LEGISLATIVE COUNCIL

Monday 24 November 2003

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answer to question No. 278 of the last session, and the following questions of this session, as detailed in the schedule that I now table, be distributed and printed in *Hansard*: Nos 90, 105 and 115.

WATER SUPPLY

278. (Second session). **The Hon. T.G. CAMERON:**

1. How much water does South Australia extract from the River Murray, on average, each year?

2. How much of this, both in percentage terms and in gigalitres, is consumed by:

(a) South Australian households; and

(b) South Australian industry and farms?

3. How much water is estimated to be saved this financial year from the recently introduced water restrictions?

4. How much of this saved water, both in percentage terms and in gigalitres, will be due to:

(a) household savings; and

(b) industry and farms savings?

5. What exactly do 'level 5 water restrictions' involve?

The Hon. T.G. ROBERTS: The Minister for the River Murray has advised:

1. On average, South Australia extracts some 650 Gigalitres (GL) per year from the River Murray.

2. South Australia's use of water from the River Murray can, for purpose of comparison, be split into four distinct categories as defined by the Murray-Darling Basin Commission Cap and auditing requirements. These four categories are:

- SA Water Corporation's Licence for Metropolitan Adelaide and associated country areas. This licence is for 650 Gigalitres (GL) over a rolling 5 year period which, for comparison purposes, is referred to as a nominal 130 Gigalitres (average) per year for the purpose of defining an annual 'allocation'. Usage in any year may exceed 130 GL but the usage over any 5 year period must not exceed 650 GL.

  Note: Metropolitan Adelaide is not solely reliant on the River Murray and also sources water from the Mt Lofty Ranges Catchment.
- SA Water Corporation's Licence for Country Towns: Allocation of 50 GL, long-term average use 35 GL per year.
- 'Highland' Irrigation water use, including industrial, recreational, and environmental water use, and stock and domestic purposes (other than for the Lower Murray Reclaimed Areas Irrigation Management Zone): Total allocation 522 GL. Long-term average use 415 GL per year
- Irrigation water use and stock and domestic purposes in the Lower Murray Reclaimed Areas Irrigation Management Zone: un-metered, long-term average use 100 GL per year.

Therefore, based on long-term average use, approximately 79 per cent of the water extracted from the River Murray in South Australia is used for irrigation and the SA Water Corporation extracts 21 per cent to supply metropolitan Adelaide, major country towns and rural areas. It should be noted however that this 21 per cent is not used solely by South Australian households.

For the year 2001-2002, SA Water Corporation's breakdown, based on meter readings, for the total volume of water supplied was as follows:

- Metro Adelaide (sourced from both River Murray and Mt Lofty Catchments)
  - 67 per cent Residential
  - 12 per cent Industry
  - 10 per cent Farm
  - 11 per cent Other, including public institutions
- For all major systems supplied from the River Murray by SA Water (ie 5 major pipelines)
  - 61 per cent Residential
  - 14 per cent Industry
  - 14 per cent Farm
  - 11 per cent Other, including public institutions

3. and 4. When first announced, restrictions on water extracted from the River Murray were intended to result in a 20 per cent reduction on the total use of water from the River Murray for 2003-2004. I have subsequently announced increases in authorised use such that:

- where water is used for irrigation, industrial, recreational and environmental purposes, the authorised level of use from the River Murray be increased to 85 per cent of licensed water allocation;
- where water is used for urban water supply purposes, the authorised level of water use remain unchanged; currently 31.5GL and 122GL for SA Water's Country Towns and Metro Adelaide licences, respectively.

Water restrictions were put in place to protect the water resource, manage declining water quality and ensure equity with respect to security of supply for all water users assuming dry conditions persisted. This outcome will be achieved as a result of our policy. Any assessment of water 'savings' is highly dependent on factors such as prevailing and historic climate conditions. In many respects it is meaningless to say how much water is 'saved' in any one year unless you are able replicate climate conditions from one year to the next. It is far more important to ensure that demand is kept in check with water availability, which is what has been achieved.

5. To achieve their required reduction in water use from the River Murray, SA Water had imposed temporary Level 2 water restrictions on their customers that were reliant on the River Murray for supply. On 26 October 2003, SA Water removed these restrictions as a result of the improved water supply conditions in their Mount Lofty Ranges storages. At the same time, an on-going system to regulate water use behaviour across the State was introduced to promote more sustainable and responsible water use, irrespective of the prevailing water availability conditions.

Level 5 water restrictions are the most severe level of restrictions that would potentially be applied by SA Water. Details are as per the attached table. Caution should be used when considering this information, as these details are indicative only and would be subject to change if implemented.

CHILDREN IN DETENTION

90. **The Hon. KATE REYNOLDS:** Has the Government acted on Recommendation 160 of the Layton Report 'Our Best Investment' that it should obtain a detailed legal opinion on the extent of the applicability of Children's Protection Act 1993 to children and their families in detention, whether they be in detention centres or in detention outside such centres, having regard to the provisions of the Migration Act 1958 (Commonwealth)?

The Hon. T.G. ROBERTS: The Minister for Social Justice has advised:

The Government sought a detailed legal opinion from the Solicitor-General, Chris Kourakis QC, soon after the Layton Report and its recommendations was made available to the Government. On the basis of the Solicitor-General's advice, it is understood that the current arrangements negotiated with the Commonwealth provide for as much intervention by State authorities as the law permits. Legal advice provided to the Government is subject to legal professional privilege.

BUS SERVICES

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

1. Which are the 'poorly patronised bus services' referred to in the recent State Budget (Budget Paper 3, page 2.29, under the Passenger Transport Board Savings Initiatives) which are due to be removed to save $1.85 million?

2. How were they classified?

3. Which electorates will be affected most by these removals?

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

The saving to be achieved through removal of poorly patronised bus services is $1.85 million in the first year and $1.95 million in subsequent years. The savings are ongoing but not cumulative. Savings will be achieved by eliminating low patronage bus trips. This will reduce the contract payments payable to the public transport contractors.

We know the public is critical of buses running with no passengers—and this measure is part of achieving ongoing efficiencies.

As the city and its population changes, the needs of public transport customers also change and there is an ongoing need to review public transport services. The bus services to be altered are being determined.

The Passenger Transport Board is working closely with the bus contractors to identify appropriate services so that the impact is not significant.

When the changes are made it will be accompanied by a comprehensive information campaign so the public is fully informed.

HEALTH, COUNTRY

115. **The Hon. SANDRA KANCK:** With regard to an upcoming Department of Human Services country health summit to be held in Adelaide on Friday, 24 October 2003, at which directors of nursing or community health services will not be present:

1. Who is responsible for the decision that directors of nursing and directors of community health services be excluded?
2. What reasons justify this decision?
3. How will expert knowledge on community health and nursing be delivered to the summit?
4. Without the presence of directors of nursing and directors of community health services, how valid will be any recommendations concerning these two fields in particular, or recommendations about governance in general?

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

1. The Country Health Summit Reference Group (which comprised representatives from health service providers, the community, the Aboriginal Health Advisory Council, Department of Human Services, Regional General Managers and an officer from the Office of the Minister for Health) determined the invitation list for the Country Health Summit on 24 October 2003. 32 Directors of Nursing and two Directors of Community Health Services were invited to attend, in addition to the Chair of the Directors of Community & Allied Health Services and the Chair of the Primary Health Care Forum.

2. The Directors of Nursing and Directors of Community Health Services were invited to achieve a broad representation of participants at the Summit.

3. and 4. In addition to the Directors of Nursing and Directors of Community Health Services who were invited to attend the Summit, representation from Health Service Chief Executives, Divisions of General Practice, Aboriginal Health Advisory Councils and Regional General Managers contributed expert knowledge on primary health care including community health and nursing.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2002-03—
City of Holdfast Bay
City of Mount Gambier
District Council of Karoonda East Murray
Municipal Council of Roxby Downs

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

Regulation under the following Act—
Aquaculture Act 2001—Licensee's Fees

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

Reports, 2002-03—
Country Arts SA
Department of Human Services
Eudunda and Kapunda Health Service Incorporated
Metropolitan Domiciliary Care
Mid-West Health and Aged Care Inc. and Mid-West Health
Millicent and District Hospital and Health Services Inc
South Coast district Hospital Inc. (Incorporating Southern Fleurieu Health Service)
Waikerie Health Service Incorporated
Regulation under the following Act—
Native Vegetation Act 1991—Exploration and Mining Operations

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. G.E. GAGO: I bring up the report of the committee for 2002-03.

Report received.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The Hon. J. GAZZOLA: I bring up the interim report, and the evidence and submissions to the committee, on the Statutes Amendment (WorkCover Governance Reform) Bill and the Occupational Health, Safety and Welfare (SafeWork SA) Amendment Bill.

Report received.

McBRIDE, Mr S.W.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a ministerial statement in relation to the application for parole by Stephen Wayne McBride made today by the Premier.

WORKCOVER

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a ministerial statement in relation to WorkCover made by the Minister for Transport, the Hon. Michael Wright MP.

QUESTION TIME

MINTABIE

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Mintabie opal mining lease.

Leave granted.

The Hon. R.D. LAWSON: Members may be aware that in the Anangu Pitjantjatjara lands there is an excision of land for the purposes of the Mintabie lease. That excision enabled opal mining to continue at Mintabie under a lease arrangement which has now expired. For some time, Anangu people have been concerned about operations that occur at Mintabie; and in particular, the Iwantja community of Indulkana has been concerned about many of the ill-effects of Mintabie. The community writes:

This community is in the front line of combating the problems that Mintabie has brought to the region.

There can be no doubt that alcoholism has increased dramatically on the lands since Mintabie has allowed the sale of alcohol to people in the area. Many will argue that the sale to Anangu is banned and does not happen but this has been proved incorrect many times and is noted by the Marla police.

Additionally the sale of sly grog has been a problem for some time as well. People who live at Mintabie and also others who visit without permits sell alcohol to Anangu all the time.

In recent times the selling of marijuana has increased to an epidemic, this leaves families with less money to spend on food and clothes and has an added effect on those who drink or abuse petrol, in that they enter into a psychotic state that in many cases has led to violence and even deaths through murder.

Further some people have been deliberately selling petrol to Anangu for the purpose of sniffing.

Pornographic magazines are just another example of the trade that is unwelcome in the area and is readily available through Mintabie as well.

Traditional owners are aware that they receive no payments for the country that has been decimated by the works at Mintabie, nor do any of the surrounding Anangu people or communities receive anything but problems from the existing operations.

The Iwantja community was desirous of extending the Mintabie lease for a short period, and only to allow bona fide miners the right to continue mining, while they camp on their mine sites. The Iwantja community was of the view that all others who are not at the site for mining should move on as the intent has always been for the area to be used as a mining site and not a community-in-development. It has recently come to my attention that a business in Mintabie, which has been holding keycards for a number of Anangu people against which store purchases are booked, is writing letters to Anangu people threatening legal action against them. My questions to the minister are:

1. Will he confirm that the term of the Mintabie lease has expired and that the terms of a new lease have not yet been finalised?

2. Why has the finalisation of the lease taken as long as it has?

3. When will this matter be resolved?

4. What steps is he taking to ensure that the concerns of the Iwantja community, and others, about this matter are appropriately addressed?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his important questions about the wellbeing of the Anangu lands, in particular, the geographic region that is in close proximity to Mintabie. For many years, the Mintabie community has been the focus of the attention of the Indulkana community because of the many problems that the Indulkana community sees as emanating from the Mintabie community. There have been many police operations in the lands, concentrated on Mintabie, to try to deal with some of the accusations which come from the Indulkana community concerning Mintabie. I am sure that, from time to time, some of those accusations have strong foundations.

The situation with the Mintabie community is that there is sly grog and marijuana. I understand from information given to me when we were in opposition and then going into government that it is not only the Mintabie community that is being accused of undermining the strength of some of the other communities that try to keep free of sly-grog, marijuana and other drugs. It was a problem affecting the whole lands from entry points in the north-west and the Northern Territory.

There have been accusations levelled at certain individuals and groups associated with the movement of sly grog and drugs within the community. It has been well established that those circumstances do exist. The circumstance we found when we came into government was, as the honourable member has described generally, that there were accusations being made and there were also people who were known to be involved in these activities. Police have cracked down on some of those activities, where they have been discovered.

I am sure there is more to be done about clearing out those people who unscrupulously exploit the people within the lands, including by the illegal use of key cards to take funds from bank accounts, without permission in many cases. In some cases, the key cards are handed over for petrol, car repairs and food. When the key card runs down or has no funds left in it, those people, in the past, have gone without food because they have not had any money. That is the nature of the poverty of those people who live in the lands: they have not had any money to buy food for either themselves or their children.

It is an abject failure on our part to have allowed a community in the north-west of our state to fall to such a low ebb. It has been the government's intention, working in a bi-partisan way with the opposition, to try to change the circumstances in which people up there live. The important first step that we initiated was to try to change aspects of governance to try to lead the governance that existed, that is, the AP executive, which is now the APY executive, to a form of local government so that partnerships could be developed with state and commonwealth governments to change those abject circumstances in which people find themselves.

They do not live in poverty: they live in abject poverty. Their health is not bad: it is absolutely diabolical. The circumstances are shocking and terrible. We have been reporting this situation to the parliament over some considerable time. A standing committee has been established to look at these issues. A select committee has also been established and is finalising its report, which will be tabled, hopefully, in the near future. The issues that the honourable member raises in relation to Mintabie and their direct influence within the community are accurate and have been described over a number of years. However, it is our belief that that is no reason to deny the extension of the Mintabie lease to the Mintabie community: they are two separate matters.

The issue of the accusations laid against the Mintabie community needs to be fixed using the due processes of law and order and vigilance at the government's disposal. The second issue is to arrange for the lease on grounds that are acceptable to the broader community. The negotiations have stalled on the conditions being requested and what the negotiators are prepared to accept as conditions on an extension of the lease. I am confident that there will be a finalisation of those negotiations within a reasonable time frame.

I understand the frustration of the Indulkana community and the honourable member which is inherent in the question. They have been going on for some considerable time, when the lease was being run down, and time is running out. Negotiations or discussions were put in place some considerable time ago—at least 12, if not 18, months ago. However, obviously there is some breakdown in those communications, and that needs to be changed.

I undertake to give an update in the form of a reply to those questions that the honourable member has placed on notice. I hope that, with the commonwealth COAG trial, with the funding that we have recently announced to the community and with the extra attention cross-agencies will put in, there will be a change in the circumstances in which all Anangu people live—not only those in close proximity to Mintabie. That will include those places that have declared themselves dry of sly grog and are ridding the community of marijuana that is being peddled into the remote regions. I understand that those who sell these sorts of drugs are now looking at selling some of the harder drugs in that community which, as I said, lives in abject circumstances that we hope to be able to change.

PLANT BREEDING

The Hon. CAROLINE SCHAEFER: As a general principle, does the Minister for Agriculture, Food and Fisheries agree that the main function of the plant breeding section of SARDI is to develop and release new varieties of plants for the betterment of agriculture generally and within this state in particular?

The PRESIDENT: That is asking for an opinion.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The plant breeding activities of the department as they relate to wheat are now incorporated into Australian Grain Technologies Limited, which is a company that is jointly owned by SARDI, the University of Adelaide and the Grains Research and Development Corporation. The major wheat breeding activities of the department have now been incorporated into that—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: That is plant breeding. AGT is a commercial company that was established early in the days of this government. It had been ongoing prior to the change of government. That work was finalised under this government. Other work was undertaken by SARDI in relation to some other crops, but the major effort of wheat breeding is now within AGT.

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question on plant breeding rights.

Leave granted.

The Hon. CAROLINE SCHAEFER: It has come to my notice that the *Plant Varieties Journal* of December 2000 released registration of an FEH germ plasm which if trialled successfully would lead to the commercial release of a sulphonyl-urea tolerant medic—nothing to do with wheat. Such a medic would be invaluable for pastoralists and farmers in South Australia, particularly those with alkaline soil where nitrogen fixing is difficult. My understanding is that, under regulation, trials must take place within 12 months of registration and, if successful, commercial release must take place within two years. Yet there has been no such release of this variety and no such publishing of trials, thereby excluding farmers from accessing this new technology and also preventing commercial plant breeders from such access. My questions are:

1. Was an extension of time for trial and release sought by SARDI? If so, on what grounds?

2. Does the minister consider that withholding of such intellectual property is in breach of the Plant Breeder's Rights Act?

3. Has anyone briefed the minister on this matter?

4. Can the minister explain what appears to be a deliberate breach of the law by a section of his department?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The honourable member is making some pretty serious accusations.

The Hon. A.J. Redford: That's what she said!

The Hon. P. HOLLOWAY: That's right. It therefore warrants a considered response and I will ensure those allegations are examined.

CAULERPA TAXIFOLIA

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

Leave granted.

The Hon. CARMEL ZOLLO: As all members would know, the state government has been undertaking an eradication program in West Lakes aimed at Caulerpa taxifolia. What is the status of this project at this time?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The government is optimistic that the fresh water that has been pumped into West Lakes since July has killed most if not all of the Caulerpa taxifolia within West Lakes. Under the modelling that has been used, the salinity tests, which show that the salinity for the lake is at 10 parts per thousand or below, indicate that at least 92 per cent of the weed has been destroyed. However, we hope and believe that it would be considerably more than the modelling has suggested. When remnants of Caulerpa taxifolia have been taken to the laboratory and attempts have been made to regrow them under ideal conditions, there has been no regrowth of Caulerpa taxifolia on any sample taken from the lake since mid September, which gives us significant confidence. Conclusive results will depend on further dive surveys in autumn after the lake has been returned to salt water. Visibility in West Lakes is very low, making it impossible for divers to make a full visual assessment of the project at this stage.

As well as salinity and water quality, one of the key tests involves gathering the remains of the weed throughout the program and trying to regrow it in laboratory conditions. The most recent tests to regenerate the weed in culture have failed, indicating there is no viable weed left in the areas sampled. One of the biggest threats posed by Caulerpa taxifolia is that even the smallest fragments can regenerate after 10 days or so out of the water. So, it is significant to reach a stage where we cannot regrow the algal material in the laboratory.

While we cannot absolutely guarantee that Caulerpa taxifolia has been completely eradicated from West Lakes, every indication that we have suggests that the eradication program has been successful. The West Lakes Caulerpa taxifolia eradication program will cease as planned at the end of November. Barges positioned on West Lakes will be moved to deeper areas of the lake to mix water over the next two weeks to ensure that the deepest areas of the lake are exposed to fresh water prior to the program ending in a fortnight. The seaward gates will open on Monday 1 December 2003 and it is planned that all activities, including fishing and boating, will recommence in West Lakes from Monday 15 December 2003. However, fishing in the upper Port River from the Jervois Bridge will remain banned.

The reason for that is that, as the freshwater is released from West Lakes down the Port River, we are endeavouring to temporarily hold that fresh water for as long as we can in the Port River between West Lakes and just north of the Jervois Bridge to reduce the area of weed in the upper Port River. It may be possible to consider covering the remaining areas of the Port River with black plastic or salt to eradicate Caulerpa taxifolia from the waterway. Any remaining patches of Caulerpa taxifolia in the Port River should be affected by that release of the fresh water.

More surveys will be undertaken throughout the Port River and Barker Inlet systems to ensure that the weed has

not escaped beyond its known limits. Certainly to date the indications are that the treatment program has been as successful as we could possibly have hoped, and that objective has been achieved without any problems to date of any odour and has taken place with minimal inconvenience to the residents of West Lakes. Some public meetings have been announced and local residents in the vicinity of West Lakes have been advised about those briefing meetings.

BLACK LEG DISEASE

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about black leg disease in canola crops.

Leave granted.

The Hon. IAN GILFILLAN: A week or so ago Mr Joe Dahletz, a farmer of Cummins, indicated through the media that there were massive losses in Eyre Peninsula of canola crops from black leg disease. In this morning's ABC report through radio station 639, Mr David Strong, Canola Business Manager for Pacific Seeds, commenting on calls by Joe Dahletz, farmer, of Cummins, for compensation for massive losses in some Eyre Peninsula canola crops, stated:

> The disease black leg has devastated many crops and is blamed on a seed producer Pacific Seeds, knowingly selling seed that had suffered a genetic breakdown, giving it susceptibility to the disease.

Mr Strong's response is not significant to my question but is there for those members who wish to pick it up. However, he finishes, as reported by the ABC, with a comment arguing that they had done all they could, as follows:

> From our point of view we abide by the Canola Association's guidelines of not planting within 500 metres of last year's crop, but that is one step you can take to reduce outbreaks of black leg. Asked about compensation, the association said it would have to know details to comment.

My questions to the minister are:

1. Does he believe that a company (and he does not have to comment specifically on this case) selling seed purportedly to be a genuine, disease-free article is responsible for the product and does the responsibility extend to any legal liability that may occur from failure to abide by the prescription for the product and, if so, would he consider that that would also embrace those companies which may be selling genetically engineered seed?

2. In light of Mr Strong of Pacific Seeds saying that they abide by the canola association's guidelines of not planting within 500 metres, does he recognise that that is at odds with the genetic regulator prescribing for the commercial release of canola that a five metre buffer is adequate between genetically engineered and non-genetically engineered canola crops?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): There are a number of issues wrapped up in that question. I have received advice that a new strain of the disease black leg has devastated canola crop yields on Eyre Peninsula. I believe that crop losses are up to 80 to 90 per cent of production in individual paddocks. It is estimated that canola production on Eyre Peninsula has been reduced by 50 000 tonnes with a farm gate value of $20 million. My advice is that the black leg strain affects only Pacific Seeds canola varieties and has resulted in the breakdown of the black leg resistance in these varieties. The vast majority of canola sowings on Eyre Peninsula are to Pacific Seeds canola varieties. The affected varieties include Hyola 60, Hyola 43, Surpass 603 CL, Surpass 501 TT, Surpass 400, Surpass 404 CL and Surpass 402 CL.

I am advised that the new black leg strain was first detected on a property on Eyre Peninsula in 2002. A recent survey has shown that the disease has spread 100 kilometres from the original detection site on Eyre Peninsula. I guess that gets back to some of the information raised in the honourable member's question, which I will come to in a moment. In the early 1990s, Brassica sylvestris was identified as being highly resistant to the black leg fungus. This resistance was successfully incorporated into canola, resulting in an almost immune response to black leg. After further breeding, Pacific Seeds subsequently released a series of varieties for the Australian market.

Adoption of these varieties by Australian growers has led to substantially reduced yield losses associated with black leg. It now appears that the fungus has overcome this resistance in at least three geographically isolated regions, and possibly more. Although there are several possible ways that the fungus can overcome the resistance, it is probable that the virulent black leg strains were always present and have built up to a high frequency after varieties with the Brassica sylvestris resistance were grown. I am advised that the new strain of black leg has also been detected at Bordertown, Lake Bolac and Horsham. Further survey work is expected to show the disease is also present in other canola growing areas across southern Australia. It would appear from the advice that I have that the—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: The honourable member asked questions about legal liability, which ultimately are matters for the court and individual growers and those that supply them seed. I think the honourable member in his question somewhat confused the issue of selling seed that is professed to be disease free and seed that is disease resistant. There are two different issues involved there, and I would not want to get into the legal issues in relation to that. I have said sufficient to say there is a difference between seed that is sold as 'disease free' and seed that is sold as 'disease resistant'. It is more the conditions under which this particular black leg disease can grow and flourish within the relevant regions of Australia. It is quite obvious that the somewhat moister conditions and cooler season we have had this year have been conducive to the spread of this disease.

The honourable member in his question made a comparison with GM issues, in particular the quarantine area for genetically modified seed. The spread of a disease is a completely different issue from the spread of pollen—which is the issue being debated by the community in relation to any cross-contamination of GM and non-GM crops. In this case, we are talking about other vectors that may spread disease. I think the issues are really somewhat different. In relation to the honourable member's question on legal liability, I repeat that that is really a matter between the companies that supply these seeds and the individual farmers and, obviously, ultimately for the courts.

SURVEILLANCE CAMERAS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Attorney-General, questions regarding the use of surveillance cameras in Adelaide city.

Leave granted.

The Hon. T.G. CAMERON: A recent *Advertiser* article reported that over 250 security cameras are now operating in the Adelaide city square mile to manage crime prevention. This includes 34 operated by Adelaide City Council, 76 by the Passenger Transport Board and 196 by TransAdelaide. Incidents caught by the cameras over the past 12 months include 200 disturbances, 54 assaults, 33 instances of property damage, 76 cases of intoxication, 15 instances of people with health problems and 29 shop stealing offences. Ambulance officers were also called on 28 occasions, whilst the fire service attended six incidents after alerts by Police Security Service monitors. In fact, the cameras are so powerful that a numberplate can be clearly seen from 100 metres away.

Whilst I support the use of the cameras to assist the better operation of our emergency services, I have some concerns about their indiscriminate use, that is, the civil liberties implications, such as who has access to the images these cameras pick up and what restraints are placed on their use. There have been instances in the past of operators using surveillance cameras improperly. My questions are:

1. What controls are currently in place to cover the use of surveillance cameras being operated in the city?

2. Is there a code of conduct for their use and, if so, could a copy be made available to my office?

3. What protection does an innocent member of the public have against improper or indiscriminate use of their image caught by these cameras?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): As the minister representing the Attorney-General, I will take that question on notice. If other agencies are involved, we will get a response from them as well.

YOUTH COUNCIL

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Youth, a question regarding youth organisations.

Leave granted.

The Hon. J.M.A. LENSINK: The minister's Youth Council is an organisation composed of 14 young people aged between 12 and 25 for the purpose of providing advice to the Minister for Youth. The government's youth portal advises that the minister's Youth Council enables young South Australians to have an opportunity to participate in government decision making and the planning, development and implementation of relevant policies and programs.

Members of the minister's Youth Council sit on the council independently and are not representatives or delegates of specific groups or agencies. They are selected on their ability to represent the views of their peers to the government. The council seeks to have its membership based on a mix of young people of various ages and life experiences. Local government also has its own structure of youth advisory committees (YAC). Since September 2001, 67 have been set up across the state and provide those involved with the opportunity to gain valuable skills in areas such as communication, advocacy and leadership. My questions are:

1. What are the criteria for the selection of members of the minister's Youth Council?

2. How many people applied for positions on the council in the last round?

3. Are any of the current members of the council members of political organisations and, if so, which members and to which parties do they belong?

4. How does the minister guarantee the independence of the council's advice when the chair is a Young Labor identity?

5. Can the minister confirm the rumour that certain members of the council attend meetings of YAC with a view to recruiting new members to Young Labor and poaching ideas to implement under the badge of the minister's Youth Council?

6. Is there a statutory link between the minister's Youth Council and the youth advisory councils? If not, under what authority would council members involve themselves in the affairs of YAC?

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

HOME OWNERSHIP

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Primary Industries, representing the Premier, a question about home ownership.

Leave granted.

The Hon. A.J. REDFORD: Last month I asked a series of questions of the Minister for Infrastructure regarding housing affordability and, in particular, what policies the government has in relation to making housing more affordable, and the priorities of the Land Management Corporation. To date, I have not received any answers. The Land Management Corporation's charter, signed off by the Hon. Robert Lucas, is, amongst other things, designed to 'create economic, environmental and social benefits'. I stress social benefits concerning land. Further, the government has put two submissions to the Productivity Commission on housing affordability. The first by the Under Treasurer and the second a more formal one. In its submission, the government's report states 'the government is expected to have in place strategies to assist in affordable housing'. It goes on: 'There is ample time for these opportunities to be investigated.' Further, it indicates that the first home owner's grant should be scrapped or substantially modified and that the cost of stamp duty should not be reduced because it is likely to be capitalised into home values.

On page 15 it says that South Australia has a better than national average in the ratio of family income needed to meet an average loan repayment, ignoring the actual dollars or disposable income available after payment of these expenses. It also says that we should focus on rental housing despite noting, on page 17 of the report, that there has been a significant decline in home ownership in this state. Indeed, the submission notes that new home ownership has declined substantially over the last 18 months. Finally, it notes that there is ample land available for future housing and states that land will be available for development by the private sector, either as a public private partnership or solely by the private sector—or privatisation as we know it on this side of the chamber. From pages 44 to 45 of the report, it talks about taxation and the state costs of developing land. I would recommend that all members read it. In the light of that, my questions are:

1. When will the government tell me what its policies are concerning making houses more affordable in South Australia?

2. When will the government have some strategies to assist in affordable housing?

3. Why is there 'ample time' to investigate opportunities? What is meant by the term 'ample time'?

4. Why is it suggested that first home owner grants affect housing prices and stamp duty does not?

5. Why does the report talk about the ratio of family income required to meet a mortgage rather than disposable income and South Australian home owners' capacity to meet payments if interest rates rise?

6. Why has new home ownership declined over the last 18 months? What is the government going to do to help the young and the dispossessed?

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: I know you are not interested in this, but I am.

The Hon. R.K. Sneath interjecting:

The Hon. A.J. REDFORD: Well, if I had received answers then you would not have to worry about it.

7. Why will the government not fast-track the release of Land Management Corporation land?

I find it disappointing that the honourable member has no interest in this.

The PRESIDENT: There were a series of questions there and it was getting very long. Then again, it has happened in a number of other cases today. Explanations have been extremely long today, but the answers have been even longer. I ask all members to concentrate their minds on succinct explanations and even more succinct answers.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): There was a number of questions asked there of a number of different ministers for which I will get responses. In relation to the honourable member's questions asked previously in this council, I have recently signed off on an answer, so he should receive that through the system very shortly. I think that answer, and those to supplementary questions asked by the Hon. Julian Stefani in relation to stamp duty, are ones which the council will find very interesting. In talking about housing affordability, it is at levels which would concern all Australians.

I find it rather incredible that the Governor of the Reserve Bank, of all people, should be expressing concern about intergenerational equity in respect of housing issues. The federal government, which is largely responsible, has not said a word. It is incredible that the Governor of this bank, of all people, should be making comments about such fundamental issues as equity between generations in the country.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Well, the primary responsibility obviously lies with the federal government. I will refer the questions about those matters to the minister. It is remarkable that the Governor of the Reserve Bank should be making these statements.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I am pleased that the Hon. Mr Redford acknowledges that the Governor of the Reserve Bank is right and I hope he can persuade his federal colleagues of that.

CORRECTIONAL SERVICES, MOBILE OUTBACK WORK CAMPS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about mobile outback work camps.

Leave granted.

The Hon. R.K. SNEATH: I am aware that groups of prisoners from Port Augusta have been involved in mobile outback work camps over the past few years, providing significant benefits to areas such as the Coorong in the South-East of the state.

The Hon. Caroline Schaefer interjecting:

The Hon. R.K. SNEATH: Obviously you should have been taught by the member for Unley for a while. His yardstick would have stopped you from interjecting. My question is: can the minister give details of any knowledge he has of the important work that prisoners are doing in South Australia's world famous Coorong?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question and his on-going commitment to all matters in the regional areas. I know he has a personal love for the Coorong, travelling to and from the South-East. Last week I had the pleasure of visiting the Coorong and saw the work being done by the mobile outback camps. In this case, the work being done was of a general nature in building up infrastructure support for tourism and making sure that the cleaning and maintenance programs were put together inside the parks to accommodate the growing number of tourists to the Coorong. The mobile outback work camps and the staff have built walk-ways and walking trails and have removed tonnes of noxious weeds and bushes.

An honourable member interjecting:

The Hon. T.G. ROBERTS: They did a lot of good work at Glengowrie. They are doing a lot of work in environmental protection by removing noxious weeds and trying to build walking trails and board walks in order to direct traffic away from many of the sensitive areas within the Coorong. I commend some of the National Parks officers who have had to deal with many of the protection issues over a long period of time, without support and assistance and who have to confront, in a lot of cases, alcohol affected people who camp in the Coorong and to ask them to behave in a responsible manner. The partnerships drawn between the prisoners and National Parks are commendable. The specific works in progress which I saw were the walking trails, parking areas and a viewing area at Jack's Point, which allows you to view at any time of the day or evening—particularly early in the morning—birds of all varieties at almost hand's length to the viewer.

An honourable member interjecting:

The Hon. T.G. ROBERTS: The honourable member interjects, but I will not repeat his interjection. The birds are of serious interest to most birdwatchers—and I am sure that there is a recipe for most of them! The departmental cooperation with National Parks and Wildlife that is occurring across the board is to be commended. A lot more good work is being done and could be done. As I have reported to the council on other occasions, we are looking at ways of using prisoner services in a constructive way—to break the boredom and to build up mentoring and leadership amongst prisoners within the present system—so that, when they leave, they have some skills that will make them presentable when they make application for employment in the community.

It is difficult enough to have the stigma of having been in prison when approaching an employer for employment. However, if you are unskilled, you do not have much of a chance. The cycle of unemployment, poverty and return to

prison is well known. In this case, we are trying to break that cycle.

TAFE FEES

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Employment, Training and Further Education, a question about TAFE fees.

Leave granted.

The Hon. KATE REYNOLDS: The 2003-04 state budget indicates an increase of 50¢ per hour in apprentice and trainee fees at TAFE institutes. This equates to a 50 per cent increase and results in a fee hike from approximately $320 per year to $480 per year. This rise of $160 impacts greatly on apprentices, whose wages are amongst the lowest of all workers. For example, a first-year electrical apprentice earns between $232 and $295 per week and is expected to purchase textbooks and learning equipment costing as much as $400 each year. Coupled with the up-front training fees, this means that apprentices must find well over $700 before they start their apprenticeship and even before they have purchased tools.

Whilst some employers view training as an investment and not a cost, apprentices are responsible for their trade school fees, unless otherwise stated in the relevant award. Many of the employers who pay fees reimburse on successful completion, which means that apprentices still have to find the initial $480. Despite the fact that there is a shortfall in tradespeople, the education sector fears that access for young people wishing to learn a trade will, as with university education for poorer families, become even harder. My questions are:

1. What was the reasoning behind the government's decision to increase fees by 50 per cent?

2. What consultation was undertaken with the training sector and student bodies before this decision was made?

3. What options are available for apprentices and trainees who are unable to pay the fees up front?

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

FLINDERS MEDICAL CENTRE

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Health, questions about the Flinders Medical Centre.

Leave granted.

The Hon. A.L. EVANS: Some time ago, I received letters from members of the community detailing their experience at the Flinders Medical Centre. Their concerns were not aimed at the staff; in fact, they had nothing but praise for the capacity of the doctors and nurses working under very difficult conditions. Their complaints were levelled at the lack of medical resources available at the Flinders Medical Centre. For instance, one of the letters detailed how the patient was asked to bring pillows from his home and that a nurse showed him a medicine cabinet—a cardboard box with a few drugs lumped together in a heap. He went on further to say that most of the drugs needed could not be scrounged from other medical sources. My questions are:

1. Will the minister advise whether the Flinders Medical Centre has enough medical supplies to meet patient demands across all departments?

2. Will the minister advise when the Flinders Medical Centre last conducted a review in hospital security and procedures regarding the care of patients admitted with pre-existing mental illness at the Flinders Medical Centre?

3. What was the outcome of the review?

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.

WATER SUPPLY, GLENDAMBO

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Correctional Services, representing the Minister for Industry, Trade and Regional Development, a question on the subject of the Glendambo water supply.

Leave granted.

The Hon. T.J. STEPHENS: It was recently reported in *The Advertiser* that the people of Glendambo are facing a water crisis. The town's water supply has been designed to cater for 25 residents and does not take into account the 400 buses, trucks and cars that travel through the town every day. Somewhere between 60 and 80 tourists stay there every night and use the town's water supply. The government has considered only the water needs of the 25 permanent residents. The minister was reported as saying recently that he will look at the situation. My questions are:

1. When will the minister look at the situation at Glendambo?

2. When can the people of Glendambo expect a suitable resolution?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question on the Glendambo water supply and indicate that I will pass that question on to the minister and bring back a reply. I also mention that a number of other communities in the northern outback region have a similar problem. In some cases it reflects the success of the passing trade, but that does nothing for the people who live there 52 weeks of the year. The growth in outback tourism is being restricted by our ability to provide enough fresh water for a wide range of human services, including drinking, and across agencies the government is starting to look at that.

Some work has been done in trying to put together programs that include using solar technology for water filtration or turning salt water into potable fresh water. Such programs are expensive but I suspect that, if the only water supply in an outback town is underground and it is not being replenished, that must be considered as an option. Trucking is one other option that outback communities look at. That is also an expensive way of providing water, but all of the difficulties that are now being experienced will have to be looked at by government to try to bring about solutions for those communities who have been doing it tough for some time. Alternatives need to be examined.

ECONOMIC DEVELOPMENT BOARD

The Hon. D.W. RIDGWAY: I seek leave to a make a brief explanation before asking the Minister for Agriculture,

Food and Fisheries, representing the Premier, a question on the Economic Development Board.

Leave granted.

The Hon. D.W. RIDGWAY: The May 2003 report of the Economic Development Board, entitled 'A Framework for Economic Development in South Australia', highlights the recommendations of the board, which were subsequently agreed to by the government. In particular, the EDB recommended that a whole of government state strategic plan be introduced to provide a basis for ensuring that agencies are all pulling in the same direction. The Economic Development Board's recommendation 22 proposes:

The government ensures that every chief executive has a performance agreement that:

(a) is agreed with the respective minister;

(b) reflects both portfolio and whole of government responsibilities;

(c) reflects priorities in the state strategic plan;

(d) requires effective management and development of resources, including people;

(e) is based on achieving agreed results; and

(f) is monitored and managed.

I draw the Legislative Council's attention to point (c) of recommendation 22, which states that the recommendation should reflect the priorities outlined in the state strategic plan. Recommendation 22 was given a time frame of 'short' by the EDB and ratified by the government. A short time frame is specified in the report as up to six months. However, the time frame specified for the implementation of the state strategic plan is 'medium' and the report describes a medium time frame as six to 12 months. A number of other recommendations rely on the implementation of the state strategic plan, namely, recommendations 65 and 69. Both recommendations are given a short time frame.

Recommendation 65 states that the Minister for Federal/State Relations ensure that strategic, coordinated and successful approaches are made to secure commonwealth funding in support of the state strategic plan; and recommendation 69 states that the government should establish an office of infrastructure to set up priorities between competing infrastructure needs in line with the state strategic plan, to ensure coordination between agencies and the development of agency proposals and private sector initiatives and adequate monitoring. All of these are very sensible proposals and should have been implemented by now, but due to the absence of the state strategic plan they have stalled. My questions to the minister are:

1. When will the Premier indicate when the strategic plan is likely to be completed?

2. Will the Premier provide details of why recommendations 22, 65 and 69 are classed as short-term goals when they clearly rely on the implementation of the state strategic plan?

3. Will the Premier clarify if the government has any intention of fulfilling these plans?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): As the honourable member suggested in his preamble, the government is committed to all but one of the recommendations of the Economic Development Board. My understanding is that a strategic plan is very close to being finalised. There have been some consultations I am aware of in that regard, but I will obtain a more considered reply from the Premier, who has responsibility for these matters.

GAWLER CENTRAL RAILWAY LINE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, a question about the Gawler Central railway line.

Leave granted.

The Hon. J.S.L. DAWKINS: Recently the *News Review Messenger* featured an article about an independent audit of stations on the Gawler Central railway line. The audit was carried out by the organisation called People for Public Transport (or PPT) at the instigation of Messenger newspapers. As someone who has frequently used and valued the Gawler line for a number of years, I was interested to read the front page article and the associated summary of the ratings of each station following the evaluation by the PPT representative. This was despite several negative headlines and subheadings such as 'Journey into the abyss', which would not encourage people to use the train service. Stations were graded out of 10 in six different categories for a total score out of 60. Categories were: appearance; maintenance and upkeep; security; lighting; car/bike parking; disability access; and facilities such as toilets, seats, food and ticketing. The highest rating stations included well patronised stops such as Salisbury, Elizabeth and Gawler, while the other end of the scale featured less frequented stations such as Kilburn, Kudla and Islington.

My personal experience in recent years is that there has been a marked increase in the patronage of evening trains on the Gawler central line since the decision of the previous government to ensure that all trains after 7 p.m. are staffed by both a passenger assistance officer and a security officer. However, the PPT audit indicates that the lighting and security standards at a number of stations on the Gawler central line do not match the increased patronage of trains after dark. My questions are:

1. Will the minister indicate what plans are in place to improve the lighting and security at stations such as Dudley Park, Nurlutta, Elizabeth South, Broadmeadows, Munno Para, Kudla and others?

2. Will the minister indicate what plans are in place to improve disability access to a number of stations?

3. Which stations on the Gawler central line have been set aside as declared areas to restrict access to rail users only?

4. Will the minister indicate why all railway stations are not declared areas for the use of public transport passengers only?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his important questions, and I commend him for using public transport frequently, as he mentioned. As he has observed, there are more people using vehicles in the evening. The flexibility of working hours is one question which governments must connect to better public transport. The security issues to which the member referred are also connected to the flexibility of working hours and shopping, particularly where young women are involved as a result of the changes to working hours. If these issues are not fixed, the number of people using public transport will not increase. So, it is the government's responsibility to ensure that this happens. I will pass those questions on to the minister in another place and bring back a reply.

REPLIES TO QUESTIONS

GOVERNMENT PROMISES

In reply to **Hon. R.I. LUCAS** (22 September).

In reply to **Hon. NICK XENOPHON** (22 September).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

In keeping with its pre-election commitment, the Government referred the issue of how to reduce homelessness to the Social Inclusion Board.

The Social Inclusion Board reported to the Government in July. The Social Inclusion Board report and the Government's response are both publicly available.

The Government relied upon homelessness data from the Australian Bureau of Statistics in developing its election policies.

The Australian Bureau of Statistics counted 6 837 homeless people in 1996 and broke this population down into three groups:

1. 734 people without conventional accommodation, such as people living on the streets, sleeping in parks, squats, cars or makeshift shelter
2. 4 771 people who move frequently between various forms of temporary shelter e.g. friends, emergency accommodation, hostels and boarding houses
3. 1 332 people who live in single or shared rooms in private boarding or rooming houses – without their own bathroom, kitchen or security of tenure – on a medium to long term basis.

The Australian Bureau of Statistics count of 734 people 'sleeping rough' is a point in time measure. That is, it is a count of the number of people 'sleeping rough' on a single night.

In response to the report by the Social Inclusion Board, the Government has announced funding of $12 million over four years to reduce homelessness across all three groups.

The Government's initiatives focus not only on dealing with the needs of those who are homeless, but also on preventing homelessness among those known to be at immediate risk of becoming homeless. They focus on young people and families without a home of their own who move between various forms of temporary shelter.

Each of the three segments of the homeless population has its own disadvantages and risks. The Social Inclusion Board recommended that 'rough sleeping' homelessness should be given particular attention in the context of an overall goal to assist people out of homelessness (Social Inclusion Board report: Everyone's Responsibility: Reducing Homelessness in South Australia, 2003).

The Social Inclusion Board has identified people sleeping rough as the first priority in terms of any effort to reduce homelessness overall. The Government has accepted this advice. This is reflected in the Premier's comments and the Governor's speech, referred to by the Leader of the Opposition in his question.

The overall homelessness problem that the government is committed to address became entrenched because of a failure of Commonwealth housing policy. The net effect decreased housing affordability; a decrease in the supply of low cost rental properties; and significant reductions in public housing stocks.

The Government remains committed to reducing homelessness, with a 50 per cent reduction in the numbers of people 'sleeping rough' as the first priority.

SCHOOLS, SAFETY

In reply to **Hon. A.J. REDFORD** (23 September).

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

The sensationalist claims made by the honourable Member and repeated through Press Release and media comment by the Member for Bragg have been exposed as inaccurate and mischievous.

The claim that 'the number of ex-gratia payments [to staff] has gone up approximately 250 percent' for the period December 2002-August 2003 compared to the period March 2002-November 2002 is incorrect.

For a start, as clearly listed in the table provided to the Opposition, the total ex-gratia payments for the Department of Education and Children's Services to any of its 24 140 employees between March 2002 and August 2003 is only $4825.26. Almost half of this amount, $2179.56, was for payments for damage to possessions arising from the Salisbury bus-train accident and the Nuriootpa High School bus crash.

Indeed in the December 2002-August 2003 period there were fewer, not more, payments as alleged by the honourable Members. The particular example given by the Opposition spokesperson as evidence of violent incidents was a payment of $346 to a teacher on yard duty who had her glasses smashed. The incident was rather the result of a mishap with a soccer ball.

The Government is acting to make these payments to ensure that teachers are reimbursed when there are accidents, which do occur in schools.

As indicated in a recent media release from the Minister for Education and Children's Services, this Government takes the subject of school security and safety very seriously.

A bill will be introduced to Parliament shortly establishing tougher penalties for numerous offences against teachers. Violent criminals caught targeting teachers could be jailed for up to 25 years under these new laws. Through these tough new laws together with new regulations to allow for troublemakers to be evicted and banned from school sites, the State Government is sending a strong message that violent incidents in schools will not be tolerated.

This is in addition to the extra $1 million a year over 4 years, which this Government is spending to make our schools safer in terms of school security.

MINISTERIAL CODE OF CONDUCT

In reply to **Hon. A.J. REDFORD** (23 October).

The Hon. P. HOLLOWAY:

1. Yes, the Minister signed a Chief Executive Performance Agreement with the Chief Executive of PIRSA on 7 February 2003 for the period 1 July 2002 to 30 June 2003. The Minister for Energy is also a signatory to the same Chief Executive Performance Agreement as the Chief Executive of PIRSA has a dual reporting role to both Ministers.

2. The above mentioned performance agreement between the Minister for Agriculture, Food and Fisheries, the Minister for Energy and the Chief Executive of PIRSA sets out the objectives and expectations for the Chief Executive's performance and provides a basis for the Ministers' assessment of the Chief Executive's performance.

Mr Hallion has provided a self-assessment Achievement Report of his performance agreement for the 2002-03 financial year to the Minister for Agriculture, Food and Fisheries on 1 August 2003.

In addition, a weekly meeting is scheduled between the Minister for Agriculture, Food and Fisheries, and Minister for Mineral Resources Development with the Chief Executive, Executive Directors and relevant senior officers of PIRSA to discuss policy issues and provide directive and guidance on the whole range of portfolio matters.

3. The minister has signed a document evidencing priorities, directions, targets and expected levels of performance and evaluation of performance, as outlined above.

4. There has been no breach of the Ministerial Code of Conduct.

HOMELESSNESS AND SCHOOL RETENTION

In reply to **Hon. KATE REYNOLDS** (24 September).

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

1. Tracking students is a device to support attendance strategy and school retention goals. The Department of Education and Children's Services is currently investigating the feasibility of introducing a new method of data collection from schools, which would facilitate the transfer of a unique student identifier between schools when a student transfers. This would enhance the capacity of the current system to monitor and track student destinations and benefit students at risk, particularly transient students.

This Project will also develop agreed cross agency indicators for programs to support young people to stay at school and improve practices for the exchange of data about students between government departments.

2. The government already allocates significant additional resources to schools with high numbers of disadvantaged students through the Index of Disadvantage. Student mobility is a significant factor within the Index, along with parental income, parental education and occupation, and Aboriginality. Through the Index, schools with high levels of disadvantaged students receive extra funding annually.

Highly disadvantaged schools, with significant numbers of transient students, also attract extra resources, including junior primary salaries, student counsellors and School Card salaries.

Schools have the capacity to allocate these resources to areas of greatest need, including supporting transient and homeless students in relation to literacy and numeracy, which is a major government priority.

Recently, eighty teacher mentors have been appointed to each assist ten students at risk of leaving school early, for a variety of reasons, in their learning and in their transition to training and employment pathways beyond school.

3. Homelessness is highly correlated with socio-economic disadvantage and can be a cause of interrupted schooling. However, homelessness is not necessarily associated with literacy and numeracy problems, nor can such problems be met with a standardised response.

Where students are disadvantaged in their literacy and numeracy learning due to transience and homelessness, new District-based Learning Band Coordinators and Student Inclusion and Well Being Coordinators will support the development of seamless services to support a local focus on the curriculum needs of transient and homeless students.

In addition, the 1998 Department publication, Student Transience; moving frequently between schools in South Australia, provides schools with strategies to address the issues that arise from transience, including discontinuity in relation to learning.

Finally, the Learning Difficulties Support Team is a responsive service providing assistance to teachers, students and their families. This enables schools to address the particular needs of all students at risk in their literacy learning.

SCHOOLS, SAFETY

In reply to **Hon. J.F. STEFANI** (23 September).

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

DECS records the number of employees who have taken sick leave. However, to meet legislative requirements to protect the privacy of individuals, DECS does not record the reasons for this sick leave being taken. Therefore, information on the numbers of employees taking sick leave due to 'stress' cannot be provided.

In 2002-03, there were 17 claims from DECS staff being injured through physical contact with a student, which resulted in lost work time.

This is broadly consistent with previous years. There were 15 claims resulting from lost time in 2001-02 and 19 in 2000-01.

In 2002-03 the cost of all claims resulting from DECS staff being injured through physical contact with a student, which resulted in lost work time, was $61 364.'

GEOSEQUESTRATION

In reply to **Hon. J.F. STEFANI** (14 October).

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

The Electricity Supply Industry Planning Council's Annual Planning Report released in June 2003 forecasts customer sales and electricity sent out to the year 2012-13. During the interval 2001-02 to 2012-13 final customer sales of electricity are anticipated to grow at 2.75 per cent per annum. Extrapolating that data and assuming this rate of growth continues to 2023-24 then in 20 years customer sales would be about 20 268 gigawatt hours (GWh), up from 11 254 GWh in 2001-02.

In response to the question regarding carbon dioxide emissions assuming different energy sources, brown coal electricity generation has, according to the Efficiency Standards for Power Generation Working Group Final Report February 2002, an emissions factor of 1.220 kg $CO_{2\text{-}e}$ per KWh sent out and combined cycle gas has an emissions factor of 0.451 kg $CO_{2\text{-}e}$ per KWh.

Accordingly, if all of the additional electricity for the period was sourced from brown coal fired generators the additional CO_2 would be 11 million tonnes. If all of the additional electricity for the period was sourced from gas fired combined cycle generators the additional CO_2 would be 4.1 million tonnes.

SUPREME COURT COSTS

In reply to **Hon. J.F. STEFANI** (23 September).

In reply to **Hon. NICK XENOPHON** (23 September).

The Hon. P. HOLLOWAY: The Attorney-General has provided the following information:

1. Provided that the transcript is available in a suitable format or is capable of conversion then it would be technically possible to publish transcript on the internet. It will cost money and time to publish transcript on the internet. Other matters to be considered are suppression orders and service charging.

2. The Courts Administration Authority has estimated that $1 235 000 will be collected from the sale of transcripts for 2003-04. During 2001-02 collections totalled $965 000, while collections for 2002-03 totalled $1 278 000, which included an increase in the fee of $0.30 from $4.70 per page to $5 from 1 July, 2002. The fee, which is based on the cost of producing a page of transcript, was not increased in the annual CPI fee increase process on 1 July, 2003, and remains at $5 per page. The revenue received is not retained by the CAA but is paid into Consolidated Revenue.

The reference to the cost of a page of transcript being $10 is about situations where the transcript is not required by the court and therefore is not produced at the time the matter is heard. This situation is unlikely within the Supreme Court jurisdiction, however, without further information about to this particular matter it is not possible to explain why a fee of $10 per page has been quoted.

3. Litigants are generally not informed of the cost of transcript until they request a copy. The request for transcript is made in writing, either by letter or by a requisition form. When making the inquiry, i.e. the provision of transcript, the party is informed of the actual cost per page. The total cost would not be known until after the end of the trial. A party requesting transcript is required to acknowledge that he undertakes to pay the fees as prescribed.

Should a party indicate he cannot afford the cost of transcript then he is told how he may apply for a remission of fees. The request is in the form of an application, usually to a Master, who considers each application on its merits.

It has been held in the Supreme Court that the Court has no general discretion to waive fees set down by regulation. A waiver should be made only where it is demonstrated that there is an inability, and not merely a hardship, to pay the fees and there is some special reason why the order should be made [See King—v- State of SA (SC(SA), Bleby J Judgment No S6620, 9 April, 1998, unreported].

ADELAIDE HILLS, BURN-OFFS

In reply to **Hon. T.G. CAMERON** (14 October).

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

In responding to these questions I have consulted with the S.A. Country Fire Service and the Department for Environment and Heritage. As you will be aware, one of the key initiatives identified by the Premier's Bushfire Summit earlier this year, was the requirement for a multi agency and broad scale review of fuel management issues across the high bushfire prone areas in South Australia. This initiative must necessarily include a wide range of fuel management solutions on both public and privately owned lands.

One of the solutions identified is fuel reduction burning to be undertaken on both publicly and privately managed lands in the Mount Lofty Ranges. While this approach has been identified as a key priority, fuel reduction burning is simply one of a number of tools available to landowners and land management agencies to assist them manage the bushfire issues on their land.

In respect to your question regarding fuel reduction burning on lands owned and managed by the Department for Environment and Heritage, it must be remembered that over the past 10-15 years this Department has lost many of the skills (both in the planning and conduct of burns) and appropriate processes to undertake broad-scale fuel reduction burns, particularly in the high risk urban interface zones in the Mount Lofty Ranges. The first priority of the Department is to build its capacity together with the S.A. Country Fire Service and other land management agencies in the planning, managing and safe conduct of fuel reduction burns. Failure to adequately plan, organise and conduct fuel reduction burns through the hasty adoption of inappropriate land management practices, may result in increased risk to the public through fires escaping from poorly planned burn-offs. This Government is not prepared to place the community at any additional risk and therefore has provided additional resources to the Department for Environment and Heritage to enable them to build their capacity in this specialist area.

In regard to your question about the impending Fire Danger Season, as with many other issues in the field of Emergency Management, there is no guarantee that a major bushfire will not impact on the Mount Lofty Ranges at some stage during the summer months. The reality is that the Mount Lofty Ranges is one of the most bushfire prone areas in south-eastern Australia. As Minister for the Emergency Services, however, I am confident that responsible agencies are well prepared for the Fire Danger Season, indeed they have been working closely with land management agencies and the community to ensure a heightened level of preparedness for this Fire Danger Season.

PUBLIC SECTOR, REGIONAL RECRUITMENT

In reply to **Hon. J.S.L. DAWKINS** (14 October).

The Hon. P. HOLLOWAY: The Premier has provided the following information:

The Acting Commissioner for Public Employment advises that all vacant positions in regional areas are now advertised external to the Public Sector if there are unlikely to be suitable internal applicants.

I am advised that the Commissioner's Office and the Department of Human Services for Health Commission Act positions, continue to approve all external advertising of vacancies to ensure redeployment processes and the Government's advertising contract are followed. The Office for the Commissioner for Public Employment approval is generally given within 24 hours and enables concurrent advertising in the Public Sector Notice of Vacancies and appropriate media outlets. In some instances, external advertising occurs before the publication of the Notice of Vacancies to meet regional media publication time requirements.

OLIVE KNOT DISEASE

In reply to **Hon. J.S.L. DAWKINS** (23 October).

The Hon. P. HOLLOWAY:

1. The Department of Primary Industries and Resources (PIRSA) in association with the national Consultative Committee on Exotic Plant Pests and Diseases (CCEPPD) have made available two information documents for growers. These describe the symptoms of Olive Knot and a range of management practices that are designed to minimise both the entry of the disease onto properties and its subsequent spread once it is present. These information documents have been distributed widely through the national and state olive associations. The first of the information sheets was distributed in June this year with an updated document sent out in mid October.

The management practices that are outlined in these documents include such practices as minimising damage to trees, practicing good hygiene, avoiding excessive fertiliser application, not pruning during wet weather, summer pruning to remove galls, incineration of any infected material and the application of copper sprays in autumn and spring.

Growers have been asked to check their plantings and to report any suspect symptoms via a toll free number 1800 084 881.

The national Consultative Committee has established a management group that includes representatives from the Commonwealth and State Governments and the Olive Industry to further develop the range of recommended practices to control the disease. Additional information will be provided to growers when this process is completed.

2. In relation to the quarantine restrictions that have been placed upon the five South Australian properties, these have involved a direction to the owners to prevent the movement of potentially infected plant material from the properties that may spread the disease further. It should be noted however that, on the basis of the national Consultative Committee determination that the disease is not considered to be eradicable, these restrictions are to be removed. The Consultative Committee consider that if managed properly in accordance with suggested management practices, Olive Knot should have a minimal economic impact within Australia.

TEACHER NUMBERS

In reply to **Hon. KATE REYNOLDS** (10 July).

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

The recruitment and retention of teachers is not at crisis point. There are currently over 3000 teachers who have applications for employment with the Department and this number continues to increase. It is a matter of concern that in some regions and some subject areas, there are, on occasions, difficulty in filling positions. There are a range of strategies, including the Early Graduate Recruitment Scheme, conversion of contract teachers to permanency, Country Teacher Scholarships and improved incentives to teach in the country, being employed to address these issues. No one solution will provide the answer for every need.

The Office of People and Culture in DECS is focusing on the issues of workforce planning for teachers in our schools to meet immediate needs and the longer term needs of our public education system with reference to the changing demographics of the state, the age profile of the workforce and the developing curriculum needs of our schools. The department is working closely with Universities in describing workforce needs.

In addition, this Government has awarded recent teacher wage increases a 4.5 per cent increase in July 2002 and a 4 per cent increase in July 2003. This means that the State's graduate teachers, who undertake four years of training, are presently the highest paid in the nation.

The Minister does not agree that teachers in South Australia work in poor or dangerous conditions. Where there are occasions where conditions may be unsatisfactory, the department has strategies to support teachers, schools and students to address those particular circumstances.

There are a range of industrial incentives this government has implemented to make teaching in South Australia an attractive and rewarding career. The numbers of people applying for and undertaking teacher education courses continues to increase in South Australian Universities and the numbers applying for positions in our schools and pre-schools continues to increase. During the time of this government it has increased the numbers of teachers in Junior Primary Schools and increased the number of counsellors in Primary Schools. In 2004 there will be additional leadership time for both Primary and Pre-Schools at a cost of an additional $10 million per annum.

This government has already initiated a range of incentives for teachers to take positions in country schools. Last year this government reached agreement with the Australian Education Union on a Certified Agreement that included significant incentives for country teachers. The government put in place a Country Teacher Scholarships scheme to attract young people from the country to train as teachers and return to regional South Australia to teach. The department has continued to use the Early Graduate Recruitment program to attract well qualified undergraduates by offering them an early placement in the country and providing additional professional support to them during the final semester of their training course.

The Minister is supportive of the need to explore alternate pathways into the teaching profession, particularly for those already employed in peripatetic roles in schools and preschools.

The Department offers assistance to School Services Officers who are undertaking a teacher education course through a retraining support scheme. Ancillary staff, in country locations, are also eligible to apply for the Country Teaching Scholarships which provide a grant payment of $1250 per semester to recipients, up to a maximum of $10 000.

A Teacher Education University Liaison Group is currently exploring a range of issues relating to teacher education courses in South Australia. Representatives from the Recruitment Unit, Site Staffing Services, the Teachers Registration Board and Universities attend these meetings. Training pathways for ancillary staff including recognition of their skills and experience will be discussed at a meeting of this group in the near future.

The Minister supports the view that there is a need to recruit more indigenous educational workers with special training programs to be located in both remote and urban locations. The Recruitment Unit within the department has a commitment to supporting indigenous teachers in education training courses. In addition beginning permanent teachers are supported with additional resources in their first year of teaching. Every effort is made to both employ and mentor beginning aboriginal teachers, acknowledging that they represent a valuable resource in our educational community.

ABORIGINAL EDUCATION WORKERS

In reply to **Hon. KATE REYNOLDS** (13 May).

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

Aboriginal Education Workers (AEW's) engaged by the Department of Education and Children's Services (DECS), are not

being told by the department to enrol in a community development program to offset their DECS employment. Schools have been advised that DECS does not support AEW's on dual pay systems.

The criteria for permanency of employment for AEW's is based on a minimum of 15 hours employment per fortnight, continuous for three years. In developing policy and making offers of employment, the department has been mindful of particular and differing needs of AEW's on the Anangu lands. Under certain circumstances variations have been made to the criteria regarding 3 years continuous service to take into consideration cultural factors in relation to AEW employment. Further offers of permanency made in October 2003 relied more heavily on reliability of employment during the 2002-03 school years.

Offers of permanency have been made where possible. However, 'D' type employment allows the greatest flexibility of pay conditions for AEW's. Under this system, AEW's across the Lands regularly access their pay on a weekly basis to suit personal needs. AEW's across the Lands will now be given the choice of D type employment or contraction employment on an annual basis. D type employment is essentially employment days work as compared to employment on an annual basis with regular fortnightly pay periods.

Where an AEW meets the criteria for permanent employment they will be offered permanent employment. To date, of the 52 AEW's in Anangu Schools, 21 have been recommended for permanency in 2004. The implementation date for the permanency conversions will be the beginning of the 2004 school year.

This Government has also provided job security to over 1200 contract school and preschool staff by offering them a permanent job.

A review of the permanency conversions was conducted in October 2003 and that review recommended the process for further permanent conversions. The review mechanisms for authenticating applications for permanent employment were based on required skills, expertise and long term, continuous employment. Every intention of making offers of permanency where possible has been maintained.

The State Government provided extra funds to make good a reduction in Commonwealth monies. A shortfall in funding existing AEW hours was going to occur because of a cut back in Commonwealth funding from 2003-04. The State government, recognising the importance of AEW's, made good an Indigenous Education Strategic Initiatives Program (IESIP) shortfall of $1.136 million for the employment of AEW's and Coordinators in Anangu schools.

A training program to consider the implications of permanency options for AEW's on the Anangu Lands will be conducted at Ernabella on 25 November 2003.

FRUIT FLY

In reply to **Hon. J.S.L. DAWKINS** (2 June).

The Hon. P. HOLLOWAY: The Chief Inspector of Plant Health has written to the Adelaide Airport Airline Managers for Virgin and Qantas airlines seeking assistance in maintaining the strict quarantine standards and reinforced the strict controls on bringing fruit into South Australia. These letters stressed the importance of the restrictions and warned of the penalties. The letters further requested respective Airport Managers to direct the information to all incoming flight crews and to advise them to eat any fruit they are carrying or to dispose of it safely in the quarantine bins provided in the pre-arrivals area. They were further instructed to advise passengers to do likewise or risk a penalty should fruit be detected by the Detector Dog Teams. This was supported by direct discussions with senior airline staff requesting that the information contained in the letter be passed on to all incoming flight crews and passengers. There are 5 clearly marked quarantine bins strategically positioned at the air terminal that continue to have a contributing effect in the fight against fruit fly through the collection of around 500 kilograms of fruit per month. The bins are emptied twice weekly. Similar bins are also provided at regional airports. The airlines support public awareness by providing in-flight announcements on in-coming flights.

The Department undertakes a range of activities aimed at protecting South Australia from fruit fly. It contributes to half the cost of an additional detector dog at the domestic and internal terminals. The Australian Quarantine and Inspection Service continue to meet and service all incoming international flights supported by random inspections by the detector dogs. The detector dog crew report all quarantine breaches to the Department which are promptly followed up. Quarantine bins are also located at Edinburgh Airforce Base. The Department has taken the message further than sporting groups by developing strategies across the broader spectrum of tourist and traveller destinations. The Department services thirty-six (36) quarantine bins at the Great Southern Rail Terminal and information is posted at the interstate and intrastate bus terminals. Community awareness is further enhanced through the Department web-site, links to the RAA, NRMA, RACV, RACQ and AANT. Information packages are provided through these outlets and are available at all caravan parks, tourist information offices in the State, and selected border destinations in other States. Fortnightly advertisements appear in the Saturday Advertiser and Sunday Mail newspapers, and monthly advertisements appear in Messenger Newspapers circulating throughout the State.

Additionally, a range of other strategies ensures the fruit fly free message reaches a wide audience, including promotional material being placed in motor registration renewals reaching 460 000 households, advertisements placed in interstate travellers guides, bus-line publications, 'Caravanning Australia' and newspapers targeting tourists.

The community awareness campaign continues to provide wide coverage to all types of travellers. The fact that the media focused on this incident reinforces the high level of community awareness of South Australia's strict quarantine requirements. Despite the ongoing efforts of State Quarantine and AQIS in enforcement and community awareness breaches will occur. The breaches are not a regular occurrence and every effort is made to further enhance our surveillance and risk mitigation activities. South Australia remains the only fruit fly free mainland State.

SHOPPING BAGS

In reply to **Hon. J.M.A. LENSINK** (16 September).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has been advised that:

1. In 2002, the South Australian Government put the issue of plastic shopping bags on the National agenda as the preferred stance is for a nationally consistent approach to plastic carry bags. Discussions to date at the national level have primarily considered either a levy on plastic shopping carry bags or a ban. A recent meeting of Australia's Environment Ministers agreed that light weight single use carry bags containing HDPE will be phased out within 5 years.

2. The Environment Ministers agreed to support an industry code of practice subject to conditions including a requirement that industry must report nationally against targets specified in the code.

3. No agency is responsible for measuring plastic bag use. This data is gathered by retailers for national use. An independent auditor is being appointed by the Australian Retailers Association to audit data.

4. At this stage, requirements for data provision is clearly spelled out in the industry Code. Code signatories will be expected to provide the information. Given the two largest retail chains have already stated that they will sign the code, it is expected that data will be available from most purchases involving plastic carry bags.

5. There are no specific State targets, only national targets. Data is independently audited.

6. Action with respect to non attainment of targets will be coordinated at a national level. As already stated, the ultimate target is to phase out single use carry bags within five years.

7. Removing plastic bags from the waste stream will help to reduce South Australia's reliance on landfill for waste.

In reply to **Hon. J.F. STEFANI** (16 September).

The Hon. T.G. ROBERTS: The Minister for Environment and Conservation has advised that:

The code of practice put forward by retailers requires quarterly reporting to the ministerial National Environment Protection and Heritage Council, benchmarked against 2002 usage figures. Any relationship between extended shopping hours and plastic bag use, may be more strongly influenced by the reduction campaigns already under-way.

MUSIC INDUSTRY

In reply to **Hon. A.J. REDFORD** (21 October).

The Hon. T.G. ROBERTS: The Minister Assisting the Premier in the Arts has provided the following information:

1. The City of Charles Sturt has recently developed a draft liquor licensing policy, to which The Hon Angus Redford referred when asking the question.

While I have not seen this document, I am advised that it has been circulated to all licensed premises in the Council area, and to the AHA, for comment. This consultation period has been extended until 5 November 2003 and responses are encouraged.

It should be noted that the Council is not the decision maker in regard to liquor licenses but makes recommendations relating to applications to the Office of the Liquor and Gambling Commissioner. The policy is designed to provide Council with a consistent approach when making these recommendations.

I am advised that the draft Policy includes a number of recommendations in relation to public safety and noise and other disturbance, including the provision of security, where it is warranted, and other conditions that may be included in a License in response to complaints about noise or behaviour of patrons. However, these do not appear to be compulsory requirements, rather they would be negotiated between the premises and the Council if necessary.

Similarly, I understand that the recommendation regarding the keeping of log books and monitoring of noise levels would only apply in the case of complaints being received.

I am pleased to hear that The Governor Hindmarsh Hotel was recognised recently on the ABC as an example of an outstanding live music venue, and that its presentation of live music is not resulting in complaints.

MENTAL HEALTH ACCOMMODATION

In reply to **Hon. SANDRA KANCK** (22 September).

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

1. It is not possible within the given timeframe to determine how many mental health patients were accommodated in wards not specifically designed as psychiatric inpatient units for all of Adelaide's metropolitan public hospitals, and how many of these patients were assigned a private security guard for the specified date of the 26 June. However, as the preceding discussion related to the Royal Adelaide Hospital the following information has been provided: the Royal Adelaide Hospital had six (6) mental health patients accommodated in general wards on the 26 June 2003, of whom four (4) had a security guard assigned to them.

2. It is not possible within the given timeframe to determine for each of these hospitals the financial outlay for private security guards for mental health patients during the months of June, July and August. However, as the preceding discussion related to the Royal Adelaide Hospital the following information can be provided for June & July 2003: the Royal Adelaide Hospital total financial outlay for security guards for mental health patients for June & July 2003 is $154 533.86 excluding GST.

3. The Reform of Mental Health Services in SA is consistent with the National Mental Health Strategy and subsequent national policy which advocate care of people with mental health problems to be provided in the least restrictive environment available. With this in mind, the first priority of the department is to establish mainstream beds in each of Adelaide's metropolitan public hospitals, which will assist people with mental health problems to be appropriately located in mental health facilities and will reduce the need for security guards.

In summary, the use of security guards applies only to those people who are currently not able to access mainstream inpatient mental health beds and whose clinical condition is assessed as requiring a security guard. It is anticipated that as the Reform of Mental Health Services is implemented, including the opening of mainstream inpatient mental health beds such as the Margaret Tobin Centre, within Flinders Medical Centre, this will allow mental health services to meet care requirements within a purpose-built facility to maximise safety and security.

HOSPITALS, ROYAL ADELAIDE

In reply to **Hon. J.F. STEFANI** (22 September).

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

1. I am unable to investigate this particular matter due to the insufficient detail provided. I strongly recommend that the person involved contact my office to provide information allowing me to investigate this situation further.

It is deeply regrettable that patients experience cancellations of surgery. There are significant pressures on the metropolitan hospital system for inpatient accommodation, particularly in the winter months due to increases in viral infections. At all times emergency treatment and care must have priority for admission, which unfortunately often delays elective admissions. The number of emergency presentations requiring hospitalisation has increased from last year and with an ageing population the number of patients requiring longer stays in hospital is growing, particularly for hospitals providing tertiary care like the Royal Adelaide Hospital (RAH). There are a number of patients waiting in hospitals for nursing home placement.

Waiting lists for elective surgery have been put into place as a strategy to better manage elective demand. Patients are placed on waiting lists using three levels of clinical assessment with associated desirable timeframes: urgent, semi-urgent and non-urgent. The placement of patients on the waiting list is a clinical decision and cancellations occur with regard to that predetermined clinical need so that least urgent cases are cancelled before semi-urgent. Patients with severely complex or life threatening conditions are categorised as urgent and seldom cancelled.

2. The government is committed to improving hospitals and the health system as a whole. $66.4 million will be invested over four years for initiatives including:

- additional nursing costs ($6.7 million);
- increasing intensive care unit activity ($7.5 million);
- protecting vital blood supplies ($2.4 million); and
- an additional support to alternative system of care ($16.6 million).

The government has and continues to demonstrate its commitment to the pledge for additional beds. Since July 2002 the following beds have been opened across metropolitan hospitals:

- 14 rehabilitation beds;
- 26 Emergency Extended Care Unit beds;
- 10 ICU beds;
- 36 acute transition beds; and
- 38 general beds.

$9.5 million has been allocated over 4 years to reduce the number of patients on the waiting lists at major metropolitan public hospitals. This will fund approximately 2 115 additional elective surgery procedures. For 2003-04, $2.24 has been allocated to undertake an additional 445 procedures, with a focus on overdue urgent and semi-urgent admissions and patients waiting longer than 12 months for surgery.

The First Steps Forward document identifies a range of strategies to reform the SA health system. The Clinical Senate will have its inaugural meeting shortly to advise the Department of Human Services (DHS) on:

- clinical planning priorities;
- safety and quality;
- use of new technology;
- emerging system issues; and
- service delineation.

Initiatives such as 'Hospital in the Home', 'Rehabilitation in the Home', aged/acute interface programs and chronic self-management programs will be expanded.

The government has developed a Primary Health Care Policy that will serve as a significant driver of health reform. Workforce planning and development is a high priority and a number of recruitment and retention strategies are in place. A population health funding model is being investigated which in the end, will see services better reflecting, and responding to, the needs of their community.

In reply to the Supplementary Questions asked, the Minister for Health has provided the following information:

3. I acknowledge that the recent winter months have placed additional demand on our hospitals, particularly for hospital beds. DHS continually investigates a range of solutions to assist the hospital to ensure an acceptable level of care.

To address the issues brought on by winter demand, and further to the 124 additional bed numbers mention in my response to question 2, eight general beds and additional four rehabilitation beds were opened at the Repatriation General Hospital (RGH), with an additional ten beds being made available on a flexible basis depending on demand. An additional 6-8 general beds have been provided by the operators of Modbury Hospital. Increasing beds alone, however, will not address the current pressures on the system and the government has implemented other strategies such as funding 105

additional community support packages to enable early discharge from hospital to home.

4. I agree it is unfortunate that waiting times are experienced for procedures. I have given the status of the health system in my answers before and re-iterate that I would appreciate the opportunity to receive further information regarding the matter raised to allow further investigation to take place.

SA WATER

In reply to **Hon. T.G. CAMERON** (7 July).

The Hon. T.G. ROBERTS: The Minister for Administrative Services has advised that:

1. In accord with the recommendation of the SA Government Accounting Policy Statements, SA Water applies a straight-line depreciation methodology which takes into account the useful life of the asset. This means that the asset's capital cost is spread evenly over its life. This method is also used by other large Australian (Government owned) water utilities (eg. Sydney Water and Hunter Water).

2. Since outsourcing the metropolitan operations to United Water, the total revenue generated by SA Water from all operations (metropolitan and country) amounted to $4.2 billion (1996/97–2002/03). Of this, Community Services Obligations (CSO) totalled $0.6 billion (14%), revenue from water and wastewater rates and sales totalled $3.1 billion (74%) and other revenue received from fees and services totalled $0.5 billion (12%).

For the same seven year period, dividend payments to Government totalled $0.95 billion.

Details of revenue, CSOs and Contribution payments are provided in SA Water's annual report.

3. United Water has spent no money on system improvements since it is a contractor to SA Water, which continues to own the water supply and sewerage infrastructure throughout the state. SA Water funds all infrastructure capital expenditure. In the Adelaide metropolitan area United Water project manages the delivery of all capital works projects.

4. For the years 1996-97 to 2002-03 inclusive, for projects worth $1m or more, SA Water's capital expenditure has been $205m on system growth, water quality initiatives and asset renewal.

System growth is dominated by extensions to the water and wastewater networks to service new customers, but also includes major augmentation projects that ensure levels of service are maintained.

The main water quality initiative has been the country water quality improvement program which has widened the coverage of filtered water to additional communities and improved the management of quality within SA Water's extensive distribution systems. The figure excludes the Riverland Water Contract through which ten water treatment plants have been built and are operated under contract, to deliver filtered River Murray water to various communities.

5. During 2001-02 SA Water had period contracts with panels of engineering and technical specialists to provide:

- Engineering, environmental and related services
- Dams engineering consulting services
- Survey monitoring of dams and reservoirs
- Engineering and cadastral surveys
- Cost estimating services

The services provided primarily related to delivery of the Corporation's capital works projects. SA Water's definition of consultants and contractors is based on a Department of Treasury and Finance policy statement and is consistent with Australian Accounting Standards. The period contract work by engineering and technical specialists is classified as service contracts. Therefore these works have not been identified as Consultancies in the SA Water annual report for the year 2001-02.

6. Each of the major water authorities has different pricing structures so it is difficult to provide a definitive answer to the question. However, SA Water's revenue per customer, a measure that reflects an average of tariffs applied to all customers, is around the mid-range for the major urban water authorities in Australia.

The National Competition Policy water reform agenda requires that water charges recover the full cost of water services, including a provision for a return on the assets employed. The profits this generates supports continued maintenance and improvement of water and wastewater services and dividend payments to the Government as owner. A reduction in tariffs would necessarily result in a reduction in the standard of water and wastewater services and/or a reduction in dividend payments, along with the Government services such as health, education, roads and police that those dividend payments support.

RIVERLAND AGRICULTURAL BUREAUX

In reply to **Hon. J.S.L. DAWKINS** (25 September).

The Hon. T.G. ROBERTS: The Hon J.D. Hill has advised that:

1. When making an important water policy decision that impacts on River Murray water users, the Government has always sought to consult with them. This was no different for the implementation of water restrictions. In making the decision with respect to how to best achieve the desired reduction in water usage from the River Murray, the Department of Water, Land and Biodiversity Conservation (DWLBC) consulted with representatives from a range of irrigator and industry groups. At the meeting of the Riverland Agricultural Bureau I made it clear that officers from DWLBC would be available to discuss future water policy issues, including water restrictions.

GAMBLERS, PROBLEM

In reply to **Hon. NICK XENOPHON** (25 September).

The Hon. T.G. ROBERTS: The Minister for Gambling has advised that:

1. The Independent Gambling Authority has issued a direction to all gaming machine licensees under section 11 of the *Gaming Machines Act 1992* which provides the following:

(1) If the licensee is served with notice of a barring order, the licensee must take reasonable steps to ensure that the excluded person does not enter or remain in a gaming area within the venue while the order is in force.

(2) The licensee must implement a procedure for the purpose of complying with sub-clause (1) and ensure that staff in the venue are instructed in the procedure.

(3) The licensee must keep the notice of every barring order in force in relation to the venue, in a place within the venue—
(a) which is accessible by, or visible to, staff, and
(b) which is neither accessible by, nor visible to, members of the public.

(4) The licensee must take reasonable steps to ensure that the identity of an excluded person is communicated only to the extent necessary to enable the enforcement of the barring order and is otherwise kept confidential.

Failure to comply with a direction given under section 11 constitutes an offence which holds a maximum penalty of $35 000 or imprisonment for 2 years.

2. As described above, the direction given by the IGA provides that the licensee must implement a procedure and ensure staff are instructed in the procedure.

It is also a requirement of the Responsible Gambling Code of Practice that all gaming machine managers and employees undertake training in responsible gambling. For the purposes of the code, the Commissioner has issued a direction that training should be undertaken by recognised registered training providers. Registered training providers base their course curriculum on national competency standards which are developed by the training industry. The course curriculum includes the specific requirements under the *Gaming Machines Act 1992* and the direction given by the IGA and addresses the procedures that should be followed if a person enters a gaming area where he or she is barred.

3. Liquor and gambling inspectors conduct regular inspections of all gaming machine venues. As part of the inspection, inspectors ask to see where copies of barring orders are kept and whether staff have been instructed with the relevant procedures.

4. The three self-exclusion schemes in South Australia, all with legislated authority, are substantially different to the voluntary industry operated scheme in Victoria. On that basis many of the recommendations of the South Australian Centre for Economic Studies (SACES) report are already in place in South Australia or do not apply.

5. The Office of the Liquor and Gambling Commissioner has received three formal complaints regarding barring orders issued by the Independent Gambling Authority since the scheme began on 1 October 2001.

6. A response to this question was tabled on 15 October 2003. I refer the honourable member to *Hansard* for further details.

FAMILY AND YOUTH SERVICES

In reply to **Hon. KATE REYNOLDS** (13 October).

The Hon. T.G. ROBERTS: The Minister for Social Justice has advised that:

1. *Will the Premier meet with the Public Service Association this week to discuss funding requirements for child protection workers within FAYS Offices?*

The Premier met with the Public Service Association (PSA) on Friday 17 October 2003.

2. *If $1.5 million cannot be found, as the Minister for Social Justice indicated last week, to employ 32 more workers, how then will the government fund the recommendations in the Layton report, in particular recommendations 39 and 45 which recommend that extra staff be allocated to FAYS to meet its obligations under the Children's Protection Act?*

The Premier agreed at the meeting with the PSA to provide additional funding of $2.1 million on a recurrent basis for 35 more workers to be employed by FAYS.

3. *When will the government's response to the Layton report, entitled "Our best investment", be released?*

The Attorney-General's Department is preparing a report collating the responses to the Layton Report from the across-government task groups, together with a prioritisation of recommendations to be implemented. Cabinet will consider the report in December, and the government's response will follow.

4. *Does the Premier have any evidence that the PSA is serving its own interests rather than the interests of children in relation to this issue?*

This government is committed to improving the child protection system in South Australia, and is working with the PSA with that common aim.

BUSINESS ENTERPRISE CENTRES

In reply to **Hon. R.I. LUCAS** (18 September).

The Hon. T.G. ROBERTS: The Minister for Industry, Trade and Regional Development has provided the following information:

A comprehensive review of the Business Enterprise Centre (BEC) network was completed recently. This review confirmed the benefits of the BEC network in supporting small business.

The BEC network has received significant funding from the budget of the Small Business Services unit at the Centre for Innovation, Business and Manufacturing (CIBM). The current review of the Department for Business, Manufacturing and Trade (DBMT) includes evaluating continuation of this funding. The contracts for the previous funding support have expired and interim monthly funding is being provided until the DBMT review is completed and the future direction for small business support is confirmed.

WOMEN'S PRISON

In reply to **Hon. R.D. LAWSON** (20 October).

The Hon. T.G. ROBERTS: I advise that:

I am aware of the circumstances of this situation and can confirm that the prisoner concerned has not waited 15 months to see a psychologist.

In this case, the prisoner concerned has been seen by the Department for Correctional Service's Senior Clinical Psychologist who is currently assessing what is required to ensure that the offending behaviour, of the prisoner concerned, is addressed. Once that assessment is completed, psychological assistance will be provided, if it is required.

The honourable member should be aware that psychological services to the Adelaide Women's Prison were never cut. Vacancies did exist however that were difficult to fill.

The department will continue to seek suitable applicants to fill the psychology vacancies that currently exist.

LAW REFORM (IPP RECOMMENDATIONS) BILL

Adjourned debate on second reading.

(Continued from 11 November. Page 523.)

The Hon. IAN GILFILLAN: The Democrats support the second reading of the bill. We look forward to constructive discussion and the consideration of some amendments in committee. We understand the government's approach and the fact that it believes that it is acting with the best intentions. The government is responding to reports from the insurance industry in Australia suggesting that the law must be changed or that that particular industry will fail. Quite frankly, I am not convinced by the arguments put forward by the insurance industry. Much of the ado seems to relate to the failure of one particular company which, admittedly, had serious impacts around the country. However, that company's failure would not have been prevented by the passing of a bill such as this.

It would appear that this company aggressively sought to expand its business by charging premiums significantly lower than its competitors. I will not take a company to task for seeking to expand its market share, but in this case it would appear that this company did not adequately reinsure to cover the extra custom it had achieved. Clearly, such a strategy is doomed to failure, and this company has paid the price. Unfortunately, of course, many citizens of Australia also paid the price and are continuing to do so. At the same time, the stock market delivered poorer returns, and insurance companies generally, which relied on the stock market to generate profits, also found their revenue decreasing.

Naturally, these companies want to maintain their high levels of profit, and increased premiums are a simple way of achieving this. Justification for the increased premiums put forward by the insurance industry is that the cost of litigation and compensation is too high. These increased premiums have caused substantial damage to community organisations and have resulted in community outrage, forcing governments around Australia to see what can be done to rectify the situation. As a result, we have had an inquiry chaired by Justice Ipp and a series of bills around the country have been introduced to limit the potential for claims for negligence.

The Australian Democrats are not acting alone in formulating their position on this bill. Like others in this place, we are receiving advice from a number of sources. We take such advice with a grain of salt at times, but at other times it is quite clear that it deserves serious consideration. It would be fair to assume that plaintiff lawyers are representing their own interests. Given their experience in argument and rhetoric, we would expect them to be most able at defining their interests in terms of the common good. It is with some foreboding that one plaintiff lawyer, a member of this place, has indicated that he will put the case for plaintiff lawyers at some length. Similarly, the Law Society would have difficulty in being completely impartial, but it has endeavoured to do so in the material that it has submitted to us.

We also have advice from the Australian Medical Association prepared in conjunction with the Law Society, as well as some advice at their own instigation. Even though we recognise that these groups represent particular constituencies, a pattern emerges from their efforts that indicates issues that we still must consider. Is it really a good idea to paint a category of 'obvious risk' with a brush that is so broad that all risks wear this colour? Is it appropriate to reduce a person's duty to warn of risks when so much risk is mitigated with a simple warning sign? At this stage, I should also note that when considering this material and input from members in this place, I am not swayed by calls for uniform laws around the country. In fact, I believe that it is a shame if we are intimidated by other legislatures into introducing legislation which we do not 100 per cent agree with and support.

As can be said, a bad law is a bad law. It does not become a good law through enactment by a number of jurisdictions. We have a duty of care to ensure that we put laws in place that go to the heart of a problem; and the problem must be greater than ensuring profits for a single industry—in this case the insurance industry. In the early days of Justice Ipp's investigations, a number of individual cases were brought to light in the populist media to demonstrate the need for legislative change. It is my belief that judges are in the best position to make a determination based on the facts of a case, and the general public whipped up into a frenzy by the media is in the worst position to make that determination. As Mr Nigel Walker of the Cambridge Institute of Criminology recently said:

> Hard cases make bad law, and spectacular cases make knee-jerk policy.

Here in parliament we must go beyond individual cases and consider the impact for all people and consider how that impact may affect lives for decades to come. Does this bill address any of the circumstances that caused the current alleged 'crisis' in the industry? Clearly, it does not address the issue of risky business behaviours and failure to reinsure. If the insurance industry is in crisis, should there not be some evidence of this reflected in profitability? Mr Andrew Goode, in his recent article in *The Advertiser*—members will recall that he is the recently retired President of the Law Society and that he wrote the article in that role—indicated some rather interesting profitability figures for the industry, showing quite a glowing analysis of many companies in the insurance industry.

We have a number of concerns about changes to the law contained within this bill. The clauses referring to the assumption of risk, the liability of road authorities and the general power to extend periods of limitation (to indicate just a few) must, and I expect will, be addressed in the debate and amendments in the committee stage. In conclusion, I repeat that we do support the second reading of the bill. We look forward to constructive discussion and improving amendments in the committee stages.

The Hon. A.L. EVANS: The government has told us that this bill represents the second stage of its legislative response to the crisis in the cost and availability of insurance. The first stage took place last year with the passing of the Recreational Services (Limitation of Liability) Bill, the Statutes Amendment (Structured Settlement) Bill and the Wrongs Act (Liability for Damage for Personal Injuries) Amendment Bill. Those bills operated to create caps and thresholds in motor vehicle claims, as well as provide for structured settlement and create codes governing liability at high risk recreation. This bill, together with last year's legislation, arises out of the recommendation of the Ipp committee and forms part of a national scheme of legislative change. The motivating factor behind the change has been the increase in insurance premiums in the last few years. The assumption is that the reforms will operate to bring down insurance premiums. The Treasurer in his contribution in another place on 14 August said:

> We believe it [the reforms] should bring down insurance premiums and that it is a comprehensive set of reforms and it is incumbent upon the insurance companies to deliver.

According to an ACCC report produced in July 2003, the average premium increases were stable for three years up to 2000. The premiums then increased by 19 per cent in 2001 and by an average of 44 per cent in 2002. There is no doubt that these are sizeable increases. However, there is no guarantee whatsoever that insurance premiums will be reduced by virtue of these reforms. The insurance companies are under no obligation to deliver reduced premiums. They can sit back if they so choose and pocket the increase in profits.

I understand that major providers of insurance have recorded strong profits in recent times. QBE Insurance recently announced that its net earnings have more than doubled to $241 million. The CEO is reported as saying that this result was pleasing but, nevertheless, warned that premiums on some lines of insurance, including public liability and professional indemnity, would rise by 5 per cent to 15 per cent in 2004. Promina Insurance experienced a net profit of $135 million for the six months to 30 June 2003. IAG announced a profit of $153 million for the full year to 30 June 2003. The company reported that they were exceeding all operating targets for the year. Suncorp experienced a net profit of $284 million for the year to June 2003. The managing director noted that this represented a 140 per cent increase in second-half earnings to $161 million.

The salaries of insurance executives reflect the level of profits delivered. The CEO of Suncorp Metway, for instance, earns $2.444 million per annum. The CEO of IAG is on $1.558 million. The CEO of QBE earns $2.403 million. The CEO of AMP earns $2.095 million. These executives are handsomely remunerated out of the very substantial profits that insurance companies make. It is an extraordinary proposition made by the insurance companies that they must increase premiums because they cannot afford to properly service the claims, both in volume and amount claimed. They have managed to convince governments across the nation that the answer is to restrict or limit an individual's right to damages. It is the 'little person' who will be affected by this bill. I seriously doubt whether there will be any flow-on effect for those who take out insurance, because I am not convinced that the insurance companies will reduce their premiums. Why should they? They have an obligation to maximise profits for the sake of their shareholders. By reducing their level of exposure and risk through legislative change, all we are doing is giving insurance companies an opportunity to increase their profits.

It is widely accepted—although perhaps not by the insurance companies themselves—that other factors, such as share market vulnerability, global developments with terrorism and the collapse of HIH, have substantially contributed to an increase in premiums. September 11 had a profound impact on reserves, policy pricing and the availability of capital in Australian markets which, in turn, impacted on our insurance market. These are the major contributing factors, yet the insurance companies are trying to convince us that it is somehow all connected to the number of claims. However, the ACCC has said that there is no link between litigation rates and increased premiums. The federal government's Productivity Commission recorded in a 2001 report that civil litigation rates had been falling in Australia by 4 per cent for four years. A report to the head of Treasury on 30 May 2002 stated that there was no evidence of an explosion in litigation in recent years.

For the most part, insurers are not responding to government reforms by dropping insurance premiums. Page 12 of an ACCC report in July 2003 stated:

. . . all insurers expected premiums to rise in 2003 irrespective of government reforms in 2002. . . insurers regard the longer term impact of the government reforms on premiums as uncertain.

The conclusion of the report stated:

Uncertainty about the short and long-term impacts of recent reforms on claims costs is a consideration in the insurers' approach to factoring in the effects of reforms. . . The ACCC considers that it is too early to say in this report the extent to which reforms have lowered insurer's costs and if these cost savings have been passed onto consumers. This will be assessed in future reports when data on actual outcomes becomes available.

If we have an ACCC stating that it is too early to make an assessment on whether these reforms are going to reduce premiums, why are we in such a mad rush to pass this bill? I do not believe premiums will ever come down because of these reforms. However, let us say for argument's sake that there is a chance they might come down in the future. Why are we not holding off for a few years to await the outcome of last year's reforms? We could then make a proper determination as to whether this type of measure is necessary or even beneficial.

The ACCC itself has said it is too early. We are being asked to consider a bill that will negatively impact on the rights of individuals to bring claims and their chances of success without any proof that there will be benefits to the average person taking out insurance and with the likely expectation that insurance companies will pocket the profits.

The bill we have before us operates to raise the notch in a number of areas concerning liability. Plaintiffs will have a harder job to establish liability on the part of the defendant and, in some instances, the defendant is absolved from liability altogether. Other provisions make it harder to get extensions of time to bring claims. The bill also operates to enshrine some common law principles relating to the law of negligence. New sections 36, 37 and 38 outline aspects relating to the defence of voluntary assumption of risk or volenti. The defence is available if it can be shown that the plaintiff took part in an activity when there was an obvious risk of harm. It is sufficient that the plaintiff was aware of the type or kind of risk and not the specific risk.

Historically, volenti has not had much success in civil litigation cases. These provisions seek to broaden the availability of the defence by stating that a risk can be an obvious risk even if it is not prominent, conspicuous or physically observable. I find that an absurdity. How can something be an obvious risk if it is not prominent or physically observable? This is simply unfair on the plaintiff and is compounded by the fact that section 37 provides that it is the plaintiff (not the defendant) who must prove that he or she was not aware of the risk.

New section 42 provides that road authorities are not liable for a failure to maintain, repair or renew a road or to take other action to reduce the risk of harm that results from a failure to maintain, repair or renew a road. If road authorities are not liable, who is? If there is no legal consequence for road authorities who fail to maintain a road, it follows that our roads will deteriorate. The result is less safety for the community, because of a faint hope that insurance companies will reduce their premiums some time in the future. Under proposed section 45A, the rights of children with a disability will be reduced to their disadvantage, and these children are often mentally disabled. The bill enshrines some common law principles relating to duty of care and burden of proof. However, the very strength of the common law is the fact that it is not enshrined, and I question the merits of these provisions.

Earlier this year, all honourable members would have received a fax from the Australian Plaintiff Lawyers Association, which outlined some areas of concern and raised some questions. One of those questions that I would like to put to the government is: what investigations has the government undertaken regarding insurance pooling and other alternative measures to that of reducing entitlements to fair compensation, and what has been the outcome of these investigations? If we are expected to vote on a bill that will substantially impact on an individual's rights, it is important that we know whether other options have been examined that may reduce premiums. If we reduce the right to sue, we are endorsing a greater tolerance for conduct that is less than entirely safe. These types of measures could result in fewer people taking care and a less safe community.

Family First does not believe that families will benefit from this bill. It is founded on false assumptions, and I doubt that there will be any positive impact on premiums or on the availability of insurance. At this stage, there is no evidence that this measure will make a difference to premiums. The only thing certain about this bill is that it will reduce an individual's rights and impact on families in a negative way. For those reasons, I oppose the second reading.

The Hon. NICK XENOPHON: Like my colleague the Hon. Andrew Evans I oppose this bill. This bill is a con and a betrayal by the Labor Party of its heartland. This is the Labor Party beating up on the injured, and it is the Labor Party supporting the big end of town in terms of the insurance industry. As a matter of disclosure, I should say again that I am a plaintiff lawyer and a member of APLA, the Law Society and the Association of Trial Lawyers of America (ATLA). I also indicate that for many years I have acted for injured plaintiffs. So, I have seen first hand what the impact can be of a catastrophic injury on people's life and that of their family. At the outset, I would also like to thank Carren Walker, a law graduate, who has been doing research on this bill for me. She has worked tirelessly for the past week, and I am very grateful for her work in relation to this bill and for exposing that this bill really is a con on South Australians.

This bill will limit the rights of people who suffer long-term and life-changing injuries. The bill purports to make the law of negligence more certain for injured people and ease the pressure on the insurance industry, which says that it is increasing premiums, and give greater certainty in the area of medical negligence. In fact, this bill will do the opposite. It will unnecessarily complicate the law; it will give uncertainty for injured people; it will increase litigation; and it will change and complicate already well established law. In terms of general principles and the role of common law in the community, we could do a lot worse than quote from Ralph Nader, the consumer advocate, who, in many respects, is known as the father of the consumer movement because of his work for consumer rights in the 1960s. I think what Ralph Nader said in relation to tort reform (which he describes as 'tort deform') in the civil justice system is also appropriate in the context of this bill. He said:

The civil justice system provides our society with its moral and ethical fiber. When the rights of injured consumers are vindicated in court, our society benefits in countless ways: by compensating injured victims and shattered families for unspeakable losses (and saving taxpayers from having to assist them); by preventing future injuries by removing dangerous products and practices from the market place and spurring safety innovation; by educating the public

to unnecessary and unacceptable risks associated with some products and services through disclosure of facts discovered during trial; and by providing authoritative judicial forums for the ethical growth of law where the responsibility of perpetrators of trauma and disease can be established. This authoritative expansion of respect for human life serves to distinguish our country from most other nations.

He goes on to say:

Business wrongdoers should be held responsible fully for their damage to innocent people. When courts make these defendants accountable for their damage, the companies have a greater incentive to produce safer products or conditions. This is the lesson of legal history.

There is a myth of litigation explosion, which was alluded to by my colleague, the Hon. Andrew Evans. The review of the law of negligence by a panel of eminent persons was chaired by Justice Ipp, and included an acting judge in the Supreme Court of New South Wales Court of Appeal and a justice of the Supreme Court of WA.

The report, which is referred to as the Ipp report, was released in 2002. The report gives a comprehensive critique of the common or judge made law, as it now stands, and makes a number of recommendations that this government has decided to adopt. This arose out of a ministerial meeting on public liability with ministers of the commonwealth, states and territories on 30 May 2002. Terms of reference were jointly agreed to by the ministers in relation to the Ipp report. Within this broad context, the terms of reference for the review stated that the award for damages for personal injury has become unaffordable and unsustainable as a principal source of compensation for those injured through the fault of another. That was its contention. It said that it is desirable to examine a method for the reform of the common law with the objective of limiting liability in quantum of damages arising from personal injury and death.

We dealt with this, in terms of capping damages, last year. From recollection, the point was made by the member for Heysen—and a very good point—and the Hon. Angus Redford, amongst others, that in essence, there was no guarantee that this would do anything to bring down premiums. That was a very significant capping of damages awards. The Ipp report is a hasty, knee-jerk response to a number of concerns in relation to the rise in insurance premiums. A scare campaign has been launched by the insurance industry, and by some factions in the medical profession, about the number of injury claims and the amounts awarded by the courts. However, statistical analysis in this area gives a different picture.

According to statistics taken from Luntz and Hambly in their text *Torts: Cases and Commentary*, 55 per cent of injuries happen in the home and therefore no-one can sue to recover for injuries. The five per cent of accidents that occur on the street or highway result in the most serious injury. Only 54 per cent of people injured in motor vehicle accidents receive any compensation, and 30 per cent of accidents causing disabilities lasting six months or more were caused by road accidents. In South Australia, the average number of civil law claims for 2001 was fewer than 50 000. I emphasise that that relates to all claims; it relates to minor civil actions, and to the whole gamut of claims including injury claims. It gives you some idea of the difference between South Australia and the other states. Compare that to the figures in other jurisdictions, which are substantially higher, even on a per capita basis.

On my reading, the trend for litigation, based on the Australian Productivity Commission's report of 2001, table 9A.1, is downwards not upwards, as we have been led to believe. The relative number of public liability claims has been in decline since 1998, according to the Trowbridge report to the meeting of ministers who commissioned the Ipp report. So, this is the report commissioned by the ministers—their own report—which indicates a downward trend. In her article, 'Public Liability: A Plea for Facts', Professor Regina Graycar, Professor of Law at the University of Sydney writes:

There are about 3.6 million people in Australia with some form of disability. However, only 590 000, 16 per cent, attribute their condition to some form of accident or injury. Only 64 500 recovered damages and of those, only 5 660 received more than $100 000.

She attributes the concept of a crisis and a need for reform to a media frenzy that portrays judges as handing down exorbitant payouts every day. I hasten to add that that has been largely due to the myths being pushed by the insurance industry. The perception that every injured person receives an exorbitant payout is misconceived. In South Australia the award for damages is significantly lower than in New South Wales and Victoria, with the average payout being only $19 000 compared to $47 000 in New South Wales. Considering that this is an average payout, along with the proportion of injured people who do receive compensation, the litigation crisis does not seem as dire as the government would have us believe.

When you consider that we are adopting so-called reforms that the New South Wales government has adopted, when our average payouts for public liability claims are significantly lower than those in New South Wales, it begs the question: why is the government pushing for this draconian legislation? My question to the government is: on what empirical data and information does the government base its claims of a litigation crisis which is very much the undercurrent of this bill? What research has the government done on claims in South Australia compared to other states? Does it agree that the average payout for public liability claims, for instance, and for other claims such as medical negligence, is significantly lower than in other states, particularly in New South Wales?

The supposed uncertainty in the law of negligence in terms of its scope and the award of damages in each case has been blamed on the increase in insurance premiums. The insurance industry has lobbied the government to legislate in this way in order to solve this problem. The reasons for the rise in the costs of premiums are varied. The insurance industry is recording huge profits and is doing little to alleviate problems caused by their own industry. Some of the global factors driving insurance premium increases include massive claims from September 11, corporate failures overseas such as Enron, the low global stock market returns, low global interest rates, increasing re-insurance costs, catching up from past low product pricing—that is something that particularly happened here in Australia with HIH—and pricing for risks previously omitted.

Given the extraordinary events that have occurred within the industry, one would expect that the insurance industry would be the first to be hit hard in terms of profits and managerial expenses with all of these pressures on them. However, nothing could be further from the truth. In terms of information provided from the reports of public companies, Mr Steve Jones, CEO of Suncorp-Metway, received a salary of $2.444 million and a payout of $30 million when he left that job. Mr Michael Hawker, CEO of IAG, receives a salary of $1.588 million; Mr Frank O'Halloran, CEO of QBE Insurance, $2.403 million; Mr Andrew Mohl, CEO of

AMP Insurance, $2.095 million; Mr George Turnbull, the former CEO of AMP Insurance Limited, $4.9 million.

In terms of profits, IAG had a 27 per cent increase in net profit for the first half of 2002, making $62 million after tax; that was described as 'almost unheard of'. QBE is expected to increase its 2002 operating profit of $238 million by 15 per cent this year. Suncorp-Metway estimates that it achieved a 67.4 per cent increase in growth from $43 million to $72 million in 2002. These profits were recorded after so-called tort reform legislation was passed in New South Wales and Queensland. The insurance industry has not passed on any of its savings or profits to customers despite their allegedly desperate condition. The Australian Plaintiff Lawyers Association summarised the situation well in its media release of 20 August 2003, headed 'QBE: you're not fooling anyone'. Mr John Gordon, President of the Australian Plaintiff Lawyers Association, says:

> Governments enacted full scale reform under the mistaken belief that the insurers would pass on the savings to consumers. But this is not how the insurance industry works. QBE is continuing to raise premiums as well as insisting that governments continue to slash the rights of the injured. Rest assured, insurers will be keeping the profits they make from this for themselves because governments have not required them to use this windfall to reduce premiums.
>
> By announcing record profits on the one hand but increasing premiums and demanding that further reform be enacted on the other, QBE have shown their true colours. They work on a principle of greed and consumers and governments should not be fooled into thinking anything else.
>
> No-one should believe QBE and insurers anymore, as they push for and have delivered more reform. Governments should now repeal the tort reform legislation as it has clearly failed. It was a con and they fell for it.

It is easy to be awed by the gravity of such statistics on huge profits. The human consequence of such enormous rises in premiums is in stark and sickening contrast to the devastating effect that this has had on people in the community. Mark Westfield, in his article in *The Australian* on 21 August 2003, entitled 'Insurers swim in cash but no handout for strugglers', states:

> HIH's disappearance from the market in 2001 and the refusal or the reluctance of most of the Australian based insurers to take on these long-tail classes for anything less than exorbitant premiums forced many professionals and tradespeople into the hands of insurance brokers offering cover from unauthorised foreign insurers.

He says that practitioners in the building, pest control and long haul trucking industries simply must have insurance certificates to work. He makes the point that essentially insurers have not been supporting Australian consumers and it has forced many to go overseas.

Two weeks ago there was a report on ABC Radio news about a company administrator who was concerned that he could not get insurance for a company. The premiums asked were quite exorbitant and he ended up going overseas for the same cover, in order that this company could continue trading. It was something like 90 per cent cheaper than the quotes he got from Australian insurers. What on earth is going on? This is an absolute con. Former APLA President Rob Davis, in an article in the *University of New South Wales Law Journal*, explains the reason behind premium increases within the industry and why tort reform is so unnecessary. He makes the point, when looking at the real causes of premium increases, as follows:

> Usually premium cycles are driven by insurance capacity, and this is influenced by economic cycles in equity markets, interest rates, global claims experience and ultimately competition. When earnings are high, (soft markets) capital floods into the industry. This influx of capital sparks new entrants and increased competition. When earnings are low, (hard markets) capital floods out of the industry to other markets where it remains until it is enticed back by increasing profits. Tort reform does not fix market cycles, it merely provides temporary subsidies to paper over the consequences of market inefficiency, corporate incompetence and occasionally outright dishonesty.
>
> When the market cycle turns soft, the tort subsidies are then consumed, underwriting another round of corporate excesses in which all the same mistakes are repeated, albeit from a lower subsidised cost base. Meanwhile the insurance consumer never sees the benefits of these subsidies and injury victims progressively have entitlements eroded in a system that becomes increasingly distorted by so called tort reform. Eventually, hard markets return and, each time they revisit the industry, the same insurers reappear with their hands out pleading for governments to assist them with more tort reform.

The insurance industry's rising premiums in relation to personal indemnity insurance is an internal issue for it to sort out and should not have a bearing on potential plaintiffs who wish to be compensated for their loss due to the negligent actions of others. Plaintiffs have an expectation that a judgment be tailored to their particular situation and should not have to jump hurdles that have been put in place by parliament solely to alleviate the alleged problems of the insurance industry. If the government is drawn into the trap of legislating in response to an issue, the insurance industry and the insurance cycle, as described by Rob Davis, which results in the lowering of premiums, the law of tort has been modified and complicated with the effect of unnecessarily limiting plaintiffs' rights. My question to the government is: what assurance has the government received from the insurance industry in this state that these so called reforms will bring down premiums? This is something that the Treasurer has raised in the past. What assurances will there be that premiums will go down with these draconian changes?

The Queensland Premier, Peter Beattie, has responded angrily to insurance companies which will not respond, in the light of laws passed by his government that are aimed at taking the pressure off the industry. He made this point in an address to the Queensland parliament on 27 February:

> It is about time the insurance industry stopped being so greedy. That's it in a nutshell. Frankly, the way they are picking on some organisations that meet on a very frequent basis that have never made claims is absolutely scandalous. There is no possible justification for the rip-off they are putting into community based organisations. I say to the insurance industry in Australia: it is about time you had a heart and thought of the community you serve.

Indeed, our Treasurer, the Hon. Mr Foley, has criticised insurance companies on a number of occasions, asking them to help alleviate the difficulties faced by community organisations that cannot afford insurance. On 3 June 2002, in the other place, he said:

> Come 30 June, we do have a serious problem. We are working it through. There is no easy answer because, if all the insurance companies are walking away from this and wanting to charge skyrocketing premiums, one of the alternatives is for the government to accept all the risks.

On 9 July 2002, he also said:

> Then again, when you wake up and see the newspaper this morning, you read that the head of QBE, before a select committee in Canberra, is making noises that, regardless of what governments do, that does not necessarily mean there will be an automatic reduction. It says that the insurance companies have to lift their game and have to deliver on the savings that they have told all governments will result in reform measures. . . The insurance industry is on notice. We expect it to deliver and I expect the commonwealth government to step in and insure from a regulatory point.

The Hon. Mr Foley, the lead minister for this legislation, has made a number of statements about this. On 2 October 2002, he said on *The World Today* on ABC Radio:

> I'll give this message to the insurance companies: that states like South Australia have been bending over backwards to do what we need to do to get lower insurance premiums. It's time the insurance industry stopped the talk and started delivering on lower premiums.

My question to the government is: what undertakings has the Treasurer received from the insurance industry in terms of his public pleas and pronouncements on this where he set out very clearly what his stand was about this? If he does not have those undertakings, why are we going down this path with this legislation?

I note that the member for Enfield, Mr Rau, in the other place, on 15 August 2002, was sceptical about the first stage of so called tort reforms that were passed. He talked about future care, as follows:

> Let us get this absolutely clear: what does future care mean? Future care means that when somebody is so badly injured they cannot look after themselves—maybe because they are quadriplegic and they have to receive support. The support may be in the form of housing, a wheel chair, carers to come in and wash them or whatever. That is what future care is all about. . . these people are very ill and future care is not there for these people to spend at the casino or have a good time but for a purpose. No alternative proposition is being offered.

He goes on to talk about the particular problems, and the member for Enfield has a background as a barrister acting for people who have been injured. The member for Heysen, Mrs Redmond, made a similar point about catastrophic injury claims, saying that it is inevitable that future care will be one of the two major components that will make the claims so large. Let us put that into perspective in terms of what future care is all about. The member for Heysen made this very pressing point:

> Once again, I express my cynicism about whether anything we do will affect the insurance companies and cause them to bring down premiums. I am with the member for Enfield in being highly cynical about insurance companies and their obligations. I do not think that the measure will have that effect. However, it will certainly limit some of the outcomes without being terribly prejudicial to those who are injured.

That was the first stage. This bill goes a lot further.

The government has justified the legislation by saying that it will create market certainty. Market certainty is almost a contradiction in terms, especially in the current global climate where the insurance market is constantly being thrown into turmoil by world events. In terms of the pay outs for claims made in this state, there is a substantial difference between this state and New South Wales, for example, in terms of public liability claims. When the government says it wants market certainty, my question is: which market is the government referring to? Is it the Australian market, the New South Wales market, the global market or the South Australian market? Why legislate for a problem that does not exist for us in South Australia and is a problem for the insurance industry to sort out?

In Victoria, 78 per cent of the price of an insurance premium is taxed. According to information provided by the Plaintiff Lawyer's Association, South Australia has the fifth highest tax percentage on insurance premiums in the world and is below France, Tasmania, New South Wales and Victoria. Given the enormous windfall it is getting, will the government consider cutting the exorbitant taxes on premiums that insurance companies pass on to consumers? The justification for this bill aims to blame the injured for high premiums instead of attributing the blame to insurance companies that refuse to reduce costs despite high profits and the government which taxes premiums at an extremely high rate by world standards.

There is no guarantee that the reforms will bring premiums down. Indeed, in Queensland the tourist industry is still waiting for relief in the costs of its premiums after the government enacted its tort reform legislation. If the government wants to bring premiums down, it should limit the tax in premiums that drives up the price of a policy.

Professor Marcia Neave, the chair of the Australian Health Ministers Advisory Council Legal Process Reform Group, has stated that the insurance industry's data on increased personal injuries claims draws simplistic conclusions about the effect of claims on premiums. A report by consultants, Cumpston Sargent, agrees with these conclusions. I understand that Cumpston Sarjeant did some work for the Plaintiff Lawyers Association. The report states:

> I do not think recent APRA (Australian Prudential and Regulatory Authority) figures on public liability are reliable enough to allow any conclusions to be safely drawn.

This report was quoted in an article in the Australian *Financial Review* dated 6 August 2002 which was entitled 'The litigious society fails to materialise in Australia'. The reporter, Damien Lynch, makes reference to this in an analysis that puts a hole in the arguments of the insurance industry and of those who seek to take away people's rights. Mr Lynch made the point:

> Insurers are partially responsible for the situation in which they now find themselves as, up to this year, they do not properly rate public liability risks. Led by HIH's underpricing initiatives, they scrambled after market share in the early 90s, offering unsustainably low rates. They could only afford this as long as equity markets were performing well. Insurance companies collected premiums from policy holders and invested the money using the returns to pay claims.

The link between increases in insurance premiums and increases in litigation is tenuous at best, yet the government has drafted this legislation based on the insurance industry's own spin. The insurance market will adjust over time. It needs parliament to have a knee-jerk reaction, which may be redundant by the time the legislation is passed and when it is in effect. There is a real concern that these changes will be at the risk of public safety.

The Labor Party prides itself on its record on social justice and on its assistance to workers and those who are vulnerable in the community. It is disappointing, to say the least, that it is proposing a bill that allows a route for businesses and professionals to escape responsibility for injuring members of the community and that makes it more difficult for people to get the justice they deserve after their life has been crippled by the wrongdoing of others.

In relation to the Victorian government's moves, Mr Peter Gordon, the President of APLA, made the point:

> It's mothers, it's the elderly, it's children. It's the most vulnerable in the community who have been the most entitled to the protection of the Labor Party who will suffer most.

I note that the Victorian government has withdrawn from a number of its changes. The law of tort aims not only to give injured persons an avenue to recover their loss at the hands of negligent professionals or businesses but also to deter such negligent practices and to encourage good risk management practice and high standards.

Law reform in this area should not be about saying that potential tort feasors will be negligent anyway, so let us lighten their burden a little so that they can pay their insur-

ance. This is entirely the wrong message for a government to be sending—no less a government than one that prides itself, through its links with the union movement, on protecting the rights of workers. It is doing the opposite.

The legislation responds to concerns and pressures that exist outside the law of negligence. The legislation will provide a disincentive to care for the safety of others in the community. By creating provisions to limit the warning people need to give about risks (as in proposed section 36 of the bill, which I will discuss later), we are putting potentially injured people in a desperate situation.

The history of common law development of the protection of injured parties needs to be referred to briefly. The concerns over costs in insurance and risk management are all valid and of concern. Rob Davis, the former president of APLA, outlines the equally valid and important community concerns. He says:

> These include the values of fairness, responsibility and compassion for the disadvantaged. These are values that define us as Australians—giving everyone a fair go and treating others with dignity and respect and, above all, ensuring that our actions are responsible and do not cause pain or suffering to anybody else. The common law system has been upholding these values in Australia for more than 200 years and forms the foundation of our basic democratic rights. It ensures that we as Australians live in a safe society, free from oppression and the unwanted interference of others.
>
> The risk of litigation provides an incentive to businesses as to provide safe workplaces and products. It is because of our legal system that food is safe to eat, children's toys are safe to play with, cars are safe to drive and people can go to work every day without the threat of injury or death.

In his address to the Insurance Council of Australia, John Gordon, the President of APLA, reports that the vital importance of the common law as made by judges is a deterrent to unsafe practices in businesses. Talk about going into the lion's den! In looking at the common law as a regulatory mechanism, Mr Gordon made the following point:

> A few weeks ago, Kraft and McDonalds announced that they were changing the way they were going to do business. Consumers were going to be better informed [and there would be greater concern in terms of health factors].

He continued:

> It is the same reason we don't have asbestos in our workplaces any more; why drugs are put through rigorous testing and review before humans can consume them; why churches are facing up to issues of sexual abuse of children, which have remained hidden for years; why Australian mining companies and third world nations are suddenly giving some thought to the environments in which they work; why our children play in playgrounds where they fall on woodchips or rubber rather than tar or cement; and why doctors have to tell you about some of the risks you face before they operate on you.
>
> Take away the common law and you take away those controls, the incentive to do things better. All you have left are the blunt and cumbersome instruments of government control and the criminal law and, to be effective, those tools depend on recognition of the problem and a willingness to do something about it free from political pressure. An individual who is injured by negligence or misleading and deceptive conduct, now also being abolished as a cause of action, feels no such encumbrance. He or she sees a defective unreasonable product or system, then forges ahead with an incentive to see it through. The product or system is held up to public scrutiny and, if the individual proves their case or negligence is accepted, the product or system is improved or removed.
>
> In the absence of such a powerful agency for change, compare trying to get government action on a system or product, particularly in an industry with political clout and power.

In an article in the law journal of the University of New South Wales last year, entitled, 'Problems in insurance law', Justice Callinan of the High Court of Australia has stated that whoever is to blame for the crisis, it is certainly not the injured people. He continued:

> But I do think (and I can say with some confidence) that those much maligned people—juries in this country—at least are not culpable, if culpability there be—

in terms of jury awards for damages, which we do not have in this state. He makes the point:

> Care also needs to be taken in treating the legal profession as the main cause of current problems. The concept of insurance dates back thousands of years. Risk transference, which is a central feature of insurance, was a cornerstone of the commercial arrangements of the Babylonians, Phoenicians, Greeks and Romans.

Professor Harold Luntz, a law professor at the University of Melbourne and a well-published author in the area of personal injury, in his article last year 'Reform of the law of negligence: wrong questions—wrong answers', states:

> . . .the rise in premiums is due to complex factors, not all of which are yet fully known, but that lack of principle plays only a minor role among them, that the changes advocated by politicians are making the law less not more principled and that these changes will do little to reduce the costs of the system of compensation. I assert that the problem with the present system of compensation is its slow, cumbersome, expensive, discriminatory operation, that many of the costs of injury are inevitable and will be incurred anyway; that the real issue is how the unavoidable costs should be allocated; and that, to make the system more affordable, requires the elimination of the wasteful costs of investigation into fault.

That is Professor Luntz' view. Professor Mark Cooray is a former associate professor at Macquarie University School of Law in Sydney. In his book *The Australian Achievement: From Bondage to Freedom* he outlines the virtues of the common law system and the inadequacy of the legislation to do the job of the courts, which is exactly what the government is attempting to do with this bill. The government's response is hasty and it is ill-considered, in light of the observations of so many experts and professionals in this field of law. If we go down this path, we will take away people's rights and we will deliver a windfall to insurers.

In terms of the specific clauses of this bill, clause 31 is essentially a restatement of the duty of care. It does not change the common law position. It begs the question as to why it has been included or restated in this way, whether it is simply unnecessary or superfluous. Clause 32(1)(b) states that the risk was not insignificant. That relates to determining whether a duty arises, and this clause is ambiguous. My question to the government is: insignificant to whom—to the plaintiff, to the court, to the defendant? It is not specific. 'Insignificant' is not a legal term and should be deleted in this clause. Much argument will be afforded to courts as to the precise degree of the term 'not insignificant'. As Professor Luntz expresses, interpreting the legislation will put more of that money into lawyers' pockets. Professor Luntz was talking in general terms about this tort reform.

The common law test for the breach of duty of care and the foreseeability of injury will be changed. The test on which clause 32 is based was formulated by Justice Mason in Wyong Shire Council v Shirt, as follows:

> In deciding whether there has been a breach of the duty of care, the tribunal of fact must first ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may

have. It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to the reasonable man placed in the defendant's position.

Justice Mason went on to say:

The considerations to which I have referred indicate that a risk of injury which is remote in the sense that it is extremely unlikely to occur may nevertheless constitute a foreseeable risk. A risk which is not far-fetched or fanciful is real and therefore foreseeable, but as we have seen the existence of a foreseeable risk of injury does not in itself dispose of the question of breach of duty. The magnitude of the risk and its degree of probability remain to be considered with other relevant factors.

The High Court has assessed these issues and, rather than having a blunt instrument which in many respects will make the law more cumbersome, more complex, give more work to lawyers, it is important that we consider what the High Court has already determined. These are standards based on reasonableness, on fairness in terms of what is reasonable to do in the circumstances, rather than looking at this from a narrow perspective, and a perspective that will be unjust.

The so-called far-fetched and fanciful test is replaced in the bill with a double negative 'not insignificant'. Just as Ipp uses a double negative in his report at 7.15, the statement is clumsy and changes the existing law and will need to be interpreted by the courts in any given case. The Ipp report changes the test to 'not insignificant' because far-fetched and fanciful 'says nothing about whether precautions to prevent the risk materialising ought reasonably to have been taken and, if so, what precautions.' That is Ipp at 7.13. If we look at the High Court's decision in the Wyong Shire Council case, it makes very clear the standards that need to be considered.

Clause 32, which relates to precautions against risk, provides that, in determining whether a reasonable person would have taken precautions against the risk of harm, the court is to consider amongst the following a number of relevant things. The Ipp report states that, once the risk is identified, the so called 'negligence calculus' applies, namely, the consideration set out in clause 32(2). If there are other relevant things to consider, why not include them here as a comprehensive list? This clause has no significance because it leaves it up to the court to take account of whatever is relevant in any event, as stated by Justice Mason in his formulation of the test. Nevertheless, the criteria outlined in the bill and how they are to apply are ambiguous. The Ipp report suggests that paragraphs (a) and (b) be weighed against paragraphs (c) and (d). That is from the Ipp report at 7.8, page 103. That is clearly not stipulated in the bill.

This recommendation changes the current state of the law as set out by Justice Mason in Wyong Shire Council v Shirt. Justice Mason stated:

It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to a reasonable man placed in the defendant's position.

There will be confusion as to what relevant things are to be taken into account and how much weight they are to be given. The criteria are paraphrased from those set out by Justice Mason in the case of the Wyong Shire Council, which I have read out previously. The significance of which criteria are to be given weight is important, given the way each of them is worded. Subclause (2)(a) provides for the probability the harm would occur if precautions were not taken. Surely that is irrelevant if, in clause 32(1)(b), the legislation stipulates that the defendant need only take precaution against the risk of the harm that is 'not insignificant'. The term 'probability' is that recommended by the Ipp report. I query the government's approach in relation to this as to why it has been drafted in this way.

Subclause (2)(c) refers to the burden of taking precautions to avoid the risk of harm. What sort of burden does this paragraph refer to? Does it mean that, if it is too costly to avoid the risk of harm, defendants will be absolved from their duty to take precautions, even if there is a risk of catastrophic injury? It seems as if defendants would be absolved of their duty if they can prove that taking care against a risk will be too expensive or take too much time or trouble. That is cold comfort to someone who has a permanent injury requiring specialist care for the rest of their lives.

Subclause (2)(d) refers to social utility. This appears to have the potential to conflict with subclause (2)(c) if something is considered burdensome yet there is social utility in undertaking it. How will this work? How will this improve the common law position in Wyong Shire Council and the test set out by Justice Mason? What is the definition of social utility? It is not a term used by the courts, and it is not a term that has been interpreted, as I understand it. It will just encourage more litigation.

Subclauses (2)(a) and (2)(b) are sufficiently broad to encompass the ambit of what the court should consider. The term is referred to loosely by the High Court in Pyranees Shire Council v Day in the judgment of Justice Gummow in the area of economic loss caused by negligent misstatement. In that decision, Justice Gummow states:

The broad concepts which found the modern law of negligence reflect its development from the action on the case. Windeyer J. explained this in Hargrave v Goldman. These concepts are expressed in major premises which, if unqualified, may extend liability beyond the bounds of social utility and economic sustainability. This has proved particularly to be so with liability for economic loss caused by negligent misstatement.

In argument on the present appeals, various control mechanisms were canvassed for the application to local government bodies and the principles of negligence with respect to the discharge of the statutory functions.

This is an area in which the government will be encouraging greater legal uncertainty in relation to this. The whole of clause 32 is a restatement of the common law in some respects, but in others it seeks to limit and complicate it. In that sense it is unnecessary and irrelevant. It will not clear up any current ambiguities in the law nor assist in the reduction of cases. The government's attempt to limit or restate the common law will result in more litigation. The common law changes with the times in that it responds directly to the needs of the parties before it. It is in line with community expectations. The courts are independent and well suited to interpret the law as it exists. The codification of the common law will mean that words and terms in legislation will have to be interpreted and argued over, taking up more of the courts' time, extending the length, complexity and expense of cases.

Clause 33 relates to mental harm. Pure mental harm is that which stands alone as a result of witnessing traumatic events. This is referred to in the Ipp report, section 9.2, page 135. This clause disadvantages people with a pre-existing psychiatric condition. If a person is almost at breaking point and if an action caused by the defendant's negligence is the straw that breaks the camel's back and they suffer mental harm, then the defendant owes them no duty. The term 'normal fortitude' in the clause is an insult to the ordinary person in these stressful times. A briefing paper from the Beyond Blue national depression initiative states that one in four females and one in six males will suffer depression at

some time in their life. This translates to 800 000 Australians each year suffering from some form of depression.

Under this bill, these people may be classified as of normal fortitude by a defendant and so be denied a remedy for mental harm. Why should people with a propensity for psychiatric injury be discriminated against? If a plaintiff is more susceptible by reason of their pre-existing psychiatric propensity to have a problem as a result of some negligence caused by the defendant, the defendant can avoid a claim under this clause on the basis that the plaintiff was not of normal fortitude, even if that were foreseeable. I find the fact that this government is going down this path to be extraordinary, given that this government, in opposition, campaigned very strongly against the reduction of rights of injured workers in relation to stress and section 43 claims. This goes against the grain of what the Labor Party was standing up for in relation to injured workers, yet the Labor Party, the government, is going down a path of discriminating in a sense against those with a pre-existing psychiatric disability or condition.

The Ipp report gives policy reasons for limiting recovery for pure mental harm in section 9.4, but it does not stand fair scrutiny. This clause is an insult to those with psychiatric illness and should be deleted from the bill. The developments in nervous shock claims are a positive sign and show the progression of common law in this area. The law should be allowed to grow and develop in this area to ensure just outcomes for plaintiffs. Indeed the proposed clause is in direct contradiction to the most recent statements of law in this area—Tame v New South Wales and Annetts v Australian Stations. The facts of the Tame/Annetts cases are set out in the judgment of Chief Justice Gleeson. Members may remember that Annetts was the horrific case where two young jackeroos were lost in the desert and were treated quite horribly by their employer and they perished in the desert in terrible circumstances. Chief Justice Gleeson said, in relation to the Tame case:

> The allegedly tortious act is that of the police officer in erroneously completing the accident report, [noting she had alcohol in the blood, which she in fact did not]. He had no contact with the appellant, [Mrs Tame], and made no communication to her. He entered some information about her in a routine form. That information was incorrect. The error was obvious. It was soon corrected; and it was never acted upon by anybody. The police officer's conduct consisted in recording and communicating to third parties incorrect information about the appellant. He made a careless misstatement, but nobody relied upon it. The appellant's reputation was unaffected. There was no claim in defamation. [Mrs Tame suffered nervous shock as a result.]

Chief Justice Gleeson's restatement of that states:

> In the second case at one level. The conduct of the respondent was of a kind that commonly forms the base of tortious liability; it was the alleged failure of an employer to provide an employee with a safe system of work. But there is more to it than that. The employee was a minor. His parents, the applicants, had agreed to permit him to work for the respondent in a remote part of Outback Australia on the face of assurances that he would be well cared for. It is alleged that he was not well cared for. He died. The parents suffered psychiatric injury.

Chief Justice Gleeson indicates that in some cases you cannot succeed in a nervous shock claim, but in others you can. In terms of community concern and expectation, the courts in many respects reflect those concerns. The judges deciding the case made several comments regarding the standard of normal fortitude, the majority rejecting it as a sole test of liability due to the variable nature of the human psyche and the changing notions of nervous shock and what causes it.

It seems incredible that the government is going down this path in an almost Darwinian approach of survival of the fittest of normal fortitude and it goes against the grain of what the Labor Party was saying in opposition in relation to what the previous government did with respect to WorkCover laws. I know that you, Mr President, were an active campaigner for that and fought very hard for the rights of those with psychiatric injury to be compensated; you pushed hard for that. This goes against the grain of that very approach. Chief Justice Gleeson in the Annetts v Australian Stations case discusses the issue of liability. He says:

> A case such as that of Mrs Tame explains the increasing awareness both in the medical profession and in the community generally of the emotional fragility of some people and the incidence of clinical depression resulting from emotional disturbance. What would be a consequence for the way in which people conduct their lives of imposing upon them a legal responsibility to have in contemplation and guard against emotional disturbance to others? Considerations of that kind are not floodgates arguments—they go directly to the question of reasonableness, which is at the heart of the law of negligence. Reasonableness is judged in the light of current community standards.

He goes on to refer to Lord MacMillan in Donogue v Stevenson and stated:

> The conception of legal responsibility adapt to social conditions and standards.

He paraphrased that. That is what the common law is about. It is about adapting to social conditions and standards, always with a base of what is reasonable, yet this government is going way beyond that, throwing out the baby with the bath water in terms of dealing with this.

In this decision, a decision to do with Tame v New South Wales and Annetts v Australia Stations, delivered on 5 September 2002—two different cases, but one decision, I understand—Chief Justice Gleeson went on to say:

> But defining the circumstances in which it is reasonable to require a person to have in contemplation and steps to take to guard against financial harm to another person or emotional disturbance that may result in clinical depression requires a caution which courts have displayed.

Courts do display caution in dealing with these matters. Chief Justice Gleeson said:

> I agree with Gummow and Kirby J.J. that the common law of Australia should not and does not limit liability for damages for psychiatric injury to cases where the injury is caused by a sudden shock or to cases where a plaintiff has directly perceived a distressing phenomenon or its immediate aftermath. It does not follow, however, that such factual considerations are never relevant to the question, whether it is reasonable to require one person to have in contemplation injury of the kind that has been suffered by another and to take reasonable care to guard against such injury. In particular, they may be relevant to the nature of the relationship between plaintiff and defendant and to the making of a judgment as to whether the relationship is such as to import such a requirement.

Justices Gummow and Kirby in their joint statement state:

> The statement by Spiegelman C.J. in the Court of Appeal in Tame, that a plaintiff cannot recover from pure psychiatric damage unless a person of normal fortitude would suffer psychiatric damage by a negligent act or omission, should not be accepted.
>
> Windeyer J observed in Pusey that the notion of a 'normal' emotional susceptibility, in a population of diverse susceptibilities, is imprecise and artificial. The imprecision in that context renders it inappropriate as an absolute bar to recovery. Windeyer J also pointed out that the contrary view, with its attention to 'normal fortitude' as a condition of liability, did not stand well with the so-called 'eggshell skull' rule in relation to the assessment of damages for physical harm.

So, the High Court is discussing this and taking it into account. It is not about opening up floodgates but, rather,

doing what is reasonable in the circumstances. Justice Hayne in that same judgment said:

> Underlying all three of these propositions (shocking event, directness of connection and reasonable or ordinary fortitude) can be seen as the concern of the common law to confine recovery to only the clearest of cases. These mechanisms of control all have obvious connection with issues of causation and might, therefore, have been located in an aspect of the law of negligence, but hitherto they have found their principal expression in this area as propositions relevant to duty of care. They may therefore be said to reflect the fact that how and why psychiatric injury is suffered has, in the past, been very poorly understood. If that now can be shown to have changed, and if, as I have mentioned earlier, suitable criteria can be formulated for distinguishing between compensable harm (psychiatric injury) and non-compensable consequences (mere emotional distress), there may be force in saying that recovery should be extended beyond those cases which are identified in the ways I have mentioned. Even then proper regard must be paid to the need for the law of negligence to reflect community standards and understandings of what is meant by 'reasonable'. Only if that is done will the law effectively work its purpose of promoting socially responsible behaviour.

Justice Gaudron said:

> To say that 'normal fortitude' is not and cannot be the sole criterion of foreseeability is not to deny that, ordinarily, 'normal fortitude' will be a convenient means of determining whether a risk of psychiatric injury is foreseeable. However, it will be otherwise if a defendant has knowledge that the plaintiff is particularly susceptible to injury of that kind or is a member of a class known to be particularly sensitive to the events in question.

Justice Gaudron goes on to say:

> . . . there is no principled reason why liability should be denied because, instead of experiencing sudden shock, they suffered psychiatric injury as a result of uncertainty and anxiety culminating in the news of their son's death. 'Sudden shock' may be a convenient description of the impact of distressing events which, or the aftermath of which, are directly perceived or experienced. And it may be that in many cases the risk of psychological or psychiatric injury will not be foreseeable in the absence of a sudden shock. However, no aspect of the law of negligence renders 'sudden shock' critical either to the existence of a duty of care or to the foreseeability of a risk of psychiatric injury. So much should now be acknowledged.

Justice Callinan states, in terms similar to the legislation, what the test of suffering pure mental harm should be with the very important qualification that the government has overlooked in its drafting of this section. He said:

> In my opinion, the reasons for judicial caution in cases of nervous shock remain valid, as do the principles formulated by the courts in this country to give effect to that caution. The principles need to be refined as new situations, and improvements in the professional understanding, diagnosis and identification of psychiatric illness occur.

This bill does not do that. This bill takes away people's rights unnecessarily. The normal fortitude test is an insult. It is an insult to the hundreds of thousands of Australians and many tens of thousands of South Australians who each year suffer from depression, a psychiatric illness, or an underlying psychiatric condition. I predict that this clause will be the subject of great litigation. As with many other clauses, it will be a lawyers' picnic and it will give great comfort to insurers as they attempt to deny claims.

The judges citing the case make several comments regarding the test standard of normal fortitude. The circumstances stipulated in clause 33(2) are not pre-conditions of establishing a duty of care as the above judgment of the learned justices shows. Their report notes that the common law since Tame is now wider than existing legislation in New South Wales. This should not be a reason for limiting the law in South Australia. The judges in Tame applied the test as outlined in the common law to the facts, with the result of Mrs Tame's claim being characterised as far-fetched and fanciful, and therefore dismissed with the Annetts recovering for their distress at losing their son in those most awful circumstances.

The distressing conditions under which the Annetts' son died, and their anguish and long battle for some justice for his death, is described in an article in *The Sydney Morning Herald* as, 'Horrific desert death: parents can sue'. The article of 6 September 2002 by Malcolm Brown describes how James Annetts and Simon Amos, who was 17 at the time (and from South Australia), did not realise when they landed in the Kimberleys to work on part of the cattle baron Peter Sherwin's vast empire that conditions they would be forced to endure would be so appalling. I am sure that the Annetts case has made a difference in the way that young jackaroos are treated on those cattle stations so they do not face the risk of liability and the risk of a nervous shock claim such as that made by the family of those two young men who died so needlessly.

That is what the common law is about. It is about ensuring that there is a basic standard of responsibility amongst, in many cases, corporate wrongdoers. That is what we will lose with this particular clause. It still shocks me that the Labor Party, which fought so hard when in opposition for the rights of the injured in terms of psychiatric injury, as a result of what the previous government did, is going down this path.

The Annetts and their lawyer also commented on the extent of psychological trauma in terms of their fight for compensation in an interview on the ABC's *AM* Program some time ago. My concern is that the Annetts, the parents of that young man, would not be able to claim under this bill. On the *AM* Program on 29 April 2000, Sue Annetts said:

> Because we're so far away, right, and because we didn't see him die, it's not supposed to affect you. I mean, if your child's sick in hospital and your child dies it affects you. If your child is killed in a car accident it affects you, right, but at least you know what happened to your child. We have no idea. I mean, we can only imagine the worst. The horrible thoughts that go through our mind, day in and day out, right. You don't sleep. When you do you have nightmares.

This government is going down a path that will make it more difficult for parents such as the Annetts to sue when they have lost their child in horrible circumstances. I indicate I will move an amendment to clause 33(2)(a)(i). I will speak to my colleagues, including the Hon. Robert Lawson, in relation to amendments I propose to table tomorrow, following discussion with various parties in relation to this bill. My concern is that clause 33(2)(a)(i) should incorporate the circumstances of the case to which the court may have regard and consider—in other words, to make it broader. This wording is more fitting in this area of law where judges may or may not take certain considerations into account depending on the facts of the case.

Clause 33(2)(a)(ii) refers to whether the plaintiff witnessed at the scene a person being killed, injured or put in peril. This clause is also in direct contradiction to the existing common law as outlined in the South Australian Supreme Court case of Pham v Lawson—which went to the High Court. I refer to the judgment of Justice Lander, with whom justices Bollen and Cox concurred. In that case, it was said:

> For the purposes of a consideration of the facts of this case those judgments establish that a duty of care will be allowed by a tortfeasor to the spouse of an injured person where that spouse has suffered nervous shock and consequent psychiatric illness in circumstances where the spouse was not present at the time of the accident and did not attend the scene of the accident but was later told of the consequences of the accident in relation to her spouse and attended at the hospital and perceived for herself some of the consequences.

> It is a matter of degree. It is a matter of commonsense when the stage is reached that a court must say that there can be no duty of care in the given case because the involvement of the person who suffered the nervous shock is not sufficiently close in terms of relationship, involvement or perception. That stage is reached when the facts of the case demonstrate that it is not appropriate to erect the duty of care.

I remember that case well. Angela Bentley, a lawyer who specialised in personal injuries, took on that case and acted for the plaintiff, whose daughter was killed in a motor vehicle accident. The plaintiff did not see her daughter at the scene, but she consequently had to prepare her daughter's body for burial. The insurer fought that case. It went all the way to the High Court but the plaintiff was successful. My concern is that this legislation may well be restrictive in relation to that. If the plaintiff in that case was not of normal fortitude, could it be that that person would not have had a claim? I suspect that it would be grounds for the insurer to argue the case—the case where the mother prepared her daughter's body for burial and was ultimately successful in a claim for nervous shock.

Justice Lander based his conclusions on the well-known statement of Justice Deane in Jaensch v Coffey, at 608-9, who said:

> It is somewhat difficult to discern an acceptable reason why a rule based on public policy should preclude recovery for psychiatric injury sustained by a wife and mother who is so devastated by being told on the telephone that her husband and children have all just been killed that she is unable to attend at the scene while permitting recovery for the reasonably, but perhaps less readily, foreseeable psychiatric injury sustained by a wife who attends at the scene of the accident or at its aftermath at the hospital when her husband has suffered serious but not fatal injuries.

In Annetts, Chief Justice Gleeson, in reference to the circumstances of the Annetts' son's death, where he became lost and died in the desert, states:

> . . . this may not have been likely to result in a sudden sensory perception of anything by the applicants. But it was clearly likely to result in mental anguish of a kind that could give rise to a recognised psychiatric illness.

This case abolished the 'sudden shock rule', the 'normal fortitude rule' and the 'direct perception rule' that the government is trying to reinstate in this bill. We should be progressing in our understanding of psychiatric illness and the law, not taking a regressive and retrograde approach.

Under subclause 2(a)(ii), the requirement of this bill differs from the District Court of South Australia's decision in Awad v Bebnowski, Squirrell and Noarlunga Health Service (2002), as it requires the plaintiff to be at the scene. This attempts to close off an area of law that is still untested and developing. It should be left alone. In that case, Judge Rice of the District Court delivered a judgment. Helen Awad was involved in a car accident with Bebnowski as a driver, and she died before reaching the Noarlunga Hospital. The hospital rang her home to inform the family, and Mrs Awad collapsed on hearing the news of the car accident. Mr Awad went to the hospital and was notified on arrival that his daughter was dead. He sued the driver, the hospital and the doctor in charge for nervous shock suffered as a result. He was successful as against the driver Bebnowksi, but unsuccessful against the Noarlunga Hospital and Dr Squirrell, who had informed him of the news.

Again, the common law worked in the sense that they were not successful. The common law takes a reasonable approach in these circumstances. Judge Rice stated that these three rules are relevant factors in determining that a duty of care exists, where such a duty does exist, and whether it has been breached; whether the defendant's tort has caused the injury in question, and whether the injury was too remote a consequence of the defendant's tort. Judge Rice found that there was a substantial causal link between Mr Awad's mental injury and the breach of duty of care. He said, '. . . it is the fact of that devastating news that was crucial, not the mode of its communication' with regard to whether the news was delivered in person or via the telephone. This is just one situation where negligent drivers are held responsible for their actions in the area of nervous shock.

Another case that did not make it to the court concerned an accident involving a woman and her young child. The woman was crossing the street with her child when a motorist ran into them, killing the child instantly. Her husband was not at the scene, nor did he witness the accident or the death or injury. Both the husband and wife sued for nervous shock and were successful, and the case was settled before trial. Under this provision, the husband may not have had a successful claim because of subparagraph (ii).

Subparagraph (iii) aims to avoid claims where a person sees a person other than a family member involved in a negligent incident. Very few, if any, successful claims for nervous shock have been brought by anyone other than close family members. In the event that there is a claim, the court should be free to decide the case on its facts in light of all the evidence without having to deal with this proposed section. Subparagraph (iv) seems to be superfluous, given the provisions in subparagraph (iii), and I would like to hear from the government as to why it is there.

Subclause 2(a)(b) is inconsistent with (ii) and (iii) above. If a plaintiff suffers a minor bodily injury and has consequential mental harm, a defendant can argue that a person of normal fortitude with those minor injuries would not have suffered a psychiatric injury and therefore should not have an entitlement. This is another opportunity for defendants to avoid claims and should not be pursued.

Clause 33(3) provides:

> This section does not affect the duty of care of a person (the defendant) to another (the plaintiff) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

There is concern that people might not want to know about other people's 'less than normal fortitude' if this will make them liable as potential defendants. It is almost an out of sight, out of mind approach. This clause is supposed to cover workplace type injury where an employee might know of a particular weakness, yet still fail to take care. There will be less incentive for people to be aware of the needs of others if this provision is included.

To put this into perspective, this is a bill from a government that brought in a 'no fault' workers compensation scheme abolishing common law rights on the basis that it was supposed to stamp out unscrupulous insurance companies exploiting victims. Clearly, the government has turned its back on the principle that it enunciated a number of years ago when it was last in government. Again, it is an attempt to codify the existing common law, but it will lead to more litigation.

In relation to clause 34, on causation, it is my understanding that this is based on English case law that has not been referred to in any Australian judgment: we are going down the English path. It is not clear why this clause includes subclause (2)(a) as a result of Fairchild and Glenhaven Funeral Services. The established principle referred to is a characterisation of causation in a negligence claim where

there is more than one defendant and it cannot be proved which act of negligence caused the loss or damage to the plaintiff.

This was a decision of the House of Lords of 2002, and it seems that the government is going down the path of looking at the House of Lords. I thought we abolished appeals to the Privy Council many years ago, but it seems that we are tugging our forelocks to the House of Lords rather than looking to the High Court of Australia and to our own superior courts in this country. Again, I find it extraordinary that this government is going down this path. We are now going to the House of Lords rather than looking at the High Court.

Clause 36 relates to obvious risk and subclause (1) provides:

> For the purpose of this Division, an obvious risk to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.

Subclause (2) provides:

> A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

This is a case of Darth Vader meets Monty Python. So, you really are dealing with a case where the government says it is an obvious risk, which relates to an assumption of risk, but, for the risk to be obvious despite the dictionary definition of obvious, it does not have to be obvious. I would like the government to explain the contradiction between those two clauses. It just does not make sense. It is a circular description of the meaning of obvious risk. I query whether or not the government is implementing the Ipp reforms or whether it is a botched attempt at dealing with what it is saying. Recommendation 14 of the Ipp report states:

> A person does not breach a proactive duty to inform by reason only of a failure to give notice or to warn of an obvious risk of personal injury or death, unless required to do so by statute.
>
> (a) An obvious risk is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of the person injured or killed.
>
> (b) Obvious risks include risks that are patent or matters of common knowledge.
>
> The panel considers that it would be undesirable and impractical to attempt to identify obviousness of risk. Whether or not a risk is obvious must ultimately depend on the facts of the individual cases and, in the end, will be a matter for the court to decide.

My question to the government is: why has the definition of obvious risk been changed from the Ipp specification to risks that are not prominent, conspicuous or physically observable? What has been the rationale behind that?

I presume that this clause does not apply to recreational services given that the recreational services legislation was passed by this parliament not so long ago. The High Court has shown that it is able to decide such cases without the assistance of legislation as can be demonstrated. According to the *Oxford English Dictionary*, 'obvious' is derived from the Latin 'ob' meaning against, and 'via' meaning way—it is taken to mean plain and open to the eye or mind; clearly perceptible; perfectly evident or manifest. Thus, the physically observable to the eye or mind is implicit in the term obvious and should not include non-physically observable risks. So, here we have a government that is trying to turn the dictionary definition on its head with legislative sleight-of-hand. Observable is from the Latin 'ob' and 'servare' meaning to watch or look at and means a thing that may be observed or noticed; something that can be perceived more or less directly; something that is knowable through the senses. The term 'not physically observable' is therefore a contradiction in terms in relation to the definition of the word observable.

Insurance companies will use this clause as a cover to throw out all personal injury claims as all claims can be potentially classified as coming under this clause. Under the clause, the defender does not owe a duty to warn of this risk that is obvious yet not observable. Surely, the fact that it cannot be observed justifies a warning. The presumption that a plaintiff is aware of a risk in 36(2) could apply to any claim that would make it very difficult for any plaintiff to recover. At the very least, it will encourage more litigation. This is just manna from heaven for insurance companies that will be able to argue this time and again in so many public liability claims.

Currently, settlement offers are about 40 per cent of the amount plaintiffs claim. Insurers would drastically lower offers, if not make no offer at all, if this provision could be used because it absolves defendants from warning plaintiffs of risks defendants should be aware of if they are so obvious. This proposed section will grossly disadvantage children and people from non-English speaking backgrounds who are not aware of such risks and who will not necessarily understand signs or warnings that make risks obvious. They will be denied a remedy under this provision.

Vairy v Wyong Shire Council, a decision of the New South Wales Supreme Court, is one example of a case where injured people, especially the young, will not be able to recover damages to help them live with crippling lifelong injuries. It is the first in a series of so-called diving cases which have been before the courts recently. I would like to hear from the government as to how those sorts of cases would be impacted on by the obvious risk cases because they are cases where people suffer catastrophic injury, such as quadriplegia (tetraplegia).

Justice Bell, in setting out the facts, said that the plaintiff sued the Wyong Shire Council for damages arising from injuries sustained on 24 January 1993 when he dived into the ocean from a rock platform located at the northern end of Soldiers Beach and hit his head on a sandbar. He suffered a burst fracture at C5 causing irreversible tetraplegia. The plaintiff had not dived from the rock platform prior to the date of his accident. He did not make an assessment of the depth of the water adjacent to the rock platform at the dive location on any occasion when he entered the water from the rock platform to go snorkelling.

The council submitted that it was under no duty to warn of obvious risks such as the varying depth of the water at the rock platforms. It was held that the council was liable for Mr Vairy's injuries and that he was 25 per cent contributorily negligent for failing to check the depth of the water. Justice Bell goes on to apply the common law tests of breach of duty in foreseeability of risk, outlined in Wyong and Shirt as referred to in the discussion in relation to clause 32. This is a good illustration of judges applying the well established law to the facts and arriving at a reasoned decision. Justice Bell said:

> I am satisfied that the danger of a person sustaining severe injury as a result of diving from the rock platform was foreseeable. It was neither far fetched nor fanciful to consider that a person diving from a rock platform might sustain severe injury. The council did not contend the contrary. The erection of signs prohibiting diving, or at least, warning of the dangers of diving off the rock platform, would have occasioned relatively little expense to the council.

They could have absolved themselves of liability. Often, the warnings that should be given are inexpensive, as pointed out by Justice Bell. Removing the need for warnings under the legislation will discourage risk management practices, making it unsafe for all of us, especially in areas such as parks and beaches which are always busy with people, particularly children. After applying the reasonable foreseeabilty tests outlined by Justice Mason in Wyong Shire Council v Shirt, his honour makes a number of pertinent observations about the duty to warn of obvious risks.

Justice Bell confirms that the test will determine whether there has been a breach of the duty of care as enunciated by Justice Mason in Wyong Shire Council v Shirt. Justice Bell said:

> I am satisfied that the council, as part of its promotion of tourism, encouraged members of the public to visit patrolled beaches within the Wyong Shire, including Soldiers Beach. . . The council contends that the only danger in this case was that the water was too shallow to admit of diving safely into it. To my mind this submission pays insufficient regard to the evidence of various witnesses and they were persons of considerable knowledge of Soldiers Beach and the rock platform dating back over many years in terms of the use of that rock platform.

The case of Mulligan v Coffs Harbour City Council was very similar. The only difference in the facts was the location. The plaintiff, Mr Mulligan, having dived into the water several times that day was, therefore, taken to be familiar with the varying depth of the water when he took the dive that caused his injury. Mr Vairy suffered his injury in the first dive that he took. The court did not give judgment in favour of Mr Mulligan. After applying the same tests as Bell and Vairy, Justice Wheally concludes—this shows how the common law works—the following:

> A reading and re-reading of many of the cases in this field where they relate to injuries of plaintiffs while swimming, or in other circumstances, confirms that even in recent times, minds of the utmost legal distinction have come to differing but justifiable conclusions in comparatively simple situations of risk and injury. . . The practical consequence is that the plaintiff will not be entitled to damages in this case. My impression of the plaintiff is that he is an exceptional young man who was tragically and catastrophically injured in circumstances where his own contribution to the accident was relatively moderate. He had taken a degree of care in relation to his decision to dive and his method of diving. He was justified, to some degree, in thinking that he might continue to dive with safety. Certainly he had no intention of injuring himself and he was not acting with reckless disregard for his own safety. Yet it is not unfair to say that his life has been completely ruined by this dreadful accident. One could well understand, to borrow a phrase from the criminal law, relevant to sentencing, that he might have a genuine sense of grievance that other quadriplegics injured in diving accidents have been generously compensated whereas he is not to be.

But it turned on the circumstances of that case and it was determined that it was not reasonable for a plaintiff to recover in those circumstances, taking into account all the nuances of the case, the facts and the obligation on the council and what was reasonable to avoid the risk of injury. The varying decisions in those two cases are a good example of the toughness of the judgements of courts and the ability to decide the case before it based on the facts. Clauses 36 and 37 will throw that out and make it, I believe, almost impossible for many people who are catastrophically injured to be able to bring a successful claim.

Behind all the legal cases and terminology is a human face and a stark reality for victims of the negligence of others. Currently, a case is before the courts of a young man who, in his early 20s, became a quadriplegic after striking his head on a sandbar. We do not know whether his case will be successful. In an interview with *The Law Report*, he described the extent of his injuries. He said that had been told that it was a family beach. He was swimming with a group of mates and had been in the water for 15 minutes when he had this accident. It was a life-changing event. He stated:

> . . . there were no warnings available to tell me of those risks. . . I didn't see it as a risk. Where I live, I've grown up next to water and beaches and things like that, and I certainly know my areas around the place, but this was a new beach.

It is not certain whether he will succeed, because the circumstances of the case will need to be determined. However, I believe that this bill will take away people's rights. The courts will not be able to look at the circumstances of a case in which people are catastrophically injured.

My question to the government in relation to clauses 36 and 37 is: does it acknowledge that there will be less of an obligation on councils or authorities to put up warning notices about the risk of catastrophic injuries? In many respects, they will be absolved of their obligation to take relatively low-cost measures, such as putting up a sign to warn people of a potential risk, because of the bizarre definition of 'obvious risk' in clause 36(2), because it is a risk that is not prominent, conspicuous, or physically observable.

Clause 37 provides that injured persons are presumed to be aware of obvious risks. The heading of this section should be changed because it is inaccurate in that it assumes that injured persons are aware of obvious risks without the defence of volenti non fit injuria being raised. Literally, this means: to one who is willing, no legal wrong is done. This is a concept that the courts have narrowed over the years, yet this clause will expand it.

The defence of volenti is just that—a defence. Under clause 37(2), a plaintiff now has to prove that they were not aware of the risk, and this shifts the onus to the plaintiff for a defence and absolves a defendant from taking reasonable steps to avoid the risk of harm. This is socially unacceptable and is a disincentive for a defendant to take care and to ensure safety. It is outrageous that a defendant should be absolved from warning a plaintiff of a non-physically observable, inconspicuous, non-prominent risk. How will a plaintiff know about such risks? Everyone is always aware of risk, but how can someone be aware of a risk that they cannot see?

My question to the government is: why has the onus been shifted to the plaintiff? Does the government acknowledge that it is shifting the onus of risk to the plaintiff? It is giving a free kick to insurance companies, and it will increase dramatically the costs for a plaintiff to bring about a claim and will make it so much easier for these matters to be defended by insurers.

Alternatively, clause 37(1) should read that a defendant still has to prove volenti on the balance of probabilities that a plaintiff was, or should have been, aware of the risk, thus placing the onus back on the defendant. There has been some criticism of the defence of volenti by Professor Fleming, who is one of the leading authors on the law of torts. In the ninth edition in 1998 of the *Law of Torts*, he states:

> The central problem, to which divergent answers continue to be given, is what justifies the conclusion that a particular risk has been assumed. At one extreme are statements demanding an 'agreement', or even 'bargain', between the parties whereby one assents to waive his right of recourse against the other in return for an expected favour, like being given a free ride. But this requirement is both psychologically unrealistic and incompatible with the course of decisions which have found plaintiffs volentes on the basis of far less positive conduct. Particularly troubling in this respect are situations in which the question of assumption of risks arises in advance of the defendant's conduct, instead of the defendant's negligence preceding

the plaintiff's confrontation of it. Such are cases dealing with a passenger's rights against a drunken or incompetent driver, nowadays the principal testing ground of the defence.

In Joslyn v Berryman and Wentworth Shire Council v Berryman, the High Court decision states that volenti has been successful in only four cases in Australian common law history. Justice McHugh talks about how there have been only a handful of cases. He states:

> But these four cases were the high water mark of the defence of volenti in cases where the driver was intoxicated. Since then the defence has failed in numerous cases—invariably on the ground that the passenger failed to appreciate the risk of harm, or did not intend to take the risk.

He continues:

> In New South Wales and in South Australia, the legislature has even intervened to abolish the defence of volenti non fit injuria in motor accident cases. Instead, legislation makes knowledge of the driver's intoxication a matter of contributory negligence and apportionment. But the defence of volenti is still available—at least theoretically—in other States and Territories.

My questions to the government are: given the comments of Justice McHugh in those cases, what is the interaction between the two? What will it mean in terms of the defence of volenti? Does the government acknowledge that the defence of volenti will be expanded way beyond the way in which the courts have previously dealt with it? It will be easier for a defendant to escape liability. It seems that the government is taking another backward step in bringing volenti back from the dead after abolishing it in motor vehicle accidents. What is the interrelationship between the two? Is this not inconsistent with the government's approach in relation to motor vehicle accidents?

Clause 38 refers to 'no duty to warn of an obvious risk'. If a person does warn of a risk, presumably they can be liable in negligence. My question to the government is: is this a bar to a damages claim in its own right? I will argue that the clause should be deleted.

Clause 38(2)(a) discriminates against children and migrants who may not understand information or do not know how to ask for the correct information. Would a casual comment, such as, 'This isn't dangerous, is it?' constitute a request for advice or information? Will they have to differentiate between a request in jest and a formal request for information? How will that be done? How does the government propose that this clause will work? Will it mean yet more litigation and more grist to the mill for insurers? My question to the government is: how can you ask for advice or information about a non-physically observable risk? It does not make sense.

Clause 38(2)(c) is a restatement of the position of the High Court in Rogers v Whitaker, the facts of which I will refer to briefly in a moment. My argument is that clause 38 should not be passed. It complicates the common law, discriminates against children and migrants and is contradictory and nonsensical in its formulation.

On the basis of information that I have received from the Plaintiff Lawyers Association, this clause could well cut off some 75 per cent of claims. South Australia has the lowest claims rate in Australia, with the average public liability claim being only $19 000, compared with a much higher figure (more than double the amount) in New South Wales. So, why are we doing it?

Clause 39 is a restatement of the common law. It does not alter anything and appears to be superfluous. My question to the government is: why go down this path? Clauses 40 and 41 aim to restrict the cases in which a person can sue a professional (and, in particular, a health care professional) for negligent actions. It is already difficult to run a medical negligence claim without further hurdles in relation to burdens of proof. In New South Wales, the parents of a meningococcal victim are attempting to sue for compensation. They are having no end of problems, and it remains to be seen what will happen. That case is referred to in an article in *The Sydney Morning Herald* of 20 June 2003.

Clause 40 restates the position as described by Chief Justice King in F v R, the landmark South Australian Supreme Court decision. Chief Justice King said:

> The law imposes on the medical practitioner a duty to exercise reasonable care and skill in the provision of professional advice and treatment. The standard of care is that to be expected of an ordinarily careful and competent practitioner of the class to which a practitioner belongs.

The formulation in clause 41 is simply a restatement of the Bolam test, which is derived from the direction Justice McNair gave to the jury in Bolam v Friern Hospital Management Committee in a 1957 House of Lords decision. He said:

> A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art.

That is what I call 'the mate's defence' because it also applies to other professions, including the legal profession. In essence, if your mates say that what you have done is reasonably accepted practice, the claim will fail. That is what it is about. This bill is attempting to change the standard of Chief Justice King, of reasonable community expectations, and it will be winding the clock back by going back to a 1957 House of Lords decision. The point that Chief Justice King made in F v R is:

> The court has an obligation to scrutinise professional practices to ensure that they accord with the standard of reasonableness imposed by the law. A practice as to disclosure approved and adopted by a profession or a section of it may be, in many cases, the determining consideration as to what is reasonable.

He goes on to say:

> The ultimate question, however, is not whether the defendant's conduct accords with the practices of his profession or some part of it but whether it conforms to the standard of reasonable care demanded by the law. That is a question for the court and the duty of deciding it cannot be delegated to any profession or group in the community.

However, that is what this bill is doing. It is taking away people's rights. It is constricting and choking people's rights and going back to a standard decided upon by the House of Lords in 1957, that what your mates say is good enough. That is what the current law is. In introducing this measure, we are taking the legal position back 40 years because of the way in which clauses 40 and 41 modify the standard of care for professionals.

A number of other South Australian cases have rejected the Bolam principle, including Piwonski v Knight, and Justice Perry in that decision stated:

> But it does not follow that the evidence of the practice followed by competent medical practitioners is irrelevant. On the contrary, it is always a relevant item of evidence, and at times will be highly relevant.

But it is not the only factor, as Justice Perry goes on to explain. In E v The Australian Red Cross Society, Justice Wilcox stated:

> It seems to me that, for the reasons they give, the view expressed by Reynolds J.A. in Albrighton, by King C.J. in F v R and by Lord Scarman in Sidaway is to be preferred to a rigid reliance upon common practice. While evidence of the practice usually adopted by persons in the position of a defendant will generally be of great

assistance and often decisive, the way must be left open to a plaintiff to persuade the court that the practice does not ensure an adequate standard of care.

Adopting that philosophy, he then found in favour of the plaintiff in that case, which related to blood products and donor screening practices, where the plaintiff was successful. If we go back to the Bolam principle, which is what this clause 41 is trying to do, we will be taking away people's rights and make it almost impossible for them to sue because it will be the approach of mates in a profession, whether it is the medical profession, the legal profession or other professions.

In Daniels v Burfield, a decision of the South Australian Supreme Court of Justice Bollen, another reference was made to this. Justice Bollen said:

Be that as it may, strict adherence to accepted practice will not alone automatically defeat an injured patient's claim. Of course, accepted practice is a very important matter to take into account.

Again, it is one of community expectations, and that was the crux of Chief Justice King's decision that effectively changed the law around the country, and now we are seeking to go back to a 1957 House of Lords decision. It has also been rejected by the courts in England where the Bolam test was derived, and Luntz and Hambly in their commentary on this quote the history from Rogers and Whitaker, an informed consent case, where the High Court adopted the approach of the British courts, saying that there is an obligation on the medical profession, particularly, and other professions to give people reasonable advice of the risk of surgery. As a result of Rogers v Whitaker—thank goodness for that case — doctors, the medical profession and other professions have to give more information to people about the risk of a particular course of conduct or the risk of particular surgery.

This clause will allow any professional person to gather all like-minded professionals to gang up against potential plaintiffs. This approach is biased, it is unjust, and it should be left in the hands of the courts to partially weigh the expert evidence and decide a standard, instead of having a standard imposed by the profession in question. I refer also to the case of the very courageous Jayne Kite. Her case related to the obligation of the medical profession to inform patients of test results and it concerned record keeping.

In the end, as a result of the Kite decision, doctors now do things differently to advise people of test results, and that must be a good thing. It means that there is less of a risk of injury for patients as a result of the Kite decision. However, this clause will turn that decision on its head, and I would like to hear from the government as to whether it disagrees. Given the facts of the Kite case, given the wording of these clauses, my belief is that it will turn it on its head, because the F v R principle of community standards of what is reasonable will be thrown on its head. Chief Justice King in F v R said:

The ultimate question, however, is not whether the defendant's conduct accords with the practice of his profession or some part of it but whether it conforms to a standard of reasonable care demanded by the law.

That should be the key test. In accordance with the principles outlined by Chief Justice King, I will be moving an amendment along these lines: that a person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted as a competent professional practitioner according to general community standards and by members of the same profession. Through that amendment we will not lose the position of F v R.

Widely accepted in Australia, as set out in clause 41(1), is that it does not take into account international medical practice, which may be more advanced than that in Australia, although we are fortunate in having one of the best health systems in the world, and standards and practice may vary widely. If there are advances overseas, it means that we cannot take them into account if the profession here was reasonably aware of them. It is difficult enough to run a medical negligence claim in Australia at the moment. There are risks, and I am not suggesting in any way that we go down the path of the US, where the cost of indemnity rule does not apply. In other words, you do not get an award for costs against you if you lose. We have a cost indemnity rule here. It acts as a very important and reasonable brake on people bringing forth frivolous or vexatious claims. If you do not succeed in your claim you will be hit with a massive claim for costs from the other side, even if your lawyer is working for you pro bono, and that is a reasonable limitation. I am not suggesting that we change that. It is already very difficult to claim: this will make it almost impossible. There will be a reduction in the standard of care.

Peter Cashman, a former president of Plaintiff Lawyers, who was involved in some noted breast implant litigation when Dow Corning was sued for its silicone breast implants, and also the Copper 7 implants, where many women were rendered sterile as a result of that defective product, talks about the importance of developing adequate procedures designed to reduce or avoid the risk of injury. He says:

In many instances where claims arise, issues of informed consent become problematic in the absence of reliable records of communication concerning risk. When an event occurs, many doctors do not provide frank disclosure of how and why things are wrong. This failure of disclosure is compounded by an unwillingness to say sorry.

The culture of concealment has been fostered by medical indemnity insurers and their lawyers on the legally specious premise that somehow saying sorry translates into an admission of 'legal' responsibility or liability.

This government and the Treasurer deserve credit for this. The shadow treasurer took this up in terms of being able to say sorry without incurring liability. That is a good thing. The standard here in clause 41(2) provides:

However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.

The standard does not apply if it is irrational. 'Irrational', according to the *Australian Concise Oxford Dictionary* means 'unreasonable, illogical, absurd; not endowed with reason'. The word 'unreasonable' would be more suitable in this context and more in accordance with the legal terminology in the area. 'Irrational' does not appear in any law dictionary or legal phrase companion. What is the government doing here? Short of a professional being stark raving mad, we have to cop it in terms of their conduct. Reasonableness should be the appropriate test, and I urge the opposition and other members to support an amendment I will move along those lines.

It does not make sense and I call on the government to confirm that 'irrational' is not defined legally, that it will mean that the dictionary definition will be the approach that the courts will use. Therefore, short of a doctor in medical negligence cases being stark raving mad on something, we will just have to cop their opinion. In the distant past, I have acted for plaintiffs in medical negligence cases where there have been quite horrific injuries because a doctor has had a particular technique, in one case in a birth delivery, with horrific consequences to the woman involved. My concern

is that this clause would have prevented that woman from bringing a claim.

I also ask, in terms of subclause (4): what is meant by 'universally accepted' as opposed to 'widely accepted'? According to the *Australian Concise Oxford Dictionary* 'widely' means 'extending far, embracing much, of great extent, to full extent'. 'Universal', according to the *Australian Concise Oxford Dictionary* means 'of or belonging to or done, etc., by all persons or things in the world or in the class concerned, applicable to all cases'. This is a sweeping statement and is not consistent with the earlier use of the word 'widely'. Which one of these meanings is intended in the provision? There does not appear to be a clear distinction between 'widely accepted' and 'universally accepted'. This artificial distinction should not be supported.

Clauses 40 and 41 really provide a means for medical professionals with their mates and for other professionals to circumvent their obligations of responsibility. If a medical professional has three or four friends who are willing to state that, in their view, what the potential defendant did was widely accepted practice, then the injured party would lose their case and have no recourse. Having a medical procedure is a traumatic enough experience in some cases without having to contend with the fact that, if a doctor acts negligently, he can rally members of his profession around his cause to help him avoid liability instead of relying on an impartial judge to make a decision based on the facts and on existing legal principles where reasonableness is the key and where community standards are the benchmark.

Subclause (5), stating that this section does not apply to liability arising in connection with the giving of or failure to give a warning, advice or other information in respect of risk of death or injury associated with the provision of the health care service, lets other professions such as lawyers, accountants and engineers off the hook in terms of giving advice. It lowers the standard of careful professionals at a time when society seeks to make standards higher and expects more of its professionals. Why sacrifice standards that are reasonably expected simply to appease the insurance industry? As I understand it, even the AMA in its approach has voiced concerns over limiting the standard in this way. That is something I will bring up in committee.

Clause 42 relates to highway immunity. The immunity of highway authorities from liability goes directly against recent High Court authority and resurrects the body of law that was put into effect in 1936 in Buckle v the Bayswater Road Board—a 1936 decision of the High Court. The laws surrounding misfeasance and non-feasance in relation to negligent highway authorities became so complex in the intervening 60 years that the High Court decided to abolish this artificial and troublesome immunity in a joint decision of Brodie v Singleton Shire Council and Ghantous v Hawkesbury City Council.

Professor Fleming in his text *Law of Torts* outlines the history of the immunity of public authorities and their various interpretations and principles that have been formulated in order to give effect to the intention of the rule. Again he says:

> Although public authorities enjoy no immunity as such from ordinary tort liability, a protective screen has long remained in the vestigial non-feasance rule that mere failure to provide a service or benefit, even pursuant to statutory authority, would ordinarily confer no private cause of action on persons who thereby suffer loss. The overriding policy applies alike to act for negligence and nuisance.

Again the High Court dealt with that in terms of abolishing the distinction, but again this is a retrograde step. The old artificial structure will need to be brought in, which states that liability exists for failure to maintain other structures attached to or associated with the highways, such as drains, lamp-posts and seats.

The complexity of this area of law was outlined by Luntz and Hambley in *Torts: Case and Commentary*, and I propose to refer to that in more detail in the committee stage in terms of how this works. Brodie v Singleton Shire Council acknowledges the complexity of this area and deals with it by abolishing the distinction.

In terms of highway immunity, the Victorian government is going down a different path of sunsetting, and placing an obligation on authorities to at least deal with safety concerns to minimise the risk of injury. Has the government considered that and does the government acknowledge that in Brodie's case the government is proposing to turn that decision on its head?

New section 45A refers to the Limitation of Actions Act where there will be a six-year limitation. I believe that is not enough. Children's symptoms may not materialise until after this time and, even if they do, the judgment on whether they ought to sue is taken out of their hands if they need to file a notice of intent through a parent or guardian within six years. A child will have no idea whether or not they want to sue, and the parent or guardian may make their own choice, not necessarily in line with the choice that the child would make once they are an adult. It is almost a different standard. If some parents have a different view or some are more diligent than others, you will have some children being prejudiced and others not.

In terms of the issue relating to the requirement to notify parties and potential defendants, my concern is that in a practical sense this may conflict with the commonwealth Privacy Act because when you complete a Health Insurance Commission form there is a requirement to indicate whether you have a claim or not and, if you say that you do not have a claim, there may well be an issue of whether the commonwealth is being prejudiced in relation to a claim brought down the track. There seems to be a tension and an inconsistency between the requirements in the Health Insurance Commission claim forms and the requirements of the Health Insurance Commission Act and this bill and a conflict with respect to privacy provisions.

Often a legal claim is the last thing in a parent's mind after their child has sustained an injury in an accident due to possible negligence, and that has been raised previously—the Law Council of Australia has raised it quite extensively in the media. My question in relation to gratuitous services is: why should they not be recoverable? The point of an extension of time is because a plaintiff is uncertain whether or not they will be able to make a claim.

How can you give notice of something that has not yet materialised? My concern is that this section will encourage litigants not to fully disclose on their HIC forms as they should. For example, if an obstetrician makes an error when delivering a child and there are independent reports to this effect but not all the symptoms have yet crystallised, and an extension of time is granted but no notice of the type of damage is given, the parents will probably be wary about ticking all possible options on the HIC form, because otherwise they will not be able to recover for medical services when the case is finally heard, say, 15 years down the track, and that could cause all sorts of problems with getting treatment for that child.

Section 48(3a)(a) changes the law as confirmed in Wright v Donatelli, a decision of the South Australian Supreme Court. Interpreting the High Court's decision in Sola Optical v Mills on the question of what constitutes a material fact in granting an extension of time, His Honour Justice Cox stated that there need be no interaction between the postulated material fact and the plaintiff's decision to sue, that it does not need to form an essential element. He states further that it is difficult to ascertain a material fact within a time period in order to obtain an extension of time and when facing such obstacles insurers (except in quite exceptional cases) would be best advised to expend their forensic energies in more rewarding ways.

Paragraph (c) refers to a significant loss of expectation of life. Is not all loss of expectation of life significant? If you have been injured and your life is going to be reduced by six months, 12 months, five years or 10 years, is that not significant? What does the government mean by 'significant loss of expectation of life'? Does this mean that, if an asbestos victim aged 70, who was exposed to the asbestos 40 years earlier, is going to die within 12 months instead of living to, say, 75 (whatever the average is), that is not a significant loss of expectation of life? I do not think victims would take that view. If it was not significant, the court would not allow an extension. I think this paragraph is particularly insulting to anyone who suffers the loss of expectation of life if the court rules that their loss is not significant enough under this section.

We are then faced with the ambiguous terms 'major significance', 'substantial reduction' and 'significant loss'. The use of the words 'substantial' and 'significant' is confusing. It makes this area of law ambiguous. How does the government propose that they will be dealt with? According to *Butterworths Concise Australian Legal Dictionary*, 'substantial' means 'real or of substance as distinct from ephemeral or nominal'. This is referred to in Tillmanns Butcheries v Australasian Meat Industry Employees Union, a 1979 High Court decision. 'Major' and 'significant' are not terms generally used in this area of law, and the courts would have to interpret these sections.

There is a real concern that the words 'substantial' and 'major' could prejudice a plaintiff's claim significantly in terms of their capacity to work. That is what the extension of time provisions refer to, and they appear to be unnecessary hurdles. The courts already take matters into account, so this reference to a major loss of earnings seems to be an unnecessarily onerous hurdle for plaintiffs. If someone's earnings decrease from $1 000 a week to $800, will they fulfil the criteria if that $200 a week could make a real difference to that person keeping their head above water or supporting their family? The words 'major' and 'significant' are not generally used in this area of law. Again, the courts are happy to interpret these sections and they are excessively narrow.

With reference to powers of limitation, subsection (3b)(b) provides:

> The desirability of bringing litigation to an end within a reasonable period and thus promoting a more certain basis for the calculation of insurance premiums.

Promoting certainty for the calculation of insurance premiums should not be the job of government. Why should an injured person—in this case, more likely a child given the time extensions—be denied future compensation for living from day to day with a disability or injury simply to ensure that the insurance industry can carry on its business? That should be the criterion, This is not what insurance is about. This is even more offensive given the huge profits recorded by insurers in recent times.

Those are just some comments in relation to this bill. I look forward to hearing from the government in relation to the matters raised. I am amazed that a Labor government is going down this path, that it is batting for insurers rather than the injured, and I hope that, in committee, the government will be amenable to amendments that will ameliorate the draconian effects of this bill.

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

NATIONAL PARKS AND WILDLIFE (INNAMINCKA REGIONAL RESERVE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November. Page 557.)

The Hon. SANDRA KANCK: On 25 March 2002, after nearly five years of negotiations (some of them very tense), a groundbreaking event occurred: conservation groups signed a memorandum of understanding with petroleum companies agreeing that an area of land within the Innamincka Regional Reserve should be protected and managed in such a way as to maximise its conservation values. The petroleum companies (represented by John Ellice-Flint of Santos) consisted of Santos Ltd, Origin Energy Resources Ltd, Delhi Petroleum Pty Ltd, Novus Australia Resources NL, and Basin Oil Pty Ltd. The conservation groups (represented by Margaret Bolster of the Conservation Council) consisted of the Conservation Council of South Australia, the Wilderness Society and the Nature Conservation Society (SA).

This agreement envisaged that the current Coongie Lakes control zone (CLCZ) of the Coongie Wetlands be increased from 655 square kilometres to 2 585 square kilometres by adding in the flood plain surrounding some of the lakes. With a couple of riders, the agreement was that the new control zone ought not be made available for future petroleum exploration, production, pipelines and infrastructure, and that both parties would take this agreement forward to the South Australian and commonwealth governments, recognising that any final decisions for further action would rest with those governments.

The agreement even envisages the possibility—which I think is very exciting—that the north-west branch of Cooper Creek and the Anabranch might, in time, also be included. Having waited anxiously for some time for the state government to take action—remember: this agreement was signed on 25 March 2002—it was with relief that the conservation movement heard the government's announcement that the legislation before us would finally be introduced. The minister's speech understates the significance of this move. He says that the 'most environmentally significant portion' of the Coongie Lakes area will be protected. But he has not done justice to this agreement.

I remind members that we are talking about 2 500 square kilometres of land that will now be protected—and it is not just any old patch of land. Innamincka Regional Reserve was declared as such in 1988 by the state government as a way of attempting to deal with the conflict between the environment, pastoralism and the petroleum industry. Environmentalists have long been very unhappy with that mixed use concept for this area, and it is little wonder when we consider what we

are dealing with. This land is an environmental treasure, as well as being of archaeological significance for the Aboriginal people. It was given national estate listing in 1980. It is a Ramsar site, making it a wetland of international significance, and it is listed on both the national and South Australian directories of important wetlands. It is listed on the national wilderness inventory and it meets three criteria for world heritage listing.

With little or no promotion of the area it is already attracting 30 000 tourists per annum. As a result, managing the conservation values of the area will not necessarily be easy. Cooper Creek feeds into this wetland and I suspect that, when South Australia goes into bat over cotton growing across the border in Queensland, the move that we are taking in this legislation will allow us to more strongly argue against the use of Cooper Creek water for cotton growing.

The Democrats welcome and support this legislation. The reaching of the agreement between competing interests and the government support for this legislation is something of which all South Australians can be proud. It is something that does not happen very often. I congratulate the three groups involved: the petroleum companies for their willingness to negotiate over the excision of this section of land; the conservation groups for not walking away from negotiations when the going got tough and for keeping pressure on the government; and the government for keeping its promise on a significant election policy.

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

HIGHWAYS (AUTHORISED TRANSPORT INFRASTRUCTURE PROJECTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November. Page 559.)

The Hon. SANDRA KANCK: Three and a half years ago parliament passed the rather innocuously named but very significant Highways (Miscellaneous) Amendment Bill 2000 in anticipation of the building of what has been termed the third river crossing at Port Adelaide—the first crossing being Jervois Bridge, the second being Birkenhead Bridge, and the third being the as yet unnamed bridge which will see transport coming through from the Salisbury interconnector on a road that is currently under construction. A road bridge will be constructed as part of stage two of the project and a rail bridge in stage three. I understand that crown law has cast some doubt on the appropriateness of using the Highways Act, as it is presently constituted, to cover a rail project. This bill sorts that out, using, as it does, the more generic term 'transport infrastructure'. I further understand that tenders for the bridge construction will be called at the end of this year, so it is important that this bill be progressed and passed in the next two weeks of sitting.

Being great fans of rail as a means of freight carriage, the Democrats are keen to support this bill's passage and to remove some of the B-doubles that currently travel along Semaphore Road and Victoria Road off those roads. Obviously, that will not be able to happen until such time as the new bridge is built. Recently, at my request I had a departmental briefing and I was given a tour of the area to see how the project is coming along. I have to say that I am quite impressed with what is happening. If one goes to the Wingfield dump and looks over the side, one can see the roads being well and truly constructed at the present time.

That tour showed me just how much we need this upgrade, particularly in relation to the rail bridge—which is part of my enthusiasm to see this legislation passed fairly quickly. Presently all trains, including freight trains, cross west over Commercial Road on a rail bridge at Port Adelaide, then loop back around to Semaphore Road, travel east back across Victoria Road, then behind Adelaide Brighton Cement, and northwards parallel to the Port River. That Commercial Road bridge was never designed to take the very long and, I suspect, heavy grain trains that are likely to be travelling to Outer Harbor once the harbour has been deepened and new grain handling facilities are built; nor, at the present time, is the existing freight line designed to cope with freight. Trains are most energy effective when they are able to build up a head of steam, as would have been the case in the past. They are most ineffective when they are in stop-start mode. Yet at a number of the rail crossings behind Adelaide Brighton Cement and further north, the train driver literally has to stop the train and get out to push a button to obtain permission to move the train across that particular level crossing.

I am pleased to note from my briefing and tour that a number of these access points are to be closed. As with the rail system elsewhere in this state, it will obviously make great sense to give rail priority over cars and trucks on these crossings. After all, it is easier for a car or truck to stop than a loaded freight train. I commend the former transport minister Diana Laidlaw for getting this whole development happening and also the current minister Michael Wright for keeping it going. I indicate that the Democrats support the second reading.

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

PARAFIELD GARDENS HIGH SCHOOL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I lay on the table a copy of a ministerial statement relating to Parafield Gardens High School made earlier today in another place by my colleague the Minister for Education and Children's Services.

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

EDUCATION (MATERIALS AND SERVICES CHARGES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 582.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to speak to the second reading of this bill. Mr President, with your long history in the Legislative Council, I am sure you recall with fondness, as I do, previous occasions when we have debated the issue of compulsory school fees, if I can use that shortened expression for the materials and services charges legislation we have before us this evening. Mr President, you would be disappointed if I did not seek at least to put on the public record the very strong position that the Australian Labor Party in South Australia has always adopted, up until this occasion, on the issue of compulsory school—

The Hon. P. Holloway: Will you be adhering to your former position as well?

The Hon. R.I. LUCAS: I must admit that consistency in my position is much closer than consistency in the Labor Party position, as the record may well show. With due deference to you, Mr President, I have chosen not to look at your previous contributions.

The PRESIDENT: I am very pleased about that.

The Hon. R.I. LUCAS: I thought you might be, Mr President. I did not want to be ruled out of order, so I thought I would refer to previous contributions made by the former leader of the opposition in the Legislative Council, ably supported on occasions by the then deputy leader of the opposition, now the Leader of the Government, the Hon. Mr Holloway, who had a very strong position on the issue of compulsory school fees, and also the position of the then leader of the opposition in another place, now Premier, the member for Ramsay, Mr Rann.

As I have said, we have debated this bill on a number of occasions. However, prior to the election in November 2000, this was a controversial debating topic between the then Labor opposition and the former Liberal government. The then Labor opposition proudly spoke out on behalf—as it then argued—of teachers, parents and those interested in free education in South Australia and roundly condemned the former Liberal government for its attitudes in relation to the collection of compulsory school fees.

In November 2000, the now Premier and former leader of the opposition said:

> The minister has not issued guidelines to ensure that parent contributions are related to enhancing educational outcomes rather than subsidising what should be the government's own clear responsibilities.

The then leader of the opposition was making it very clear—as was the Labor Party's position—that the Labor Party believed it was the government's responsibility in relation to the provision of free education in South Australian schools.

The now minister (and former shadow minister) was very eloquent in defending the Labor Party's policy in relation to this area. She said:

> Australia, obviously, is party to the International Convention on the Rights of the Child, and article 27 of that Convention says that primary education should be compulsory and free and that secondary education should be available and accessible with appropriate measures in cases of need.
>
> Section 9 of the Education Act says that the state is responsible for primary and secondary education and that it should be provided free.

Later on, the now minister (and former shadow minister) said:

> I refer the minister back to the Crown Law advice that the Hon. Rob Lucas, when he was Minister for Education, put forward, which was basically that the Education Act precluded the charging of any fee associated with tuition.

Then, triumphantly (if I can use that word about the minister), the now minister proclaimed to all who would listen in the House of Assembly:

> All of this has been a manipulation of definitions in order to get around the principal act, which talks about free provision of education. It is an artificial manipulation.

Members of the Legislative Council remember the contributions made by the now Leader of the Government and, indeed, by you, Mr President. As I have said, I will not refer to the details of your contribution. Of course, the former leader of the opposition in the Legislative Council (Hon. Carolyn Pickles) said, amongst many things:

> I thank all members for participating in what clearly is a passionate debate. The fact that most members believe so fervently in a free education system is an indictment of the way in which, over the years, we have let our education system gradually creep into semi-privatisation.

On another occasion in late 2000, the Hon. Carolyn Pickles said:

> We have debated this issue so many times in this place that I will not take up the time of the parliament on it, except to say that the opposition is opposed to compulsory school fees.

I remind readers of *Hansard* that the opposition (the now Labor government) 'is opposed to compulsory school fees'. Further on, the Hon. Carolyn Pickles, the then leader of the opposition in the Legislative Council went on to say, in almost famous last words, on behalf of her colleagues, the Hon. Mr Holloway, you, Mr President, and others, as follows:

> At least we are consistent. We have consistently opposed it on every occasion, and we will oppose it here today. We will oppose the third reading of this bill. I fervently believe in free education. I believe that free education is a right of all South Australian children in state schools. It is something that we have supported.

Later on, she said:

> I do not want to see two classes of education in our state.

There are on the record many similar claims by Labor Party members in this chamber and in the House of Assembly over many years of debating this issue.

As I said, the former leader of the opposition in the Legislative Council, the Hon. Carolyn Pickles, proudly proclaimed that at least the Labor party had also been consistent on this issue of compulsory school fees. So, what have we seen of this government, as soon as it assumed the mantle as a result of the deal in March last year? What we have seen is the same in many areas. Who gives a continental about principle? Who gives a continental about what the Labor Party supposedly believes? It made promises and commitments. It went to the Australian Education Union; it went to the South Australian Association of School Parent Clubs, which has also opposed the compulsory collection of school fees; and it went to anyone in education who would listen. That is a very big constituency.

The Labor Party put its hand on it heart, looked them in the eye, and said, 'We have always been consistent in relation to this issue of school fees. That terrible lot, the Liberals, want to support the compulsory collection of school fees, but we, the Australian Labor Party in South Australia, have always been consistent. We have opposed and will oppose the compulsory collection of school fees. We believe in free education.' The current minister triumphantly proclaimed the Universal Declaration of Children's Rights and said that she and the Australian Labor Party believe in free education.

The sad thing is that this Premier in South Australia, and these ministers, made those promises knowing that, as soon as they assumed government, they would break those promises to all of the teachers, parents and educators within our state school system. They knew, prior to the election. They looked those people in the eye and, as soon as they were in government, they said, 'We are not going to worry about the commitments that we made in relation to this particular issue.'

As I have highlighted before, sadly, this government—led by the Premier, the Deputy Premier and ministers—has the driving philosophy that was summarised by the Deputy Premier when he challenged the Leader of the Opposition and said, 'You do not have the moral fibre to break your promises—we do.' That is the philosophy that drives this govern-

ment. That was in relation to the broken promise on increases in taxes and charges in South Australia. It was the Deputy Premier attacking the Leader of the Opposition for his innate honesty and integrity, and saying to the Leader of the Opposition, 'You do not have the moral fibre to break your promises—we do.' Sadly, we are seeing that right across the policy spectrum. This debate tonight is about that. This government and these ministers are proud to adopt the philosophy of their Deputy Premier and their Premier. They are proud to indicate that they have the moral fibre, as they put it, to break their promises, and to challenge the opposition that the Leader of the Opposition did not and does not have the moral fibre to do the same.

That is the background to this particular debate. As members would know, it has been a controversial debate in both houses of parliament. Many statements have been made by many members—I am not going to repeat all of them in the debate tonight—but the contributions made by the now Premier, the now Minister for Education and the former leader of the opposition (Hon. Carolyn Pickles) are a good indication of the so-called policy position of the Australian Labor Party in South Australia in relation to this particular issue. We have in this council now members of the Labor Party caucus—both past and present—who meekly come along and put their hands up to support their ministers and their leaders in relation to these particular issues when, for many years, they have proclaimed loud and often their opposition to the compulsory collection of school fees in South Australia.

I approach this debate with some feeling because, as a former minister for education and children's services, I took up this debate together with my party, the former government, during the period 1993-1997. I did this because parents and principals from schools around South Australia came to me as the minister and said, 'We have raised this issue with governments for many years in relation to the collection of school fees. We believe that there are parents who can afford to make their commitment to school fees but they are deliberately choosing not to and, as a result, other hardworking parents in our schools are having to pay higher level materials and services charges to make up for the contribution of those parents who can contribute but do not.' At that time, there were almost 100 000 students on school card. That was the judgment that the department and the system made in relation to those parents and families who needed assistance in this area. I am not sure what the number is today, but I suspect it is probably not too different from that. It might be a little less given the reduction in the number of students in the past decade in our schools.

I do not think that anyone could argue that a school card percentage which is that high, in terms of the number of students on school card compared to the total number of students, was a miserly approach by either the formal Liberal government or the previous Labor government. No-one was talking about those parents who could not afford to pay. What was being discussed was that group of parents who had made a conscious decision that they were not going to pay their contribution to their child's education.

Parents and principals approached the former government and, without going through the history of it, after a period of consultation, discussion and debate, the former government brought a position to the parliament. It left the Liberal government susceptible to attack from an opposition that was prepared to promise whatever it might promise, irrespective of what it might choose to do should it ever be elected to government. There is no doubt that the promises that the Premier and the now Minister for Education made to teachers and parents were politically popular, as were the promises not to increase taxes and charges. In terms of trying to win votes in an election, the best approach is to go to the people and say, 'We are not going to increase taxes and charges. We do not believe in the compulsory collection of school fees. We support the notion of free education.' That, of course, is a much more palatable policy package for parents and principals. It might not be honest and it might not be scrupulous, but it is politically popular in terms of offering a policy package to the electorate.

What we have seen since then is that, at the end of last year, the sunset clause was about to expire and, after some eight or nine months, the government indicated that it still had not come to a decision as to how it was going to approach this difficult issue—whether or not it was going to keep its election promise. So, it said, 'Let's roll it over for another 12 months.' What the minister and other members said, with their hands firmly on their hearts, is, 'Give us another 12 months; we will conduct a comprehensive inquiry.' My colleague the member for Bragg is quoted in the *Hansard* debate.

The specific commitment made by the minister is: 'Give us another 12 months and we will conduct a comprehensive inquiry to talk to principals, parents and teachers and to anybody else who has a view about this particular issue and about our promise [that is, the Labor government's promise] of opposing compulsory collection of school fees and that terrible policy position that the former Liberal government adopted which allowed compulsory collection of school fees.'

The parliament agreed to a 12-month extension on the understanding from the minister that she was being true to her word, that she needed 12 months to have a comprehensive review. So, what has happened? Twelve months later, almost at the end of the school year, certainly at the end of the parliamentary program, the minister and this government decide: 'We will be a little bit clever; what we will do is, in the last couple of weeks of the last parliamentary session, we will jam this legislation through the parliament on the basis that something has to be passed—schools will jump up and down if there is no resolution of the legislation, one way or another, in the last couple of weeks of the year.'

When the bill was introduced, as I said, there was no advance warning. There was a ministerial statement, an announcement of the bill and the need for the legislation to be rushed through the parliament. My colleague the member for Bragg, understandably, asked where was the comprehensive investigation of this difficult and thorny issue. To cut a long story short, the government or the minister provided to the opposition a list of people who had, allegedly, been consulted about this issue. I will go through some of this alleged consultation in the committee stage when the amendments are moved. To summarise what the member for Bragg was able to ascertain in the 24 hours that she had to prepare for this aspect of the debate, the member found that she could not find any independent association or organisation that had been asked for a written submission associated with any inquiry on this issue.

The then acting president of one of the key groups, the Australian Education Union, indicated to the member for Bragg's office that she could not recall being consulted and she would check whether other arms of the Australian Education Union had been consulted. Other key groups indicated that the first they knew of it was when they were

contacted by either the minister or her office when the bill and the ministerial statement were first released. That is, the government announced its decision, introduced a bill and then sent a copy to people asking them for comment. That is not the comprehensive inquiry that was promised in December last year in relation to this particular issue. I remind members that part of what the minister said at the time, in November 2002, was as follows:

> This will allow a comprehensive investigation of the most appropriate mechanism for levying of the materials and services charge in South Australian public schools to be canvassed alongside the announced consultation on the potential changes to the South Australian system of local school management.

Further on the minister states:

> The one year extension will give stability to the schools and it will give the government time to conduct a review of the various options for school fees and what place they might take within a unified system of school financing. The review will take a broad canvas, looking at the options for both compulsory and voluntary contributions, and the boundary between what schools, and what parents, supply as materials and services incidental to education. This review will form part of the task of developing a single robust financial system for schools to which the government gave a commitment when releasing the Cox review.

This is a clear and unequivocal commitment from this government and its ministers that there would be a comprehensive review of this issue during the last 12 months. On behalf of the shadow minister for education I have placed an amendment on file which seeks to give this government time to conduct the comprehensive inquiry that was promised last year. I am referring to it in shorthand as the Xenophon amendment, in tribute to the Hon. Mr Xenophon who first came up with the concept of a sunset clause in this particular area.

On behalf of my colleague—the amendment on file refers to 1 December—I have discussed with the Hon. Kate Reynolds her party's position on this and I flag that the Hon. Kate Reynolds quite rightly pointed out that 1 December is a bit late in the school year and I will seek to move my amendment in an amended form in committee. I give notice now that the amendment will provide for 1 September next year. That will give a good 18 to 20 months for the minister to conduct this comprehensive review that she promised. It will also mean that the Australian Labor Party can come to its final position on this issue in plenty of time for the following school year and for all schools to be advised well before the end of the 2004 school year.

The other amendment I flag is, again, an amendment moved by my colleague the member for Bragg in another place, to assist those schools which have some difficulty in using the services of, for example, a debt collector to collect unpaid school fee contributions. It is fair to say that some of our biggest schools, in particular our high schools, probably have the staff resources, with school support officers and administrators, or someone with specific responsibility for managing the process of the collection of school fees, to manage more easily, given the size of the school and the number of staff.

There are, however, many smaller schools—rural, primary and junior primary schools—where the staff is very small. In the view of the Liberal Party, as put by the member for Bragg, it is too onerous a task for these small schools to have someone on staff to collect debts, or employ a debt collection agency for the task of collecting from five, six or seven parents who have not made their contribution. The member for Bragg is suggesting that there be provided by the Department of Education and Children's Services a service for the centralised management of debt collection. I hasten to say that it is not the intention of the opposition to allow a school to, for example, avail itself of this proposed amendment and say, 'Well, look, we want the department to collect all our school fees right from the word go.'

We accept that there is good sense in local management of most of this collection process and in decisions being taken at the local level about exemptions or waiving or time payment of fees by the principal and school or governing councils. When we get to the end of that process, when all else has been tried and the school decides that a debt collection agency is to be used, it is at that stage that the member for Bragg suggests that the use of a debt collection agency be managed through the centralised coordination of the department as a service to schools, in particular to small rural, primary and junior primary schools.

We hope that members of the Legislative Council, or at least the majority of members, will be prepared to support the amendment that was first moved by the member for Bragg. In conclusion, I indicate that the opposition supports the second reading of the bill. I flag the two broad amendments that the Liberal Party will move during the committee stage of the debate and that I will seek to move one of those amendments in an amended form.

The Hon. NICK XENOPHON: I indicate my support for the second reading of this bill. In many respects, these issues were canvassed in November and December 2000, when the previous government introduced its Education (Councils and Charges) Amendment Bill. At that time, I supported the government's bill with a number of amendments that were accepted by the council, including amendments to provide a sunset clause so that this measure came back before the parliament, and I do not resile from that position.

I consider that the system before the previous government's bill was passed was anomalous, namely, that some people paid if they wanted to and others could get away with it, in the sense that there was no system to ensure that charges were paid. Some parents who could well afford to pay the fees did not do so because they could snub their nose at the system, whereas many other parents, who were battling on with budgetary constraints, paid the school fees. I believe that the previous government did the right thing in introducing that legislation. I think that you have either an 'all in' or an 'all out' system: it is either a compulsory system of collection, or it is totally free, and to have any other system allows for anomalies. I certainly do not resile from the position I took in supporting the former government.

As it was passed at the end of 2000, the bill contained a number of safeguards to protect parents in cases of hardship. It also contained broad discretions to allow materials and services charges to be paid by instalments, to waive or reduce a materials and services charge, or to refund a materials and services charge in whole or in part. Where there was genuine hardship, that balance allowed parents to be absolved of the responsibility of paying the fees. It was a reasonable piece of legislation and, for that reason, I supported it.

It is pleasing to see that, as result of the sunset clause passed in 2000, this government has had to consider its position, and I believe that commonsense has prevailed. There ought to be a transparent system of collecting school fees—effectively adopting what the former government had done. A review was undertaken of the system of charges. More questions will be asked during the committee stage

regarding the extent of that review and whether there is need for a further review. On the basis of information that I have received, I believe that there ought to be a more comprehensive review than has hitherto taken place. Of course, I wait to hear from the government in relation to that issue.

Two amendments are on file in the name of the Hon. Mr Lucas. In relation to the first amendment, which provides that the Director-General must make services available free of charge to school councils for the recovery of outstanding materials and services charges, I query whether the way it is drafted requires schools to go to the Director-General for this assistance. I am concerned that that is not clear, but I will hear from the Hon. Mr Lucas (and, no doubt, from others) in relation to that amendment. If a small school wants assistance from the department to the recover fees, it ought to have that option, because debt collection may be quite an onerous task administratively for a small school.

In relation to the second amendment filed by the Hon. Mr Lucas regarding this provision expiring on 1 December 2005, I note that, following discussions with the Hon Kate Reynolds, he will move an amendment to that amendment to change the date to 1 September 2005. Certainly, I will support that amendment as it seems to make sense in terms of the time frame for reconsideration of this legislation.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank all members for their contribution to this bill, the purpose of which is to amend the Education Act 1972 to enable the ongoing charge for materials and services for students in South Australian government schools. The bill provides the administrative instructions to specify the categories of materials and services to be covered by the charge in connection with courses of instruction provided in accordance with the curriculum determined by the Director-General of Education. It provides that school councils may recover as a debt a standard sum, or an amount otherwise decided through a poll of the parents and approved by the Director-General. It is worth pointing out that this government has decided that school card payments will now be indexed. The payments for 2004 have been increased for the first time in six years.

Regardless of their ability to pay, no student will be denied access to materials and services essential to participation in the core curriculum of the school by reason of non payment. The bill builds on previous equity provisions for families in hardship, whereby the Director-General may approve the payment of materials and services charges by instalment, or waive, reduce, or refund the charges in whole or in part. The only other comment I wish to make is that the Leader of the Opposition went through some of the history of this bill, as I suppose was inevitable. I would like to put on the record that the Leader of the Opposition referred to comments made by a number of members of the former opposition.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes; I was waiting for that. The comments that the leader made in relation to the Minister for Education and Children's Services related to when she was the shadow minister and her debate on the Education (Councils and Charges) Amendment Bill which, I point out for the record, also covered the previous government's P21 scheme. That bill allowed for compulsory and voluntary invoicing, thus complying with the Liberal government's election promise that there would be no GST on school fees. So, the comments made by the former shadow minister and quoted by the Leader of the Opposition need to be seen in that context.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: As I said, they were made in relation to a different agenda, and I point that out for the record. I thank members for their contribution to the bill. Obviously, I will respond to specific questions and will deal with issues raised by the amendments during the committee stage.

Bill read a second time.

In committee.

Clauses 1 to 4 passed.

Clause 5.

The Hon. R.I. LUCAS: After some discussion with the Hon. Nick Xenophon, who has had some discussion with the Hon. Kate Reynolds—a relay is going on here—I move:

Page 4, after line 22—
Insert:

(12a) The Director-General must, at the request of a school council, make services available (free of charge) to the school council for the recovery of outstanding materials and services charges.

I thank the Hon. Mr Xenophon and the Hon. Kate Reynolds who believed that the amendment that I had on file on behalf of the opposition would benefit from some clarification to make sure that it dealt with the issue of a school council that seeks assistance. As I highlighted in my second reading speech, bigger schools may well have the staffing flexibility to perform this task but, as my time as minister reminds me, many independent smaller schools may well decide they prefer to manage the process from start to finish themselves. What the member for Bragg and the opposition are seeking to do with the amendment is provide assistance to those small schools, particularly small rural schools, with very small staffing complements, which find the task of having to employ debt collection agencies very difficult and onerous. This amendment seeks to ensure that those schools and school councils which seek assistance from the department will be provided with services to assist them.

Of course, that would enable the department—because it will be able to aggregate a debt collection contract with either one agency or a number of agencies—to get economies of scale in terms of managing that; so it will be a lower cost to the system overall and it will reduce the administrative load and burden on many small schools, in particular small rural schools. As I said, it retains the flexibility, which some members of the Legislative Council—and I support them—want to see for those schools that want to manage this process from start to finish. There would be no compulsion; it would be an option and it would be provided by the department to those schools which formally request that particular assistance. I think I explained in a little detail the reasons for this particular amendment in the second reading contribution: I will not repeat that again. Having explained the further amendment as a result of discussions with other members of the Legislative Council, I ask committee members to consider supporting the amendment.

The Hon. P. HOLLOWAY: The government cannot support the amendment. First of all, let me give a summary about the policy that this government will be adopting in relation to debt collection because, after all, this is the outcome of the consideration that this government has given to this issue over the past 12 months. Under the new debt collection policy, schools will be able to pursue debts after the end of term 2 each year. This will ensure that schools can

pursue the debt before secondary students finish for the year. What the government proposes is that a tender process will select a panel of debt collectors. Schools will pick their debt collection services from the approved panel. It is proposed that information will be given to the approved debt collectors to ensure that there is compliance with policies and procedures, but the state office will be able to control the process to ensure the relationship with the students and parents is preserved.

The panel of debt collectors will be notified of the number of approaches and the tone of letters. The panel of debt collectors will alleviate the need for every school to engage their own debt collection agency. The policy also provides that debt collection agencies assist schools to identify any bad debts. It would give step by step instructions in the process for writing off the debts. It would give step by step instructions to provide for doubtful debts in the budgeting process and also provide a support and grievance process for both parents and school staff in the process of the debt collection. The debt collection process proposed would be as follows. Firstly, it would provide a detailed invoice indicating the charge and the components of the charge. Thirty days later, the process would be to send a statement to the parent giving details of the outstanding debt. In the middle of term 2, the process would be to send another statement of the outstanding debt, if required.

At the end of term 2, the parent will be informed that if payment is not received within 21 days the debt will be passed to a debt collection agency. Once being passed to the debt collection agency, the agency will provide a minimum of two letters comprising of at least 30 days to commence the payment of the debt. The debt collection agency will keep in communication with the school throughout the process. Prior to taking the debt to court, written permission must be gained from the school council and the Minister for Education and Children's Services. That is the process that the government proposes in relation to collecting debts. The problem with the amendment moved by the opposition, particularly in its original form—and I am not sure that it has changed all that much in its amended form because it could well be that all school councils would take advantage—

The Hon. R.I. Lucas: You need a new briefing notice, do you?

The Hon. P. HOLLOWAY: No, the thing is that what you are saying is that the Director-General must, at the request of the school council, make services available free of charge to the school council. Okay, it puts out the request to them, but presumably a large number of them may well take advantage of this.

The real disadvantage of the proposal of the opposition is that it would dissociate the setting of the charge from the collection, which can result in an unrealistic level of charges being posed that are not within the local communities capacity to meet. If a school council can set the charge knowing that it can simply pass off the debt collection process, then of course there is that disconnect between the community and the school council. If you are not accountable for pursuing a policy, obviously you lose that discipline upon those that would make the policy.

The Hon. R.I. Lucas: You set the fee.

The Hon. P. HOLLOWAY: There is the minimum of the collection fee, but the link between the collection of fees and the setting of fees must be kept at the local level, so when the council sets the fees it understands what the community can bear. That is really the important part of this.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: That is one of the options. The important thing is that the connection between the setting of fees and the collecting of them not be broken. With this proposal the central agency would not be adding value to education outcomes for students, but effectively the department will become a debt collection agency. The core business of the Department of Education and Children's Services should not be debt collection.

The Hon. Kate Reynolds interjecting:

The Hon. P. HOLLOWAY: But once you have disconnected the community—

The Hon. R.I. Lucas: You are disconnected.

The Hon. P. HOLLOWAY: We know why the Leader of the Opposition is moving this amendment—it is nothing to do with improving education, but that is what one might expect. The other point that needs to be made in relation to this is that the level of debts would not be such that it would be economically viable to pursue all debts. The cost of collection could possibly outweigh the cost of the debt and that is why it is important. In the arguments I just gave in the government's proposed summary of debt collection policy that matter would be addressed. The economic viability of the process would be taken into consideration.

The other problem is that a central system would not be in a position to take into consideration individual parents' situations but would conduct business according to a predefined process. It is very important that you have that local connection between individual parents, between the community that school serves in general and its capacity to pay. The government's proposal to set up this panel contract will achieve the efficiencies necessary but without the significant disadvantages of disconnecting the local communities from the setting of fees. I urge the committee not to accept this amendment: its passage would simply be detrimental to the future of education in this state.

The Hon. NICK XENOPHON: I indicate my support for this amendment. I do not know whether it is appropriate at this stage to ask a general question about privacy. If parents do not pay school fees for whatever reason, are there safeguards and policies in place to ensure that other parents and the children of those parents do not find out about that? Will the minister assure me that there are already protocols in place to ensure that if that occurs there are safeguards in place?

The Hon. P. HOLLOWAY: I am advised that there is protection under state privacy principles. There are also policies and guidelines that apply in this area, and these apply to all DECS employees, to ensure that protection. However, let me make the comment that, if this amendment is carried, you will be expanding the number of people who will know this information; you will be moving it up to head office, so a greater group of people will be aware of that information. Obviously—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I am just saying that the risk, if you like, increases; that is self-evident. There are principles—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Whether it is a slight or not, the reality is that a simple risk analysis shows that the number of people—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If one were relying on the Liberal Party as an example of keeping things secret, we had

leaks coming out of its cabinet; it could not keep things private or secret, so I do not know that it provides a particularly good example. I just make the point that, obviously, the greater the number of people involved, the greater the risk. It is self-evident.

The Hon. A.L. EVANS: I probably would have opposed the amendment, as I did not want the Director-General to be used as a sort of blunt instrument to obtain money from people who are disadvantaged. However, the amendment to the amendment has really covered my concerns, and it seems to be a good compromise for all.

The Hon. KATE REYNOLDS: It seems to me that the initiatives that the government has recently introduced, as outlined by the minister, do not alter the intent of this amendment and, in fact, may be the service that is made available at the request of school councils for the recovery of outstanding materials and services charges. I do not think it has to be an either/or situation, where we have the policy or the legislative protection. If the current policy falls over at some time or another, at least schools have the protection of this legislation to ensure that they have some capacity to go back to the department for support.

The committee divided on the amendment:

AYES (13)

Evans, A. L.	Gilfillan, I.
Kanck, S. M.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I. (teller)
Redford, A. J.	Reynolds, K.
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	Stephens, T. J.
Xenophon, N.	

NOES (5)

Gazzola, J.	Holloway, P. (teller)
Roberts, T. G.	Sneath, R. K.
Zollo, C.	

PAIR(S)

Dawkins, J. S. L.	Gago, G. E.

Majority of 8 for the ayes.

Amendment thus carried.

The Hon. R.I. LUCAS: I will move my amendment in an amended form. I move:

Page 5, after line 7—
Insert:
(15) This section will expire on 1 September 2005.

This replaces an expiry date of 1 December 2005. As I outlined in my second reading contribution, the amended amendment is as a result of some discussions with the Hon. Kate Reynolds, who I am sure will outline the views that she and her party have on this issue.

To summarise the Liberal Party's position, as I outlined in the second reading stage, we support the requirement for the minister and the government to conduct the comprehensive review that the minister promised at the end of last year when she sought the extension of the sunset clause from the end of 2002 to the end of 2003.

As my colleague the member for Bragg very capably outlined in the House of Assembly debate, no comprehensive review has been conducted. The member for Bragg and her office contacted a number of the key principals and teaching associations, and none of them had been consulted about a comprehensive review and none had been asked to provide comprehensive written submissions for an inquiry along the lines outlined by the minister at the end of 2002 when she sought the approval of the parliament to extend the sunset clause for 12 months.

This amendment, should it pass the parliament, will give the minister the opportunity to conduct the review she promised at the end of last year. I note that my colleague the member for Bragg has flagged a number of options, should the minister thumb her nose at the parliament's request for a comprehensive review (in the event of this amendment's being passed) including the possibility of a select committee of the House of Assembly to conduct the comprehensive inquiry that was promised by the minister.

So, a number of options will be available to, firstly, the government and, secondly, the parliament for this comprehensive inquiry that was promised by the minister at the end of last year. It can be a comprehensive inquiry established by the minister and her department, consulting with all who are interested. If it is not, the member for Bragg has flagged the possibility of other options, such as a select committee of the House of Assembly. I urge members to support the amended amendment. The fact that the date is now 1 September will firstly give plenty of time for the inquiry (at least 18 months or so) and, secondly, will mean that the results of that inquiry will have been concluded in plenty of time for the start of the 2006 school year.

That means that schools can be advised of any changes well prior to the end of the 2005 school year and in plenty of time for the commencement of operations at the start of 2006. If the inquiry establishes that the package we have before us this evening is by far and away the best package, the sunset clause can be allowed to expire at the end of September 2005, and the existing arrangements will be able to continue. All options would be on the table. All this is doing is allowing the minister to keep the promise she made to the parliament at the end of 2002. As I said, if the minister is not prepared to keep another promise on this issue, options are available to ensure that that promise is kept for the minister and for this government.

The Hon. P. HOLLOWAY: The government, obviously, opposes this measure as, indeed, will the vast majority of the school community in this state. Let us make no mistake, the effect of this amendment, if it is carried, is that the system will revert to voluntary school fees in 2005. That is what it means. You can talk about it any way you like but, if it is carried, that is the effect of this amendment. It is important to point out that the President of the Secondary Principals Association does not support this amendment; the President of the Primary Principals Association does not support this amendment; and the President of the School Councils Association does not support this amendment.

All those key groups are opposed to this measure, and why would they not be? The bill includes the provision for reporting on an annual basis through the agency's annual report to parliament. So, there is already that reporting requirement. We heard all this gross hypocrisy from the Leader of the Opposition earlier this evening in his second reading contribution. He went through the history saying that the Liberal Party's position had always been consistent. Well, it might have been until tonight but it is now a complete reversal. Now the leader is saying, 'Let's go back to voluntary schemes in 2005.' Bleat as he may, that is the impact of his amendment.

His hypocrisy deserves to be exposed. Let me also say—and I hope that the Hon. Kate Reynolds listens to this—that the Hon. Kate Reynolds, in relation to the previous amendment, indicated to me earlier today that she would not be

supporting it. I hope that the honourable member realises that if she is going to change her position it is polite on these matters to indicate that to members of the government. It is quite clear that the honourable member went off and did a deal with the—

The Hon. Kate Reynolds interjecting:

The Hon. P. HOLLOWAY: Oh, yes you did. The comments the honourable member made to me earlier today were dishonest in relation to that previous amendment. Anyway, we know what we are dealing with. It probably does not particularly surprise—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, I tell the truth. It is a simple matter of truth. It deserves to go on the record. People should know what they are dealing with in respect of the Australian Democrats. I should have known better, I suppose. But, anyway, never mind. Let us get on with this amendment. As the leader has raised the issue of review and consultation, it is important that I point out that a review was undertaken in 2002, which included principals, school administration officers, superintendents, parents' representatives and the PSA and AEU unions. In 2003 further stakeholders were consulted, adding to rather than repeating the review held in 2002. Administration officers, representatives of the Social Inclusion Unit, tax policy consultants and the State Office Call Centre were involved in that.

Many issues raised by parents over the last 12 months were brought before that review. The 2002 review considered the issue of compulsion and the impact on sites with respect to voluntary debt recovery. The 2003 review built on the above issues and added what parents could expect to provide as a contribution to their children's education and what they could expect the government to provide. I guess that the numbers will mean that we will have another review.

I do not know what extra it can add to it now, given that the matter has been comprehensively debated in this parliament over many years. There has been an enormous amount of debate, including those comprehensive reviews in 2002-2003, but nonetheless, I suppose if it is the wish of the parliament—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, the thing is that now it will be an issue of Liberal Party hypocrisy. It is the Liberal Party that will be—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It is the Liberal Party's policy tonight, as of now, it has become Liberal and Democrat policy that there should be voluntary fees in 2005.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, at least it will be if they vote for this measure. We will see.

The Hon. KATE REYNOLDS: We will support this amendment to ensure that fee charging provisions expire in 2005 to enable a thorough and participatory review of the charging of any school fees, whether they be compulsory or optional or, as the minister suggests, any other term such as voluntary. I will not repeat the comments made in another place, which quoted members of this government when in opposition, except to say that I am surprised and disappointed that a Labor government has so readily supported the continuing charging of compulsory fees for primary and secondary school education. I remind members of the comments by my predecessor, the Hon. Mike Elliott, on 7 December 2000, when he said: 'I am absolutely stunned by the Labor party saying that it is opposed to compulsory school fees, but that, given a choice of two years or forever, it will go with forever.' Sadly, it seems that nothing has changed.

On 20 November last year, the minister said she wanted a comprehensive investigation of the most appropriate mechanism for the levying of materials and services charges in South Australian public schools. It seems that the ALP required only a few months in government to backflip on its call for free education for all. So, given that the government has not yet carried out this comprehensive review, and I emphasise 'comprehensive', we will support the inclusion of a sunset clause in the bill so that the government can properly seek the views of the education sector and parents.

I will not repeat comments made in another place except to say that a few hasty phone calls in the couple of weeks prior to the introduction of the bill does not in our view constitute a comprehensive review. I note that a number of bodies, including the South Australian Association of School Parent Clubs, which, like the Democrats, opposes the charging of compulsory fees, materials or services charges, was not consulted at all, other than in a by-the-way telephone conversation with the minister. I believe that was within days or weeks of the bill being introduced in another place.

In our view, the conducting of a truly comprehensive review of the charging of fees, which invites submissions from interested organisations and individuals, will allow proper debate of the merits of any fee charging regime and, in fact, will allow opportunity to consider the question of whether or not fees should be charged at all. Organisations such as the South Australian Association of School Parents Clubs, SAASSO (South Australian Association of State School Organisations), the Primary Principals' Association, the Secondary Principals' Association, the Public Service Association, the Australian Education Union, SACOSS (South Australian Council of Social Service)—which advocates and speaks on behalf of low income earners, who have a great deal at stake in this debate—and individuals, parents, and individual school councils should all be given sufficient opportunity, which includes sufficient time, to express their views about the compulsory charging of fees if, as I said previously, any fees were to be charged, and to make suggestions and comments about how fees should be charged and collected, if they were to be charged at all.

For that reason, we support the amendment because we believe it provides an important opportunity to have much needed debate about the role of government in the funding of education in this state. As I have said, in my discussions with the minister, just a few moments ago, I indicate that, should this amendment fail, we are unlikely to support the bill.

The Hon. A.L. EVANS: The Leader of the Government indicated that a number of reviews have been conducted since last year; can he give us any results of those reviews?

The Hon. P. HOLLOWAY: The result of the review, I guess, is the bill that is before us. That is the outcome of it. But let me say that I presume that supporting this amendment is an admission of defeat by the Liberal opposition and that, in fact, it got it wrong when it introduced this back in 2001. Obviously, it got it wrong because it is now saying, 'Well, we should have reviewed it; we got it wrong back then.' I would be interested to know, but perhaps the real reason is just hypocrisy.

The Hon. NICK XENOPHON: I indicate my support for this amendment for the reasons set out by the Hon. Mr Lucas and the Hon. Ms Reynolds.

The Hon. R.I. LUCAS: I sense that the numbers might be with us, so I will not delay the debate unduly. In concluding, I indicate that the Liberal Party's position on this issue remains as it has been for a number of years. What I will say to the leader of the government, who has been decidedly personal and vindictive in some of the comments that he has made towards certain members, is that I am severely wounded by his attack, but I will whimper off into my room. Before I do, I suggest that what is hidden beneath the attacks by the Leader of the Government against members on this side of the chamber and on the cross benches is that this government does not want the comprehensive review that it promised, because it does not want its minister, its Premier and other members, to have to answer to the promises and commitments that they gave to teachers, principals and parents prior to the election. As I said in the second reading, they went to principals, teachers and parents and said, 'We don't support the compulsory collection of school fees: the Liberals do. Don't support the Libs.'

The Hon. P. Holloway: This is before the election we did this, did we?

The Hon. R.I. LUCAS: Yes, this is what the Labor Party was saying before the election: 'Don't support the Libs. The Labor Party's position is clear: the Labor Party does not support compulsory collection.' I read on the record the statements made by the Premier, the now minister and other members such as the Hon. Carolyn Pickles about the Labor Party's position. I know what they were telling principals, parents and teachers in the school system. It was a very politically popular position to be adopting.

The Hon. P. Holloway: In opposition?

The Hon. R.I. LUCAS: In opposition, that is right. It is my view that they knew they were not going to keep that promise prior to the election, and they do not want an inquiry, because they do not want these groups to be able to put questions to them, to make submissions to them and to say to the minister, 'Why did you tell me that?'. I have spoken to some teachers who spoke to the Minister for Education in her electorate, and they will be saying, as will some parents, 'Minister, why did you say this to me on behalf of the Labor Party in relation to these particular issues?', as will people who spoke to other members and candidates in relation to this issue prior to the election.

I only hope that some of those people will be able to present evidence to the committee of inquiry or to the select committee or whatever it is that is structured to take evidence on this issue. But what certainly will happen will be that, rather than individuals, the associations will be able to put their point of view in relation to this issue. As a number of members have indicated, there is a range of views about this issue ranging from the school parent clubs and the AEU at one end, who oppose any notion of anything other than free education, if I can put them in that broad category, through to the principals' associations.

I indicate that the Liberal Party's position has not changed on this issue. The Liberal Party's position is the one that is consistent on this particular issue. We are holding this government—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, not at all. The Leader of the Government can delude himself if he wishes, but he is not going to delude anyone else in this debate. The leader of the government can adopt that particular public position if he wants. The Liberal party's position remains consistent. What we are saying about this issue is that the party that has changed its policy position after the election, as opposed to before, is the Labor Party. A comprehensive inquiry will ensure that all the groups, associations and anyone else who wants to will be able to put a submission to the minister and the government on this issue. That adequately summarises my position.

The Hon. P. HOLLOWAY: It is certainly true that the Labor Party did oppose the legislation when it was brought before parliament. But, let the opposition produce promises made at the last election, as the leader has alleged, that this government would not support compulsory fees and that it would reverse—

The Hon. J.F. Stefani interjecting:

The Hon. P. HOLLOWAY: That was in the legislation at the time. There is a ratchet effect here. It is a bit like selling ETSA. Can you reverse it? Can you unscramble that egg? If you go and sell it off can you buy it back? There are some things where the situation changes after the policies—

The Hon. J.F. Stefani interjecting:

The Hon. P. HOLLOWAY: Well, we would love to be able to but, as I say, unfortunately, you cannot reverse it. Sadly, members like the honourable member who just interjected voted for it.

An honourable member interjecting:

The Hon. P. HOLLOWAY: I would be quite happy to debate that on another occasion. I reiterate the government's opposition to this. I point out that, in fact, those groups who the leader said should be consulted have made their positions known and they are opposed to this amendment. The effect of this amendment is to revert to voluntary fees in 2005, unless it is reversed. That is the impact of it, whatever the Leader of the Opposition says. I can read the numbers so I will not divide on the matter.

Amendment carried; clause as amended passed.

Remaining clauses (6, 7 and 8) and title passed.

Bill reported with amendments; committee's report adopted.

CORRECTIONAL SERVICES (PAROLE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 455.)

The Hon. R.D. LAWSON: I rise to indicate that the Liberal opposition will be supporting the second reading of this bill—not without some considerable reservations and not without serious concerns about the government's motivation in introducing this amendment. This bill does represent the high water mark in the government's unprincipled handling of parole issues in recent times. This bill is the result of a review of the parole system conducted by the Chief Executive Officer of the Department of Premier and Cabinet. Mr McCann is an excellent public servant but nothing has been indicated which demonstrates that he has any knowledge or expertise at all in correctional systems or in parole systems.

This is a cynical and cosmetic political exercise. Mr McCann's review came up with amendments which—surprise, surprise—were in exact accordance with the Premier's announcement before the review was undertaken. The result of this review was decided before ever Mr McCann put pen to paper. This is window dressing and, if the minister opposite were frank, he would readily acknowledge that the minister's office and the correctional services

department, who do have some knowledge and understanding of parole issues, were not consulted in this matter or, if consulted, were consulted in a perfunctory way.

The Hon. J.F. Stefani: What about the Parole Board; was there any consultation with that?

The Hon. R.D. LAWSON: As my colleague the Hon. Julian Stefani interjects, 'What about the Parole Board?' My understanding is that the Parole Board was not consulted about this bill at any stage until very late in the piece when, as I indicated, the Premier had already announced what the result of the review was going to be. Ordinarily, this parliament is entitled to expect that it will be presented with evidence about the operation of any system which is being reviewed. Parliament should be presented with the facts; facts about the effectiveness of the current system, of its defects, and what would be appropriate policy options in remedying those defects. If this parliament does not diagnose correctly what the sickness is, it is highly unlikely that the prescriptions we come up with will be effective. These are contrived amendments. They are not designed for a practical purpose: they are designed for the cynical purpose of electioneering and grandstanding in a community which does not have all the facts about our parole system.

It is worth placing on the record a few matters in relation to parole. As members may know, parole refers to the situation where a prisoner is released from prison before the expiration of his or her sentence, and that release is accompanied by certain conditions. Breach of any of those conditions will require the prisoner's return to prison to serve the balance of the sentence.

The latest annual report of the Department for Correctional Services indicates that 582 parole orders were made in South Australia in the year ended 30 June 2002. So, 582 persons were on parole as a result of parole orders made in that year although, of course, others were on parole pursuant to orders made before that time. On the other hand, probation refers to a situation where an offender is released by the court, rather than from prison, on a bond to be of good behaviour. The bond usually has conditions, including that the offender will be under the supervision of a community corrections officer. A bond can be imposed upon the suspension of a sentence of imprisonment, and the annual report to which I referred earlier indicated that in the year ended 30 June 2002 some 2 050 new probation orders were made.

An important part of the parole system is the Parole Board. The granting of parole is governed by that board, which was first established in 1969. Before that time, early release could be obtained only by exercise of the Crown's prerogative of mercy, exercisable by Executive Council. In the literature on the subject, we are told that applications for early release were sparingly granted at that time. The board presently comprises six members appointed by the Governor: a presiding officer, who shall be a judge, a retired judge, or a person with extensive knowledge of criminology, penology, or other related science, and the term of the current Presiding Member is five years, in accordance with statute; secondly, a medical practitioner with experience in and knowledge of psychiatry; thirdly, a person with extensive knowledge in criminology, penology, or other related science; and three other persons nominated by the Minister for Correctional Services. The board has quite extensive powers which are set out in the Correctional Services Act. Those powers include the power to require the attendance of witnesses and the production of documents and reports. One of the board's responsibilities is to interview certain specified prisoners at least once a year, if the prisoner so requests.

Who is eligible for parole under the current law? Offenders completing sentences of 12 months or more are required by law to have a non-parole period set by the court that sentenced them, unless the court declines to set a nonparole period. Parole is virtually automatic for offenders serving sentences of less than five years. Such offenders are eligible for release on parole at the expiration of the non-parole period set by the sentencing tribunal, provided the prisoner agrees to comply with the conditions of release set by the Parole Board. That is why I say that parole is virtually automatic for these offenders. They only have to agree to comply with the terms specified by the Parole Board, and one would imagine that most would be happy enough to do so to secure their release.

Offenders serving a term of five years or more are required to apply for release, and the Parole Board must make a decision as to release and the conditions of release. Prisoners serving a life sentence may apply for parole after the expiration of their nonparole period, and the board must make a recommendation and set the terms of release. As members of the council will be aware, a recommendation by the Parole Board for the release of a prisoner serving a life sentence is not effective until such time as it is approved by Executive Council. This is the sole and residual responsibility of executive government in relation to these matters.

Regarding procedures, the board makes its decisions based on a parole report completed by a community corrections officer. The report contains information regarding background, offender history, an assessment of a prisoner's risk and criminogenic needs, behavioural patterns in prison, programs to be undertaken, and release plans, etc. The report also makes recommendations regarding the conditions of parole. The Parole Board considers these reports and sets the actual conditions of parole. The supervision and intervention regime set for parole is similar to that established for probationers, however parolees are under a higher level of supervision. Weekly supervision is the norm initially, with some parolees being seen twice-weekly. Over time, the level of supervision increases if the parolee is responding well, but parolees remain under supervision for the entire period of their parole orders.

This is a system which has been refined over the years but which has worked relatively well. The approach of the Rann government to parole for prisoners sentenced to life highlights a number of issues. In April last year, the government refused to approve recommendations for parole by S.W. McBride and J.D. Watson, two prisoners convicted of unrelated murders, which were correctly described as brutal and frightening. If the government's decision were judged in purely political terms, there is no doubt that the Premier would have been delighted with the result. It was a well-managed media event.

It was interesting to hear that the family of McBride's victim greeted with delight the announcement by the Attorney-General when he called them late at night, out of the blue. The mother of the victim of Watson's crime told the media that she was called by the Premier out of the blue and told that the government was refusing to release Watson. Contrary to Mr Rann's expectations, she did not greet the news with enthusiasm. She said that she had visited the prisoner and had come to terms with the fact that he was going to be released at some time. So, she did not make a

terribly good media personality for Mr Rann. However, there is no doubt that Mr Rann was enthused by the response.

The Hon. J.F. Stefani interjecting:

The Hon. R.D. LAWSON: As my colleague reminds me, the particular lady of whom I speak thought it was the responsibility of the Parole Board and she was satisfied with allowing the board to reach its decision. The Chair of the Parole Board, Frances Nelson QC, courageously but unsuccessfully sought reasons for the government's decision. She asked why the government refused the Parole Board's recommendation. We on this side of the house asked the government to explain this new policy for which a good deal of positive political press was being generated. The question was never answered. The obvious reason was that there was no new policy, just an ad hoc decision to refuse to accept the recommendation of the Parole Board in cases where the government considers that such a decision would be electorally popular.

In July last year, the Parole Board recommended the release of a prisoner, Mr Zubrinich, after eight years of imprisonment. He murdered his wife in rather gruesome circumstances, but the government decided that he was not a threat to society. On what basis the government reached that view was not stated, nor was any announcement made as to what exactly the new policy was.

In April this year, the government refused to grant parole to Mr A.C. Ellis, who had served 12 years for murdering an Aboriginal man in what was described as a brutal racial attack. The Premier said 'Aboriginal groups would be angered' if Ellis was released. This matter was the subject of an exclusive, which was announced by *The Advertiser* for the benefit of readers in South Australia, before Executive Council had met on this very topic, indicating that what was here involved was not a considered decision based upon any policy but a well-staged, if premature, media event. Once again when pressed the government was unable to say what new policy it had adopted, other than the suggestion that the board should be required to take into account public safety, which, as Ms Frances Nelson said publicly on a number of occasions, the board already was implicitly required to do when making decisions about the likelihood of an offender reoffending.

In a ministerial statement on 28 April, the Premier announced that Mr McCann would undertake an immediate review of the Correctional Services Act. In particular, he said that the act should be amended to specifically require that the board have regard to community safety, something which, as I have already said, it is implicitly required to take into account in any event. Once again, I interpose: why was the Chief Executive Officer of the Department of the Premier and Cabinet asked to review the Correctional Services Act, rather than someone with a professed expertise and knowledge of the parole system? One cannot escape the conclusion that the Premier wanted to keep this issue in house and that the review that was being conducted was not one in which public submissions would be sought or where the views of the Parole Board, or even the minister's department, would be taken seriously.

I emphasise again that, on this occasion in announcing the immediate review, the Premier stated that there would be a specific amendment requiring the board to have regard to community safety. The Premier must have been delighted with the press thus generated, because a couple of weeks later on 13 May he made another ministerial statement announcing the terms of the McCann review, which were:

1. Should the Parole Board have the power to refuse parole to prisoners sentenced to less than five years?

2. Whether the matters to which the board must have regard should be strengthened, particularly with regard to community interest and safety.

3. To examine the most appropriate balance of skills, qualifications and experiences of Parole Board members.

That was hardly a wide-ranging review. The very statement of those requirements indicates that the government had in mind precisely the result it expected. On 13 June the board itself announced that it was refusing parole to a prisoner by the name of Riley who had served 15 years. *The Advertiser's* headline tells the story, but I think it indicates the level to which public discussion on the matter has descended. Its headline was: 'Child killer to stay behind bars'.

On 17 June during the estimates committees the Premier announced that cabinet had approved the drafting of amendments to the act which (surprise, surprise) will include the following provisions:

1. To take into account community safety and the impact of a prisoner on victims and their families. (The discussions had obviously indicated that it would be good to inject a bit of victim interest);

2. To allow the Parole Board to refuse automatic parole for all sex offenders for whom a non-parole period had been set (once again, that was electorally popular but there was no argued justification as to why sex offenders in particular should be singled out for particular treatment in relation to parole); and

3. To increase the number of the members of the Parole Board from six to nine to allow for general community involvement, to include an ex police officer as a member of the board and a victims of crime representative.

Once again, as Ms Frances Nelson pointed out on more than one occasion, the board already included the minister's three nominees and had always included, an ex police officer, who is a very worthy representative on the board but one hardly needed to change the legislation to achieve that because the minister already had the power to do so. The press statement described this as the 'toughest changes to parole law in decades'. I think the press statement, in order to emphasise the matter, used the expression 'tough' or 'toughest' on six occasions in two paragraphs, and the media swallowed the line.

It can be seen that the government has extracted a good deal of popular mileage out of its approach to parole, but with no positive benefits. There has been nothing in the nature of additional resources or an analysis of what requirements will be needed to ensure that the board can function given its additional responsibilities in relation to the parole, for example, of sex offenders. I ask the minister to indicate in his response what resources have been allocated to enable the board and the department to satisfy the additional responsibilities under this act; and what inquiries were made of the board or the department about the work load required to discharge these additional responsibilities.

The bill can be described briefly as having five elements. The first is to change the Parole Board by reducing the term of the presiding member from five to three years; to expand the qualification for appointment to include any legal practitioner of seven years' standing; to increase the number of deputy presiding members to two; and to increase the

membership from six to nine, with one being a victim's representative and one a retired police officer.

Secondly, section 85D of the current act, which authorises the release to victims and victims' families and others of details of sentences, release dates, conditions, places of incarceration and details of escape, etc., will be changed in a manner which, I must say, the opposition wholeheartedly supports to establish a more formal register of victims who wish to be kept informed. Whilst the current act authorises the release of this information, it does not institutionalise a register, which should remove some of the difficulties which have been experienced under the current regime. Whilst I say we support this in the interest of victims, it is a very minor administrative amendment and one that does not warrant the trumpeting that has accompanied this bill.

Thirdly, I refer to prisoners who are serving less than five years. As I mentioned earlier, they are now entitled to automatic release after the expiration of their non-parole period. The bill will remove automatic parole for prisoners who are serving sentences for sex offences. Such prisoners will have to apply to the parole board for parole and the imposition of conditions. Fourthly, regarding conditions of release, the current act sets out matters to which the parole board must have regard when determining parole matters. These matters do not explicitly include the safety of the community in so many words, but the bill will require the board to have regard to community safety as 'a paramount consideration', and also to have regard to the impact of the release of the prisoner on the victim and the victim's family. The bill will allow the board to take into account the gravity and circumstances of offences involving violence. It will remove the requirement that the board have regard to reports on the 'social background' of an applicant for parole.

Whilst we support the changing of that rather dated nomenclature, the suggestion made by some members of the government that the parole board presently has a look at the social standing of applicants as a relevant consideration is puerile. The social background of offenders to which the board has had to have regard is not one to advantage people from a good social background. Actually, the expression relates to the family and social supports which are available to a prisoner on release, and of course it is relevant for the board to have regard to that.

Fifthly, I should mention that the bill will have retrospective effect. The change requirement (which will deny to sex offenders automatic parole) will apply to existing prisoners, which is a perfectly justifiable position, in my view, but once again this government seeks to breast beat about this and the Premier, to use his oft repeated phrase, makes no apology for this tough proposal. The bill is largely window-dressing. It is largely cosmetic and a cynical political exercise—and a fairly crass political exercise at that. However, notwithstanding that, the bill makes a number of amendments which the opposition will certainly not be opposing. What we deprecate is the misuse of parole for political purposes rather than for purposes of social policy.

We will be moving amendments at the committee stage. The first will be to require the tabling in parliament of the reasons for either the approval or the disapproval by executive council of parole decisions. Similar legislation applies in Western Australia where the government, whether refusing or accepting parole, has to table in parliament a statement of the reasons. It is interesting to see that this government, for example as we saw today in relation to McBride, has been issuing a press release and seeking to make political capital out of a parole decision which is deemed to be popular, but when, as happens from time to time, prisoners are released and the government accepts a recommendation of the parole board, there is no such thing as a media statement or a notice in the *Gazette*—no announcement at all. This government is seeking to milk the political advantage for those decisions that it regards as popular.

We believe that good public policy demands that they ought to publish, for the benefit of the public, all its decisions so they can be examined in this place and the public can have access to them. The Parole Board is required under present legislation to provide an annual report to the minister, but there is no requirement for that report to be tabled in parliament. Accordingly, there is not on the public record any of the recommendations of the Parole Board or reports about the general operation of the board. We believe it would be appropriate—and I will be moving amendments to the effect—that the report is not simply to the minister, but is tabled in this parliament to enable the parliament and the public to have a better understanding of the workings of this system.

I ought to mention that one additional amendment will be introduced to overcome what we see as a deficiency in the bill. Currently section 67(4) of the Correctional Services Act provides:

> In determining an application for the release of a prisoner on parole, the board must have regard to the following matters. . .
>
> (c) where the prisoner was imprisoned for an offence or offences involving violence, the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment but only insofar as it may assist the Board to determine how the prisoner is likely to behave should the prisoner be released on parole.

The government in this bill seeks to delete those words, but only in so far as it may assist the board in determining how the prisoner is likely to behave should the prisoner be released on parole, thereby creating the implication that the Parole Board has a role, in effect, in resentencing an offender if the board considers that the gravity of the offence was such that the decision of the sentencing judge can be second guessed by the Parole Board. The words which are sought to be removed will remove that constraint so that, in effect, this opportunity of a resentencing will occur. We believe it will be not appropriate to remove those words but if, notwithstanding our opposition, the government is successful in having them removed, we would seek to have inserted a provision to the effect that the board does not have the power to substitute its own view of the seriousness of the offence for that of the sentencing tribunal.

The Parole Board has an important function, but the major function in our system is that of the sentencing court, independent of government, and the sentencing judge is required to fix the non-parole period and it is not a matter for subsequent adjustment by the board. To do so would be a serious intrusion upon the independence of our courts and to seek to politicise further this process.

Finally, I ask that the minister indicate to the parliament in his response whether Mr McCann produced a written report. Is that report available for tabling? Did he receive written submissions in relation to his inquiry and, if so, from whom? With whom did Mr McCann communicate, and when did his communications occur? Will he confirm that it was not until after he had made his decisions and finalised his report that he consulted with the Parole Board about this issue?

I indicate that we will support the amendments, notwithstanding the fact that they are cosmetic, because they can be justified. What cannot be justified is the cynical way in which this government is approaching this issue.

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

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

This Bill makes various amendments the Legal Practitioners Act 1981 (***the Act***). The Bill amends the Act to remove restrictions on competition as recommended by the Review Panel that conducted the National Competition Policy review of the Act and makes other amendments that have been requested by the legal profession and the judiciary. In addition, the Bill makes minor amendments to update the Act and make it consistent with other contemporary legislation.

The Standing Committee of Attorneys-General is currently undertaking a project to introduce a model law for the regulation of Australia's legal profession. The Government has yet to consider the model law. The proposed amendments are not related to the model laws project they are necessary short-term changes to the Act to increase competition within the legal services market and to improve the operation of the current legislative scheme.

In October, 2000 the Review Panel conducting the National Competition Policy review of the Act released its final report to the South Australian Government. The review canvassed a range of competition matters, including the scope of the reservation of legal work, restrictions on the ownership of legal practices, requirement to insure through a statutory scheme, and other matters. The review found that there where features of the South Australian market that contributed to healthy competition, including for example, freedom to advertise, direct competition with conveyancers and the availability of contingency fee arrangements. The review did not identify the need for major reform of the legislation.

Competition policy requires that any restriction to competition that is more than trivial should be removed, unless it delivers a public benefit that cannot be delivered in a less restrictive manner. On this ground, the report recommend the removal of the restriction on land agents drafting leases above a prescribed rental value and the requirement that a person must be an Australian resident to be admitted as a legal practitioner.

To comply with South Australia's competition policy obligations, the Bill removes these restrictions to competition from the Act. Clause 6 of the Bill removes subsection 15(1)(b) thereby removing the requirement that person must be an Australian resident to be admitted as a legal practitioner. Clause 8 amends subsection 21(3)(n)(i) and (ii) to permit land agents to draft leases above the rental values of $25 000 for residential and $10 000 for non-residential, provided they carry approved professional indemnity insurance.

To increase competition within the market, the Bill also amends the practice protection provision of the Act to allow trustee companies to charge for the preparation of wills. Presently, under subsection 21(3)(s) of the Act, trustee companies may prepare wills without using a lawyer only if they are appointed as the executor and they gain no fee or reward for drafting the will. Trustee companies therefore draft wills for the public on a so-called free basis with the cost of the drafting commonly recouped out of the commission gained by the company from the estate when subsequently acting as the executor.

The Bill amends subsection 21(3)(s) to allow trustee companies to charge for the preparation of wills provided that if the trustee company is appointed as the executor under the will it must disclose the costs that may become payable in consequence of that appointment to the person on whose instructions the will is being prepared. Consumers are therefore informed of the executor fees that will be paid out of their estate. It is then the informed consumers choice as to whether they wish to appoint the trustee company as their executor under the will.

The Law Society of South Australia has moved to insuring practitioners on a financial year basis. Section 18 of the Act, however, provides that practising certificates are issued every calendar year by the Supreme Court, through its delegate the Law Society. To have consistency between the terms of the practising certificates and the insurance scheme, the Law Society wants practising certificates to be issued on a financial year basis. To achieve this outcome the Law Society has asked that the Act be amended to allow the Supreme Court to issue certificates for six months from January, 2004 to June, 2004.

Clause 7 of the Bill amends section 18 of the Act to allow the Supreme Court, and thereby the Law Society, to issue certificates for any period less than 12 months. The new provision will allow the Supreme Court to issue certificates for the six months from January, 2004 to June, 2004. Practitioners could then enter into the professional indemnity insurance scheme and be issued a practising certificate, at the same time, for the financial year 2004 to 2005.

Legal practitioners are required to audit their trust accounts each year and provide a copy of the auditor's report to the Supreme Court by 31 October. Currently by the operation of sections 18(3) and 33 of the Act, if practitioners fail to submit the auditor's report on their trust accounts by the 31 October, in addition to a $10 000 fine, they will not be issued a renewal of the practising certificate next January. This ensures that practitioners who do not comply with trust accounting requirements are not allowed to continue to practise.

Once the Law Society switches over to issuing certificates every financial year, the period between when the audit reports are due to be submitted in October and the renewal of the certificate will be increased from two to eight months. Therefore, to maintain the effectiveness of this discipline, the Bill includes a consequential amendment to section 33 of the Act. Pursuant to the amended section 33, practitioners will be suspended if they do not submit an auditor's report on their trust accounts by 31 October or by any extension of time granted by the Supreme Court.

Subsection 18(3) of the Act has also been amended to provide that where a practitioner has been suspended, the practitioner's practising certificate cannot be renewed until the suspension has been lifted.

The Bill also includes a number of amendments requested by the Supreme Court, the Legal Practitioners Conduct Board (***the Board***) and the Legal Practitioners Disciplinary Tribunal (***the Tribunal***) that will increase the effectiveness of these bodies to supervise the legal profession for the benefit of South Australia's consumers of legal services.

Subsection 23B(3) of the Act provides that an interstate practitioner practising in South Australia must give notice to the Supreme Court of any conditions or limitations imposed on the practitioner's interstate practising certificate. The Supreme Court has however expressed concern that the subsection does not specify the time in which an interstate practitioner must give this notice.

Clause 9 of The Bill amends subsection 23B(3) to introduce time limits for interstate practitioners to notify the Supreme Court of any limitations or conditions placed on their practising certificates by interstate authorities. Under the new provision, an interstate practitioner must notify the Supreme Court of any limitations or conditions within 14 days of commencing practice in South Australia or within 28 days if the conditions or limitations are imposed after the practitioner has commenced practising in South Australia. Under the Act, failure to notify the Supreme Court within the specified time limits will be deemed to be unprofessional conduct.

Subsection 82(6)(a)(iv) provides that if, after conducting an inquiry, the Tribunal is satisfied that a legal practitioner is guilty of unprofessional or unsatisfactory conduct, it may make an order suspending the legal practitioner's practising certificate for a period not exceeding three months. The 2002 Annual Report of the Tribunal recommended that the maximum suspension of three months was inadequate. The Law Society, the Chief Justice and the Tribunal have therefore requested that the Tribunal's power to suspend practitioners for unprofessional conduct be increased from three to six months. Clause 13 of the Bill amends subsection 82(6)(a)(iv) to increase the maximum period of suspension from three to six months.

The Board has requested that it be expressed in the legislation that it has the power to impose a combination of the sanctions provided for under section 77AB of the Act. Section 77AB provides that the Board may, with the legal practitioner's consent, determine

not to lay charges before the Tribunal and, instead, reprimand the legal practitioner or place conditions on the legal practitioner's practising certificate or require the practitioner to make specific payments or do or refrain from doing a specific act in connection with legal practice. The Government supports the Board's requested amendment to the Act.

Clause 11 of the Bill amends the Act to clarify that the Board may impose a combination of the sanctions provided for under section 77AB. This amendment will give the Board greater flexibility to tailor its response to a practitioner's unprofessional conduct.

Traditionally recipients of the title Queen's Counsel have been required to give an undertaking to the Supreme Court of South Australia that they will not use, or allow others to attribute to them, the title when practising as a solicitor or when working in a firm of solicitors. This undertaking is consistent with the title Queen's Counsel being awarded to lawyers who have demonstrated a standard of excellence as an advocate. The title does not make any representation as to the recipient's abilities as a solicitor. Accordingly, using the title whilst practising as a solicitor has the potential to mislead consumers of legal services who are seeking to engage a lawyer to conduct solicitor work.

The Chief Justice has expressed concern that the undertaking required by the Supreme Court could, arguably, be open to challenge under section 6 of the Act. Subsection 6(1) states that it is Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors. Also, subsection 6(3) provides that an undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void.

The undertaking in question deals merely with the use of a title and does not require the recipient to practise either solely as a barrister or as a solicitor. However, to put the issue beyond doubt, clause 5 of the Bill inserts a new subsection (3a) into section 6 of the Act. The new subsection states that nothing in section 6 affects the validity of any undertaking made to the Supreme Court by a legal practitioner who receives the title Queen's Counsel about use of that title in the course of legal practice.

The Chief Justice and the Law Society have also requested that section 79(5) of the Act be amended. Section 79(5) provides that replacement members of the Tribunal are appointed only for the balance of the original member's term. The Chief Justice suggests that this arrangement creates unnecessary complications such as a potentially short initial appointments and the risk of overlooking the need to reappoint a replacement member. Clause 12 of the Bill amends section 79(5) to provide that where the office of a member of the Tribunal becomes vacant, before the expiry of a term of appointment, the successor may be appointed for a full term of three years.

The Bill also makes a number of amendments to update the Act to make it consistent with contemporary legislation.

Section 5 of the Act defines ***company*** to mean a company incorporated under the law of South Australia. Clause 4 of the Bill amends the definition of ***company*** to reflect the fact that in 2001 the State, pursuant to the Corporations (Commonwealth Powers) Act 2001, referred certain matters about corporations and financial products and services, including the registration of companies, to the Commonwealth. Ancillary provisions dealing with the transition to the new corporations legislation have been enacted, which have had the effect of causing the definition of ***company*** to be read in accordance with the new corporations legislation. The new definition merely updates the definition on the face of the Act.

Section 97 of the Act grants the Governor the power to make regulations that are contemplated by the Act, or are necessary or expedient for the purposes of the Act. Section 97 is out of date with other regulations making powers in contemporary legislation. Clause 14 of the Bill inserts a new subsection (3a) into section 97 of the Bill. The new subsection provides greater certainty as to what regulations may be made pursuant to section 97 and to whom they are to apply.

In relation to the possible future use of section 97 of the Act I am considering introducing a new regulation to identify government-employed lawyers as a class of legal practitioners that are required to pay no fee, or a reduced amount, for their practising certificates. In the Commonwealth, Queensland, Tasmania, Victoria and Western Australia, government lawyers are exempted from the requirement to have a practising certificate.

I merely raise this matter to give notice of my intentions as to a possible future regulation. This is not a matter that is directly related to the Bill. The proposed amendment to section 97 is consistent with current drafting style and would have been included in the Bill in any event.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Legal Practitioners Act 1981*

4—Amendment of section 5—Interpretation

This clause amends section 5 to update the definition of ***company***.

5—Amendment of section 6—Fusion of the legal profession

This clause amends section 6 to ensure the validity of undertakings given to the Supreme Court by Queens Counsel regarding the use of that title in the course of legal practice.

6—Amendment of section 15—Entitlement to admission

Section 15 of the Act currently requires an applicant for admission and enrolment as a barrister and solicitor of the Supreme Court to be a resident of Australia. This clause removes that residence requirement.

7—Amendment of section 18—Term and renewal of practising certificates

This clause amends section 18 to allow the Supreme Court to issue practising certificates for a period of less than 12 months and to clarify that suspended practising certificates cannot be renewed until the period of suspension expires.

8—Amendment of section 21—Entitlement to practise

This clause amends section 21—

· to allow land agents to prepare (and charge for) tenancy agreements regardless of the amount of rent payable under the agreement provided that the agent has approved professional indemnity insurance;

· to allow trustee companies to charge for the preparation of wills (subject to a disclosure requirement relating to executor's commissions and remuneration).

9—Amendment of section 23B—Limitations or conditions on practice under laws of participating State

This clause amends section 23B to impose a time limit within which an interstate practitioner practising in this State must notify the Supreme Court of conditions or limitations imposed on the practitioner's interstate practising certificate. Under the proposed amendments, the practitioner must advise the Court within 14 days of commencing practice in this State or, if the conditions or limitations are imposed after the practitioner has commenced practice in this State, within 28 days of the imposition of the conditions or limitations.

10—Amendment of section 33—Audit of trust accounts etc

This clause is consequential to clause 7. Currently the Supreme Court must refuse to renew a practising certificate where an auditor's report has not been lodged in accordance with section 33. Because of the change to the period for which practising certificates may be issued, that provision is no longer appropriate and is removed by clause 7. Instead, this clause of the Bill provides for automatic suspension of a practising certificate where an auditor's report is not lodged in accordance with section 33.

11—Amendment of section 77AB—Powers of Board in relation to minor misconduct

This clause makes minor changes to the wording of section 77AB to make it clear that the Board can exercise more than one of the powers of the Board under subsection (1).

12—Amendment of section 79—Conditions of membership

This clause amends section 79 to delete the requirement that a successor appointed to fill a vacancy on the Tribunal that has arisen part way through a term of appointment can only be appointed for the balance of the term.

13—Amendment of section 82—Inquiries

This clause increases the maximum period for which the Tribunal can suspend a practitioner's practising certificate from 3 months to 6 months.

14—Amendment of section 97—Regulations

This clause amends the regulation making power in the Act to allow the regulations to be of general of limited application, to make different provision according to the matters or circumstances to which they are expressed to apply and to provide for discretion.

The Hon. R.D. LAWSON secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (IDENTITY THEFT) AMENDMENT BILL

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

ADJOURNMENT

At 9.53 p.m. the council adjourned until Tuesday 25 November at 2.15 p.m.