in this country we can see that we have lost the apprenticeship/traineeship schemes that supplied skilled labour to industry. I am not saying that it is the only factor as to why our skills base has dropped, but it is certainly one of them. I was just stating a fact in saying that there is an unequal power relationship. We are going back to the days of servitude, where young people must rely on the patronage of employers to look after their interests and, in many cases, there is unequal power in the relationship between trainees, apprentices and their employers.

Members on this side of the committee are trying to address that situation. There may be other ways in which states can address the imbalance of power that the commonwealth has put in place. However, in relation to this bill, it appears that the numbers are such that we cannot address it by the measures we are taking; and I think, therefore, that we need to progress the bill as it is. By precluding the use of AWAs for employment of apprentices and trainees (and the issue of job loss), there is no indication that employers would not employ apprentices or trainees but for an AWA; and 96 per cent of apprentices and trainees are not employed under AWAs.

Employers can employ and train employees under AWAs in non-trade occupations without participating in a contract or training system. Some employers cease employing trainees because they cannot use AWAs, and this calls into question their commitment to employment and training and suggests that they may have employed trainees primarily to attract commonwealth subsidies. No-one is throwing up their hands and saying, 'Oh, that doesn't happen,' because we all know that it does. Many trainees and apprentices have been exploited in this way—in many cases, when their contract runs out their job seems to disappear.

Certified agreements, enterprise agreements and federal and state awards can be used for the employment of apprentices and trainees. Certainly, they would be the more preferable ways to address education, training and linkage to security of employment and a free and fair way in which young people can be protected. I do not label all employers because many employers do the right thing, but some unscrupulous employers take advantage of the AWA system as it stands.

The Hon. T.G. CAMERON: On the way to work this morning, I flicked on the radio. I always have the radio tuned to 891—I have for about 40 years now, but it sounds a little Labor loving when I listen to it these days. However, be that as it may, I have remained loyal to the old 5AN and I listen to it. This morning, when I turned it on, I heard the dulcet tones of the Hon. Robert Lawson emanating from my car radio. The Attorney-General then came on and made it very clear that, at the last election, Labor's bill in relation to sentencing guidelines was a key promise. I thought, 'Oh, well, that might help me resolve where I'm going on AWAs.' I looked up the ALP policy platform on Australian workplace agreements and the policy remains silent.

I could not find it mentioned in its policy, so I thought, 'Well, I'll go back and look through all the old ALP state conference resolutions regarding trainees and contract training.' Surprise, surprise—I discovered that, for a number of years now (if not four or five years), no resolutions have been passed in relation to Australian workplace agreements. So I thought I would look up the Labor Party's youth platform to see whether there was any reference there to the evil nature of these Australian workplace agreements and how if Labor were elected to office it would outlaw them. However, once again, the policy remains silent.

One Labor policy I came up with is 'Labor is committed to making youth unemployment one of the top priorities for government, including public sector employment of young South Australians, and reviewing all current and employment training programs for young people.' As the Hon. Andrew Evans pointed out, he is unable to come to the view that this will not affect the employment of young South Australians. I may well have missed something, so I invite the minister—if he wishes—to comment on precisely what the ALP policy was in relation to Australian workplace agreements when they went to the last election. If this was not a specific policy of the government, what caused the change of heart between now and the election?

The Hon. T.G. ROBERTS: In reply to the direct question on the party platform, as the honourable member knows, the party platform is a document that is drawn up on a regular basis. It acts as an instrument for instruction and allows people in the broader community to find out exactly what policies are being developed on specific matters. Sometimes policies are developed within trade unions that are affiliates to the ALP whose policies remain the province of those trade unions. I would expect that, if you went to one of the web pages of a major industrial union, you would find that it would have a position opposed to the current position of the federal government. Point 5 of the South Australian ALP Election Platform (2002) on Industrial Relations reads:

> Labor believes that the statewide industrial relations environment in SA should be based on cooperation and consultation between unions, employees, and employers and supported by a legislative framework that protects the rights of all parties.

Point 7 states:

> Labor believes that trade unions and employer organisations have a legitimate role in the industrial relations arena and Labor therefore encourages collective approaches to all industrial relations matters. . .

Point 11 states:

> Labor believes that the protection and enhancement of working conditions, living standards, the creation of the maximum number of jobs possible and the provision of full and secure employment are the prime purposes of our industrial relations system.

Point 33 states:

> Labor believes that the industrial relations system must ensure that both remuneration and conditions are based on equity rather than just industrial strength.

Paragraph 3 of the South Australian ALP convention states:

> Convention strongly opposes the measures that the Federal Government has introduced to encourage the shift to these narrow (new apprenticeship) programs. These measures include:
> - . . . Using individual contracts (AWAs) the employer can reduce the pay of an apprentice or trainee by about $40 per week when compared to the apprenticeship or National Training Wage Award.
>
> Convention calls on the State Government to:
> - Seek prohibitions on the use of AWAs in conjunction with contracts of training.

So you can see that, if it is the policy problem that the honourable member has, we should have a program of enhancing our strong opposition to AWAs, I will certainly take a recommendation back to the next state council if you want to strengthen our opposition to the program.

The Hon. T.G. Cameron: You haven't been very successful in getting them through in the past.

The Hon. T.G. ROBERTS: I will give the honourable member an undertaking that, if he supports the bill before us, I will secure an invitation for him to address the state council, and he can extol the virtues of being an independent and being able to help those who are unable to help themselves industrially. The bill on AWAs has the same effect as the bill put forward by the opposition that it drew up last year. The current position simply puts forward the bill as amended by the Liberal minister in the House of Assembly, so this is not a revolutionary position by any stretch of the imagination. It is arguable that the advice given to the previous government was given to the previous minister when he introduced the bill last year, so nothing has changed in respect of information and consultation processes. I guess the honourable member will have to consult with those who have changed their position in relation to AWAs and perhaps draw a fresh conclusion. We will see how we go with progressing the bill through all stages.

The Hon. R.K. SNEATH: Mr Chairman—

The Hon. T.G. Cameron interjecting:

The Hon. R.K. SNEATH: Well, I might gazump you and the miserable opposition. I will speak against the amendment, because AWAs are the worst thing that could possibly have been inflicted on workers in this country by the federal Liberal government. They are an absolute disgrace. This is a way of keeping the young poor and inflicting more injury on low income earners, and it is a way of getting the desperate to work for next to nothing.

The Hon. A.J. Redford interjecting:

The Hon. R.K. SNEATH: Well, if you knew something about AWAs you might have some sympathy for some of the workers, because no-one else in your party has, which is perhaps why you are doing so poorly in state elections. Take a lesson from your colleagues over the border or at the next election here you will probably end up just like those people over the border with a lot fewer—hardly any—of you here. If you force AWAs on the workers, you will not last; you will be pipped off one at a time.

Perhaps I had better let some of the ill-informed opposition know what AWAs do to workers. I refer to an example of an AWA that exists not far from here. The first thing that is stated in the front of the AWA is that it applies to the employee's workplace but the award does not apply whatsoever. Employees are not to take sick leave without the permission of the company, and sick leave is reduced from 10 days to five days a year. Employees cannot work for other employers without the permission of the company; the 38-hour a week standard is replaced by a 40-hour week with no RDOs; hours of work may be changed at any time to include weekend work, 10-hour shifts or early morning starts as early as 4 a.m., and that is to be worked at the discretion of the company. Not bad when we say to families that they need more time together!

Hours of work may be averaged and no penalty rates apply except for night work; employees required to work one compulsory hour of overtime per day whether they want to or not; employees also required to work on Saturdays and Sundays as compulsory overtime whether they want to or not; overtime is not paid, it is banked and paid out at the discretion of the company. It is paid out when there is a shutdown through no fault of the workers. They are actually paying them the money they earned while they sit there because the factory has broken down. This is unbelievable stuff!

Employees are not entitled to any paid breaks during ordinary 8-hour shifts; employees paid as juniors until 21 years of age; annual leave loading abolished; sick leave reduced, as I said; family care leave abolished; long service leave abolished; work on public holidays is compulsory; employees can be sacked for not working unpaid overtime; redundancies not paid for—

The Hon. A.J. Redford: How much an hour are they paid—

The Hon. R.K. SNEATH: Not quite as much as you, I can assure you.

The Hon. A.J. Redford: How much?

The Hon. R.K. SNEATH: I think the rates of pay are in this document and they are pretty poor—and juniors are paid 50 per cent of that, which is real handy, because 50 per cent of nothing is not a lot, I can tell you. It is $507 a week, and for juveniles $236. For a 20 year old, married person with two children, it is $425.

The Hon. T.G. Cameron: What is the award?

The Hon. R.K. SNEATH: The award does not apply. I just told you that. They have abolished the award.

The Hon. T.G. Cameron: What is the name of the award?

The Hon. R.K. SNEATH: It is the Meat Workers Award, in this case. The Hon. Andrew Evans raised some concerns. The opposition has always talked about the umpire, but the real umpire, as we all know, is the Industrial Relations Commission, which none of these people have access to. Members should put themselves in the place of a young school leaver. There are not a lot of jobs around, and thousands of kids leave school at the end of the year and they are all looking for a job. They are sent a copy of the AWA, which says in the front, 'This is an agreement drawn up by the company: sign this.' They are given five days in the case of a new employee, and 14 days in the case of an existing one. They are told, 'Sign this.' You do not have to sign it, but they do not tell you what happens after, if you do not sign it. We are not too sure what happens to them, but we know what happens to the person putting in for the job, the school leaver, if they do not sign it: they do not get the job.

Kids are working for miserable wages because they are desperate. Their parents are desperate. We heard the Hon. Mr Evans say that, at times, parents have agreed to and signed AWAs on behalf of their children. Well, yes, these parents are desperate that their children get jobs and get into the work force. The Hon. Andrew Evans said that, if AWAs are not allowed under this training bill, it could take a lot of opportunities from young people and create unemployment. I think it is the other way around because, if you look at a lot of this information on AWAs and where they are in training packages, a high number of young people do not complete their training because they cannot support themselves because of the poor conditions and wages. They get sick of being not looked after in the workplace and of being under paid, and they leave their training. So, then the employer goes out and does it all again. Young people get cheap training, but not many of them complete it, unfortunately.

There are other avenues—there is the award and there is enterprise bargaining. There are AWAs in a lot of cases—and the opposition likes them mainly because trade unions are not involved. Enterprise bargaining can be done without a trade union being involved; but at least it is done collectively—

The Hon. T.G. Cameron: It is very rare.

The Hon. R.K. SNEATH: Well, it is, but trade unions do not have to be involved. There are a lot of non-union places that have enterprise agreements, but the fact that workers bargain collectively is what gives them their strength: they

have some support. It might not be the support of a trade union official or an expert in industrial relations, but they have the support of one another. This takes that support away from them. A 15 or 16 year old school leaver is on their own, and the choice is to sign or not work. Take the case of a low-paid person with a family living in an area where one of the largest employers is running AWAs. That person needs to work to keep up their self-esteem and to keep money coming in to look after the family, and is desperate.

When they get this letter in the mail saying, 'Here is the new AWA; you have 14 days to sign it,' they cannot collectively get together with their work mates. This is the idea, to tackle individuals, because they have no strength, they have no collective bargaining power. So, they talk it over as a family. If the wife is the one who is employed, she will talk to her husband about it, and vice versa, and they come to the conclusion that they cannot afford not to sign it. That is widening the gap. These people over here do not care if the gap gets wider. It suits them for the rich to get richer and the poor to get poorer. It suits you, because you have always operated like that. You have never cared about the worker and you never will. If you did you would not be moving—

The Hon. A.J. REDFORD: I rise on a point of order, sir. I invite the honourable member, who has considerable experience, to address his comments through you and not directly to us.

The CHAIRMAN: If you want to abuse them, you abuse them through me or you do not abuse them at all.

The Hon. R.K. SNEATH: These people do not care about the workers—they never have and they never will. They have never cared about the workers and they never will because, if they did, they would not try to put amendments in a training package that will be damning on young people. They would not try to do that. That is a shame. In fact, it is slavery. When there is an industrial dispute these people say that you should listen to the umpire. In this case they call an individual—this is all about individuals. The employer drags in a highly paid lawyer to draw up a contract to send to the unemployed youth, asking them to sign it within 14 days (in the case of new employees, 5 days).

These young people, if they are not happy with the agreement, then have the right of appeal to an independent arbitrator. They cannot trot off together as a collective unit to the Industrial Relations Commission where the real umpire is and where these people opposite used to tell us to go all the time and accept its decision—no way! They might get an industrial relations commissioner who comes from the workers' side, and members opposite do not want that. Or, they might get a sympathetic commissioner who comes from their side. This is a terrible abuse of young people. With AWAs in this training package and AWAs for all young people in this country, members opposite will not have any young people voting for them. They will not vote for you when they get older, and you will end up in a worse position than the Liberals in Victoria.

The Hon. A.J. REDFORD: Putting aside the last opinion poll which showed that 18 to 24 year olds are very much on our side, I draw the honourable member's attention to standing order 452 which provides that, if you quote from a document in debate, we are entitled to ask for that document to be tabled. I now ask the honourable member to table that document.

The Hon. R.K. SNEATH: I seek leave, with great pleasure, to table the document, as members opposite might learn something from it. It is a copy of the AWA from T. & R. Murray Bridge Ltd, Australian livestock wholesale and export beef traders.

Leave granted.

The Hon. R.K. SNEATH: I also have another document, which I seek leave to table. They might learn something, Mr President, and there is no doubt that they need to. Also, I seek leave to table a short brief taken out of an AWA which I am happy for them to have as they might learn something from it.

Leave granted.

The Hon. T.G. ROBERTS: By way of interjection, the Hon. Caroline Schaefer claimed that the no disadvantage test was a protective clause for young people in AWAs. Unfortunately that claim is flawed. In a recent case cited by the opposition in the lower house—an excellent example of innovation—approximately 100 school students were signed to training contracts, having entered into AWAs with an employer, whereby the students agreed to go without pay for 13 weeks until the employer received the commonwealth's employer subsidy for employing trainees. The case is under review by the state's apprenticeship authority, and the salient points to be drawn from it are that the AWAs passed the commonwealth's no-disadvantage case for AWAs, and there do not appear to be any safeguards mandated in the commonwealth's legislation or administrative procedures relating to AWAs that would prevent such an arrangement from being replicated under other AWAs for other employees. Murray Bridge Meats, the case that the honourable member quoted, is a large user of employees on AWAs. It appears that it is an industry within an industry to try to engage as many of its employees on AWAs as possible, and in the casual employment area it does undermine the part-time, permanent casual and full-time employees.

So, there are ways in which unscrupulous employers are able to use AWAs, and we are concerned; that is why we are starting to put the position in relation to the bill in front of us. In a general sense, there are numerous examples of exploitation due to AWAs. I am not saying that members on the other side are putting up AWAs as a perfect case, because I have not heard anyone say that. But, in the absence of its being stated, I can only assume they believe that AWAs cover all the problems associated with young people who are trying to engage in employment to get training that is provided by employers, so that they can then make themselves a marketable product in the marketplace and sell their skills. Unfortunately, the examples that have been given to us fall short of young people being able to build up a skills base to enable them to go on to further employment. Some examples of exploitation are as follows:

1. An AWA that discounted the award rate of pay by more than $2 an hour, paid a lower probationary rate than the award, with the length of the probation entirely at the employer's discretion, and no minimum engagement or meal breaks provision. The AWA provided for bonuses to compensate for the lower rate of pay, but the AIRC rejected the AWA, saying that the bonuses were 'fairly restricted' (Australian workplace agreements PR922331, 10 September 2002).

2. An AWA that was raised in federal parliament in August 2002 by the opposition removed all sick leave and annual leave in exchange for higher rates of pay. Although the increased rate of pay was sufficient to cash out leave, when it was measured against the relevant award in 2000 it did not provide for wage rises over the three-year term of the AWA. According to the Deputy Employment Advocate, if the

no-disadvantage test was done again today the rates may not compensate for lost entitlements.

3. In May 2001 the Federal Court found that Employment National applied duress to four employees to sign AWAs when it replaced the CES. According to the Federal Court judge, the employer offered the employees no real choice, despite being aware that they opposed the AWAs (Schanka v Employment National (Administration) Pty Limited, [2001] FCA 579, 18 May 2001).

Although they are cases that we can all pull out of the Registrar's reports or out of the industrial relations examples provided by people studying a case, the information is coming through that AWAs are not the protective answer that is required for providing young people with the confidence and the basis for building up a skills base within the state.

The CHAIRMAN: Order! We will go right back to the standing orders. I am getting a bit tired of this. The debate has been going an hour and 10 minutes, I remind the committee. I am about to test the amendment, as soon as the Hon. Mr Lucas has finished his contribution.

The Hon. R.I. LUCAS: I can assure you, sir, that I have not taken most of the hour and 10 minutes. I refer to the claims made by both the Hon. Mr Sneath and, in particular, the minister reading the advice that was provided to him. I suspect that the advice that the minister has received, where he has highlighted what he claims to be the inadequacy of the no-disadvantage test, is in relation to one particular AWA. What he has not highlighted—and I think it is the same case—is the advice which has been provided to the opposition, that is, that the Employment Advocate has personally looked at this particular AWA and has personally satisfied himself that the no-disadvantage test is met, and that the AWA ensures that the young person is paid substantially more than under an equivalent award.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: I can't name the case, and you haven't named the case, either. But I suspect, from the information that the minister has put on the public record, and it was raised in the House of Assembly, that we are probably talking about the same case. So, it is fine for the minister to highlight what might have been traded away in the AWA, but he has not highlighted the fact—and I know the Hon. Mr Evans may well be talking about the same case; I am not sure—that in the AWA that he was talking about he stated that the actual payment was 10 per cent higher than would otherwise have been required.

Certainly, the advice provided to the Liberal Party in relation to (I suspect) the same case that the minister has raised is that the Employment Advocate looked at it personally and found that the AWA meant that the young person was paid substantially more than would have been required under some of the potentially equivalent awards.

I certainly do not want to unnecessarily delay this. I would have thought that the government's position is pretty well known on the issue; the Liberal Party's position is pretty well known, as is the Democrats'. The Hon. Mr Evans and the Hon. Mr Cameron have spoken and, certainly from my viewpoint, we are happy to proceed to a vote on it.

The Hon. A.J. REDFORD: I have sat here pretty silently and listened to a lot of irrelevance, but I will just bring the topic back to the bill. It is my understanding that this amendment proposes to amend the definition of 'industrial agreement' in part 4 of this bill. Can the minister confirm that the only two references to industrial agreement in this bill are in clause 42 and clause 47?

The Hon. T.G. ROBERTS: Do I understand correctly that you are moving your amendment in 36B: after 'certified agreement' include 'an Australian workplace agreement' into the Workplace Relations Act 1996?

The Hon. A.J. REDFORD: I will do this slowly. What the amendment before this place is attempting to do is add the words 'or an Australian workplace agreement' to the definition of 'industrial agreement' which is set out in clause 36; and the work that this does is contained in other sections in this bill. I am just asking if the minister could confirm that the only work that the term 'industrial agreement' has to do is in relation to clauses 42 and 47 of this bill.

The Hon. T.G. ROBERTS: In clause 37, under 'Training under contracts of training', at paragraph 6*(b)*(i) the words 'industrial agreement' also appear.

The Hon. A.J. REDFORD: Does the minister agree that this has a very limited effect as it affects only a small proportion of workers who might be the subject of an AWA (as they are known) who come into contact with this act?

The Hon. T.G. ROBERTS: That is probably a true assessment in relation to the coverage, but the point that we have been making on this side is that it is aimed at a very vulnerable section of the potential employment base of this state.

The Hon. A.J. REDFORD: How many employees who are subject to AWAs come into contact or have some involvement with this bill?

The Hon. T.G. ROBERTS: As to the extent and use of AWAs, as at 13 November there were 38 272 active contracts of training. Of those, 1 473, that is 3.8 per cent, involved AWAs. By comparison, 1 per cent of the Australian work force have their pay set by AWAs. In the nine months to September, 11 085 new contracts of training were recorded by the TAMB. Of these, 627 or 5.6 per cent involved AWAs.

The Hon. A.J. REDFORD: If I understand the minister's prepared answer, some 1 400 South Australians are subject to AWAs who might be caught up in part 4 of this bill.

The Hon. T.G. ROBERTS: It is 1 473.

The Hon. A.J. REDFORD: Given the media release issued by the federal Minister for Employment and Workplace Relations, he might not have been entirely accurate that these laws could cost up to 1 700 jobs, but 1 473 jobs might be put at risk, based on the government's figures.

The Hon. T.G. ROBERTS: The worst case scenario is that they would all be terminated, but I do not think that would ever occur.

The CHAIRMAN: I propose to test the amendment. The question before the committee is that the amendment be agreed to. Those for the question say 'aye'.

The Hon. R.I. Lucas: Aye!

The CHAIRMAN: Those against say 'no'.

Honourable members: No!

The CHAIRMAN: I think the noes have it.

An honourable member: Divide!

The CHAIRMAN: I heard only one voice, so it is lost. There was one voice, a very loud Mr Lucas.

The Hon. R.I. Lucas: And a very quiet someone on the back bench.

The CHAIRMAN: I am the one who has to hear the voice. In the spirit of cooperation, we will put the question again. I can understand that after an hour and 20 minutes you are all tired.

The committee divided on the amendment:

AYES (11)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Laidlaw, D. V.

AYES (cont.)

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

NOES (9)

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

Majority of 2 for the ayes.

Amendment thus carried; clause as amended passed.

Remaining clauses (37 to 57), schedules and title passed.

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

Bill read a third time and passed.

CRIMINAL LAW (FORENSIC PROCEDURES) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 December. Page 1611.)

The Hon. IAN GILFILLAN: The Democrats find this bill rather taxing in so far as it is a new technology—the taking of DNA information and the use of it—with enormous complications for society at large, which I will touch on a little later. However, the contents of this bill have been much paraded by the Attorney-General. The government seems (as I have observed previously) to be obsessed with law and order, and it is willing to dismiss civil liberties while pursuing its obsession.

The Democrats believe that the taking of a DNA sample is an intrusive procedure, and we reject the proposals in the bill that seek to deny this. DNA stands for deoxyribonucleic acid. It is the fundamental blueprint for life. Each DNA strand contains all the genetic information about the make-up of an individual. It is conventional for DNA profiles for forensic identification to be taken from what are referred to as non-coding sections of DNA, or 'junk' DNA. It is widely believed that non-coding DNA serves no purpose and holds no relevant genetic information about an individual.

The vast majority of our DNA (over 75 per cent) is, in fact, of this non-coding type. It is hard to believe that such a large proportion of our DNA serves no purpose at all. Recent research investigating this area suggests that this so-called junk DNA may, in fact, be important in how organisms adapt to new circumstances. However, such research is still in the very early stages, and it is fair to say that we currently do not have the means to derive any meaningful data about an individual from one's junk DNA. If this DNA profiling is to be introduced (which, I concede, given the position of the government and the Liberal opposition, is likely), it must be done in a responsible way. The DNA profile must be taken only from the non-coding section of a person's DNA. The original blood or swab sample must be destroyed to prevent further analysis of the person's DNA. The bill before us does not define what a DNA profile is. I would seek reassurance from the minister that only non-coding DNA will be used, and I ask the minister to outline the processes in place for dealing with DNA samples and by what methods those procedures can change.

One of the troubling things about this bill is the change as to how we define an intrusive procedure. Currently, a forensic procedure that involves the taking of a person's blood, or a procedure that involves intrusion into a person's mouth—namely, the taking of a buccal swab—is considered to be an intrusive procedure and, as such, a person may refuse the procedure. In such a case, to gain authorisation to use force in undertaking such a procedure against the will of the person involved, it must be authorised by an interim or final order. The bill changes these procedures and denies suspects of serious crimes this procedure. In such cases, force is authorised in the bill by authority of a senior police officer—and there is an amendment to define 'senior police officer' as, in fact, a sergeant of police and not an inspector.

The general structure of the bill is constructed around four categories of people who could be sampled. Category one is envisaged to be used essentially for victims of crime, where the DNA profile will not be held in a database. A person may give oral consent for a DNA sample to be taken where the person is physically and mentally capable of giving consent and is 16 years of age or older. In other cases, a parent or guardian may authorise the taking of a sample. It is important to note that a brother or sister of 16 years or older may give consent on behalf of a younger sibling. I question the need for this, and ask under what circumstances it would occur. I also note that a child under the age of 10 cannot object to the taking of a sample where consent has been given by a parent, guardian or sibling.

The second category deals with people volunteering to have their DNA profile included on the database. These profiles may be stored for either limited or unlimited purposes, depending on the choice of the volunteer. One could conceive of a situation where people are encouraged to authorise a DNA profile of their child at birth. This category has the same provisions regarding a sibling's authorising consent for a younger child. However, I ask the minister to clarify whether this sibling will have to be 16 years or older, or 18 years or older. I see no compelling reason for a sibling to be authorising such a procedure on a child, anyway. It is conceivable that the DNA profile of children or juveniles may be argued to be useful in the case of a crime performed on that person or if the person is missing.

Category three deals with suspects. It provides for the taking of a DNA sample from a suspect who consents to the procedure. It also authorises the taking of DNA from persons suspected of a serious offence as well as a person suspected of another offence where an order, apparently by a magistrate or, again, a senior police officer, has been made that a sample may be taken. This raises a couple of important questions. First, for the purposes of this bill, the definition of 'serious offence' includes: using a motor vehicle without consent as a first offence, certain firearms offences, possession of body armour, indecent behaviour and gross indecency, unlawful possession of personal property, making a false report to the police, and creating a false belief as to events calling for police action. This is broad in scope, particularly as one only has to be suspected of any of these for a DNA profile to be automatically authorised, possibly with force.

A person suspected of any other offence may also be tested, either voluntarily or by an order. Provisions for making an order are twofold. First, an interim order, which is inadmissible in court, can be made informally by a magistrate or by senior police officer not connected to the relevant case. I query the use of an interim order on the basis that it is inadmissible in court; perhaps the minister's concluding remarks will explain that point. Secondly, a final order, which is inadmissible in court, may be made by the

Magistrates Court, the Youth Court or, yet again, by the so-called senior police officer (if the bill is amended, by a sergeant of police). These orders authorise the use of reasonable force.

I again emphasise that these are suspects who have not necessarily even been charged with an offence. I note here, as I have already mentioned, that the government, in separate amendments to the bill, is also seeking to redefine 'senior police officer' as 'sergeant' whereas it is currently defined as 'inspector', hence making it easier to obtain authorisation to take a sample from a person suspected of a non-serious offence. Category 4 carries these provisions even further. Everyone serving a term of imprisonment or detention will be tested. This excludes those on home detention, but the bill allows for the testing of anyone who is so ordered by the sentencing court, the Youth Court or the Magistrates Court. Regarding the word 'detention', referred to in the new section in clause 21, I would ask the minister to confirm or otherwise whether it applies to juveniles. Technically, juveniles are not imprisoned but are detained, so that needs clarification.

The applications that are authorised will be determined, taking into account the three points: nature and seriousness of the offence; likelihood of reoffending, having regard to character, antecedent, age, or physical or mental condition; and the extent to which the procedure may assist law enforcement. Will the minister inform the council to what extent the provisions regarding offenders include juveniles—both those who are held in detention and those who are not? Further, how will age be taken into consideration in assessing the likelihood of reoffending? Unfortunately, it is clear that we cannot support this bill as it currently stands. The changes to the definition of 'intimate search', the way the bill deals with minors, and the provision for forcibly taking samples from suspects impinge too much on the civil liberties of our community.

We believe that, to a large degree, there is adequate scope in the law as it currently stands for the appropriate use of DNA sampling and DNA evidence, and that the momentum behind this move is yet another example of a knee-jerk reaction to hysteria about terrorism activities and, apparently just as concerning to the Attorney-General, a gung-ho approach to appearing to be doing something to reduce crime in our community.

We cannot take lightly the issue of the potential misuse and abuse of the DNA database; it is a new area of human knowledge. I refer honourable members to an article entitled 'DNA raises sticky questions' by Richard Yallop, appearing on page 2 of the *Australian* on 28 November. The article itself does not relate specifically to the matter in the bill, but I introduce it into my contribution because it highlights the confusion which is currently emerging and bubbling along about society's understanding and use of DNA. It relates, in part, to Monica Lewinsky and former President Bill Clinton, because DNA was the evidence used there to embarrass the President.

However, the issue is raised by Melbourne law professor, Loane Skene, an academic who is using that case to highlight the whole issue of DNA, when she poses the question, 'Who exactly did the bodily substances—and the associated DNA material—belong to?' The article states:

> It is not an offence to collect genetic material a person has discarded and to analyse it without that person's consent. 'If I am in a pub and a person walks away from a glass from which he or she has been drinking, I commit no offence if I swipe the rim and analyse the DNA from it,' Professor Skene, a specialist in medical law at the University of Melbourne, said. 'Similarly, if I collect the hair on the barber's floor after a client has left, or pick up a stray hair left in my room from a visitor.'

I will make this article available, because I would suggest that honourable members may be interested in reading a little bit more about the use of DNA to prove that Steve Bing was the father of British actor Liz Hurley's child, and other fascinating snippets of information. But the significance goes further, and I quote again from the article:

> Professor Skene will tell the symposium—

that is, the one to which she was to be speaking—

> that she does not support ownership rights of DNA material for the people from whom it was taken. She believes that, [as] with hospitals, patient tissue should be treated like records and regarded as belonging to the hospital.

But she believes that laws should be introduced to protect people whose DNA is used in a criminal way against them. There is a confusing interpretation of how DNA is accepted as either a useful asset or property in our community. The professor is actually indicating that, for example, with respect to the bill we are talking about, the forensic sample, the DNA, becomes the property of the police or the state. This is her legal argument. Under those circumstances, if it is the property of that person or authority, then the person from whom the DNA has been taken is losing or has shed the right to demand that the information or the original DNA material be destroyed.

I believe we are moving into a new and very hazardous area in what is virtually a tide of trying to embrace the biggest possible data base of DNA, arguably on the basis that it will be purely for identification. But the scope for the misuse and further interpretation of that DNA increases, because it will become a highly valuable commercial commodity, and the bigger the data base the more value or demand there will be for it to be abused.

The other issue which I think we cannot avoid in this particular debate relates to suspects who have DNA samples taken. We are moving into a category where a person is, to a certain extent, presumed guilty virtually just by being a suspect. So, the Democrats feel very uneasy about this thrust to further extend both the ease with which DNA samples are taken and their use. We regard the current law as adequate for our needs in South Australia at this time and we will oppose the second reading of this bill.

The Hon. A.L. EVANS: I rise to speak in support of this bill. I note with interest the rise in popularity of police dramas on Australian television, many of which are produced in the US. A number of these and other, home-grown, shows give considerable attention to getting convictions through obtaining forensic evidence. I think such programs have raised the level of awareness in the community and the expectation that law enforcement agencies can and should be using such technology to solve crime. In reality, this type of technology cannot offer a quick fix, but it is a very necessary power for police.

We must not lose sight of the fact that crime has a devastating impact on individuals and families. Any measure that can help in obtaining convictions is welcome. However, such technology does come at a price: we only need to consider the situation in the United Kingdom where it is costing billions each year. South Australia should have the capacity to request and order forensic samples from suspects, offenders and volunteers. This is relevant to law enforcement agencies both in South Australia and in other jurisdictions.

Crime crosses state borders and it is for this reason that South Australian law must be consistent with other states and the commonwealth. This bill amends the 1998 Forensic Procedure Act to ensure that South Australia's current legislative scheme fits together with the commonwealth model and also to ensure that our law meets the requirement of the CrimTrac DNA database, technology managed and operated at the commonwealth level.

The bill provides law enforcement agencies with additional powers to carry out DNA sampling on all prisoners, not just suspects and prisoners convicted of serious offences. It also covers the obtaining of DNA samples from volunteers and protected persons to assist the police in their investigations along with other relevant safeguards. A range of categories may be held in DNA databases. These categories conform to the categories found in commonwealth legislation, with the inclusion of an additional category. Importantly, there is a provision for the creation of other indices should this become necessary in the future. Family First supports this bill as a significant development in forensic law and I am confident that this bill contains adequate safeguards. However, I am willing to consider favourably any further safeguards that would add value to this bill.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank members for their support of the bill. I think it is fair to say that the shadow attorney-general supported the bill on behalf of the opposition but was critical of it for not going far enough. He made a number of points during his contribution that I would like to take this opportunity to address. First, the honourable member said:

> Within the court system itself, the judges have laid down that a jury must be directed that it is unsafe to convict on DNA evidence alone, and that the jury must take into account other evidence. . .

I do not believe that is a correct statement of the law. There is no obligation to give any such warning. I refer the honourable member to Karger, which he cited in the course of his contribution. I also refer him to the ruling of Bleby J in R v Humphrey (1999) 103 A Crim R 434. There is no authority for a warning of the kind referred to. Secondly, the honourable member said:

> The mere fact that a DNA sample is found at a criminal site is insufficient of itself to convict anyone of an offence.

That cannot and is not a proposition of law. There is no authority that can I find for that proposition, nor is any cited by the honourable member. However, it may well be true as a proposition of fact covering most cases. Thirdly, the honourable member placed a great deal of reliance upon the system legislated in Tasmania—a system also much praised by the Commissioner of Police. He did so in the context of the testing of offenders, and he did so to suggest that the South Australian legislation might go further towards mass testing without jeopardising compatibility and acceptance by CrimTrac.

But let us look at what the Tasmanian legislation says on the subject, not what it is said to say. The key provision for the testing of offenders under the Tasmanian legislation is 26(2). It is simplicity itself. It provides:

> A police officer may make an order authorising the carrying out a non-intimate forensic procedure on a prescribed offender.

Obviously, the key question is: who is 'a prescribed offender'? The answer is in section 3(1):

> . . . 'prescribed offender' means:
>
> (a) a person who has been convicted of a serious offence and—
> (i) is serving a sentence of imprisonment or detention in a prison;
> (ii) after serving part of such sentence in a prison is on release on parole under the Corrections Act 1997; and
> (b) a person who is subject to a restriction order under the Criminal Justice Mental Impairment Act 1999.

That, in turn, depends on what is a 'serious offence'. That, too, is defined in section 3(1):

> 'Serious offence' means an offence—
> (a) under the law of this state or of a participating jurisdiction that is punishable on indictment, even though in some instances it may be dealt with summarily; or
> (b) against sections 34B, 35, 37, 37B or 39 of the Police Offences Act 1935; or
> (c) [section 3(1) amended by No. 95 of 2001, schedule 2, applied: 1 June 2002] against section 20, 21 or 26 of the Misuse of Drugs Act 2001;

So, in the end, in Tasmania, the only offenders who can be tested for DNA are those who are in prison or on parole, having been convicted of an indictable offence or on one of a short list of summary offences. Put another way, they can test a smaller category of offenders than this bill proposes. To say or imply otherwise flies in the face of the plain words of the statute.

Fourthly, in comparing the position about the taking of DNA samples from suspects unfavourably to that applying in the UK, the shadow attorney-general said:

> The difficulty is that these are only suspects in relation to certain serious offences in respect of which it can be demonstrated that the taking of a DNA sample will be of use in relation to the particular offence of which a person is suspected.

The honourable member is incorrect. There is no need to demonstrate such relevance; that much is clear from proposed section 14(2)(b), which is inserted into the act by clause 11 of the bill.

Fifthly, the honourable member appeared to be of the view that the authorisation of the testing of suspects who had not been arrested or charged is innovation. It is not. It was in the 1995 model provisions and the 2000 model provisions, and is currently in the 1998 act; hence, it has been law in this state for four years. It is, therefore, incorrect to claim, as the honourable member did, that the government has not been clear about this issue to the Labor caucus or to the community.

Sixthly, the honourable member wanted to know why the list of 11 summary offences was composed as it is. The answer is simple: the Attorney-General asked the Commissioner of Police which summary offences he would like to have DNA testing for. He received the list from the Commissioner and, having taken advice, approved it.

Seventhly, the honourable member made a general inquiry about the regulation that was used in order to transfer a DNA profile to the Northern Territory in relation to a suspect in the Falconio investigation. I do not think it appropriate to enter into the details in this place, and I will not do so. For all that any honourable member knows, the issue may be the subject of future litigation. However, there is a point to be made here. If the CrimTrac arrangements had been in place and if this bill had been passed, there would have been no need for any complex legal manoeuvring—on one proviso. That proviso is that the Northern Territory climb down from the position that it has taken and become CrimTrac compatible. If ever there were a lesson in the facts that (a) serious criminals cross borders and CrimTrac is needed, and (b) that there are severe penalties in practice in high-handedly going it alone on DNA testing, this case illustrates the point.

Lastly, the shadow minister referred to the Bali tragedy and the need to think about overseas jurisdictions and practices. Overseas cases will be dealt with by commonwealth extradition and mutual assistance legislation. The honourable member may be interested to know that the commonwealth has introduced legislation specifically directed to the matching of DNA profiles for the purpose of the Bali tragedy. I thank honourable members for their thoughtful contributions and commend the bill to the council. That reply was prepared before the honourable member made his contribution.

In relation to the question he posed about siblings and the age of 16 or 18 years, 18 years was chosen because the model that was being developed was based on that age. In response to the Hon. Mr Gilfillan's question about the system currently used to construct DNA profile tests at loci which are non-coded except for the matter of sex, there is of course no possible guarantee that that will never change, given scientific research. An interim order is used to obtain and preserve forensic evidence which may be perishable, pending the obtaining of a final order. In response to the question asked, the definition does apply to juvenile offenders. I thank the Hon. Ian Gilfillan and other members for their thoughtful contributions and commend the bill to the council. I would hope to have speedy passage of the bill after we move into the committee stage after dinner.

Bill read a second time.

TERRORISM (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 2 December. Page 1622.)

The Hon. A.J. REDFORD: In rising to support this bill, I think it is extremely important that at critical times in the history of this country we always remember what values and principles separate us as a nation and as a people from those who would seek to destroy and undermine our community and our society. We all hold dear to our hearts the values of democracy, the rule of law, the presumption of innocence and the protection against arbitrary arrest, as we also hold dear to our hearts the right to go about our existence and daily activity without the intrusion of some of the events that have occurred in New York, Bali, Kenya and numerous other places around our globe over the past five to 10 years.

I know that this issue has been extensively debated and discussed in our federal parliament. Indeed, my attention was drawn to a speech made by the federal member for Kooyong, Mr Petro Georgiou, on 19 September 2002. Mr Petro Georgiou is well known as a former director of the Liberal Party in Victoria, but he was also a member of former Prime Minister Fraser's staff. During the course of his contribution (and I apologise for quoting him extensively), he made a number of comments which I think reflect my views and values better than I myself can express them. In the early part of his contribution on that occasion, he said:

> . . . in the 1970s when we did face great and serious challenges from terrorist movements, the measures we employ to combat the new terrorism must not undermine our core values: the rule of law, due process, civil liberties and freedom of speech. Ultimately, the responsibility of democracies is to defend both the security of their citizens and their freedom. We need to ensure that our tools to prevent attacks and to find and punish perpetrators are effective. We have to recognise the terrorist dangers and we have to respond in a measured, effective and proportionate way.

Indeed, in his contribution he concluded by saying these words, which I adopt and which I quote as follows:

> In conclusion, I want to affirm the protections that exist in our legal system. I think it is important to appreciate that these protections did not spring full blown from the mind of some chardonnay-sipping civil libertarian in an ivory tower. They evolved out of the experience of people who lived through turbulent and violent times: through rebellion, revolution, civil war and religious insurrection. The protections of individual rights were a rejection of the arbitrary use of executive power which had been justified by government as essential to the security of the kingdom and its citizens. This power was curbed because it was realised that its exercise was corrosive to the very order that it purported to serve.
>
> The strength of democratic societies has been our evolution beyond the arbitrary exercise of repressive powers. As legislators, we must not shirk our responsibility to do all that is possible to combat threats to the safety and security of our country. Equally, we must not shirk our responsibility to protect the very core values of our society that the terrorist threat we face seeks to destroy.

In other words, the member for Kooyong is flagging an important principle of our understanding of what this whole debate is all about, and that is not only the protection and security of citizens in this country but also the values that separate us as a democracy in a modern world from those who would seek to tear away that democracy from us all.

I do have some questions in relation to the bill that is currently before this chamber. This bill seeks to refer certain powers that reside within this state to the commonwealth pursuant to section 51(37) of the Constitution of the commonwealth. It provides that the act will come into operation on a date to be fixed by proclamation. Clause 4(4) provides:

> For the avoidance of doubt, it is the intention of the parliament of the state that—
>
> (a) the terrorism legislation or the criminal responsibility legislation may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this act by provisions of commonwealth acts the operation of which is based on legislative powers that the parliament of the commonwealth has apart from under the references;

In other words, this is a fairly unprecedented referral of significant state power to the commonwealth parliament. I suggest that there may well be occasions—including this occasion—where that may be appropriate. It was suggested to me that this is template legislation but, I must say, I have looked at that issue very closely and I think that it falls outside the definition of that because it is not simply a matter of our adopting someone else's legislation; rather, that we refer a specific power to the commonwealth that enables it to enact legislation on behalf of the Commonwealth of Australia.

I also note, however, that the effect of this bill is not subject to the agreement of every other jurisdiction within the commonwealth. In that respect there is (and I am not aware of the political debate in other jurisdictions) a possibility that the referral of power from various jurisdictions within the federation may not be complete; or at least there is a theoretical possibility of that. The only protection that the state might have through an arbitrary or dangerous extension of power pursuant to this legislation is contained in clause 5 of the South Australian bill. In very simple terms, clause 5 provides that the Governor may, by proclamation, fix a day as the day on which the references under this act are to terminate.

The effect of such a proclamation would be to terminate only that power that was referred to the commonwealth in the first place; and, for the purposes of this contribution, I do not profess to have done any analysis as to what power the commonwealth provides to support the Commonwealth Criminal Code that forms part of the schedule to this bill and

what power derives from the state. The bill further sets out some provisions, and I will make some comment about those provisions on termination a little later in this contribution. When one looks at the schedule one would have to say that division 100 of the Commonwealth Criminal Code, together with division 101, causes me no concern at all.

Those divisions create certain offences relating to terrorist acts, and one could not argue about those provisions. However, some of the clauses under division 102 concerning terrorist organisations do cause me some concern and, in my view, warrant some degree of scrutiny—not only on this occasion, but continuing scrutiny on the part of us all in relation to the exercise of the powers and the instigation of prosecutions that may flow in relation to those sections. These sections are quite broad. The first significant clause is clause 102.3 of the Commonwealth Criminal Code, which provides:

> A person commits an offence if:
> (a) the person intentionally is a member of an organisation; and
> (b) the organisation is a terrorist organisation because of paragraph (b) of the definition of terrorist organisation in this division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also); and
> (c) the person knows the organisation is a terrorist organisation.

It imposes a very significant penalty of some 10 years' imprisonment. Proposed section 102.6 deals with the commission of an offence if someone receives funds or makes funds available to a terrorist organisation, and that attracts a period of imprisonment of some 25 years. Proposed section 102.7 provides that it is an offence if someone intentionally provides to a terrorist organisation resources that would help them engage in terrorist activities. That attracts a penalty of some 15 years' imprisonment. So, we are dealing here with some very serious offences. The critical question that concerns me is: what is or is not a terrorist organisation? The definition contained in proposed section 102.1 provides that a terrorist organisation is:

> An organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs).

I do not know that any criticism would be anything more than arguing around the edges. However, I have some severe concerns about the next limb of this definition. A terrorist organisation means:

> An organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)).

One can, therefore, be charged with and convicted of an offence that will attract a period of imprisonment of 10 years if one knowingly joins an organisation that is specified by regulations to be a terrorist organisation; in other words, a decision to be made by the executive arm of government. I know that to date the Attorney-General has declared a number of groups to be terrorist organisations pursuant to regulations. I will quickly list them because it is important that members understand who and what they are.

First, an organisation known as Abu Sayaf Group (ASG) has been proclaimed. It is an organisation whose stated aim is to unite Philippine Muslims to fight for a Muslim state, encompassing the southern Philippines. It is alleged that this organisation has links to the famed al-Qaeda organisation. The second is an organisation known as Harakat Ul-Mujahideen (HUM), otherwise known as the Movement of Holy Warriors. I am told by the Attorney-General that that is a Sunni Islamic extremist organisation which is based in Pakistan and which operates primarily in Kashmir.

The third organisation is known as the Armed Islamic Group (GIA), which is suggested to be an extremist organisation based in Algeria. The fourth organisation is known as the Salafist Group for Call and Combat (GSPC), an Algeria based organisation formed by a splinter group of the GIA, to which I referred earlier. In addition, I understand that the two famed organisations of al-Qaeda and JI are also on this list.

I would like to think that the power to declare an organisation a terrorist organisation will be used exceedingly sparingly. I must admit that I have tossed and turned about whether or not to support this legislation because in some respects it cuts across some pretty fundamental issues. Any student of history would well understand that perhaps the most significant contribution made by Doc Evatt, as Leader of the Australian Labor Party in the early 1950s, was to run a campaign protecting our civil and political rights when Prime Minister Robert Menzies sought to ban the Australian Communist Party as an organisation in this country following a successful High Court appeal.

My reading of the history books is that, whilst the Communist Party did not enjoy broad support in the community back in those days—and I do not think that it has since—the stance taken by Doc Evatt at that time, particularly at the beginning of the campaign, was very unpopular, and it was only because he campaigned tirelessly in support of some of our democratic ideals that ultimately an Australian referendum rejected the Menzies' response to the Communist problem of banning it. We all owe a great debt to Doc Evatt for that campaign to protect our civil and community rights.

There are two risks with this legislation. First, we will arrive at a situation where the federal government can proclaim organisations by way of regulation in such a fashion that there are so many organisations proclaimed there is a real risk of people not being aware of some of the broader activities of some of these organisations. Some people might accuse me of ignorance but, until I read the information from the Attorney-General about these six organisations (which I read out earlier in my contribution) I had not heard of them before. It is highly unlikely that as a white caucasian Anglo-Saxon protestant I would be likely to join such an organisation. However, one could imagine that an ordinary law-abiding citizen could innocently find themselves a member of such an organisation and at risk of a very serious prosecution.

I have had some contact with a number of different community organisations in my time as a member of parliament and more recently I have had a deal of contact with a number of Indonesian Muslim people in our South Australian community, and I must say that I have enjoyed their company. I do not share their religious beliefs, but I have found them to be straightforward people and, whilst I do not share every political view they have, they are generally law-abiding citizens. One can imagine that some of these people could easily become innocently involved in such an organisation. In that respect, given that the state is referring power—and I will ask some questions about this in the committee stage—I hope that there is some attempt on the part of both the state and the commonwealth governments to ensure that everybody in every ethnic community throughout Australia is made well aware what organisations are declared to be terrorist organisations under this provision so that people who are good, solid, new Australian citizens or

permanent residents or, indeed, students are not caught up in a prosecution through some innocent process.

I acknowledge that there are provisions which state that a person must know that the organisation is a terrorist organisation before being convicted, and it is arguable that that is a protection. Section 102(2) of the Commonwealth Criminal Code says that subsection (1) does not apply if a person proves that he or she took all reasonable steps to cease to be a member as soon as practicable after the person knew that the organisation was a terrorist organisation. I hope that there will be some educative process in that respect. I am extremely concerned about that. I know that the whole issue received pretty detailed attention in federal parliament; I know that it was the subject of a senate committee inquiry; and I acknowledge that we live in very difficult times in so far as terrorism is concerned. That is one check which I suggest ought to be promulgated by both state and federal governments in terms of this legislation.

The second check that I suggest is a determination well in advance as to when and on what occasion a revocation of the referral of power might take place. I have confidence in both the state and federal governments that they will not arbitrarily proclaim organisations that they do not genuinely believe are terrorist organisations. However, the regulation-making power is not restricted. There is no means by which a non-terrorist organisation that is proclaimed would be able to either protect itself from being proclaimed or, outside the supervision of regulations of the commonwealth parliament, a third party could consider whether or not the proclamation of an organisation may or may not be appropriate.

We know that in other jurisdictions—in other countries, fortunately—there have been occasions when governments, for self-proclaimed good reasons, have sought to ban what might be proclaimed to be or might be suggested to be terrorist organisations. We know that from time to time it has been suggested that the IRA is a terrorist organisation. I have no reason to doubt that it was or is a terrorist organisation. However, that has not stopped western governments in western democracies—including, in the not-too-distant-past, President Clinton—receiving people who, it was suggested, were members of the IRA.

There were also suggestions in the past that the Palestinian Liberation Organisation is, has been and continues to be a terrorist organisation. That has not prevented presidents and prime ministers of all political persuasions from engaging in dialogue with the person in question. I know that there were some views in some countries throughout the 1960s, 1970s and 1980s that the African National Congress, the ANC, led by Nelson Mandela, was a terrorist organisation. One only has to look at the way in which Nelson Mandela is revered not only in his own country but throughout the world to know that, whilst in the eyes of some that may have been a terrorist organisation, in the eyes of others it was a freedom fighting organisation against oppression and institutionalised racism.

As a community we need to be ever vigilant about the use of this power. I will ask a number of questions in committee, and the first question I will ask is: on what basis will this government withdraw the reference of power pursuant to clause 5 of this bill? This is an important protection. If an arbitrary decision is made by a future commonwealth government to proclaim an organisation as a terrorist organisation, and there is a different view from that of our Attorney-General or any attorney-general or any cabinet throughout this country, then that reference can be withdrawn. I see that as a very valuable protection against any arbitrary regulation making power pursuant to this legislation.

I would also be most interested to hear what consultation will take place between the commonwealth Attorney-General and state Attorney-General prior to the promulgation of any regulation prescribing a particular body as a terrorist organisation. We live in a federal country and I know that there are occasions when our federal colleagues think that state organisations, governments and bodies can from time to time be a nuisance, but the constitutional reality of our society is that, if the commonwealth needs this power, it is my view that there ought to be some process through which the attorneys-general of each of the states are consulted prior to any regulation being promulgated. I would hope that there are no politics from a party perspective played out in relation to this, because the issues are simply far too important and serious in relation not only to the rights and liberties we currently enjoy but also to the safety and security of ordinary Australians.

I would also be grateful if the Attorney-General could advise or set out the basis, set of circumstances or situations where he believes that it would be sufficient to lead a government to revoke the referral of power pursuant to clause 5 of the bill. My final question, which is technical and involves an unlikely set of circumstances, is this: what would be the situation if an organisation in a questionable way is declared to be a terrorist organisation, an individual who is a member of that organisation is prosecuted and this state government seeks to withdraw the referral of power? Can that prosecution proceed or does that bring the prosecution to an end? I know it is a different question, but it is important that in our constitutional environment not only has the commonwealth parliament provided a degree of supervision and discussion in relation to the passage of this legislation: it is of such a nature that our constitution requires all of us in state parliament to apply equal diligence and scrutiny in so far as this legislation is concerned. With those comments, I support the bill.

The Hon. SANDRA KANCK: I am appalled that this government is proffering legislation like this for us to deal with. I know that we have a populist government, but it leaves me almost speechless with wonder at just how low it is prepared to go. This is truly unbelievable legislation. I understand that there is a sticker campaign going on in the Adelaide metropolitan area calling for 'a real Labor Attorney-General.' I would join one that asks for 'a real Labor government.' Over the past 12 months I have spoken out at a number of public rallies against the federal government's terrorist legislation. I would like to know what this state government envisages is going to happen here in South Australia in relation to terrorism, so that we know exactly what it is that we are going to be putting our federal police and federal government in control of.

I agree with my colleague the Hon. Ian Gilfillan, our lead speaker on this matter, that when we give away powers to the commonwealth we rarely ever get them back. This is quite shocking legislation. As the Hon. Angus Redford has said, the African National Congress in South Africa would have been a terrorist organisation under this legislation; Fretilin in East Timor would have been a terrorist organisation; and I am not sure that the group Campaign for an Independent East Timor, which was supported in the past by my colleague the Hon. Ian Gilfillan and by Minister Terry Roberts, would not have been classified as a terrorist organisation. What is the

penalty for a terrorist act? Division 101.1 of the schedule provides:

A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life.

When I go back and look at the definition of 'terrorist act' it says, amongst other things:

(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the action is done or the threat is made with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country;

For up to 25 years, people involved in the Campaign for an Independent East Timor—including the Hon. Terry Roberts—were so involved to attempt to get our federal government to change its stance on supporting Indonesia against the rights of the people of East Timor. That definition of 'terrorist act' provides in subdivision (3):

Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person's death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

I have grave concerns about that. When protest groups are blocking a footpath, for instance, are we regarded as endangering the health or safety of the public? I believe that this leaves us wide open. I would also like some advice on how this act relates to other federal acts such as the proposed amendments to the ASIO Act from the federal government and other federal acts such as the Suppression of the Financing of Terrorism Act. It is interesting that tomorrow one of the Senate committees will be giving a report on the amendments to the ASIO Act, and I think it would be inappropriate for this house even to be considering the rest of this bill before us until we know what the Senate has reported on the ASIO Act. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

[Sitting suspended from 6 to 7.45 p.m.]

CRIMINAL LAW (SENTENCING) (SENTENCING GUIDELINES) AMENDMENT BILL

Consideration in committee of the House of Assembly's message.

(Continued from 27 November. Page 1536.)

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

That the Legislative Council do not insist on its amendments.

The Hon. R.D. LAWSON: I oppose the motion. I submit that it is entirely appropriate for this council to insist upon these amendments. The Attorney-General in another place made a spirited attack upon the amendments that were passed in this chamber, and I remind the house that those amendments were supported by the Hon. Terry Cameron and by the Hon. Andrew Evans. Contrary to the claims made by the Attorney on that occasion and subsequently on public radio, the establishment of an advisory council with community and victim representation is not a new or an ill-considered proposal.

We cannot understand why Labor refuses to allow the general public any voice in criminal sentencing policy. We do not suggest for a moment that members of the public should have a say in relation to the sentencing of particular offenders. However, criminal sentencing policy is not the plaything of lawyers, nor of judges, but it is something that the whole community is entitled to have a say in and the establishment of a sentencing advisory council will provide an opportunity for that public input. Tony Blair did it in the United Kingdom, Bob Carr has done it in New South Wales, contrary to claims made on public radio today by the Attorney-General, and Steve Bracks in Victoria is in the process of establishing such a council. If they can do it, why should not the Labor government in South Australia agree to it?

I will deal with the specific allegations made in another place by the Attorney. He said that the Liberals—and he overlooked the other persons who supported us in this place—are 'fiddling' with Labor policy, which is to introduce guideline sentencing. This is not fiddling with the bill. Our amendments are improving it. We accept that the government has a mandate to introduce guideline sentences, and we certainly have not sought to prevent that in any way. We have not touched the government's proposals for guideline sentencing. What the Legislative Council has done is to improve the legislation and, in my submission, that is the function of a house of review such as the Legislative Council. I would argue that guideline sentencing law, without an advisory body with community representatives on it, is, as it were, toast without the jam. He has not really got the icing on the cake, and that is exactly what Bob Carr found in New South Wales.

The Attorney said today that the New South Wales legislation had not been passed. I was most surprised to hear the Attorney say that. I gather briefings have been given at which the same statement has been made and I will be seeking a public apology and correction of that from the Attorney because, on 21 November in New South Wales, the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act, No. 90 of 2002, was duly passed, and it was assented to in that state on 22 November. That act includes measures that provide for the establishment of the New South Wales Sentencing Council.

Section 100I of the New South Wales act contains that provision, and there are a number of other provisions setting out not only the constitution but the functions of the sentencing council. They are quite extensive provisions covering four or five pages of the act. New South Wales has had guideline sentencing for a number of years. We would submit that it has not been as successful as it should have been and the New South Wales government has recognised that by introducing and passing these amendments.

The Attorney next describes the sentencing advisory council as 'a lawyer's picnic'. That is absolutely laughable—a lawyer's picnic. If ever there was a lawyer's picnic it is the Attorney's guideline sentencing bill, which provides that the exclusive province of sentencing is lawyers and judges. The three judges of the court now will be laying down not only sentences in relation to individual sentences but policy. The Attorney-General will be represented before the Full Court, as will the Director of Public Prosecutions, the Aboriginal Legal Rights Movement and the Legal Services Commission, if it chooses to be. If that is not an invitation list for a

lawyers' picnic, I do not know what a lawyers' picnic is. What we seek to do is to add to that invitation list a body with community representation. We seek to ensure that there is at the table, when these issues are being discussed, an expert body with sentencing expertise to put a different point of view or perspective. The Attorney seems to think that he and he alone, as an elected official, is the siphon through which public opinion on sentencing issues should be communicated to the court.

We do not accept that. The Attorney clearly has a view, and he is entitled to put the policy of his party, or whatever else he wants to put, to the Full Court. However, he should not pretend that in that respect he represents all the interests of people in the community. In fact, in conclusion, on this allegation that we are seeking to create a lawyers' picnic, I can only say that, far from creating a lawyers' picnic, what the Legislative Council has done by these amendments is to break up the party.

Thirdly, the Attorney-General attacks the proposed sentencing advisory council because it will not 'come up with a consensual, coherent view on sentencing.' That is a patronising and, in my view, offensive remark. It flies in the face of the experience in the United Kingdom. It flies in the face of the many advisory bodies that are established in this state which provide advice to ministers, government departments and organisations. The very idea of advisory councils is that by getting a number of people on to the same body there can be a discussion, a resolution, and very often a collegiate view obtained about the appropriate course to adopt; not a view that is taken over by any particular interest, but one which takes into account the views of a number of people. This sentencing advisory council, as proposed in the amendments, will have between seven and 10 members all of whom will be appointed by the Attorney-General. We are not seeking to take away from the—

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: No, we accept that the government is entitled to make appointments.

The Hon. Ian Gilfillan: You've lost me, Rob; I'm gone.

The Hon. R.D. LAWSON: Well, you were gone to start with.

The Hon. Ian Gilfillan: I've gone further.

The Hon. R.D. LAWSON: The honourable member interjects that he is gone, but the point is that the legislation stipulates that these people shall be drawn from particular interest groups including those from the community, from victims' organisation and the like. The Attorney says that many of them have legal qualifications—for example, somebody who is experienced in defending or in prosecuting people—but there are others whom the Attorney can nominate. In fact, some of the other legislation prescribes that there be representatives of correctional officers, academics, for example, who have some perspective to bring to sentencing policy, or police officers.

No judge or lawyer would ever take any notice of what a correctional officer or a policeman had to say about sentencing: this is something that is the province of criminal lawyers and the legal system generally. I think it is important that other voices be heard in developing a collegiate advice. The court would not have to accept that advice but it would simply take it into account. We are not seeking to have some outsiders dictating to the court—that would not be appropriate—but putting a view is important.

The United Kingdom experience should not be dismissed as the Attorney did in a fairly contemptuous way, in saying that this advisory council could not come up with a consensual, coherent view on sentencing. It is a little difficult to understand precisely what the Attorney means by that. It is interesting to study the latest annual report of the Sentencing Advisory Panel in the United Kingdom (which is an extremely successful organisation), in which the chairman describes this council (they have a larger council in the United Kingdom) as 'an extremely effective team'. One would hope that any advisory council that the Attorney put together would have that team element.

The Attorney might argue that the present bill contains—as, indeed, it does—some input from victims or offenders. There is provision in the bill for the court to hear 'an organisation representing the interests of offenders or victims of crime that has, in the opinion of the Full Court, a proper interest in the proceedings'. It is a fairly limited right of appearance—if these organisations can demonstrate a proper interest in the proceedings. I can see someone standing up on behalf of a victim support group being made to feel fairly uncomfortable in seeking to argue that the organisation has a proper interest in the proceedings. But we support that measure. That is in the government's bill. We support those organisations having the capacity to make a contribution should they so desire.

However, victims' groups and offenders' groups are really support groups. They do a great job, but they cannot purport to represent the wider community, nor are they specialists in criminal sentencing. They are organisations that are brought together for the purpose of providing support, as well as advocating for victims and the like. But they cannot pretend to be specialists in criminal sentencing. That is why the community needs a body that collectively can provide a specialised and focused view.

The Attorney-General attacks the proposal to introduce a sentencing advisory council on the ground that he can already obtain statistical information on sentencing from the Office of Crime Statistics and advice from the policy and legislation section of his own department. The people in the Office of Crime Statistics and the policy and legislation section are, no doubt, excellent people. Most of them are lawyers, so one would expect them to be. But they are, ultimately, servants of the Attorney-General: they are not independent community representatives. When the Attorney obtains advice from his own department, he is obtaining advice: he can tell the department—his officers—or the Office of Crime Statistics to obtain certain material, and not to bother to obtain other material; and to find the material to support a particular policy that he, as Attorney, wishes to pursue. That is entirely proper. But one cannot suggest, as he does, that the people from within the Attorney's own department are independent community representatives. The whole point of an advisory council is that it will add community input. Until we provide that input, there will be no improvement in the public confidence in the sentencing process.

The Attorney has said that it would cost several hundred thousand dollars (and he said this on public radio several times) to establish a sentencing advisory council. Where he gets that figure from we are not told. But there are many advisory bodies to government—some, no doubt, within the Attorney-General's department—which comprise many people in the community, some of whom will give their time without any remuneration at all because they believe in the importance of what is being done for the community benefit. But the standard procedure is that people on advisory bodies are paid a sitting fee—let us say $100 a meeting. They might

have 10 or 12 meetings a year, and a person serving on such a body might receive $1 200 or $1 500. It may be necessary to have some secretarial support and, no doubt, secretarial support could be provided by the office of the Attorney-General. Perhaps a staff member, a researcher, might be engaged; or perhaps the council might engage outside people to do work on an ad hoc basis. The idea that an exercise of that kind could possibly cost several hundred thousand dollars is preposterous.

The Attorney is raising the spectre of costs simply because he does not want to accept the amendments that have been made in this place. He has not identified any particular cost. We are not suggesting for a moment that this exercise should be a costly one. The point about the sentencing advisory council is that it is to provide community input. We are not seeking to layer—as the Attorney has suggested—another level of bureaucracy upon the criminal justice process. In conclusion, it is worth mentioning the remarks of the Chairman of the United Kingdom Sentencing Advisory Panel, taken from the May 2002 annual report. He said:

> The establishment of the Panel, in July 1999, was a significant innovation within the criminal justice system of England and Wales. . . Sentencers had, for a number of years—

he says 'sentencers' meaning 'sentencing courts'—

> had the benefit of guidelines from the Court Of Appeal on particular types of offences, but there had previously been no independent input into the appellate guidelines. Through the expertise of its members, as well as its wider consultation with other criminal justice professionals and the public at large, the Panel's advice strengthens and legitimises the guidance issued by the Court.

I emphasise the words 'the panel's advice strengthens and legitimises the guidelines issued by the court.' That is the very point of the amendment to which the Legislative Council agreed. We wish to strengthen and legitimise the guidelines that will be issued pursuant to this legislation.

When the Victorian minister, the Hon. Justin Madden, introduced this bill into the Legislative Council—it having been passed through the Assembly—he said that the council will 'enhance public confidence in the justice system'. If it is good enough for Steve Bracks, it should be good enough for Mike Rann, in our view. The Attorney is behaving as if guideline sentencing was his idea and the Liberals and others are frustrating it. Guideline sentencing is not the property of the Attorney General: it was not his idea; it has been around for years.

However, the Attorney and the Labor Party took it to the election as policy, and we certainly accept that. We do not seek to frustrate it or interfere with it; we seek to improve the process. I would urge the Labor Party to adopt a sensible attitude to this in the same way they did to the DNA legislation. The Attorney has been saying that the Labor Party went to the election with this particular policy: 'We will have guideline sentencing laws.' He is saying, 'We didn't say that we'd have any other additions or amendments to it. We demand to have enacted precisely what it is we took to the election.'

In relation to DNA, the Labor Party—as did the Liberal Party—went to the election with a policy which was simply that they would DNA test every prisoner in South Australian prisons. Sure enough, true to his word, the Attorney introduced a bill which reflected that policy. However, subsequently, after the budget, and after he had seen what Rex Jory had to say, after he had seen what Geoff Roach had to say, after he had heard what Bob Francis and Leon Byner had to say, and after he had learnt that the Police Association and the Police Commissioner were arguing for something else and that the opposition was saying that it would be amending that legislation, true enough, suddenly the Labor Party was prepared to change the policy it had taken to the election and was prepared to find some money, even after the budget, and to introduce amendments to it. Just as the government has been flexible and sensible in relation to the forensic procedures legislation, so should it be in relation to this matter. Speaking for myself, if there is to be a deadlock conference, we look forward to that.

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the government's motion, which is no surprise, and I do not intend to make a long dissertation to the chamber—I have mercy on the chamber. Members heard the Democrats' exposition of our position earlier when the bill was debated. We are not in favour of the bill per se, but we certainly are not persuaded that the amendment about which the opposition is so enthusiastic has any merit: it has less merit than the proposal by the government. We support the government's motion.

The Hon. A.L. EVANS: I was very pleased that the government ran with this policy at the election. I think that there has been a great concern in the community at the variety of sentencing and there needed to be some guidelines. I was very supportive of this bill and felt that it had a lot of merit, but I did keep my mind open to perhaps improving it, if that was possible. After listening to the Liberals' amendment, I felt that it would widen the opportunity for the public to become involved in sentencing. I then chatted with the Attorney. I do not know whether his perception of that meeting was different from mine—obviously it was—but my perception was that he agreed with me that it was in place in Victoria and New South Wales under Labor governments. That just set my mind to thinking that, if they had adopted it, there must be good reasons for their doing so.

The only area on which I perhaps felt he had a point related to the cost. I have queried the cost with him since the amendment was passed. He has informed my staff of what the costing is, but I have not had the opportunity to talk to my staff on that. It is quite difficult for me to make a decision without knowing that cost, because that was one of the reasons why he was strongly opposed to it. I would like to analyse that cost. I would like to see whether there is a genuine cost or whether it is just figures picked out of the air and used to win a debate. My feeling tonight is that it will be hard for me to make a decision because, to be fair to the Attorney, I have not heard his side of the argument on the cost.

The Hon. T.G. ROBERTS: The opposition certainly makes a persuasive argument and I am almost convinced that, at some time in the future, the arguments put forward by the honourable member will be able to be picked up. However, at the moment, it is an expensive exercise to find out whether there is any point to the argument and, as I said in previous debate on this bill, it should be considered carefully. Logic suggests that we should wait to see how New South Wales and Victoria progress with their proposals rather than simply to follow behind those two states that are well advanced—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I am not sure whether the assessments have been made in relation to whether or not they are successful—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I am saying what the minister is saying in another place. The Attorney-General is

saying that it may be best to wait to see how the New South Wales and Victorian experience pans out. For the two years leading up to the last election the Labor Party told the people of South Australia what it would do if it was elected to government. Our comprehensive platform for government included the proposal to introduce a regime for guideline sentencing. We campaigned strongly on the proposal and it was endorsed at the general election on 9 February this year. Among the bills the government has brought before this chamber in our nine months in office, few carry with them a clearer mandate.

This bill gives the Attorney-General, on behalf of the South Australian public, the power to put before the highest court in this state any concern the public might have about sentences imposed for a particular crime. This is as it should be. The Attorney-General is the minister responsible to the parliament for the administration of justice. Parliament is answerable to the people. That is the nature of representative democracy.

The amendments to this bill moved by the Liberal opposition are despicable. They plainly offend against the wishes of the electors of South Australia, as expressed by them at the general election. The amendments are also perverse. The opposition claims that they will increase community involvement in sentencing, but they remove the power from the democratically elected representatives of the community and give power to an unelected group of people whose expertise and background they seek to prescribe in this bill.

By defining the characteristics of the members of the panel, they define out most of the community. This is policy making on the run by the opposition, desperately seeking to curry favour with an electorate that has rejected it. It is reminiscent of the strange proposal floated by the Liberal Party during the election campaign to involve jurors in the sentencing process, a proposal that had never been examined in any detail before it was floated. It did not specify what the role of jurors would be, did not explain what would happen where there was a trial by judge alone or a guilty plea, or in the Magistrates Court where there are no juries, and did not indicate how it would improve public confidence in the justice system—but it sounded good.

A similar amount of thought has been put into the setting up of the sentencing advisory council—namely, not much or none. The Hon. Robert Lawson said that the Sentencing Advisory Panel, established in the United Kingdom four years ago, has: 'made a valuable contribution to the process of improving community acceptance of sentences in that country.' Where is the proof? If the Hon. Mr Lawson is aware of any, perhaps he would like to share it. I take it from his reticence to do so that he has does not have any, although he has explained a little tonight in his contribution. The only other reason he gave to support his amendments was the 'keeping up with Joneses' argument: New South Wales was doing it, Victoria was talking about it, so we should have one too. This proposal is poorly thought out, and it will cost hundreds of thousands of dollars to fund. It will be an expensive exercise to hire Queen's Counsel to represent the sentencing advisory council before the Court of Criminal Appeal. Taxpayers' money will be wasted—money that could be better spent elsewhere in government, particularly on health and education.

The benefits, if any, are questionable. This proposal will bring together people who disagree about sentencing. It is likely that those people will not be able to agree on sentencing policy because of the various ideological and professional divisions that the amendments require to be represented on the council. It is an expensive exercise to find out whether there is any point to this and, as I said in the previous debate on this bill, it should be considered carefully. Logic suggests that we should wait until New South Wales and Victoria progress with their proposals, rather than to follow their lead without consideration. So, that is the summing up from this side of the committee. The shadow attorney-general did a very good job in presenting the opposition's arguments and was very persuasive. I am not quite sure how we deal with the honourable member's reply at this stage, whether we can adjourn on motion and report progress.

The Hon. R.D. LAWSON: Before we do that, firstly, I will respond to some of the comments made by the minister on behalf of the Attorney. However, I will certainly be agreeing with the suggestion made by the Hon. Andrew Evans that the matter be stood over until tomorrow so that the committee stage can continue. I thank the Hon. Mr Evans for his contribution, and he raises a very important point about the cost of the sentencing advisory council. During the deadlock committee process, the committee will certainly be pursuing that with the Attorney and, no doubt, there will be debate and discussion about the way in which the sentencing advisory council would be structured.

The deadlock conference would provide the opportunity for amendments to be agreed which might take account of that. So, consistent with the honourable member's position, it would be appropriate to go to a deadlock conference for the purpose of resolving those difficulties between the houses. The Attorney, through the minister, has seen fit to describe our proposals as 'despicable', but the fact is that, in a very extensive report called 'Pathways to Justice: A Sentencing Review of 2002', Professor Arie Freiberg, Professor of Criminology at the University of Melbourne in his analysis of many of the sentencing principles has supported the introduction of a sentencing advisory council. The idea is simply attacked on the basis that it has not been tried in other places in this country—why should we be the first cab off the rank? There was a time when South Australia was a leader in innovation in matters of this kind. Now we get the extraordinary situation where other states and the world are moving in one direction but this government stands on its digs and does not want to adopt these innovative policies.

Members interjecting:

The Hon. R.D. LAWSON: Yes; I should add to that. This morning the Attorney suggested that this bill would be made a bill of special importance. He was suggesting that, if the Legislative Council did not agree to the amendments of the Assembly or abandon its amendments, there would be an election. He overlooked the fact that section 28 of the constitution provides that a bill can be declared a bill of special importance only in the context of a third reading speech, which happened in the House of Assembly quite some time ago. He overlooked that fact and also the fact that this is not in any real sense a bill of special importance, and to try to hijack the constitution by suggesting that a measure of this kind is a measure of special importance is quite absurd.

When confronted with this fact, the Attorney-General said that this was all Wendy Glamocak's idea from ABC Radio yesterday, so Ms Glamocak was responsible for raising the spectre of declaring this as a bill of special importance. The Attorney was quick to grab that and run with it in the media this morning, until confronted with the provisions of the

constitution, when he said it was all Wendy's idea. Ms Glamocak is a very experienced and very good reporter, but I am surprised to see that she is now a leading favourite to be the new solicitor-general of South Australia, if the Attorney is taking constitutional advice from her. We look forward to a deadlock conference in due course on this matter.

The Hon. IAN GILFILLAN: I have some degree of concern about the procedure. It seems to me that in delaying the vote, whatever the consideration may be for the honourable member, we stand a very good risk of going through the same time consuming performance tomorrow as we have already experienced in a couple of bites on this bill. We are coming to the end of the session, and it appears that most people assume that we will have a deadlock conference in any case. Why should we not proceed to vote on this matter tonight? I feel that would be a sensible organisation of our time.

The Hon. J.F. STEFANI: With all due respect, the reality is that the government has introduced a number of bills which have been accommodated by this chamber at short notice. It has been more than accommodating on a number of issues. I find very objectionable the suggestion that the processes of this chamber should be impeded in any way by the urgency of the political agenda of a government that wants to politically score points on a question of policy. I strongly urge members to give their colleagues the appropriate time in which to consider the matter and, if it has to go to a deadlock conference to sort out the fundamental issues involved in matters such as the costing of an advisory council, or any other matter, I strongly support that process.

The Hon. A.L. EVANS: If members want to proceed tonight, I have no objection to our doing so, except that I will have to vote as I did initially. It could then go to a deadlock conference to be worked through there. I leave it to the committee to decide on which way it wants to proceed.

Progress reported; committee to sit again.

LOCAL GOVERNMENT (ACCESS TO MEETINGS AND DOCUMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 November. Page 1582.)

The Hon. A.J. REDFORD: I support the second reading of this bill. I note that this is the fifth amendment to the Local Government Act since it was passed in late 1999. I also note that this is part of the government's so-called honesty and accountability in government program and that it seeks to address that issue in two ways: first, to bring local government in line with recent amendments to FOI legislation and the Ombudsman Act and, secondly, to have a second look at the 1999 act to bring about some changes to accountability.

The principal amendments relate to the issue of public access to council and committee meetings (section 90) and the release of documents and minutes (section 91), in particular requiring a public interest test in relation to those issues. In addition, any decision made to keep documents confidential by a resolution of council will not affect the operation of the freedom of information legislation and the rights of the public in regard to that. There are also some minor technical amendments including, first, clarifying that the council rating policy need only go out with the first rate notice; second, allowing councils to provide rebates when phasing in a redistribution of rates; third, clarifying some issues concerning community land, easements and the closure of roads under the Roads (Opening and Closing) Act; fourth, clarifying public notice provisions and permits to use a road; fifth, allowing penalties of $50 a day to be imposed by local councils concerning continuing offences; sixth, clarifying ward representation issues; seventh, allowing the Adelaide City Council more time to create or complete its parklands management plan; and, eighth, altering positions concerning supplementary elections.

In another place the opposition supported the bill and, with others, raised a number of issues, which I will briefly summarise. First, some matters are still left to be tidied up following the passage of the 1999 legislation, and they should be attended to expeditiously and, in particular, the transitional schedules and the 1934 act. Secondly, there are some concerns regarding casual vacancies in section 54 and, in particular, section 54(2). Thirdly, there is the issue of improving the process of setting rates and ensuring transparency in the context of some local councils enjoying substantial windfall rate revenue gains as a consequence of the current property boom.

In relation to the first of these issues, the opposition is mindful of the fact that the member for Mount Gambier is likely to become the minister for local government (subject to his signing the Ministerial Code of Conduct) in the next few days. The opposition is optimistic that the new minister will attend to those matters expeditiously so that, at long last, I can take the 1934 act (which will celebrate its 70th anniversary in 18 months) out of my blue folder once and for all. That will be an act from which I will gain no small measure of satisfaction.

Regarding the second of these issues, the member for Heysen in another place (enjoying her first contribution on local government legislation) correctly noted an inconsistency in the act in relation to a local councillor seeking election to a vacant local council office (as opposed to seeking election to an Australian parliament). The member for Heysen pointed out that if you seek election for another local government position, you lose your seat, whether you are successful or not; whereas, in the latter case, that is, in the case of seeking election to a parliament, you retain your local council seat.

However, I would say—perhaps tongue in cheek—to the member for Heysen, that there is a degree of consistency in this parliament's inconsistency in dealing with local government generally. In that respect, I will give a couple of examples. First, the way in which conflicts of interest and/or potential conflicts of interest are dealt with by parliament differ substantially from the Local Government Act, depending upon whether one is an MP or a local councillor. In the latter case, the local councillor cannot participate in a debate whereas if we have an interest in the matter we can, although we are required to disclose that interest.

Another difference in that respect is that we are not subject to any penal or other sanction whereas local councillors are. Another inconsistency is contained within this bill. In that respect I note that the disclosure of documents in local government, pursuant to freedom of information and these amendments, is subject to a general public interest test, irrespective of the nature of the document, whereas the state government is not subject to such a general public interest override: it prefers to keep the mishmash of exempt or restricted documents and exempt agencies, as if those agencies cannot justify the retention of documents in the public interest—such is life!

In the matter raised by the member for Heysen (and I agree with her), there is a difference in the manner that someone who seeks a position in an Australian parliament is treated as compared to someone seeking another position in the local council, such as a directly elected mayoral position. I do not know of any justification for that. Indeed, if there is, I would be interested to hear it; if not, then perhaps we can move an amendment and fix it tomorrow. The minister indicated that he was prepared to consider it at some future time, and in that respect it is my view that that future time he refers to could well be tomorrow. We are having discussions within the parliamentary Liberal Party tomorrow morning and a further amendment reflecting the concerns of the member for Heysen may be moved.

I must say—and I digress here and express a personal view—that this problem would be easily fixed if we adopted the principle that mayors or chairs should be elected not directly by the people but from among other councillors. I think—and I have said this on every occasion that this issue has come up in this parliament (and I know that I have not had the political skill to win the debate within my own parliamentary party room)—that such a measure would prevent the breaking out of dysfunctional councils that we all observe from time to time, and the difficulties that arise when there is a resignation or a death involving a local councillor or mayor. It would also improve the accountability of the executive arm of local government in that we would not find, as I often observe, situations developing where the mayor and the CEO of a council develop close relationships and, as a consequence, exclude other elected councillors both from participating in the important democratic process of local government and, indeed, from giving them full and proper access to documents and information.

I am not sure whether it has been filed yet, but the Liberal opposition will be moving an amendment, and the amendment reflects in precise terms the amendment moved by my Liberal colleague the member for Unley, Mark Brindal. The amendment was moved and lost in another place. However, the effect of the clause was not clearly explained and, as a consequence, I will attempt to explain it here and now. Firstly, proposed new clause 6A seeks to amend section 50 of the act, which requires a council to develop a public consultation policy. In that respect, we propose to amend that provision to ensure that any consultation process caused by our amendment is consistent with that.

Secondly, proposed new clause 17A seeks to amend section 153 of the act, which is part of chapter 10 of the act dealing with rates and charges and enables councils to declare rates. We propose to add a clause whereby, if the effect of a new rate assessment on a particular property exceeds the inflation rate plus 1 per cent, then the council must, firstly, prepare a report and, secondly, follow the section 50 consultation process, so that all members of the relevant local government community are made fully aware of what local government is proposing, rather than receiving a rate notice in the mail that shows a substantial increase as a consequence of increased property value at about the same time as they read in the local Messenger the CEO announcing that rates have not gone up at all that year.

Indeed, our amendment will require the council in its report to give reasons for the rate increase. It involves its giving to the ratepayer budgetary information. It also requires the council to deal with equity issues. I know that the Hon. Andrew Evans would be interested in this, because it goes to the very heart of what Family First stands for—that is, fairness and equity in dealing with families and the disadvantaged in our community.

All too often during the last 12 months in this current property boom we have seen elderly people who have worked hard and diligently all their lives to pay off their mortgage surviving on a pension and being hit with rates that are simply outrageous and bear no reflection on the services that are delivered to them merely because when they were younger they had either the good luck and the good fortune or they planned well to acquire a house which, 30 or 40 years later, is located in a suburb that has suddenly become fashionable where property values have gone up by 100, 200, 300 or even 400 per cent. Our amendment deals directly with equity, particularly in relation to our elderly and disadvantaged who own houses in some of the faster-growing property value areas in our city.

Our amendment does not seek to interfere with the setting of rates by councils; however, we seek to ensure accountability by local government. I draw the attention of all members to the fact that a report to ratepayers will require a council to address its mind to issues concerning equity within the community—this means our elderly and our disadvantaged. It will also require a council to address on an individual basis the likely impact of a proposed increase in rates on ratepayers.

With those few words, I commend the bill to members. I look forward to an interesting debate in committee. I urge members for the sake of our elderly and those who through no fault of their own have been caught by these savage rate increases—and who, I suspect, will take a great deal of interest in what we do—to support this measure.

The Hon. IAN GILFILLAN: I support the second reading of this bill. I note with interest some of the observations of the Hon. Angus Redford, who picked up some interesting aspects of the bill, of which I cannot say I was unaware, but I certainly had not picked up with such clarity some of the points that he made. It was interesting to reflect on a matter of public interest as being the criterion for FOI in local government because, as the Hon. Angus Redford would acknowledge, he and I have had some informal conversations about whether we should be pushing an initiative for FOI in local government, and it is rather pleasant to find that the game is ahead of us.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: The Hon. Angus Redford indicates that there will be even more progress on this. It may well be that the local government community is a shining light in terms of FOI compared with the difficulty that we are having in getting effective FOI on the state governmental scene. We are assured that the bill has been through extensive consultation and has the support of the Local Government Association. The bill contains much of the Statutes Amendment (Local Government) Bill 2000, which lapsed at the conclusion of the last sitting of parliament. It also contains new provisions which seek to improve accountability in local government and increase access by the public to council documents and council meetings. The bill reduces the grounds on which a council may exclude the public from meetings. It also includes provisions which seek to prevent councils from unnecessarily restricting access to meeting documents.

The bill will require councils to adopt a number of procedures relating to the handling of documents that are available to the public including restricting charges for copies

of documents. I am particularly pleased that the bill will require councils to report annually on freedom of information applications. We welcome the increased powers for the Ombudsman to investigate complaints that a council may have unreasonably excluded members of the public from its meetings or unreasonably prevented access to meeting documents. I hope that the appropriate resources will be allocated to the Ombudsman to allow him to effectively fulfil this role.

Amongst the minor and technical amendments indicated by the minister, I note that one amendment extends the period by which the Adelaide City Council is required to prepare a management plan for the Adelaide parklands from 1 January 2003 to 1 January 2005. The rationale given by the minister is that it brings the Adelaide City Council into line with other councils on the issue of community land. I am not persuaded by that argument. It appears to me that we frequently regard the Adelaide City Council as a special entity. What other council has a Capital City Committee? It cuts its own swathe. So, to argue that the council should have a two year slack on the requirement to prepare a management plan for the Adelaide parklands, just on the basis of keeping pace with other councils, does not wash with me.

Unfortunately, it delays, yet again, the pressing need for us to have precise and visionary planning for the parklands. There has been a lot of debate in the community about this, and the organisation that I represent—the Adelaide Parklands Preservation Association—has had ongoing dialogue with the Adelaide City Council, with members of the former Liberal government and with members of the Labor government, and it is optimistic that more parties are now conscious of the fact that something constructive needs to be done.

So, I indicate quite strongly in my second reading contribution that we do not support an extension of time from 1 January 2003 to 1 January 2005. Quite clearly, if the council has not got its act together, it will not be an advantage to the parklands to push a reluctant council to get a plan prepared by 1 January, which is only a month away. However, to give it two years' slack is quite inappropriate. I believe that six months' extension would be quite adequate. Having made that point in relation to an issue of concern not only to me but to thousands of people in South Australia, I indicate general support for the second reading of the bill.

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

CONTROLLED SUBSTANCES (CANNABIS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 December. Page 1593.)

The Hon. CARMEL ZOLLO: I indicate government support for this legislation. As has been pointed out, it is the same bill which was introduced by the previous government in October 2001 and which passed through the other place but did not progress through this chamber because parliament was prorogued. The government supported this bill in opposition and we do so again. It is an important piece of legislation and deserves government support. This now private member's legislation of the Hon. Robert Brokenshire has the effect of removing cannabis plants grown by artificially enhanced methods, which we commonly refer to as the hydroponically grown method, from the cannabis expiation scheme set up under section 45A of the Controlled Substances Act 1984.

The intention of the cannabis expiation scheme when introduced was, of course, to reduce the impact of criminal law on those who possess cannabis for their own use. As has been rightly pointed out, it was not to encourage the distribution of cannabis within the community. When the expiation system was first established in 1986, it was expected that people in possession of a small amount of marijuana or growing up to 10 plants would be those who had marijuana in their possession purely for personal use. The advent of hydroponically grown marijuana means that the law is no longer suitable for this original intention.

Hydroponically grown marijuana reaches maturity much quicker than soil grown plants. The plants are not dependent on sunlight and can be grown indoors all year round. They grow to a much larger size and produce significantly more dried cannabis—about 500 grams of dry cannabis—with a market value of $3 000 to $4 000 and three or four crops a year per plant. There is also some evidence which suggests that it tends to have much higher levels of THC, the active ingredient, due to the selection of powerful strains through advanced crossbreeding and cultivation methods such as hydroponics.

Cannabis is an illegal drug and, as clearly spelt out by the then leader of the opposition, now Premier, in speaking to this legislation in the last parliament, it will remain a prohibited substance in South Australia. The expiation notice scheme applies to the simple cannabis offence and is given as an option to avoid criminal prosecution. Whilst the principle of not burdening the police or the courts system with personal use of cannabis still holds, the scheme has never made it illegal to grow or possess any amount of cannabis.

As mentioned, we now know that one hydroponically produced cannabis plant is capable of producing conservatively about 500 grams of cannabis, and it is possible to produce three or four crops a year. Given that it is estimated that a daily consumer of cannabis is likely to consume about 10 grams of cannabis per week, it is estimated that 500 grams of dried cannabis would meet the consumption of a daily user for a year. This method of growing cannabis obviously is serving more than self use but, even more important, the health issues arising from this technology and superior growing stock are rightly of concern to many people.

I have spoken previously on different motions in relation to cannabis and I see this legislation as addressing those concerns that I have raised previously: the first of which is the recognition that people growing cannabis hydroponically are doing so for more than their own self use. I see this legislation as being about stopping illegal drug pushers and the big organisers, in particular those organised criminals who are engaging smaller growers as parts of a syndicate. This legislation will enable the police to crack down on organised crime, such as that of illegal motorcycle gangs, who coordinate the growing and distribution of hydroponic cannabis. Also, because of the nature of growing marijuana hydroponically, there is a significant risk of fire hazard for those who grow it, with the incidence of hydroponic equipment overloading circuits and resulting in fires being significant. Secondly, I am pleased to see the recognition that there is some evidence that hydroponically grown cannabis does contain more active ingredients.

It is now accepted that the cannabis grown in the 1970s had a THC content of around 0.4 per cent and that hydroponi-

cally grown plants have 6 to 8 per cent content, or perhaps as high as 15 per cent. The higher THC content has both physical and mental effects. For those with a predisposition to mental illness the incidence of psychosis is greater in marijuana smokers. I do not think we need to sensationalise the issue, but one of my colleagues in the other place described it as a scourge on our society, especially on our young people, and I agree. For those for whom this drug is not simply a recreational drug but a drug of dependency, it is a scourge. Heavy use of the drug has been linked to cancer, respiratory disease, psychiatric disorders (as noted), and birth defects in the children of heavy users.

I also place on record, as did the member for Mawson (Mr Brokenshire) in the other place, that 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. The hydroponics industry has a role in the production of commercial scale vegetables as well as being used by many hobby gardeners. I, too, welcome the intimation of the Premier that the government is examining a negative licensing regime that will ban certain persons from involvement in the sale or distribution of hydroponic equipment, particularly if they have committed certain drug offences.

Hydroponic cannabis provides the greatest opportunity for abuse of the expiation system, allowing people to grow large commercial amounts while receiving only a small fine for so-called possession for personal use. The legislation before us seeks to properly respond, I believe, to changed circumstances and community concern. The government is committed to reducing the commercial production of cannabis in South Australia and I welcome this legislation, as it is a sensible measure.

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

CRIMINAL LAW (FORENSIC PROCEDURES) (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from page 1644).

Clause 1.

The Hon. R.D. LAWSON: This is a general inquiry. I understand that, by agreement, the committee stage of this bill will not be concluded this evening and we will be continuing with the committee tomorrow. I would ask that the minister tomorrow provide the committee with the following information regarding the procedures which it is envisaged will be undertaken pursuant to the amendments contained in the bill. I refer, in particular, to the number of and the costs to the government of undertaking DNA samples by buccal swab. In the other place there was some debate about not only the number but also the cost, and there was also some debate about the provisions in the budget existing for the undertaking of these procedures. The questions I ask of the minister—and I do not expect him to provide an immediate response, but he may have the information—are:

1. How many additional procedures is it envisaged that the amendments will cause to permit testing of suspects? What will be the additional number of DNA tests of suspects?

2. What is envisaged to be the number of additional DNA tests from prisoners?

3. In relation to both classes, what is the estimated cost of undertaking that number of samples on an annual basis?

4. Will the costs be borne by the police department, the forensic science service or some other—and, if so, which—agency of government?

5. What number of additional personnel will be required to be hired to police, the forensic science service and/or the prison service in relation to the taking of DNA tests for profiling purposes?

6. In relation to the estimated additional 9 000 tests to be taken, as it is estimated in consequence of the enlargement of the definition of 'serious offence' to include a number of specified summary offences, and in relation to each of those summary offences, what is the estimated number of tests that will be taken in relation to each of them?

By way of explanation in relation to the last question, the summary offences specified in the schedule, especially the first of 'using a motor vehicle without consent-first offence' is an offence for which, on the statistics made available to me, would appear itself to exceed the 9 000 tests mentioned by the Attorney in another place. So, we seek, in relation to each of those offences, the estimated number of offences which will give rise to a test.

The Hon. J.F. STEFANI: I have some additional questions, as follows:

1. Can the minister advise who will be responsible for the coordination of the samples once they are collected?

2. Where will the repository be kept in relation to samples collected by the various agencies?

3. What procedures will be adopted to ensure that the samples are not in any way mishandled and therefore cross-referenced and mixed up?

The Hon. T.G. ROBERTS: I wonder whether the Hon. Mr Lawson can clarify his question about additional procedures in relation to offenders and/or prisoners. Does he mean both or only prisoners?

The Hon. R.D. LAWSON: I am indebted to the minister for indicating that. Both offenders and prisoners.

The Hon. T.G. ROBERTS: We do have some information available but the best way to proceed would be to take all the questions on notice and bring back replies tomorrow, if that is acceptable to the committee.

The Hon. A.J. REDFORD: I will draw the minister's attention to three specific matters and then ask him some questions. Firstly, in the other place, the Attorney-General indicated that he had concern that:

> . . . there may not be enough graduates coming through in molecular biology able to be trained to be forensic scientists and do this work.

Later on in his speech, in talking generally about this measure, he stated:

> I accept the point that the member for Newland makes that it would be wrong for the legislation to expand enormously the number of people who were to be DNA sampled by the police and then not have sufficient funding of the Forensic Science Centre for those samples to be processed promptly. . .

What has the government budgeted for the implementation of its legislation and how is that consistent with the cut in the Forensic Science Unit's budget of some $346 000?

The ACTING CHAIRMAN (Hon. R.K. Sneath): The committee is considering clause 1 only and I do not know whether that question relates to that clause. The minister can answer it if he wishes.

The Hon. T.G. ROBERTS: I understand the point that you are making, Mr Acting Chairman. It is probably a

question better asked at budget time in relation to budget estimates, but I will endeavour to add it into the questions that have already been asked and include them all in the one package.

The Hon. A.J. REDFORD: I am becoming increasingly concerned about the way this government seems to duck and shove questions in committee, and it is not just the honourable minister. Without casting any reflection, an element on my very far right-hand side seems to want to hurry the committee stage in the upper house, and that has never happened in the eight years that I have been here and I deprecate it. Does the minister agree that there will need to be a substantial number of graduates coming through molecular biology to enable the government's program to be carried out and, if so, how many?

The Hon. T.G. ROBERTS: This is not clause 1, and that is the point that I was making earlier. It is not that we do not want to answer questions. Clause 1 is usually a summary of positions for advancement into debate on the other clauses. I have made a commitment to take a package of questions that the honourable member has asked at short notice. We do have time constraints on us but we are not rushing to the point of not allowing members to ask questions. It is just that on clause 1—

The Hon. A.J. Redford: We are in committee: at what clause should I ask questions about resources and costs?

The ACTING CHAIRMAN: There are a number of amendments to the bill, and no doubt a number of questions will be asked as they are dealt with by the committee. At the moment, the committee is dealing with clause 1.

The Hon. A.J. REDFORD: Mr Acting Chairman, when is it appropriate, in the committee stage, to ask general questions about the resources required to bring in the whole bill?

The ACTING CHAIRMAN: I think those questions can be asked right throughout the bill as they pertain to the clauses as they come up. The Chairman of the committee does notify you when there are amendments to certain clauses or when there are questions about any particular clause, and they can be asked as those clauses come up.

The Hon. A.J. REDFORD: In this case, for this purpose, I will accept your ruling, but we will be here for a very long time if that is the way you want to play it. I do have a series of questions—

The ACTING CHAIRMAN: Order! That is not the way the Chairman wants to play it. The minister has indicated that he is prepared to take some questions on board. The Chairman has left it up to the minister whether he takes those questions, but I remind you that we are on clause 1 and some of your questions might relate to other clauses and therefore would be better asked when those clauses are being dealt with.

The Hon. A.J. REDFORD: What I am saying is that, if we want to play this according to the rules, I will play it according to the rules. I have a bit of experience at playing things according to the rules and it will take a lot longer, but, if that is the way the committee is to be chaired, I will accept that. I do have a large number of questions on clause 2, so we will do it that way.

The Hon. T.G. ROBERTS: In relation to the question asked in clause 1, about graduates and extra staff, I can indicate that extra staff will be required and there is a shortage of graduates. The statements made by the minister in another place are accurate.

The Hon. A.J. REDFORD: I am sorry, I missed that. I did not realise that my question was in order. Can you say that again?

The Hon. T.G. ROBERTS: I was clearing the decks so that we could move on. The answer to the question is that the statements made in another place by the Attorney-General are accurate: we do not have enough graduates coming out of our universities to fill the number of jobs that will be made available for the application of the new science techniques.

Clause passed.

Clause 2.

The Hon. A.J. REDFORD: This clause provides:

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

My first question is: will any work need to be done prior to it coming into operation on a day to be fixed by proclamation.

The Hon. T.G. ROBERTS: Yes.

The Hon. A.J. REDFORD: What work?

The Hon. T.G. ROBERTS: There will need to be police training and the making of regulations.

The Hon. A.J. REDFORD: What police training and how much will it cost?

The Hon. T.G. ROBERTS: There will need to be police training in relation to the new act, but there is no indication of what that will cost.

The Hon. A.J. REDFORD: Is there any undertaking that you will get back to us with the cost?

The Hon. T.G. ROBERTS: We can do that.

The Hon. A.J. REDFORD: Are there any other costs associated with the hiring of forensic scientists?

The Hon. T.G. ROBERTS: The answer to that is, probably.

The Hon. A.J. REDFORD: Can the minister explain what?

The Hon. T.G. ROBERTS: What do you mean by 'explain what'?

The Hon. A.J. REDFORD: I am sorry; I am not sure how much the minister retains in his mind so I will try to keep the bites as small as possible.

The CHAIRMAN: The honourable member knows that he cannot use such language.

The Hon. A.J. REDFORD: You dish it out, you get it back, Mr Chairman. I think you were the one who taught me that.

The CHAIRMAN: If you are disrespectful to the chair you will sit down; that is what I will teach you. Carry on.

The Hon. A.J. REDFORD: There are costs associated with the police, and there is also the hiring of forensic scientists. Does the minister have any idea what it will cost to hire the forensic scientists?

The Hon. T.G. ROBERTS: I think I have indicated that there are no figures for me to pass on to this council, but there will be extra costs, and it will be phased in.

The Hon. A.J. REDFORD: Will the government undertake any training costs in so far as forensic scientists are concerned?

The Hon. T.G. ROBERTS: I am unable to give any commitments on any forward programming for training programs.

The Hon. A.J. REDFORD: In another place, the Attorney-General referred to an existing backlog. Will the backlog be cleared prior to the proclamation?

The Hon. T.G. ROBERTS: It depends on when the proclamation is. The date of the proclamation is unknown.

The Hon. A.J. REDFORD: What is the extent of the backlog?

The Hon. T.G. ROBERTS: Approximately three months.

The Hon. A.J. REDFORD: How many cases does that involve?

The Hon. T.G. ROBERTS: I will have to pass that information on to the member tomorrow.

The Hon. A.J. REDFORD: In another place, the Attorney-General said:

> Although current DNA analysis capabilities lead to conclusions about the source of the DNA sample, a great deal of disagreement and inconsistency remains over the scope of DNA analysis required to produce a result as conclusive as an examination of fingerprint samples.

Is that an issue that the Attorney is addressing, or is that an observation as to the current state of DNA science?

The Hon. T.G. ROBERTS: The latter.

The Hon. A.J. REDFORD: Does the Forensic Science Centre currently undertake any independent testing to ensure that its results meet an international standard? If so, what is the nature of that testing and what is the international standard that it should meet?

The Hon. T.G. ROBERTS: I will take those two questions on notice.

The Hon. A.J. REDFORD: Is the minister able to give an indication as to when we will receive an answer to those important questions?

The Hon. T.G. ROBERTS: As soon as they become available or are made available through the Forensic Science Centre.

The Hon. A.J. REDFORD: Prior to dealing with the bill?

The Hon. T.G. ROBERTS: There is a team of people working on a whole range of questions at the moment. So, if it is physically possible, yes. If there are too many questions to answer in relation to this matter before the end of the session, the council will have to make a decision on how to proceed, or indeed whether to proceed.

The Hon. A.J. REDFORD: Without being specific, in general terms is the minister able to tell us now whether any independent testing is currently undertaken in relation to the results of samples of DNA in so far as our Forensic Science Centre is concerned?

The Hon. T.G. ROBERTS: What is the member's definition of 'independent testing'?

The Hon. A.J. REDFORD: As those who have any understanding in this area would well know, there has been substantial debate over the last 15 years about DNA testing and, indeed, the quality of results coming out of forensic laboratories throughout the world. Indeed, the FBI was engaged in substantial controversy not less than five to six years ago, and certainly arising from the Atlanta Olympics, concerning the veracity of testing of forensic science results.

In the United Kingdom, forensic samples from a central source are sent to various laboratories. They are tested by the forensic laboratory, results are given and are sent back to the testing body. The forensic laboratories are thereby tested against a known result to ensure that they are operating to a certain standard. I am interested to know whether our forensic science laboratory is currently subject to any similar independent testing regime.

The Hon. T.G. ROBERTS: They do their own testing; there is no independent outsourced testing program. There is cross-testing internally, but that is it.

The Hon. A.J. REDFORD: If I understand the minister correctly, the South Australian Forensic Science Laboratory process is not subject to any independent testing.

The Hon. T.G. ROBERTS: Does the honourable member mean an accredited testing regime within the laboratory, or outsourced testing?

The Hon. A.J. REDFORD: I mean outside testing, not internal testing.

The Hon. T.G. ROBERTS: Will the honourable member reframe the question.

The Hon. A.J. REDFORD: In relation to international standards, particularly in the United Kingdom and in some laboratories in the United States, samples are sent to a range of forensic laboratories from a testing source—usually, a particular agency does it in the United States, and I know that it is not the only agency in the world. The laboratories then test that material and send back the result to the outside testing authority. The testing authority then checks to see how accurate the testing process has been. I am wondering whether there is such a process within the South Australian system.

The Hon. T.G. ROBERTS: As far as is known, we have only one laboratory in South Australia.

The Hon. A.J. REDFORD: So, I can be assured that there is no outside testing?

The Hon. T.G. ROBERTS: As far as is known, but if the honourable member wants a definitive answer, we will put it off until tomorrow.

The Hon. A.J. REDFORD: Is there any peer testing? In other words, is there any peer review by forensic scientists of the work of other forensic scientists?

The Hon. T.G. ROBERTS: We will also take that question on notice.

Clause passed.

Clause 3.

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

> Page 6, after line 27—Insert:
>
> (ea) by inserting in paragraph (c) of the definition of 'intrusive forensic procedure' '(other than the taking of a sample by finger-prick for the purpose of obtaining a DNA profile)' after 'blood';

This is an amendment to the definition of the term 'intrusive forensic procedure'. Under current law—and under the law as it is proposed to be—in general, blood testing is defined as an 'intrusive forensic procedure'. An 'intrusive forensic procedure' requires a court order. That general characterisation and rule will remain. However, as proposed amendments to follow will show, it is proposed that the police be allowed to take a DNA sample by finger-prick without requiring a court order. Technically a fingerprick is an intrusive forensic procedure. The purpose of this amendment is to make it express and clear that, in the limited circumstances specified in these amendments only, a court order is not required for that procedure.

The Hon. R.D. LAWSON: I indicate the opposition's support for this amendment.

Amendment carried.

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

> Page 6, after line 32—Insert:
>
> (ga) by striking out from the definition of 'senior police officer' 'inspector' and substituting 'sergeant'.

The purpose of this change is to amend the definition of 'senior police officer' to lower it from 'inspector' to 'sergeant'. This is to cater for the staffing levels of regional police stations.

The Hon. R.D. LAWSON: Will the minister indicate what are the functions of the senior police officer who is now to be referred to as a 'sergeant' rather than 'inspector'?

The Hon. T.G. ROBERTS: In the amendment to clause 11, the senior police officer may issue directions about the time, place and manner in which a forensic procedure is to be carried out, and also about custody of the person while the forensic procedure is being carried out and any other incidental matter.

Amendment carried; clause as amended passed.

New clause 3A.

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

After clause 3—Insert:

Amendment of section 4—Suspicion of criminal offence

3A. Section 4 of the principal act is amended by inserting '(whether or not the person has been charged with the offence)' after 'criminal offence'.

This is an amendment to the definition of what the phrase 'under suspicion' means which is contained in section 4 of the principal act. The current definition says that all that is required is that a police officer suspects, on reasonable grounds, that a person has committed a criminal offence. The Commissioner of Police wants the legislation amended to make it clear that the offence about which the suspicion was held did not necessarily relate to the offence with which a person was ultimately charged. This amendment has been drafted to achieve that purpose.

The Hon. R.D. LAWSON: My specific question to the minister is: do the words 'whether or not the person has been charged with the offence' merely declare what would otherwise be the position, or do they seek to extend the operation of the legislation?

The Hon. T.G. ROBERTS: The former definition, as defined by the honourable member.

The Hon. IAN GILFILLAN: I indicate (as members will recall) that the Democrats are opposed to the bill in its totality, and therefore I do not intend to take a particularly involved part in the committee stage and, quite clearly, where there is no opposition to amendments between the government and the opposition, how we vote is irrelevant. However, I was not quick enough on my feet, but I did want to (and I will now) make the observation that I feel strongly opposed to the change in the definition of 'senior police officer' from 'inspector' to 'sergeant'. I know it is a little out of order, but I am putting it in *Hansard* so that it can be there for all to read. I am worried enough that a police officer of any nature has this power to arbitrarily determine the taking of a DNA sample, and to reduce it to sergeant compounds the fault.

New clause inserted.

Clauses 4 to 7 passed.

Clause 8.

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

That this clause be taken into consideration after the other clauses of the bill.

Motion carried.

Clauses 9 and 10 passed.

Clause 11.

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

Page 14, after line 13—Insert:

(2) Before a forensic procedure authorised under subsection (1)(c) is carried out on a person, a police officer must inform the person that—

(a) reasonable force may be used to carry out the forensic procedure; and

(b) if the person obstructs or resists a person in connection with the carrying out of the procedure, evidence of that fact may be admissible in proceedings against the person.

(3) If a forensic procedure under subsection (1)(c) is to be carried out on a person who is not in lawful custody, a senior police officer may issue directions about—

(a) the time, place and manner in which the forensic procedure is to be carried out; and

(b) custody of the person while the forensic procedure is being carried out; and

(c) any other incidental matter.

(4) A written record of any directions issued under subsection (3) in relation to a forensic procedure must be given to the person on whom the procedure is to be carried out and the person must be informed that if the person fails to comply with those directions, a warrant may be issued by the Magistrates Court for the arrest of the person for the purpose of carrying out the forensic procedure.

(5) If a person fails to comply with directions issued under subsection (3) in relation to a forensic procedure, a police officer may apply to the Magistrates Court for the issue of a warrant to have the person arrested and brought to a police station specified in the application for the purpose of carrying out the forensic procedure.

(6) The Magistrates Court must issue a warrant for the arrest of person under subsection (5) if satisfied that the person has failed to comply with directions issued under subsection (3).

It is proposed that police will be able to take a DNA sample from any suspect for the nominated offence, whether or not it will yield any evidence relevant to the crime that they are investigating. In such situations the police will not be taking the sample by a consent procedure in all cases, and they will not be taking it pursuant to an order. The order is unnecessary because there is no judgment to be made.

The relevance test has, in this class of cases, simply disappeared; therefore, an extra class of cases has been created under proposed section 15(1)(c) to the bill. Where an order is made, a person who is in custody may be tested as an incident to that custody pursuant to the statutory power; however, where a person is not in custody, different considerations arise. The person must be brought in so that testing may be carried out. Where the test is to be conducted under the authority of an order, section 28 of the act allows the authority making the order (which will be a court or a senior police officer) to make the necessary ancillary orders to enable that to be done and enforced. Where, however, it is sought to take a DNA sample without an order under the authority of the new category created in section 15(1)(c) and the person subject to the order is not in custody, there is no existing mechanism for enforcing that requirement. Section 15(6) provides that mechanism. In brief, a senior police officer is given authority to issue directions, and those directions may, in the event of non compliance, be enforced by a warrant for arrest issued by the Magistrates Court.

The Hon. R.D. LAWSON: I move to amend the Hon. T.G. Roberts' amendment, as follows:

Page 14, after line 13—Leave out proposed subclause (4) and insert:

(4) A written record of any directions issued under subsection (3) in relation to a forensic procedure must be given to the person on whom the procedure is to be carried out and the person must be informed—

(a) of the nature of the suspected offence; and

(b) that if the person fails to comply with the directions, a warrant may be issued by the Magistrates Court for the arrest of the person for the purpose of carrying out the forensic procedure.

This is to amend the minister's amendment by inserting a new subclause (4). This is an important amendment, and we believe that it would be a significant improvement on the

proposal of the government. In proposed section 15, the bill presently provides:

> A forensic procedure is authorised under this part if—
> (a) if the person on whom the procedure is to be carried out—
> (i) is not a protected person; and
> (ii) gives informed consent to the procedure; or—

So, informed consent is the first possible condition. The second is:

> (b) an order authorising the procedure is made under Division 3—

An order under Division 3 can only be made by a magistrate. The third category of person is described in section 15(1)(c):

> (c) the person on whom the procedure is to be carried out is under suspicion of having committed a serious offence—

and 'serious offence' is now defined as indictable plus some summary offences—

> and the procedure consists only of the taking of a sample from the person's body by buccal swab or fingerprint for the purpose of obtaining a DNA profile.

So, that is the third mechanism. Under that third mechanism it is entirely appropriate to provide some of the protections that the minister's amendment will achieve. In particular, before such a procedure is authorised under new subsection (2), the police officer must inform the person that reasonable force may be used to carry out the forensic procedure and that, if the person obstructs or resists the person in connection with the carrying out of the procedure, evidence of that fact may be admissible in proceedings against the person. I interpose that that provision about the use of reasonable force applies elsewhere in the legislation in relation to other provisions for forensic procedures, so that is not new.

New subsection (3) provides that, if a forensic procedure authorised under (1)(c) is to be carried out on a person who is not in lawful custody, a senior police officer, that is, one of the rank of sergeant or above, may issue directions about the time, place and manner in which the forensic procedure is to be carried out. The same officer can give directions about the custody of the person while the forensic procedure is being carried out. Bear in mind that this is a suspect who is not in lawful custody at the time, and I ask the minister to confirm his understanding that that means the person is not under arrest. The same officer can give directions about any other incidental matter.

New subsection (4) provides that a written record of any directions given by the police officer in relation to that procedure must be given to the person on whom the procedure is to be carried out, and the person must be informed that if the person fails to comply a warrant may be issued by the Magistrates Court for the arrest of the person for the purpose of carrying out the procedure. Fifthly, if the person fails to comply with these directions in relation to the forensic procedure, the police officer may apply to the Magistrates Court for the issue of a warrant to have the person arrested and brought to the police station specified in the application for the purpose of carrying out the procedure. Lastly, the government's amendments propose that the Magistrates Court must issue a warrant for the arrest of a person under new subsection (5) if it is satisfied that the person has failed to comply.

The important point to raise is that we are dealing here with persons who are under suspicion, who are not in lawful custody and who therefore have not been charged with an offence. There is no requirement in the government's bill for the person against whom this direction is made to be given any information other than the fact that he or she is required to attend at a certain place and to subject himself or herself to a certain test and that if he or she does not comply then a warrant can be issued and the person can be brought by force.

Whilst there is a provision for the officer to give a direction as to any other incidental matter, there is no provision that the person who is under suspicion must be told anything about the nature of the suspicion or that any record must be kept of this rather extraordinary event. I might say that the opposition's position in relation to DNA testing was that, as in the United Kingdom, every person who is arrested and charged should be fingerprinted and DNA tested. That was our position. When somebody is charged they know why they are being fingerprinted and why a DNA test is being taken from them.

They know the offence for which they are charged and of which they are suspected, and a record is made of it and kept so that due process is observed. But, under this process, the person need not be given any information, nor need there be a record such as a charge sheet which at some time in the future can be referred to for a reason why the extraordinary step was made of taking a DNA sample from a person who was not charged and who may have been entirely unaware of why it was that Bob Sneath or anybody else walking down the street was called in to provide a buccal swab.

For that purpose, I am moving that proposed subclause (4) provide that a written record of the directions must be given to the person (as is now provided) and the person must be informed of the nature of the suspected offence; similarly, as already provided, 'if the person fails to comply with the directions, a warrant may be issued by the Magistrates Court for the arrest of the person,' and that follows the wording of the minister's proposed amendment. The difference is that suspected persons who are not charged and are not in custody are at least given details of the nature of the suspected offence under which they have been required to submit for a test.

Under the existing law, a magistrate would have to make an order for the provision of an intrusive forensic procedure, the person would have to know, and the person would have the opportunity to be represented. It is appropriate that if we are to extend—and we certainly support it—the range of people who can be tested, their rights should be respected in this way.

The Hon. T.G. ROBERTS: The government is prepared to accept the amendment.

The Hon. R.D. Lawson's amendment carried; the Hon. T.G. Roberts' amendment, as amended, carried; clause as amended passed.

Clauses 12 to 16 passed.

Clause 17.

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

> Page 16, lines 18 to 22—Leave out paragraph (b) and insert:
> (b) the appropriate authority must not make an interim order for carrying out—
> (i) an intrusive forensic procedure; or
> (ii) a forensic procedure that is to be carried out on a person for the purpose of obtaining a DNA profile of the person,
> if the suspected offence is not a serious offence.

This drafting amendment aligns the interim order criteria, so it covers the summary offences listed in the schedule of the bill.

The Hon. IAN GILFILLAN: It is an interim order?

The Hon. T.G. ROBERTS: It is an order that is designed to protect the DNA samples that may be perishable.

Amendment carried; clause as amended passed.

Clause 18 passed.

Clause 19.

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

Page 17, lines 2 to 6—Leave out paragraph (b) and insert:

(b) the appropriate authority must not make a final order for carrying out—

(i) an intrusive forensic procedure; or

(ii) a forensic procedure that is to be carried out on a person for the purpose of obtaining a DNA profile of the person,

if the suspected offence is not a serious offence.

This amendment does exactly the same thing for final orders that the previous amendment did for interim orders.

Amendment carried; clause as amended passed.

Clause 20 passed.

Clause 21.

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

Page 17, line 31—Leave out all words in this line.

This is a drafting amendment consequential upon amendments that follow. It is proposed that a very great number of the offenders' procedures are unnecessary and should not proceed. There is, in that case, no need for the divisional headings.

Amendment carried.

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

Page 18, line 11—Leave out 'or detention (other than home detention)' and insert:

, detention or home detention

This amendment means that all offenders sentenced to home detention will be regarded as imprisoned and are therefore subject to routine DNA testing.

Amendment carried.

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

Page 18, lines 20 to 33—Leave out proposed section 31 and insert:

Authority required for carrying out category 4 (offenders) procedure

31.(1) A forensic procedure is authorised under this part if the procedure consists only of one or both of the following:

(a) the taking of fingerprints from a person to whom this part applies;

(b) the taking of a sample from the body of a person to whom this part applies by buccal swab or finger prick for the purpose of obtaining a DNA profile of the person.

(2) Before a forensic procedure authorised under subsection (1) is carried out on a person, a police officer must inform the person that—

(a) reasonable force may be used to carry out the forensic procedure; and

(b) if the person obstructs or resists a person in connection with the carrying out of the procedure, evidence of that fact may be admissible in proceedings against the person.

(3) If a forensic procedure authorised under subsection (1) is to be carried out on a person who is not in lawful custody, a senior police officer may issue directions about—

(a) the time, place and manner in which the forensic procedure is to be carried out; and

(b) custody of the person while the forensic procedure is being carried out; and

(c) any other incidental matter.

(4) A written record of any directions issued under subsection (3) in relation to a forensic procedure must be given to the person on whom the procedure is to be carried out and the person must be informed that if the person fails to comply with those directions, a warrant may be issued by the Magistrates Court for the arrest of the person for the purpose of carrying out the forensic procedure.

(5) If a person fails to comply with directions issued under subsection (3) in relation to a forensic procedure, a police officer may apply to the Magistrates Court for the issue of a warrant to have the person arrested and brought to a police station specified in the application for the purpose of carrying out the forensic procedure.

(6) The Magistrates Court must issue a warrant for the arrest of person under subsection (5) if satisfied that the person has failed to comply with directions issued under subsection (3).

It is proposed that the entire part dealing with the offenders' procedures be redrafted. The key to the redrafting is that police have advised that the only forensic samples they want to take from offenders as mere offenders are fingerprints and DNA samples. It is proposed that both types of forensic samples be able to be taken routinely. There is therefore no need for any consent procedure, or procedure for a court order, or anything else of that kind. The deletion of all those sections is done by the next amendment. This amendment replaces all of that with a simple scheme, which follows the scheme already considered for suspects, in particular DNA may be taken by buccal swab or finger prick. A mirror scheme is provided for the issuing of directions in relation to people who are not in lawful custody and the enforcement of these directions by an arrest warrant issued by a Magistrates Court.

The Hon. R.D. LAWSON: Could the minister enlarge upon the circumstance in which a person not in custody can have a forensic procedure undertaken in relation to them as an offender without direction or order of the court?

The Hon. T.G. ROBERTS: The intention of the amendment is to provide that DNA sampling and fingerprints can be taken without a court order.

The Hon. R.D. LAWSON: That is from persons whether or not they have been sentenced to a term of imprisonment? It is persons who are offenders, is it not?

The Hon. T.G. ROBERTS: Yes.

The Hon. R.D. LAWSON: Ordinarily they would be in custody, although we have extended the definition to include those who are in home detention. Is it envisaged that a sample may be taken from any other offenders—that is, other than those in detention or home detention?

The Hon. T.G. ROBERTS: Proposed new section 30 provides the category for an offender, as follows:

(3) A person is a person to whom this part applies if, after the commencement of this section, the person—

(a) is serving a term of imprisonment, detention (other than home detention) in relation to an offence; or

(b) is being detained as a result of being declared liable to supervision by a court dealing with a charge of an offence; or

(c) is convicted of a serious offence by a court; or

(d) is declared liable to supervision by a court dealing with a charge of a serious offence.

(4) This section applies whether the relevant offence was committed before or after the commencement of this section.

The Hon. R.D. LAWSON: Is it envisaged that persons convicted before the commencement of this section but who are not in custody can be tested under the authority of proposed new section 31?

The Hon. T.G. ROBERTS: No.

Amendment carried.

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

Page 19, all lines, page 20, all lines, page 21, all lines and page 22, lines 1 to 12—Leave out all words in these lines (the whole of proposed Divisions 2 and 3).

This amendment, already foreshadowed, gets rid of those parts of the offenders' procedures which are no longer necessary.

Amendment carried; clause as amended passed.

Clauses 22 to 35 passed.

Clause 36.

The Hon. R.D. LAWSON: This is a general question relating to the DNA database system which is referred to in clause 37. For the benefit of the committee and for the record, I would like to read into the record correspondence referred to by the Attorney in another place—that correspondence being between the commonwealth Minister for Justice, who is responsible for CrimTrac, and the Attorney-General. On 18 October this year, the Attorney-General wrote to Senator Ellison in the following terms:

I write to you as a matter of some urgency in order to seek your advice.

The South Australian amendments to the Criminal Law (Forensic Procedures) Act 1998, designed to bring South Australia into line with the national scheme, are due to be debated very shortly. It will not surprise you to learn that they have excited considerable controversy. I hasten to add that you should not be misled by the reporting and commentary of the local newspaper on the subject. I have been consistently and wilfully misreported by them. The facts are as I will now outline.

Labor's election policy was that all people imprisoned, for whatever offence, should be subject to DNA testing. I intend to implement that promise. You may care to comment on whether the fulfilment of that promise will have implications for the status of our 'serious offenders' index as a corresponding index, but I am committed to that policy. But there are more difficult questions to come.

For reasons which I do not intend to explore here, I have been placed in a position where I have conceded that people reasonably suspected of having committed certain summary offences should be subject to DNA testing if, and only if, the DNA can reasonably be expected to be of use in the investigation. Those summary offences are:

- illegal use of a motor vehicle;
- unlawful possession of property;
- being unlawfully on premises;
- carrying an offensive weapon and possession of body armour;
- possession of child pornography;
- gross indecency;
- creating a false belief that a crime has been committed;
- assaulting a police officer in the course of duty; and
- certain summary firearms offences.

I note that the Tasmanian scheme also includes the possibility of testing suspects of certain listed summary offences. I would therefore trust that such a list as I propose would not put in jeopardy the corresponding status of our suspects index.

The inclusion of certain summary offences has two possible consequential implications and it is these which I particularly draw to your attention—and on which I would be most grateful for advice.

The first is, I think, the easier. In our legislation, the crime scene index is limited to crime scenes of indictable offences. It would seem to me to be odd, to say the least, and probably confusing, to expand that to cover crime scenes of certain (but not all) summary offences. I seek your advice on the question whether to do so would jeopardise the corresponding status of the crime scene index.

The second is harder. If we test a person reasonably suspected of having committed, say, unlawful interference of a motor vehicle, then the resulting DNA profile will go on the suspects index. If that person is then convicted, it would seem normal for the profile to be transferred to the serious offenders index. However, and noting Labor's policy outlined above, that would necessarily mean that the serious offenders index would have on it DNA profiles of people convicted of certain summary offences who are not imprisoned. Again, I would be grateful for your advice on the question whether to do so would jeopardise the corresponding status of the serious offenders index.

I would like to take this opportunity to assure you that I am committed to the participation of South Australia in the CrimTrac project and will do all that is within my power to ensure that it comes about. I would like to add that the matter is urgent as these mooted changes have only come about this week and the bill may well be debated in the middle of next week.

I would, therefore, be grateful for your prompt advice on the questions that I have raised in the spirit of getting CrimTrac up and running.

Yours sincerely,
Michael Atkinson
Attorney-General.

On 23 October, the commonwealth Minister for Justice and Customs replied to the Attorney-General as follows:

Thank you for your letter dated 18 October 2002 regarding South Australian amendments to the Criminal Law (Forensic Procedures) Act 1998.

After reviewing the issues you have raised in your letter, I consider the proposals are out of step with other jurisdictions; however, in the current environment, I have agreed to make the necessary regulations to recognise South Australia as a corresponding law.

The proposal to place all offenders who are in prison on the database puts South Australia out of step with other state jurisdictions. However, I concede it is arguable that the offences are 'serious' because the person has been imprisoned. This is of course not necessarily so, because a person can be imprisoned for a motor traffic offence such as drink driving and dangerous speeding.

I believe the proposal outlined in your letter may leave the South Australian legislation open to challenge and would prefer you list the more serious summary offences as 'serious offences' for the purposes of the legislation. Given the urgency of the need for a fully functioning national DNA database system, however, I will not refuse to make regulations recognising South Australia on the basis of this issue alone. It may be that other jurisdictions will take a different view and it is possible such regulations will be disallowed in the Senate.

I agree that the taking of samples from suspects in relation to certain summary offences produces the inconsistencies you describe in the letter. The Model Forensic Procedures Bill recognised there was scope for the inclusion of certain serious summary offences and that there would be variation between States about what is summary and what is indictable. For that reason the model legislation only referred to a maximum penalty of two years imprisonment as being the indicator of what was an appropriate offence in the circumstances.

The crime scene index is designed to focus on significant offences. I agree that placing less serious offences on that index would extend it beyond its intended purpose and may impact on the [South Australian] law being recognised as a 'corresponding law' in other jurisdictions. This may also be cause for disallowance of the commonwealth regulations.

Finally, the fact that some of the people whose DNA is transferred to the serious offenders index upon conviction have not been imprisoned is not at odds with the Model Forensic Procedures Bill. I would not consider this issue to be sufficient to justify not making regulations giving South Australia corresponding status.

I congratulate you for your efforts to bring South Australia into line with the national scheme on forensic procedures for criminal investigation. I look forward to the early passage of the South Australian legislation.

Yours sincerely, Chris Ellison, Senator for Western Australia.

I apologise for the length of those quotes, but they are important in the context of CrimTrac. My questions to the minister—and I do not necessarily seek an answer now—are:

1. Has the commonwealth minister been apprised of the latest amendments to this bill which are being moved tonight and, if so, has the commonwealth indicated the general support indicated in the correspondence for the bill as it now stands?

2. Have any approaches been made to other states to ascertain whether they will recognise the South Australian legislation as a corresponding law for the purposes of their legislation?

The Hon. T.G. ROBERTS: The answer to both questions is no. The more elaborate answer to the first question is that it did not seem to be at odds with the letter as the member read it.

Clause passed.

Clauses 37 and 38 passed.

Clause 39.

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

Page 36, after line 35—Insert:

(aa) by striking out from subjection (1)(d) 'an indictable' and substituting 'a serious';

This amendment is merely consequential on the addition of the schedule list of summary offences to all indictable offences. It amends an exception to the confidentiality provision of the bill so that it is consistent with the expansion of the offences in relation to which criminal proceedings may be taken to include those summary offences.

Amendment carried; clause as amended passed.

Clause 40 passed.

Clause 41.

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

Page 37, lines 25 and 26—Leave out 'the Commonwealth, another State or a Territory' and insert 'another jurisdiction'.

By way of explanation, clause 41 inserts a new section 49, which will provide that forensic material lawfully obtained under law of the commonwealth, another state or territory may be retained and used in this state for investigative, evidentiary or statistical purposes, despite the fact that material was obtained in circumstances in which this act would not authorise the material to be obtained.

The opposition has no complaint with that section so far as it goes. However, we query why this section should be limited to only forensic material lawfully obtained under a law of the commonwealth, another state or territory. In the second reading contribution I indicated, for example, that if forensic material were obtained from Bali, New Zealand or some other jurisdiction—the United States—which was scientifically appropriate, why should South Australian law not authorise use in this state of material so obtained? If the government is not prepared to accept this amendment, we would want to be convinced that there were good reasons why police and courts in this state—

The Hon. T.G. ROBERTS: The government accepts the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (42 and 43) passed.

Progress reported; committee to sit again.

ADJOURNMENT

At 10.10 p.m. the council adjourned until Wednesday 4 December at 2.15 p.m.