LEGISLATIVE COUNCIL

Tuesday 4 May 2004

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

ASSENT TO BILLS

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

Australian Crime Commission (South Australia),

Genetically Modified Crops Management,

Law Reform (Ipp Recommendations),

Motor Vehicles (Suspension of Licences of Medically Unfit Drivers) Amendment,

Problem Gambling Family Protection Orders,

Summary Offences (Offensive Weapons) Amendment.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Industry, Trade and Regional Development (Hon. P. Holloway)—

- APY Land Council and Community Safety in the Lands—Report by the Co-ordinator of Government Services to the APY Lands
- Crown Development Application by the Industrial and Commercial Premises Corporation to vary condition 2(B) of the approval for the JP Morgan Office Complex at Felixstow—Report by the Minister for Urban Development and Planning
- Regulations under the following Acts—
  - Electronic Transactions Act 2000—Exclusions
  - Legislation Revision and Publication Act 2002—Road Traffic Act 1961
  - Limitation of Actions Act 1936—Negligence Claims
  - Liquor Licensing Act 1997—
    - Coober Pedy
    - Gawler
    - Grange
    - Normanville
  - Public Sector Management Act 1995—Pecuniary Interests
- Rules of Court—Supreme Court—Supreme Court Act 1935—Scale of Costs

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

- Reports, 2002-2003—
  - Burra Clare Snowtown Health Service
  - Education Adelaide
  - SABOR Ltd
- Regulation under the following Act—
  - Genetically Modified Crops Management Act 2004—Designation of Areas
- Rules under Acts—
  - Local Government Superannuation Scheme—
  - Circular Resolution Amendments—Rule Amendments—March 2004
  - Correction of Schedule IV—Rule Amendments—March 2004
  - Government Co-contribution—Rule Amendments—March 2004
  - Miscellaneous Amendments to Schedule I, II & V—Rule Amendments—March 2004.

SOCIAL DEVELOPMENT COMMITTEE

The Hon. G.E. GAGO: I bring up the report of the committee on an inquiry into obesity.

Report received and ordered to be published.

APY LANDS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to Anangu Pitjantjatjara Yunkunyjatjara lands made by the Premier Mike Rann, together with a report from the Hon. Bob Collins to Mr Warren McCann.

QUESTION TIME

MITSUBISHI MOTORS

The Hon. R.I. LUCAS (Leader of the Opposition): My question is to the leader of the government. Does the minister agree with the Liberal Party view that, at this critical time for Mitsubishi, Mitsubishi's future might be harmed if unfounded speculation and rumour are given any credence by prominent members of the media or members of parliament?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): The Leader of the Opposition asked me a question prior to the recent break and I made some comments then that I was concerned about the nature of the particular question that the leader had asked on that day, because it may well have been construed to be providing further substance to any public fears that Mitsubishi was facing difficulties which may not in fact be the case. I think at this stage it is important in relation to Mitsubishi that any statements that are made are carefully considered and that they not create any further conjecture about the future of that company until those facts are known.

The Hon. R.I. LUCAS: I have a supplementary question. Given the leader's response, why then did the Premier on 23 April issue a public press statement as follows:

> Premier Mike Rann and Deputy Premier Kevin Foley say they are concerned about unconfirmed reports out of Germany today that Daimler Chrysler is placing its 37 per cent share of Mitsubishi Motors Corporation on the market.

This statement was subsequently shown to be untrue.

The Hon. P. HOLLOWAY: I was overseas and I have not seen the particular statement, but I will refer that to the Premier. The Premier is responsible for statements that he makes.

The Hon. J.F. STEFANI: By way of a supplementary question, does the Leader of the Government in the Legislative Council believe the comments made by the Treasurer (Hon. Kevin Foley) accusing the senior management of Mitsubishi of failing miserably in their management procedures to be helpful to the Mitsubishi cause in South Australia?

The Hon. P. HOLLOWAY: The only comments I have heard in relation to the management of Mitsubishi Australia and, in particular, Tom Phillips by either the Premier or the Deputy Premier have been highly complimentary, and I would add to those comments. I believe the Australian arm of Mitsubishi has been very competently managed, particularly since Tom Phillips has been here. As I said, I am not aware of any criticism whatsoever having been made against the Australian arm of this company. However, it is scarcely a secret that the international company has had some problems at an international level. That is why the Deputy Premier and the federal minister for industry, Mr Ian Macfarlane, will be heading off to Japan fairly quickly.

The Hon. J.F. STEFANI: I ask a further supplementary question. Is the Leader of the Government suggesting that the Treasurer did not make such a statement on radio? It was broadcast, and I certainly heard it. If he is unsure—

The PRESIDENT: Order! The honourable member will not debate the question. Please put the question.

The Hon. J.F. STEFANI: Is the minister aware that the Treasurer made that statement on radio?

The Hon. P. HOLLOWAY: I am not sure to which statement the Hon. Julian Stefani is referring. I am not aware of any derogatory comments whatsoever that have been made about the management of the local company or Tom Phillips by either the Premier or the Deputy Premier. As I said, I was overseas for the past fortnight, but I will check. I would be surprised if that were the case.

HARNESS RACING, WEST COAST

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the minister representing the Minister for Recreation, Sport and Racing a question about harness racing on the West Coast.

Leave granted.

The Hon. T.J. STEPHENS: Mr President, you may be aware that it has been reported in the local Whyalla press that the Whyalla Harness Racing Club is likely to lose a number of meetings in the next calendar year. Currently, there are nine race meetings allocated to Whyalla, and it looks as though they will be cut to three. This would make the club unviable and, with Kimba and Cowell having already moved their meetings to Whyalla, this would basically mean the end of harness racing on the West Coast. Will the minister provide leadership and assistance to ensure the survival of harness racing on the West Coast, and what representations has the member for Giles made to the minister on this topic?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the minister in another place and bring back a reply. I am not sure how to deal with the second part of the question which is directed to a backbench member of the government, but I will refer both questions to the minister responsible.

NAP FUNDING

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the minister representing the Minister for Environment and Conservation a question about NAP funding.

Leave granted.

The Hon. CAROLINE SCHAEFER: In the latest *NRM Directions SA* glossy issue No. 12 of April 2004 it is reported that integrated natural resource management groups in South Australia's five priority salinity and water quality areas have been allocated $26.8 million in South Australian and Australian government funding to implement regional integrated natural resource management plans and investment strategies. My questions to the minister are:

1. How much of that $26.8 million is actually South Australian funding, that is, out of South Australia's budget?

2. How much of it is new funding and how much of it has previously been announced under many different guises?

3. Given that there are as yet no integrated natural resource management plans, who will distribute and manage these funds?

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

EXPORTS

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question regarding exports.

Leave granted.

The Hon. CARMEL ZOLLO: The state government has set a goal of trebling exports by the year 2013. I understand that the Department of Trade and Economic Development has recently set up a virtual one-stop export shop on the web. Can the minister provide details of this important new initiative?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I can, and I thank the honourable member for her question. The Exporting SA web site will target producers and buyers of South Australian goods and services.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The site aims to help South Australian companies build their export capabilities while showcasing their products to the world and, as the honourable member pointed out, we anticipate that the site will contribute significantly towards our goal of trebling exports by 2013 through promoting sales of South Australian goods overseas. The site's main clients will be local exporters and potential exporters, overseas and interstate buyers, South Australia's overseas offices, Austrade and state government agencies.

The web site has three distinct sections. First, there is the exporters' database which is an extensive list of the state's exporting and export ready companies. There are already around 170 exporting companies directly listed, with a further 200 food, beverage and wine exporting companies linked to the site via the SA Food Online website. Overseas buyers now have direct access to around a third of the state's known exporters with numbers on the site increasing daily. The second distinct section is the exporters' road map. This is an 11 step 'how to' guide for the state's exporters and potential exporters. It is a modular training program where businesses can access contacts and export information about training, staffing, insurance, customs and after-sales service.

Thirdly, there is the export and trade information service. The rest of the web site contains general information including news and upcoming events, details about the export council and links to trade and export sites including Austrade, local industry associations and the Economic Development Board. The web site will be managed and maintained by the Office of Trade within the Department of Trade and Economic Development and I encourage all members to log onto the internet to have a look at this excellent new site at www.exportsa.sa.gov.au.

The Hon. CAROLINE SCHAEFER: I have a supplementary question. Is the virtual web site meant to take the place of the real export offices and real export officers and CIBM, many of whom have lost their jobs as a result of the departmental reshuffle?

The Hon. P. HOLLOWAY: The virtual web site certainly will not be taking the place of all of the overseas offices. As the honourable member would no doubt be aware,

this government has closed some of the offices such as those in the United States and, as the Premier pointed out in question time yesterday, if honourable members would like have a debate about that and about how much the office was costing and so on then we would be quite happy for that to happen. But the overall budget for our overseas representation has not been changed.

What the government is doing, and what I am doing at the moment, is looking at ways in which they can be more efficiently focused. The virtual web site is a very useful complement to the other services that this government provides and, indeed, we now have an industry-led approach which will be through the export plan that the export council is developing. Industry will be providing the leadership of that plan over the next few years.

Also, of course, this ties in with the programs of the federal government that were designed to double the number of exporting companies by 2006. The state government's policy and the federal government's policy are highly complementary. Of course, I mentioned earlier that I visited China last week. I joined a number of my state colleagues, as well as the federal trade minister (Hon. Mark Vaile), in China which, of course, is such an important and growing market. China is now third on the list of Australia's exports, but it is very rapidly catching up to the United States and Japan, which are numbers one and two on Australia's export list.

The reason for that joint approach in China was to show that, in relation to trade, there is a bipartisan approach to these matters, and that the state would work with the commonwealth and, indeed, with agencies such as Austrade to ensure that we implement the maximum and most efficient effort to develop our trade links, and I was very happy to do that. I think it is rather unfortunate that the opposition should be casting some aspersions against the efforts that this government is providing in that direction.

The Hon. A.J. REDFORD: As a supplementary question, in reference to the minister's comment about trebling exports, has the government assessed whether the fair work proposals would contribute or be an impediment to the target of trebling exports?

The Hon. P. HOLLOWAY: The fair work bill, obviously, is the responsibility of my colleague. As I understand it, that matter was out for discussion. Indeed, that bill was out for discussion and the government will consider any submissions in relation to that matter. That is a matter for my colleague.

ORGANOCHLORINS

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the—

Members interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: —Minister for Environment, a question about organochlorins waste.

Leave granted.

The Hon. SANDRA KANCK: Organochlorins are, for the most part, manufactured chemicals that, over time, have shown themselves to be highly toxic to humans and the environment. Some of the more notorious chemical disasters in the world have involved organochlorins in the form of substances such as DDT, PCBs and dioxins. They are fat soluble and can build up in the tissues of the body. They are known to be responsible for all but wiping out some animal populations, and in humans they have caused cancers, infertility and birth defects, to name a few of the consequences.

Our EPA holds approximately 15 tonnes of organochlorins waste in storage, but it is unable to dispose of it quickly to the only facility in Australia in Brisbane where it can be safely destroyed. The Brisbane facility has a waiting list from all Australian states and territories for organochlorins to be destroyed. My questions to the minister are:

1. How many tonnes of organochlorins waste are held by the EPA in South Australia, and how secure is its storage in terms of leakage and fire risk? What is the annual cost of storing and maintaining the security of that waste?

2. How long before any of South Australia's organochlorins waste can be disposed of at the Brisbane facility, and how much at a time will be able to be taken? Has any organochlorins waste from South Australia yet been disposed of at the Brisbane facility?

3. At such time as any of the waste is planned for shipment to Brisbane, how will that waste be moved—by road or by rail? When the waste is moved, what obligations are there on the EPA to advise local government, police and emergency services in all the locations through which the waste is proposed to be moved?

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

CORRECTIONAL SERVICES, EMPLOYMENT

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the employment of professionals within our prison system.

Leave granted.

The Hon. A.L. EVANS: South Australia currently has nine prisons providing various levels of secure care and rehabilitation. I understand that our state's prisons provide a range of rehabilitation and training programs to assist prisoners either to gain or improve education or vocational skills such as literacy and numeracy. Prisoners are also provided with opportunities to participate in core life programs to address areas that may have led them to offend, such as substance misuse and anger management. Specific assistance to sex offenders through the sexual offenders treatment and assessment program and specialised assistance is also provided to indigenous prisoners. My questions are:

1. Will the minister advise the total number of social workers and psychologists employed by the Department for Correctional Services?

2. Will the minister advise the allocation of social workers and psychologists to each prison in South Australia?

3. Will the minister advise the number of employees employed by the Department for Correctional Services in non-prison facilities?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his very insightful and detailed question, an accurate answer to which I will have to supply. I have some detail in relation to some of the requests that the honourable member has made, over and above that which I gave the Hon. Ian Gilfillan yesterday. In relation to details of the program we are introducing, the Canadian program to counsel and treat sexual offenders is in its final stages of introduction. A Canadian expert is in South

Australia at the moment to advise the department on how to deal with sex offenders within the prison system. I am to meet with her later today, so I will be able to get final detail on the number of professional people who will be involved in that program.

In relation to details in respect of the other questions, I will take those questions on notice and give the honourable member a total capture of those numbers without trying to fill in the gaps, because I do not have that up-to-date detail with me.

The Hon. A.J. REDFORD: I have a supplementary question. Will the minister provide the same figures in relation to each of the past four calendar years?

The Hon. T.G. ROBERTS: I will take that question on notice and bring back a reply.

ANANGU PITJANTJATJARA LANDS

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

Leave granted.

The Hon. R.D. LAWSON: In a report from Mr Bob Collins dated 23 April and addressed to the Chief Executive of the Department of the Premier and Cabinet, which letter the minister tabled in this place today, certain recommendations are made, as follows:

1. That legislation is introduced to provide for an election for the APY Land Council as soon as practicable. . .
2. That the SA Electoral Commission conduct the election.
3. That the commission ensures to the greatest extent practicable that all Anangu in the lands have an opportunity to participate in this process if they wish to do so.
4. That the term of the council so elected be for 12 months.
5. That a review be conducted of the Pitjantjatjara Land Rights Act 1981 so that any proposed amendments can be considered and determined by the South Australian parliament prior to the expiration of this term.

That is the 12-month term of the APY council executive to be elected. My questions are:

1. Were these recommendations discussed with members of the communities on the lands when the minister visited the lands on 20 and 21 April?

2. Is the government committed to implementing the recommendations that I just read out?

3. Does the current purported chairperson of the APY executive (Mr Gary Lewis) support the implementation of the five recommendations that I read out?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his questions in relation to the Collins report. The government is considering seriously the recommendations that have been made. The recommendations have been put together by Bob Collins on the lands in consultation with the APY—not only the executive but also the communities. The issues relating to the decision on how the election will be run, whether the Electoral Commission will be involved, how to get the greatest participation rates (other than at an annual general meeting) and whether the council election will be for a 12-month period are being worked through at the moment.

As I have said, the recommendations will be considered seriously. As a government, we would be foolish to commission somebody such as Bob Collins, who has been involved in Aboriginal affairs over the past 20 years, and ignore the recommendations that he makes. We have tabled his report so that members of the opposition and others can read it. We will introduce legislation that will encompass not just the election of the AP and how the APY will resolve the impasse with the government in relation to the election results (which we would have preferred to have come from an annual general meeting) but also the status of the current executive.

We will certainly look at the review of the act with the intention of making sure that the act as it now stands, which defines 'land council' but does not define 'local government', will include a review of engagement, using the auspices of the Office of Local Government and the Local Government Association to look at, over a 12-month period, a form of local government that is more suitable to the lands than using a lands-holding body to be the sole province of not only engagement but delivery. We will bring together a bill to amend the act. It will not have anything to do with land rights, nor will it touch the issue of land tenure. However, we certainly have to bring about a form of governance that is capable of engaging with our cross-agencies to deliver services.

As to the chair, Gary Lewis, he expressed an opinion that he believed that, because of the constitutional changes they made—not in connection with the act but to the constitution—the requirements of the constitution were being met. He also believed that the APY council was a legitimate body to represent the people of the APY lands.

The Hon. R.D. LAWSON: I have a supplementary question arising from that answer. Given the minister's answer that the legislation proposed to be introduced will cover a number of matters, does he accept that the government is not proposing to adopt the recommendations made by Mr Collins, namely, that legislation for the restricted purpose of conducting an election be introduced as soon as practicable?

The Hon. T.G. ROBERTS: We will be introducing a bill to amend the act as soon as possible, after consultation with the opposition and other interested parties within the parliamentary process.

The Hon. R.D. LAWSON: Sir, I have a further supplementary question. When can the council expect to see the legislation?

The Hon. T.G. ROBERTS: The bills are being drafted as we speak. I would expect them to be ready, I guess, when they are finalised. I could not say with any certainty, but I hope that before the end of the week the bills will be drafted and ready for introduction perhaps in the next parliamentary week.

DUKES HIGHWAY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Minister for Transport, a question about the Dukes Highway.

Leave granted.

The Hon. D.W. RIDGWAY: As members know, I have taken a very keen interest in the reconstruction of the Dukes Highway. On 1 April this year, my office emailed the office of the Minister for Transport and requested a briefing on the design and forthcoming reconstruction of the Dukes Highway. Unfortunately, I was not offered a briefing. However,

I was given the following reply, which contains a number of dot points.

First, the Dukes Highway is a national highway. Secondly, the Dukes Highway between Bordertown and the Victorian border has significant areas of deterioration and requires rehabilitation. Thirdly, the Department of Transport and Urban Planning has reduced the speed limit from 110 to 100 km/h and installed undulating surface signs in this section. In February 2003, the Department of Transport and Urban Planning presented a formal submission to the federal Department of Transport and Regional Services seeking funding (approximately $15 million) to rehabilitate this section of the highway. On 9 April 2003, the Department of Transport and Urban Planning met with a federal Department of Transport and Regional Services representative who requested that the Department of Transport and Urban Planning review the recommended rehabilitation treatments and estimates. A review was completed in December 2003 (which is, again, something of which I was aware).

On 22 October 2003, the federal member for Barker announced $15 million over two years for the Dukes Highway upgrade commencing in 2004-05 (which happens to be this coming financial year), and formal approval was received on 30 January. The final dot point states that the contract for rehabilitation is planned for the second half of 2004 and that work is anticipated to commence later in the year. Following that reply, I felt that I needed to ask some questions. My questions are:

1. What provisions have been made for slip lanes, right-hand turn lanes and school bus access in the design and construction of this upgrade?

2. Can the minister identify the proposed locations of stock crossings in the redevelopment of the Dukes Highway and the types of crossings that are proposed—whether they are to be tunnels under the road or crossings with signs?

3. Will the minister identify what community consultation has been undertaken before the redevelopment commences?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will pass those questions on to the Minister for Transport and bring back a response.

PRISONERS, GRAFFITI REMOVAL

The Hon. G.E. GAGO: I seek leave to make a brief statement before asking the Minister for Correctional Services a question about the involvement of prisoners in graffiti removal work at Port Augusta.

Leave granted.

The Hon. G.E. GAGO: I am aware that a number of local councils have made arrangements with the Department for Correctional Services to allow low security prisoners, supervised by officers from the DPC, to work outside prisons on community-based projects. Can the minister advise the council of the details of the project currently in operation at Port Augusta?

The Hon. T.G. ROBERTS (Minister for Correctional Services): Prisoners are an important physical resource that we have to use in more ways within the community to provide hours of education and community work to assist in their rehabilitation and re-entry into the community. As the honourable member has said, prisoners are a good resource for regional communities to tap into to undertake work around the community—that is, the prisoners who are suitable for those sorts of programs.

A number of councils have made arrangements with prison authorities that allow selected low security prisoners supervised by officers of the Department of Correctional Services to work outside the prison on community-based projects where those applications are made. The project referred to by the honourable member is part of an agreement between the Port Augusta City Council and the Port Augusta Prison, whereby the prison provides six prisoners and an officer four days a week to assist the council staff remove graffiti from public areas around the city. I am sure that all honourable members would be aware of the generally acknowledged importance of removing graffiti as soon as it is presented, so that it does not give the graffiti artists the time to make sure that their tags are advertised within those communities.

Tourism, which is an important part of the future of any rural community, can be affected if graffiti is allowed to go unchecked. I do have to pay tribute to the Port Augusta council, including the mayor who delivered a promotional program recently in the Hilton Hotel, which the honourable member is probably aware of, promoting Port Augusta and showing a new side of Port Augusta which is starting to develop through the investment strategies of the Northern Regional Council and the state government. In some of the photographs exhibited it is hard to recognise the old Port Augusta from some of the new projects that are being put in place.

The Aboriginal prisoners in the Port Augusta Prison, which are in percentage terms very many, are also involved in this program. I just hope that not only the Port Augusta council but other councils in South Australia continue to use the correctional services facilities and their officers and the prisoners to involve themselves in similar community projects.

GENETICALLY MODIFIED FOOD

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Agriculture, Food and Fisheries, a question regarding exemption notices under the Genetically Modified Crops Management Act.

Leave granted.

The Hon. IAN GILFILLAN: At the end of March we passed the Genetically Modified Crops Management Bill. This was a bill for an act to allow the minister to establish zones within South Australia that are free of genetically modified crops. Further, the act allows the minister to make exemptions to any GM free zone. We have the situation at the moment where the minister has declared, through regulation, that the entire state is a GM free zone. He has also, however, given an exemption to Bayer CropScience to grow GM canola in the state. The minister has been on radio—in fact I debated the issue with him on the *Country Hour*—stating that the exemptions were for, according to him, the purpose of crop trials. However, the exemption notice which was gazetted on 29 April states:

> Pursuant to the Genetically Modified Crops Management Act 2004, I, Rory John McEwen, Minister for Agriculture, Food and Fisheries, issue the following exemption notice to Bayer CropScience Pty Ltd under section 6(2)(a)(ii) for the purposes of breeding and seed multiplication—

I emphasise this: it is for breeding and seed multiplication; there is no question about trials—

of genetically modified oilseed Brassica cultivars associated with the production of InVigor Canola (hereafter the GMO) in areas of the state designated as areas where cultivation of GM food crops is not permitted.

So, as I emphasised, minister McEwen misinterprets the breeding and proliferation of seed for the harvesting of seed as a trial plot. Point 8 of the notice deals with the harvesting of the GMOs, and the first three subpoints state:

8.1 Subject to condition 8.5 below, the GMO at a Location and Pollen Trap plants may be harvested for seed only.
8.2 Subject to condition 8.5 below, following harvest of the GMO and Pollen Trap plants, if any:
(a) any harvested seed must be immediately, or as soon as is reasonably practicable:
(i) stored in a sealed container that is signed so as to indicate that it contains GM canola seed, within a locked facility that is signed so as to indicate that genetically modified canola seed is stored within the facility; or
(ii) exported—

in other words, we are actually exempting a crop to have grain exported—

or
(iii) rendered unviable by autoclaving; or
(iv) destroyed by burning; or
(v) destroyed by burial under 1m of soil.
8.3 Subject to Condition 8.5 below, any Canola seed obtained from harvest may only be transported to the extent necessary for seed cleaning or treating, to store it, export it or destroy it.

What is interesting about this, as members would have noted, is that condition 8.5 does not exist; it is not in the notice. This is a huge omission, and it puts in some doubt the integrity and accuracy of this exemption notice. So, I ask the minister:

1. Does the minister agree that when he spoke on radio about the exemption notice he misled the public by referring to the plantings as being for crop trials whereas in fact they are limited plantings as described under the act?

2. Does the minister agree that this exemption notice will put South Australia's agricultural exports at risk?

3. Will the minister consider immediately revoking this exemption?

4. How can the minister expect public confidence in the exemption notice without there being a much referred to condition 8.5?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Under standing orders, I will refer those questions to the Minister for Agriculture, Food and Fisheries in another place and bring back a reply.

The Hon. NICK XENOPHON: Does the minister acknowledge that the exemption notice referred to is in breach of promises made by the Hon. Mike Rann at the last state election in relation to genetically modified crops?

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

GAMING MACHINES

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the minister representing the Treasurer a question about poker machines.

Leave granted.

The Hon. NICK XENOPHON: I refer to a report in yesterday's *Advertiser* by political reporter Leanne Craig headed '10-year freeze on pokies taxes' which states that hotels and clubs are to be offered a 10-year reprieve from increased pokies taxes as part of a legislative package to reduce poker machine numbers. As the Treasurer (together with the Minister for Gambling) has understandably had a number of meetings recently with representatives from the hotel and club industry, my questions are:

1. Have any discussions taken place with industry representatives on any other measures affecting the industry such as smoking bans and their timing, removing ATMs from venues, and any other measures to reduce the level of problem gambling?

2. Have any undertakings been given or has any understanding been reached with the Treasurer or any other ministers in relation to any of the measures discussed?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer that question to the Treasurer and bring back a reply.

The Hon. J.F. STEFANI: Will the minister identify the exact dates when he held meetings with the appropriate people concerning these undertakings?

The Hon. P. HOLLOWAY: I will also refer that question to the minister and/or ministers and bring back a reply.

VALUER GENERAL

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the minister representing the Minister for Administrative Services a question about increased land charges.

Leave granted.

The Hon. J.F. STEFANI: On 30 March 2004 I wrote to the Office of the Valuer-General on behalf of an elderly pensioner constituent who, because of his limited financial resources, has been living in a modest, rundown dwelling for many years. Over the years the capital valuation of his property has been marginally higher than the site valuation. For example, for the year 2001-02 the capital valuation was $111 000 whilst the site valuation was $105 000. In the 2002-03 valuation period, the capital value jumped to $189 000 whilst the site valuation was fixed at $121 000, reflecting an increase of $62 000 in the value of his house over the previous year. When writing to the Valuer-General I pointed out that the house was in total disrepair and could not represent the valuation of $68 000 which had previously been notionally set at $6 000.

On 8 April 2004 I received a letter from the Acting Manager, Administration and Projects, office of the Hon. Michael Wright MP, Minister for Administrative Services, who advised me that the minister had asked her to acknowledge my letter to the Valuer-General dated 13 March 2004 and that the matters which I raised were being considered.

On receipt of this letter I rang the Valuer-General's office seeking clarification as to why the minister's office was responding to my letter instead of the Valuer-General. I was advised that the minister had directed the office of the Valuer-General to refer all queries on property valuations to the minister for his response. In other words, through his directive, it appears that the minister is interfering with the workings and independence of the office of the Valuer-General.

Unbeknownst to me, on 20 April 2004 the Valuer-General directly informed my constituent that following my representations the capital value of his property had been amended from $189 000 to $121 000, effective from 1 July 2003. This represents a welcome reduction in the valuation of the property, leading to a refund in council rates, SA Water rates and the emergency services levy. My questions are:

1. Can the minister explain why he has directed the office of the Valuer-General to direct queries on property valuations to his office for a response?

2. When was this directive issued to the Valuer-General's office?

3. How many letters of response has the minister issued on behalf of the Valuer-General when queries were raised on property valuations?

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.

STATE HOUSING PLAN

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 Housing, a question regarding the State Housing Plan.

Leave granted.

The Hon. KATE REYNOLDS: Last year the government announced that in September it would release the State Housing Plan which was intended—we believe—to provide short, medium and long-term strategies to address South Australia's community and public housing and homelessness crises. That plan has not yet been released.

On ABC Radio last month the housing minister said that there would be an announcement made about the State Housing Plan when the budget was released in May. However, it was reported in last week's *City Messenger* newspaper that the Rann government did not intend to release the much awaited State Housing Plan before the state budget later this month. The same edition of the *City Messenger* also featured a letter from the minister in which he stated that the housing plan would be 'completed and released later this year.'

My office has been contacted again by concerned representatives from the housing sector who believe that without specific budget allocations for growth another year will be lost while the state is in what they described to me as 'a housing and homelessness crisis.' I have also been told that the Community Housing Organisation's grant fund, which several community organisations and the minister's own Housing Council rely upon for funds, has been the subject of a review. I understand that the previous minister was, some months ago, provided with a report on the outcome of the review. Apparently, the appointments to the Housing Council have been rolled over for three months at a time during this process and the appointments are now only until June 2004. My questions to the minister are:

1. What has been the cause of the delay in the release of the State Housing Plan?

2. Exactly when will it be released?

3. Given that the State Housing Plan will now be released some months after the state budget, we believe, will funding be allocated in this state budget to fund any or all of the planned recommendations?

4. If not, will the release of the plan be accompanied by an announcement of funding for new initiatives?

5. Will the minister be making a decision on the use of the Community Housing Organisation's grant fund before 30 June when the current arrangements expire: if so, when will this decision be announced?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer that series of questions to the Minister for Housing and bring back a reply.

SOLAR THERMAL POWER

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Minister for Energy, questions about solar thermal power.

Leave granted.

The Hon. T.G. CAMERON: An article in *New Scientist* magazine of 10 April 2004, entitled 'Power of the Midday Sun', reported the recent advances in solar thermal power. Solar thermal power differs from its more common cousin photovoltaic solar power as, instead of using solar cells to generate electricity, it uses mirrors to focus the sun's energy on ceramic plates to super heat air that drives a steam turbine. It is heliostatic in that it tracks the sun across the sky, maximising its collecting ability. It has the added benefit of thermal storage, which means that the heat from the plate can be stored for up to two hours.

That means that the plant can continue generating electricity in times of rain or twilight. A demonstration plant has already been activated in Almeria, Spain, and it is producing one megawatt of power. Commercial plants will be 15 to 20 times larger. My questions are:

1. Is the government aware of the recent developments in solar thermal power and its implications for a renewable clean energy source?

2. Given South Australia's geographical advantages in this area, does the minister consider solar thermal power a suitable renewable energy source for South Australia, and will the government investigate ways to attract possible investors in solar thermal power generation in South Australia?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his questions, which I will pass on to the Minister for Energy in another place and bring back a reply.

HOME DETENTION

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about home detention.

Leave granted.

The Hon. A.J. REDFORD: Yesterday I advised the parliament that, on average, about 120 to 130 persons are on home detention each evening in South Australia, and that they are supervised by one corrections officer. I asked the minister whether he was confident that there is adequate supervision of detainees in those circumstances, and I asked how one person could adequately supervise. In his usual style, the minister gave us some general information and said that supervision of home detainees was difficult—a startling piece of news! He also told us that he tends 'not to interfere in operational issues', and he said that he did not have the detail required to answer the questions.

Also, early in his answer, the minister said that court ordered home detentions have remained steady, albeit later in his answer he said that numbers had risen markedly. What the minister did not say is whether or not he is confident that there is adequate supervision, or whether or not one person could manage two incidents at the one time. In the light of that, my questions are:

1. Has the minister checked whether or not only one person supervises 130 detainees overnight and, if not, why not?

2. Is the minister now confident that there is adequate supervision of home detainees?

3. Has yesterday's industrial action affected this supervision or, indeed, security in gaols?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): In relation to the second part of the honourable member's question, certainly, lock downs are not desirable in terms of a management tool for our prison services within this state. We would prefer not to have lock downs within our system because it does produce strains on an already strained correctional services system. It is an industrial relations issue and, unfortunately, it is a part of the PSA's strategy to involve our correctional services area. In relation to other matters with respect to home detention—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: It is not a matter of affecting security. In fact, security is probably tighter when people are locked down than when they are moving through the prison. However, if they continue over a long period of time, these lock downs would produce people who would not have the same demeanour as they would if they were getting their recreational pursuits and needs met within the prison system.

Home detention is a tool that has been used by governments of both persuasions in relation to alternatives to prison. The court ordered and intensive bail supervision issues are operational matters and it is for the prison operators to work out the type of prisoner who would avail themselves of these services, and the courts would determine similarly. It has never been an issue that has been reported to me as being a difficulty within—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: But, prior to the honourable member raising it in the council, it had not been reported to me as being a problem associated with supervision, given that technology is available for supervision. Perhaps the honourable member is indicating there is an over reliance on the technology to supervise the placement or whereabouts of a prisoner, but I did say that, in relation to home detention, we have to rely on that person's quality of life and home circumstances to ensure that there are few or limited risks associated with the release of people into home detention.

I have complaints as minister from parents of younger prisoners, or people who are seeking to be on home detention and who have not met the qualifications that are set by the prison services. Generally, I have had more complaints from people not being able to access home detention, not just because of the numbers available but because of the types of conditions set for some prisoners on home detention. As I have said, it is one way of maintaining links and contacts with home support services, where they are available. If someone is to be released—and that is where I get my complaints—into a home detention climate and it could put the prisoner at risk of reoffending or absconding, then the prison services operators tend not to release a prisoner into that sort of climate. I will seek a report from the correctional services operators.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: There are quite a few other matters associated with a minister's responsibilities! I give the honourable member an undertaking that I will seek a reply and bring it back to him in this council.

The Hon. A.J. REDFORD: I have a supplementary question. What is more important than checking whether there is more than one person supervising 130 home detainees overnight?

The Hon. T.G. ROBERTS: I have visited the centre where the technology is used to monitor the bracelets and anklets which prisoners or detainees wear. It is not one of those areas where you can have one to one observation. It is not necessary. It is an area where, if there is a breach, alarms are set and other people are notified. It may be that police, correctional services officers or parole officers would be notified. It is an operational matter that the prison services have decided is adequate. The honourable member has probably had information or a report that it is difficult for a single prison officer to observe or be in charge at all times. I have given an undertaking that I will seek out a reply from the correctional services officers who are in charge of the technology and the monitoring processes, and I will bring back a reply.

The Hon. A.J. REDFORD: Does the minister believe that there is any urgency in checking out my allegations?

The Hon. T.G. ROBERTS: Again, I say that I have not had any inquiries or reports prior to the honourable member's question yesterday. In his capacity as shadow minister for correctional services, I can understand the honourable member's enthusiasm in this council, but he has to get in line with all the other issues involving correctional services. However, I will get back to him with a report from my CEO in relation to his question, and I hope that that is satisfactory.

COMMUNITY FOUNDATIONS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about Community Foundations.

Leave granted.

The Hon. J.S.L. DAWKINS: The project to establish Community Foundations in South Australia was commenced by the previous government through the Building a Stronger Regional South Australia initiative, which was coordinated by the then office of regional development and supported by Philanthropy Australia and the Foundation for Rural and Regional Renewal. This work continued after the 2002 election through the current government's Office of Regional Affairs.

Community Foundations is a charitable organisation that is formed to seek, manage and distribute gifts from philanthropic donors to address local needs. It can become a vehicle for individuals, families or businesses who wish to donate funds or real property to provide a lasting benefit for their community. The valuable role Community Foundations can play in regional development has been exemplified in areas of Canada similar to South Australia in topography and population spread.

In its initial 12 months, the Building a Stronger Regional South Australia initiative explored the possibility of establishing Community Foundations in several regions, including the Barossa, the South-East, Eyre Peninsula and Kangaroo Island. The most advanced progress occurred in the Barossa, with the establishment of a constitution and trust in early 2002. My questions are:

1. Will the minister provide details of the assistance provided by the Office of Regional Affairs to rural communities wishing to establish foundations?

2. How many regional Community Foundations have been established in South Australia through the Building a Stronger Regional South Australia initiative?

3. In which regions have foundations been established?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his questions and for his interest in this matter. I do not have that information available to me now, but I will take those questions on notice and bring back a reply.

BIOSCIENCE INCUBATOR

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I table a ministerial statement relating to a new $9 million investment in the bioscience business incubator made today by the Minister for Science and Information Economy.

LOCAL GOVERNMENT (FLOOD MITIGATION INFRASTRUCTURE) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation) obtained leave and introduced a bill for an act to amend the Local Government Act 1999. Read a first time

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

That this bill be now read a second time.

I thank honourable members and the desk clerk for their cooperation in the introduction of this bill. It seeks to amend sections 7 and 295 of the Local Government Act 1999 to make it explicit that councils have the power to enter onto private land to carry out all works (including preliminary works) associated with the construction, operation and maintenance of flood mitigation infrastructure.

These amendments will resolve the uncertainty that has risen from conflicting legal advice about the current powers of councils and their subsidiaries to enter land to undertake works associated within a watercourse, especially in relation to stormwater management and flood mitigation. For example, the lower reaches of the Gawler River are under major threat from flood, especially in the horticultural and residential areas of Gawler, Virginia and Two Wells. To address this problem, the Gawler River Flood Management Plan was produced by the Northern Adelaide and Barossa Catchment Water Management Board and approved under the Water Resources Act 1997—an issue about which the Hon. Mr Dawkins would know quite a bit as he is a resident of that geographical area.

The central feature of the plan is the construction of a flood control dam on the North Para River at Concordia. The plan provides for the establishment of an authority to coordinate the construction, operation and maintenance of flood mitigation infrastructure and, as a consequence, the Gawler River Management Authority was created. The authority is a regional subsidiary constituted under the Local Government Act 1999 and comprises the member councils of Light, Barossa, Gawler, Adelaide Hills, Playford and Mallala. However, legal advice to the Gawler River Flood Management Authority has resulted in its being reluctant to proceed further and risk possibly acting without legal authority and exposing itself to significant liability, given the nature of the project.

This amendment bill makes it explicit that the functions of a council include the provision of the infrastructure for its community, including infrastructure to protect the community from hazards such as flooding. It will also ensure that adequate powers exist under the Local Government Act 1999 for councils and their subsidiaries to enter onto private land in order to carry out works associated with stormwater management or flood mitigation. Without the current amendment to the bill, the completion of projects to provide flood mitigation infrastructure will be significantly delayed.

As the matter covered by this bill will expedite necessary flood mitigation works in the Gawler River area, as well as any future flood mitigation works, the government hopes that the bill will be dealt with expeditiously. I commend the bill to honourable members.

The Hon. J.S.L. DAWKINS: I rise on behalf of the Liberal Party to indicate support for this bill and for its expeditious progress through this chamber and the parliament as a whole. The bill makes a minor change to the Local Government Act 1999 to allow surveyors to carry out survey work on the North Para River for the construction of a flood mitigation dam. I will not delay the chamber too long, but I will give some background from my knowledge of the situation.

For the first 27 years of my life I lived within what you, sir, would call a stone's throw of the Gawler River, so I am well aware of the amount of water that can be carried by that river. Although water does not come down frequently, when it does it comes at great haste and causes considerable problems, as the minister indicated, for the horticultural areas, particularly between Two Wells and Virginia, where the river becomes quite shallow and narrow. It does not take a lot of water to come down the Gawler River to go over the banks in that area.

As well as living right on the banks of the river for that first period of my life, I spent a further 16 years living and farming in the general vicinity of the Gawler River, so I am quite aware of the situation and the importance of building this flood mitigation dam. I well remember a time in 1983, a fortnight after Ash Wednesday, when nine inches of rain fell in three hours in the Barossa Valley. All that water came down the North Para River. There was already quite a bit of water in the South Para, so when the water came into Gawler it could not do what it quite often does, which is run back up the South Para. It came down as a wall of water, and that is one of the most frightening things that I have ever seen. It caused some damage in the area where I was, but there was enormous damage further towards the coast. In October 1992, we again saw significant floods, which I think caused more damage. The minister mentioned Two Wells, Virginia and Gawler as being areas prone to flooding but, of course, the rural living area of Lewiston was the one that really suffered great problems in 1992.

One of the features of the Gawler River is the fact that it has a number of natural distributaries that run out through the Lewiston area. Of course, because of the subdivision that has taken place there, and the roads and fences, the water would not go where it was supposed to go and caused enormous problems. I take into account that the minister is, I think, aware of this problem because only last year he attended a function at the confluence of the North Para and South Para rivers in Gawler. I think that just being in that area makes one

aware of the problems for the Gawler township if we do not carry out this work.

The Northern Adelaide Barossa Catchment Water Management Board has received conflicting legal advice as to the legality of surveyors entering land to prepare reports for the North Para flood mitigation dam. Most affected property owners have allowed surveyors to go about their work. However, some have been causing difficulties for the catchment water management board. It is the opinion of the board that this specific amendment to the Local Government Act will clear up any legal ambiguities. Crown law advice was that there was a legal right to enter the land. However, other legal advice given to the Gawler River Floodplain Management Authority contradicts this advice. Therefore, to overcome this area of legal doubt, this amendment is being introduced. I understand that the Northern Adelaide and Barossa Catchment Water Management Board, the Gawler River Floodplain Management Authority and the Local Government Association all support this change.

In supporting the expeditious progress of this bill through the parliament, it is relevant to acknowledge that the commonwealth government has contributed $500 000 towards the construction of the flood mitigation dam at Concordia. I think it is important that we remove any hurdle that prevents that dam from being constructed as soon as possible. It is 12 years since there was a major flood in that area. On average, it has usually been about once every 10 years that a major flood comes down the Gawler River, either as a result of flooding in the North Para River or the South Para River, or both. I think that, if we do not proceed with this flood mitigation dam as soon as possible, the increasing population in that general area will be at great risk. On behalf of the Liberal Party, I support the bill.

The Hon. SANDRA KANCK: I want to talk a little bit about process in discussing this bill. On Thursday, I received an email. The header states '29 April, 2.48 p.m.', and it was from someone called Sarah Cocking in PIRSA. The email stated:

> Dear Parliamentarian,
> The Local Government (Flood Mitigation Infrastructure) Amendment Bill 2004 is expected to be introduced on Monday 3 May 2004. Please contact me. . . if you would like a personal briefing. I have attached a written briefing for your information.

It is signed 'Matt Pinnegar, Ministerial Adviser'. There is no indication in the email of any sense of urgency. There is no indication in the email that, in fact, the intention was to introduce it first in the Legislative Council. I assumed that, given that it was coming from local government (which appeared to be its source, even though it said 'PIRSA' at the top), it would be introduced in the House of Assembly. That was Thursday, so I thought I had a little time.

About three hours later on that same day we received a fax from the Hon. Paul Holloway. The fax contained a list of bills that the government wanted processed in the coming weeks. The fax stated:

> The priority bills for sitting week 3 to 6 May: Authorised Betting Operations, Gas (Temporary Rationing) Amendment Bill, Health and Community Services Complaints Bill, Natural Resources Management Bill, Consent to Medical Treatment and Palliative Care Amendment Bill, Dog and Cat Management Amendment Bill, Statutes Amendment Courts Bill, Freedom of Information (Miscellaneous) Amendment Bill, consideration of message No. 55 from the House of Assembly.

That document was received by our fax machine at 10 past 5 on Thursday afternoon. There was still no mention of priority for a local government bill. At about lunchtime yesterday I received a message that the government wanted this bill to be dealt with in its entirety today. I received a copy of the bill at about half past 5 last night.

An honourable member interjecting:

The Hon. SANDRA KANCK: Yes. In the meantime, I had said that I wanted a briefing on the bill if we were to deal with it today. I had a meeting last night with another group of constituents on a completely different issue, so my time was already taken up. I certainly did not have time to read the bill and the briefing notes prior to having my briefing at 9.30 this morning. The upshot is that I have had no time to consult with anyone. The briefing note states that consultation has occurred with the Local Government Association, the GRFMA, the Hon. Malcolm Buckby MP, member for Light, and Mr Duncan McFetridge MP, the shadow minister for local government. End of story: no Democrats were consulted.

I am not a happy camper at the present time. I think that this government has shown, just in relation to this one bill, that it is almost incapable of communication. If I was a teacher giving government members an assessment on their communication skills, I would probably give them 'D' for 'dunce' or 'F' for 'fail'. I was told at my briefing that the LGA is supportive (and the briefing note says that it is), and I was also told that I would be receiving a fax from the Local Government Association verifying that it is, indeed, supportive of the legislation. However, when I went downstairs to the fax machine and checked about half an hour ago I still had not received anything from the Local Government Association. So, I want to put on record that the Democrats are not pleased at this process. There has been no attempt other than the email on Thursday afternoon and then a phone conversation yesterday and the briefing I have had this morning, which is all very much after the event. You want it passed when? Yesterday? That is the way it is going.

We had major floods back in 1993 in the Gawler River area. It has taken 11 years to get there. I would have thought it might have been possible for a little bit more prior advice and some consultation to occur. I am always concerned when we get legislation that is rushed through like this. I would say that 50 per cent of the time we get it wrong and we end up with the legislation back here again. So, I indicate that, while I recognise the government has given this bill status of urgency, we are less than impressed at the methodology with which the government has gone about it. Given that the flood mitigation work has apparently been put on hold in this area until this legislation gets through, the Democrats are supporting it, but in protest at the lack of consultation.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contributions and I accept the admonishment that is being given in relation to the contact time for the Democrats to consider the bill. It is a double page second reading and a single page bill, basically. But there is no excuse for the consultation processes missing the Democrats' negotiating committee and the leader, and I thank the honourable member for her cooperation in working to get the bill passed. Clearly, there is a distinct head of steam up at the moment, which is not going to stop the Flood Mitigation Infrastructure Amendment Bill 2004, and with Matt on the job and with everybody now moving in the same direction I think the bill can be put through and passed onto another place. So, I thank honour-

able members for their cooperation and this will now be the final stages of the bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.S.L. DAWKINS: Will the minister say whether the department is aware of the reasons why land-holders are refusing to allow surveyors onto their property to survey for this flood mitigation dam?

The Hon. T.G. ROBERTS: I am advised that it is more the process that is causing the delay; that is, entering into agreements with each individual land-holder is presenting the delays to those who are carrying out the work. The bill will facilitate a different process. Consultation will still have to be conducted, but agreements will not have to be sought.

The Hon. J.S.L. DAWKINS: I take the point that the Hon. Sandra Kanck made about the rapidity of this process, and I have to say that I personally have not had a great briefing on this, other than that the member for Light in another place and the shadow minister, Dr McFetridge, have briefed me. My advice was that the reason for this was that some land-holders were refusing to allow surveyors onto their property.

The Hon. T.G. ROBERTS: The advice given to me is that we are not aware of any individual land-holder being an impediment to the progress of the work by making a declaration that they are opposed to anybody coming onto the land.

The Hon. CAROLINE SCHAEFER: The title of this bill and, indeed, the remainder of the bill refer to the Local Government (Flood Mitigation Infrastructure) Amendment Bill. We have, in the absence of any briefings, and in the absence of any notice so that we can actually ask people questions, been told that this is a matter of urgency in case flooding takes place in the Para rivers this year, and onto the Adelaide Plains. My understanding is the geography of the Para rivers is such that they join, as the honourable member has suggested, close to Gawler, and then they flood out all over the place onto the Adelaide Plains. Some 10 or 11 years ago, I think in 1992, they caused considerable damage.

We are not objecting to this amendment taking place for the flood mitigation of the Para rivers. However, the Para rivers are at no stage mentioned in this bill. My question to the minister is: does this therefore apply to any survey act which is requested on any flood mitigation anywhere in the state and, if so, what are the ramifications for every other waterway within the state of South Australia? Indeed, what are the ramifications for any land-holders within the state of South Australia who may be affected by this amendment?

The Hon. T.G. ROBERTS: The bill seeks to clarify rights of access, given that there have been two opinions given on the responsibility for any action or activity that landowners could be seen to be liable for or take action for. This clarifies the circumstances and allows access without the uncertainty that lies in access now. So, it will not only be access for Little Para River infrastructure requirements but it will be access for other flood mitigation programs.

The Hon. CAROLINE SCHAEFER: That leads me to two more questions. If, in fact, this is a statewide program, what is the urgency, and, I guess, what is the hidden agenda? Secondly, if there are no landowners and there is no-one who has objected to this process, why have two contrary legal opinions been sought?

The Hon. T.G. ROBERTS: It came about after the Gawler River flood management plan was being implemented. The people involved in that process wanted clarification after having sought legal opinion. Normally, you will get two opinions and a maybe thrown in as well. This clarifies the situation once and for all for those in water catchment areas that would be flood prone so that there is no ambiguity.

The Hon. CAROLINE SCHAEFER: I would like the minister's assurance on record that the legal opinions that have been sought were sought not by private individuals but by the flood management committee and the government.

The Hon. T.G. ROBERTS: Yes.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill taken through committee without amendment; committee's report adopted.

Bill read a third time and passed.

GAS (TEMPORARY RATIONING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 April. Page 1367.)

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank members for their contribution to the debate. I wish to reply to some of the points raised by the Leader of the Opposition. The leader queried the retrospective operation and consultation. In his contribution, he said:

> We need to be clear that, if this legislation is passed in May or June, the parliament is being asked retrospectively (back to 15 January this year) to give increased powers for the minister and authorised officers to require information and documents from private sector parties in relation to the gas industry. . . From the opposition's viewpoint we would like to know the reason for the minister's desire for these significant increased powers and for them to be made retrospective. What sort of documents and information might be demanded by the minister and public servants from private sector companies? Is there any limit at all on the nature of the information or documentation that retrospectively will be able to be demanded from private sector companies? Equally, we want to know whether the private sector companies have been consulted; and whether, indeed, they have been advised by the government that these powers are to be given retrospectively to the minister and public servants to demand information and documents from those companies.

Sections 5 and 9 are to commence from 15 January 2004, the day on which regulation 22 was made. They make regulation 22 a regulation made under this division of the act in order that the minister may require an audit of compliance with that regulation. The retrospective nature of the amendments flows from the government's desire (announced from before regulation 22 was made) to ensure that it has all powers necessary to ensure that regulation 22 was complied with during the recent gas emergency: that is, retrospectivity is required to ensure there was no profiteering during the recent gas emergency. This retrospective element was announced before 15 January. Large gas customers are aware that the government is proposing to require Origin Energy to conduct an audit of its charging during the recent Moomba gas crisis to ensure they were not overcharged.

Origin Energy approached the government seeking authority to pass on the higher costs it was incurring in sourcing and transporting gas from Victoria. It sought to average the cost of this gas across the whole of its high volume users. This accorded with the government's stated intention that the gas crisis was to have as little effect on the economy as possible. Until regulation 22 was made, Origin Energy had absorbed the additional costs of providing Victorian gas to its customers. The government agreed that

the most appropriate way to deal with the cost burden was to ensure that the increased costs of acquiring and transporting gas from Victoria be spread as widely and as lightly across industry as practicable. Accordingly, regulation 22 was made and appropriate ministerial directions were given in the light of the new regulation. The aim was to allow affected retailers facing increased costs for gas sourced from Victoria to pass on that increase (and no more) to those large customers who agreed to take gas in excess of the quantity that would have been available for supply to them from Moomba under ministerial directions.

The government consulted with Origin Energy and the other retailers who were satisfied with regulation 22. The significant change to the current power of the minister to require information lies in proposed section 37A(1A) which enables the minister to require an affected retailer to audit its compliance with a regulation like the recently made regulation 22 and to report the results of that audit to the minister. We are not proposing that the retailer must engage independent auditors. We believe it should not be an unduly onerous task as all the information needed is recent and was required in order for Origin to fix its additional cost at $1.39 per gigajoule (as it did on 15 January). It must also necessarily have calculated the quantity of MAPS gas available to each of its affected customers in order to bill them for the gas they consumed and in order to bill those who had agreed to also take additional gas at its additional $1.39 per gigajoule charge.

The audit requirement must be able to relate back to what Origin Energy was charging its large customers from 15 January to 20 February in order to ensure that it complied with regulation 22, a regulation made following its approach to government to pass on costs, and to provide appropriate assurance to those large customers who agreed to pay for it that they were not the victims of profiteering during the Moomba gas shortage. The second point that the leader raised was:

> What sort of documents and information might be demanded by the minister and public servants from private sector companies?

If the audit and the report are satisfactory, it is most unlikely that any further requirement to provide information would be made. As at present advised, there is no indication that the various gas companies that were given ministerial directions during the recent gas emergency have disobeyed them. The only current concern is to honour the commitment made to large customers that profiteering would not be permitted. It is only compliance with regulation 22 that seems to be an issue at present and it is only the audit requirement that is clearly a new power, rather than refinement of the existing ministerial powers.

It is possible that the production of a source document, such as a contract, might be demanded. In some cases an authorised officer could currently require that under the powers given to authorised officers by section 70 of the act. The proposed amendment to section 70 ensures that natural persons will not be at risk of prosecution if such a demand is made. The usual investigative powers of authorised officers that include the power of entry to search for, examine and take copies of documents reasonably required for enforcement of the act continue to apply.

It should be noted that the bill provides that the authorised officers who might require a document or information relating to enforcement of part 3 division 5 (the temporary gas rationing provisions), or would otherwise be exercising powers for enforcement of the temporary gas rationing provisions, would be subject to the minister's direction and control rather than the technical regulator's. The third issue raised by the leader is whether there is any limit at all on the nature of the information or documentation that retrospectively will be able to be demanded from private sector companies.

Proposed section 37A(1) provides that the information or document required to be provided must be:

> reasonably required to determine the sufficiency of the gas supply, frame directions, plan for the future exercise of powers under this division or otherwise administer or enforce this division (or regulations made for the purposes of this division).

That is, the information sought under section 37A(1) must be reasonably required for one of the listed purposes that all relate to temporary gas rationing. The power in section 37A(1A) to require an audit and report is confined to an affected retailer's auditing and reporting of its compliance with regulations specifically made for the purposes of this division (currently, regulation 22 is the only such regulation).

The final matter raised by the leader was, and I quote from his speech as follows:

> Equally, we want to know whether the private sector companies have been consulted; and whether, indeed, they have been advised by the government that these powers are to be given retrospectively to the minister and public servants to demand information and documents from those companies.

The response provided to me is that there has been no consultation with gas companies on the bill as such. The government took the view that it was unnecessary to consult the gas companies about changes to the minister's powers to require information—an enforcement matter—particularly as the substance of these amendments was publicly foreshadowed before regulation 22 was made on 15 January this year. I thank honourable members for their contributions and indications of support.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. R.I. LUCAS: I would like to make some comments in relation to the government's response to the second reading. They could be addressed at this clause or at one or two other clauses later on, but I will make some general comment here. I would like to thank the government for the replies to the questions provided to the council. I indicate the Liberal Party's concern that the government chose to proceed with legislation along the lines that it did without any consultation at all with the affected industries and industry groups. Whilst the opposition would be prepared to accept that the nature of public announcements was such that industry and industry groups would have been aware of the thrust of the government's decisions, the detail of the powers provided to the government, the retrospective nature of the legislation, and other detailed aspects such as that should, in the opposition's view, have been the subject of consultation with affected parties.

Nevertheless, during the break since we last sat my colleague the shadow minister for energy, the member for Bright, has had the opportunity—I think for the first time for anyone, be it government or opposition—to consult with the affected parties. On that basis, whilst there are a number of questions that have been raised in those consultations and discussions, at this stage the Liberal Party in this place is not going to delay the passage of the bill and will not be moving

amendments. However, I will certainly leave the final decisions in relation to the bill to the member for Bright, who is handling the bill on behalf of the Liberal Party.

As the minister indicated, the powers are wide—for example, copies of contracts could be demanded—and one of the issues that has been raised by the potentially affected parties is: what are the provisions in relation to ensuring that commercially confidential information that a party such as AGL might provide is kept confidential, and is kept from being passed on in a public forum to the cost of the individual company concerned?

The Hon. P. HOLLOWAY: I am advised that there is an obligation for the technical regulator to preserve the confidentiality of information under section 11 of the act. I believe that might be the only requirement. I am advised that it was the government's intention that this information would be kept confidential; however, I am not sure that there is any specific provision that that would be the case.

The Hon. R.I. LUCAS: The opposition does not want to delay passage of the bill. As I said, I think this is one of the values of actually consulting with business and industry before one introduces legislation, and I guess we ought to congratulate the member for Bright for having conducted that consultation. Clearly, from the opposition's viewpoint we are in a much stronger position to be able to delay passage of the legislation in the Legislative Council and move an amendment here. However, the minister has indicated that it is the intention that information be kept commercially confidential and has referred to provisions in relation to the technical regulator, and if he was prepared to give an undertaking to the opposition that he would look at an amendment requiring commercial confidentiality of any information that might be demanded by officers acting under the powers under the legislation then, on behalf of the Liberal Party, I would accept that undertaking and leave him to have something drafted when it is debated in the House of Assembly later in the session.

The Hon. P. HOLLOWAY: I have just spoken to the minister's adviser and he is happy to take that on board. I can give an indication that the government is prepared to look at that. As I said, obviously, it is reasonable to expect that those officers would keep it silent. I suppose that one might argue that it would be required under other acts of government. I am not sure whether it is those acts that relate to general public service behaviour but, in any case, so that we do not delay the bill, I am happy to indicate that we will look at that matter between the houses.

Clause passed.

Clauses 5 to 7 passed.

Clause 8.

The Hon. R.I. LUCAS: During my second reading contribution on behalf of the Liberal Party, I noted the amendment to section 70, and I said:

> I also note an amendment to section 70, which, again, is the power to require information or documents. The explanation of clauses makes it clear that, as with the amendment under clause 4, 'the information or document will not be able to be used for the prosecution of a director or other natural person, other than for an offence relating to the making of a false or misleading statement'. The explanation of clauses in relation to section 37A provides:
>
> A requirement must be complied with even though the information or document would tend to incriminate the person of an offence. However, the information or document will not be able to be used for the prosecution of a director or other natural person, other than for an offence relating to the making of a false or misleading statement.
>
> It seems that in some circumstances information or documents which might tend to incriminate a person of an offence will be able to be required. There are circumstances where they cannot be used for prosecution, but, clearly, circumstances are envisaged where they can or could be used for a prosecution.

I am wondering whether the minister has been provided with any advice from the government in response to that question. I did miss the first part of the minister's second reading reply, so I am not sure whether he did address that issue. Certainly, he did not address it in the last three quarters that I heard.

The Hon. P. HOLLOWAY: I can advise the committee that this bill, obviously, is designed for emergency situations, such as that which we encountered on New Year's Day earlier this year. Obviously, it is desirable that we have a maximum flow of information so that the government can respond appropriately to situations that arise. We were very fortunate that, as a result of the situation that did arise at Moomba earlier this year, we did get that cooperation. But the thinking behind the legislation means that you can get all the information you asked for so that you can have all the information you need.

It is important that there be no reluctance on the part of those people working for those companies to provide that information. The provision has been framed in such a way so that, if such a situation were to arise, there would be no reluctance on those natural persons to provide the sort of information that is necessary for any government to deal appropriately with such a situation.

The Hon. R.I. LUCAS: On behalf of the Liberal Party, I indicate that this issue, possibly, is subject to further consultation. Again, the member for Bright, the shadow minister, between debate in this and another house, may well be happy to accept that further explanation from the minister on behalf of the government; if not, he may well pursue that in debate in the House of Assembly. Certainly, from our viewpoint, we do not intend to delay the passage of the bill through the Legislative Council over this particular issue.

Clause passed.

Clause 9 and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

AUTHORISED BETTING OPERATIONS (BETTING REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 1240.)

The Hon. A.J. REDFORD: In speaking to this bill, I note that earlier this year I made a number of comments about gambling and, in particular, gambling associated with racing activities. I made a detailed speech on that occasion, and I do not intend to go through that in any detail for the purposes of this bill. This bill will allow the major betting operations licensee, the TAB, to conduct fixed-odds betting on races. At the time the bill was introduced by the Hon. Paul Holloway on 24 March, the TAB in South Australia (which is UNiTAB) was engaged in an extensive battle with the Victorian TAB for the ownership of the TAB in New South Wales. I note that, over the past week, that battle has now been resolved and that the ownership of the TAB in New South Wales will go to Melbourne.

Of course, along with that will be the ownership of Sky Channel. Since the last time I made a contribution on this

topic, there have been significant developments in relation to the provision of pictures to Sky Channel. I note that the New South Wales racing industry is seeking to develop its own Sky Channel, or equivalent, and I know that we all will be watching that development with a great deal of interest as to the impact that may have on the activities of UNiTAB in South Australia. I must say that these things, to a large extent, are outside our hands and commercial considerations will come into play.

Further, I note and—probably rarely for me—congratulate the minister on this occasion for the work he is doing in relation to stopping those bludgers in the Northern Territory and the ACT bludging off the racing industry in South Australia and other states, in not paying proper taxes or fees for the provision of their services. I urge the minister to continue doing what he does at national ministerial racing meetings to ensure that the bludgers in the Northern Territory and the ACT pay their fair share towards the racing industry for the provision of those services. Anything that the opposition can do to assist the minister in that task we will do.

My only disappointment in relation to this legislation is that I always was of the view that the granting of the right to provide fixed price betting to the TAB should be accompanied by enabling bookmakers to compete on a more level playing field; in particular, to sort out the betting auditorium fiasco that prevents the betting auditorium at Morphettville from providing a full range of services to its customers for the benefit of the racing industry. I know that negotiations are continuing with TRSA, the harness racing body and also the greyhound racing body for appropriate arrangements.

I am disappointed that harness racing appears to be the impediment at this stage in relation to enabling racing to provide a full range of services in the betting auditorium. Mr President, I know you are aware that there is some division within the harness racing industry as to the appropriate way in which to deal with that, but, at the end of the day, I suggest that any detailed analysis of the figures would indicate that it is in the best interests of all racing codes for the betting auditorium to be able to offer a full range of services.

There is a range of other measures, including changing the administration regime for bookmakers. In that respect the bookmakers have indicated to me that that is a major step forward, so far as they are concerned, in relation to the administration of their activities. Interestingly, what the bookmakers have managed to achieve is to get themselves out of the clutches of the Independent Gambling Authority and have their administration conducted by the liquor licensing commissioner. I suspect that there are many other gambling codes or activities that will look at the bookmakers' position with some degree of envy. I congratulate the bookmakers for having succeeded in negotiating an outcome in that respect.

There can be no clearer example of the failure on the part of the IGA to fulfil its responsibility than to have the bookmakers manage to get out of their clutches. We on this side of the chamber would see this as a vote of no confidence in the Independent Gambling Authority. Indeed, we note that this is an initiative of the government and one might come to the conclusion that the government is less than satisfied with the performance of the Independent Gambling Authority in relation to the administration of gambling activities in this state.

I have received from the minister's office some indicated amendments. I have not had a briefing on them, and I look forward to the committee stage of the bill in relation to those amendments. I can indicate that we will be supporting those amendments, subject to the explanations and answers to questions that might be raised during the course of the committee stage. With those few words, and with a view to speeding the passage of this bill through the parliament, I commend the bill. In relation to the administration aspects of this bill, I am speaking on behalf of the opposition. Obviously, in relation to the question of whether or not the TAB has fixed price betting, for members of the opposition that is a conscience vote.

The Hon. NICK XENOPHON: I do not propose to restate unnecessarily matters relating to this bill. I think it was set out fairly concisely by the Hon. Mr Holloway when he introduced this bill on 24 March 2004. I think the Hon. Mr Redford has expanded on it. My concerns come from a different perspective, that is, will these proposed amendments make a difference and have an impact on levels of problem gambling in the community? I have had discussions with members of the minister's office and I have aired those concerns, so, hopefully, there will be a response from the government in relation to that.

In relation to shifting from a totalisator method to fixed odds betting, what will that do to the size of the market? Will it mean an expansion of the gambling market in this state? Will it mean gambling losses will expand as a result of fixed odds betting? What will it mean, for instance, in terms of the bets that are now being placed interstate? Will the government give details of the estimates of bets being placed interstate on fixed odds betting that is available by phone betting and otherwise?

The other issue is the licensing of bookmakers going from the Independent Gambling Authority to the commissioner. My understanding is that the Independent Gambling Authority under its statutory responsibilities still has a supervisory role to ensure compliance with the legislation and enforcement of legislation in the context of its interrelationship with the Liquor and Gambling Commissioner. Is it the case that the IGA has overall responsibility in terms of that supervisory aspect? Has the regulatory regime been watered down in any way as a result of these proposed amendments? Have the powers of the IGA been reduced in the context of this bill? These are matters that ought to be considered in the context of these proposed amendments.

When the Productivity Commission handed down its report on Australia's gambling industries in 1999, table 5.7 of that report set out the percentages of losses from various gambling codes. The percentage of losses from problem gamblers from wagering was 33 per cent, and that is quite a significant proportion. The highest percentage was poker machines at 42.3 per cent. By way of contrast, lotteries were between 5 and 6 per cent. Those are the issues that concern me. I am also concerned about whether these changes will make a difference in terms of increasing levels of problem gambling, and I look forward to the government's response on that issue in the context of this legislation.

The Hon. R.I. LUCAS (Leader of the Opposition): I will speak briefly on the second reading rather than at the committee stage, which was my original intention, and I will speak briefly about the fixed-odds betting aspect of the legislation. In my earlier times in the parliament, when last in opposition, fixed-odds betting was an issue of some controversy in relation to what was then a state-owned TAB. From recollection, just prior to the 1993 election the former

Labor government conducted some discussions with interested members of parliament (directly and through lobbyists) about whether or not there was any inclination to support fixed-odds betting.

I must have spoken on a previous occasion lamenting the lack of fixed-odds betting choices, because I recall being approached by the former Labor minister, Hugh Hudson (who at that stage must have been working in a consultancy to the Labor government), about various options in relation to the introduction of fixed-odds betting under the TAB at that stage. The Hon. Terry Roberts, who would have been in this place at that time (but not too many others would have), may or may not have been aware of the proposals of the former Labor government.

I was sympathetic to the notion of fixed-odds betting, although the overwhelming majority of my colleagues were not—some because they opposed the notion of fixed-odds betting and some, I acknowledge, because they were concerned about the capacity of a publicly owned enterprise, such as the TAB, to be able to manage what they considered to be the risks associated with managing a fixed-odds book. I acknowledge that there was a range of reasons for my colleagues' opposition.

As I said, I have been a long-time supporter of fixed-odds betting, and I am pleased to see that, under our newly privatised arrangements in South Australia, evidently we will now be able to see the option of fixed-odds betting being provided to those who utilise that gambling option. I indicate my support for that aspect of the legislation before us.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank honourable members for their contribution. I wish to take this opportunity to note a government amendment to this bill that has been placed on file. I understand that the Hon. Nick Xenophon has questions to which he will require responses, but I think we can proceed with the second reading debate and the committee stage on the basis that those answers will be supplied. If amendments are to be filed later, the honourable member will file them. However, if we can proceed without amendments, it will be simpler.

We are filing this technical amendment, which has been suggested by crown law and by parliamentary counsel, to enable the major betting operation licence to be amended. As highlighted in my second reading explanation, to vary the approved licensing agreement between the government and the TAB the Authorised Betting Operations Act 2000 in its present form does not expressly provide for a grant of a new or varied licence of the major betting operations licensee. This amendment is an enabling provision and has no additional policy implications.

With respect to the issues raised by honourable members during the debate on the bill, I wish to add the following comments. The provision that proposes to transfer the licensing of bookmakers from the Independent Gambling Authority to the Liquor Gambling Commission was done to better align all licensing and permit matters with the commission. This will streamline the administration of bookmakers' dealings with the government and, from the contributions that have been made, it seems to have general approval.

The South Australian Bookmakers League requested the transfer of the licensing function to the Liquor Gambling Commission. The league stated that it in no way reflects on the operations of the authority and it has indicated that it has an excellent working relationship with the Independent Gambling Authority since its inception. The Liquor and Gambling Commission remains responsible to the IGA to ensure that the operations of each licensed business are subject to constant scrutiny.

With regard to the proposal that will allow the TAB to conduct fixed-odds race betting, the honourable member raised the issue regarding the total of this form of betting. Whilst I cannot tell you the size of this market that has changed in other jurisdictions when their local TABs were allowed to provide this service, the government expects that the market for fixed-odds race betting in South Australia will become slightly larger. The growth in the local market for this product is expected to come mainly from the revenue that is currently leaving South Australia.

As has been widely reported in the media, local punters who currently wish to have a fixed-odds bet on a race with the TAB will place this bet by telephone with TABs in other Australian jurisdictions as they cannot access this product with the local TAB. It is expected that some of this betting will now find its way into the South Australian TAB and benefit the local racing industry. This market is not expected to be worth very much to the TAB, which has indicated that, based on its experience of being able to provide fixed-odds race betting, it is more of an issue of the consistency of its books across all jurisdictions as opposed to the extra revenue that this product is expected to generate.

The greatest benefactor will be the state's racing industry, which stands to receive 39 per cent of the revenue. I note that bookmakers will continue to be the only providers of fixed-odds race betting in betting rings and racecourses. The proposals in this bill have support amongst all stakeholders, who have all been extensively consulted during its drafting. I thank members for their contribution and commend the bill to the council.

Bill read a second time.

In committee.

Clause 1.

The Hon. A.J. REDFORD: I will make reference to the comments made by the Hon. Nick Xenophon and the subsequent comments made by the Hon. Terry Roberts. My understanding (and this information was conveyed to me by two or three different sources) was that the TAB turnover on fixed-price betting is estimated—and this is a heavily qualified estimation—to be in the order of $1.5 million per annum. This would give a gross profit to the South Australian TAB, and obviously a share to racing, of approximately $180 000 and $60 000 respectively.

I also understand that the biggest proportion of this $1.5 million in increased turnover is likely to be what the TAB recoups from local TAB customers who currently use interstate TAB fixed-price betting. In fact, if one looks at the general TAB turnover, which is in the hundreds of millions of dollars, this is a very small increase in terms of what will be available from punters in South Australia. It is my view, and that of the opposition, that when one looks at that those figures the impact on problem gambling is either nil or negligible as a consequence of this measure because, simply, existing problem gamblers are already problem gamblers using interstate services of the same nature.

In that respect, it is our view that, if there is a major problem gambling issue arising from fixed price betting with TABs, it already exists and is something that should be addressed in another fashion. This is really a matter of an existing South Australian operation being in a position to compete with interstate operations and also to enable South

Australian customers to use a South Australian based company with a view to taking some of that share and putting it back into the racing industry, which is very short of money. That is our position.

In response to the Hon. Rob Lucas, I indicate on the public record that I originally opposed fixed price betting when the TAB was publicly owned, but I have no objection to fixed price betting being offered by private enterprise because, at the end of the day, if they lose money it is not taxpayers' money that is being lost.

The Hon. NICK XENOPHON: I am grateful for the minister's explanation of the second reading speech and the expansion of the explanation by the Hon. Angus Redford in relation to my concerns. My office recently made inquiries of a gambling expert interstate (and, to be fair, without his permission I will not refer to that person, but he is well known as a gambling researcher). He indicated (and this has been handed to me very recently) that there are no studies that show one way or the other whether fixed odds betting increases the risk of problem gambling.

An honourable member interjecting:

The Hon. NICK XENOPHON: Yes. In that respect, I want to be fair and say that if there is research it needs to be referred to.

The Hon. A.J. Redford: I am saying that, if he could not identify problem gambling, it is probably not there.

The Hon. NICK XENOPHON: The Hon. Angus Redford made the observation that, if he could not identify it in respect of an increase in problem gambling, it is probably not an issue. The inquiries I have made of a local researcher (for whom I have a lot of regard) were similar, in terms of referring me on.

The government's second reading explanation on this matter refers to 'issues of further product information disclosure will be considered by the Independent Gambling Authority'. I understand that there is a second stage of codes of practice for various industries that I and others have participated in from both the industry and the welfare sector. What is the timetable for that? Given the information that I now have, that is the big picture—what measures we put in place so that there is some uniformity and to ensure that there is relevant product disclosure and, more importantly, appropriate intervention when people have a problem.

The Hon. T.G. ROBERTS: The IGA will consider these issues as a part of the codes of practice later this calendar year.

Clause passed.

Remaining clauses (2 to 30) passed.

Schedule.

New clause 1A.

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

After clause 1—
Insert:
1A—Major betting operations licence
Subject to the licensee's approved licensing agreement, the major betting operations licence will be taken to authorise the licensee to conduct the forms of betting set out in section 9 of the Authorised Betting Operations Act 2000 as amended by this act.

Amendment carried; schedule as amended passed.

Title passed.

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

Bill read a third time and passed.

MEAT HYGIENE (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

STATUTES AMENDMENT AND REPEAL (AGGRAVATED OFFENCES) BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): 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.

Summary

The *Statutes Amendment and Repeal (Aggravated Offences) Amendment Bill 2003* meets some important Government undertakings on criminal penalties. In the ALP 'Plan to Protect South Australians' this Government undertook to increase penalties for non-fatal crimes against the person where the victim is aged 60 or older or has a disability or is in some other way vulnerable, and to introduce extra non-parole periods where the victim is tortured, the offence is committed in circumstances where the victim is hurt seriously or threatened with serious harm or death, the offence is committed using or threatening to use an offensive weapon or the offence is committed by a gang.

This Bill carries out these policies using the approach adopted by the Model Criminal Code Officers Committee (*MCCOC*) of the Standing Committee of Attorneys-General in Chapter 5 (*Non-fatal offences against the person*) and Chapter 2 (*General principles of criminal responsibility*).

The Bill does four things.

First, it replaces most statutory non-fatal offences against the person with new, simpler offences of causing harm ('causing harm offences'), including a new offence of causing harm by criminal negligence.

Secondly, the Bill constructs a new penalty structure for offences of causing harm and existing non-fatal offences against the person that are already expressed in terms of causing harm. Each offence has two components—a basic offence with a penalty the same as the existing penalty for the offence, and an aggravated offence, with a higher penalty. Except to replace inconsistent terminology or adjust minor anomalies in penalty, the Bill has not changed offences that are already expressed in terms of causing harm or already include an aggravated component.

Thirdly, the Bill reconstructs the offences of assault and kidnapping in a way that is consistent with the new causing harm offences and the new aggravated penalty structure.

And finally, the Bill includes, for convenience, an unrelated amendment to the *Summary Offences Act 1953* updating the summary offence of obstructing or disturbing religious worship so that it applies to weddings and funerals, whether religious or secular.

Causing harm offences

MCCOC's main recommendation in its review of non-fatal offences against the person was that these offences should be based on protection from harm and on the fault with which the harm is caused, not, as now, on how they are committed.

Following the Model Criminal Code example, this Bill substitutes new generic offences of causing harm for the offences in Part 3 Division 7 of the *Criminal Law Consolidation Act 1935.*

A table identifying the offences that are proposed to become new offences of causing harm is appended to this report (see *Table 1).*

The new offences are intentionally causing serious harm, recklessly causing serious harm, negligently causing serious harm, intentionally causing harm, and recklessly causing harm.

A person causes harm if his or her conduct is the sole cause of harm to another or substantially contributes to it. Serious harm may be caused by multiple acts of harm occurring in the course of the same incident or in a single course of conduct, even though the harm caused by any one of those acts may not in itself be serious.

To ensure the new harm offences cover the same conduct that is proscribed by existing offences, the concepts of harm, consent,

recklessness and criminal negligence have been defined with great care and in ways that correspond with the national Model Criminal Code and with case law.

The Bill makes consequential amendments to other Acts that refer to sections that have been amended or repealed by this Bill. These amendments are to section 20A(b)(ii) of *Criminal Law (Sentencing) Act 1988* sections 4 and 5(3) of the *Summary Procedure Act 1921*.

Harm

Harm includes physical and mental harm, whether temporary or permanent.

Physical Harm

Physical harm includes, but is not limited to, unconsciousness, pain, disfigurement and infection with a disease. This codification of the nature of harm is without controversy, except as it includes infection with a disease. At common law there was dispute about the point. The leading case (*Clarence* (1888) 22 QBD 23) was decided on the basis of consent rather than whether or not disease can constitute harm. In including disease, South Australia is following not only the recommendations of MCCOC but also legislative precedent in New South Wales (*Crimes (Injuries) Amendment Act 1990*), Western Australia (*Criminal Law Amendment Act (No 2) 1992*) and Victoria *(Crimes (HIV) Act, 1993*).

Serious Harm

Serious harm is harm (physical or mental) that endangers or is likely to endanger a person's life or that consists of or is likely to result in loss of a part of the body or a physical or mental function, or serious and protracted impairment of a part of the body or a physical or mental function, or harm that consists of, or is likely to result in, serious disfigurement. At common law and by current and antiquated statute law, this is known as "grievous bodily harm". The concept of "grievous bodily harm" has proved elusive at common law. There are inconsistent decisions on it. The best the common law could do was to require the judge to direct the jury that grievous bodily harm was "really" serious harm. That does not help much. It is a colloquial expression of emphasis designed to concentrate the attention of the jury. The adjective is not necessary in this Bill. This Bill defines serious harm in a technical, not colloquial, way. That definition is based on the recommendations of MCCOC, who considered and refined similar definitions adopted by the US Model Penal Code and the Irish Law Commission.

Mental Harm

Mental harm means psychological harm but does not include ordinary emotional reactions like grief or distress unless they result in psychological harm. The extension of traditional bodily harm and grievous bodily harm to non-physical harms is not without its critics. Nevertheless, the common law has accepted that, in the right case, grievous bodily harm extends to non-bodily harm (Ireland; *Burstow* [1997] 4 All ER 225), and therefore to preclude such a case would be to narrow existing law against the interests of victims. In addition, it is not hard to imagine a case, or many cases, in which the deliberate or intentional causing of mental harm to a victim can and should be criminal. The provision in the Bill reflects, so far as is possible, existing law.

However, this point cannot and should not be carried too far. The ordinary disappointments of life should not be elevated into criminal offences. The examples in the Bill are intended to give a clear guide as to the intention of the Bill—that is, that it takes some mental harm quite out of the ordinary to translate even unusual emotions into criminal questions. Such cases will not be ordinary. It may be that the victim has a pre-existing condition (such as medically diagnosed severe depression) which is exacerbated by the act of another. That in itself should not suffice. The Bill has been carefully drafted to draw a difficult, fine but discernable line. Therefore the Bill makes conduct that causes mental harm alone an offence if the mental harm was a consequence of danger to the victim's life or physical safety brought about by that conduct, or because the primary purpose in engaging in that conduct was to cause harm. Without such limits, it might be possible to commit the offence of causing mental harm by doing something that is not in itself criminal or doing something that had another overriding and legitimate purpose.

Conduct

The new offences do not apply to conduct that is within the limits generally accepted in the community as normal incidents of social interaction or community life, unless the defendant intended to cause harm. It should not, for example, be criminal behaviour to slap someone on the back at a social gathering unless that action causes harm and was intended to cause harm. The Bill is careful to refer to "*the* community" not any part of the community. So, it is not to the point that it might be said that in this particular nominated community (whatever it might be), roughness in conduct or speech is more usual. The provision is intended to codify the common law principle—and that principle refers to the community generally—the South Australian public.

Consent

A person may of course lawfully consent to harm. We do this when we consent to medical or dental surgery, or when we donate blood or body organs, or when we play sport that carries an inherent risk of harm.

But there are limits to the harm society will allow its members to consent to. The Bill says that a person may consent to harm if the nature of the harm and the purpose for which it is inflicted fall within limits that are generally accepted in the community. It is up to the jury to decide this.

Fault

In the words of MCCOC, in Chapter 5 of the Model Criminal Code *Report into non-fatal offences against the person*,

> Of all the criteria of guilt, the most fundamental in our criminal law is the fault with which the harm is done. It underlies most of the important and difficult central concepts of the criminal law—and is fundamental to the community's understanding of guilt and punishment. As Oliver Wendell Holmes remarked, even a child understands the difference by the instinctive plea—but I didn't mean to.

The structure of the Model Criminal Code, and of this Bill, makes it plain that a person who causes harm or serious harm intending to do so is more culpable than someone who causes the same degree of harm recklessly, and that a person who causes serious harm by criminal negligence is as culpable as someone who recklessly causes harm that is not serious.

The offence of causing serious harm by criminal negligence is included for various reasons. The most important is to fill a gap that may be left by an offence structure that is based on the result of conduct and criminal fault if courts continue, in the words of MCCOC, to decline to attribute subjective fault to result elements of [causing harm] offences.

The Bill follows MCCOC in confining offences of criminal negligence to those that cause serious harm. It distinguishes criminal negligence from recklessness and defines each in a way that corresponds with judicial interpretation of these concepts in existing offences like criminal negligence manslaughter.

Common law defences

It is important to note that the Bill does not seek to codify the law on non-fatal offences against the person, in the sense that defences that exist at common law will continue to exist (for example, the defence of lawful correction).

Consequential changes to terminology for some other offences

The Bill makes consequential changes to offences already described in terms of causing harm by substituting the words 'harm' and 'serious harm' for 'bodily harm' and 'grievous bodily harm'. One such offence is that of causing bodily harm or grievous bodily harm by dangerous or reckless driving in s19A of the *Criminal Law Consolidation Act 1935*. This offence is also one of the few offences where the penalties have been changed to correspond with the penalty scale for the new causing harm offences.

Penalties

The maximum penalties prescribed for the new causing harm offences, also modelled on the MCCOC version, generally correspond with the penalties for the offences that they subsume.

The maximum penalties of imprisonment for causing harm offences are these:

Serious harm

- 20 years for a basic offence and 25 years for an aggravated offence of intentionally causing serious harm;
- 15 years for a basic offence and 19 years for an aggravated offence of recklessly causing serious harm;
- five years for causing serious harm by criminal negligence

Harm

- 10 years for a basic offence and 13 years for an aggravated offence of intentionally causing harm;
- five years for a basic offence and seven years for an aggravated offence of recklessly causing harm.

Most of the new penalties correspond with existing penalties for the offences that have been reconstructed as causing harm offences. Where the reconstruction resulted in an inconsistency, the penalties have been adjusted.

For example, the maximum penalties for causing harm by reckless driving in a motor vehicle have been increased from four years to five years imprisonment for a first offence and from six years to seven years imprisonment for a subsequent offence, and the maximum penalty for reckless driving of a vehicle other than a motor vehicle (for example a bicycle) increased from two to five years imprisonment so that they equate with the penalties for the new offences of intentionally or recklessly causing harm.

The Bill resolves some penalty anomalies revealed by this revision.

For example, it rationalises the penalties for the more serious offences of unlawful sexual intercourse and indecent assault in this way:

- For unlawful sexual intercourse with a person of above the age of 12 years and under the age of 17 years, or between a guardian or a teacher with a person under 18 years old, or with an intellectually disabled person the maximum penalty has been increased from seven years to 10 years imprisonment. (The maximum penalty for sexual intercourse with a person under the age of 12 years remains life imprisonment.). In this way penalties for unlawful sexual intercourse with these categories of victim are greater than the penalties for the less serious offences of indecent assault of those victims.
- The offence of indecent assault has been restructured into a basic offence, retaining the maximum penalty of eight years, and an aggravated offence of indecent assault against a person under the age of 12 years, retaining the maximum penalty of 10 years imprisonment.

Extra penalty for heinous crimes

There is a special provision in the Bill to allow greater punishment for criminals who intentionally cause serious harm to their victims, and that harm is so serious that even the maximum aggravated penalty seems too low.

The Bill allows the court, on the application of the Director of Public Prosecutions, to impose a greater effective penalty than the maximum prescribed for an offence of intentionally causing serious harm if the serious harm suffered by the victim is so great that the court considers it warrants this greater penalty. There is no limit on the maximum to the greater penalty.

Alternative verdicts

The Bill allows alternative verdicts of lesser causing harm offences.

If a charge of a causing harm offence is not made out, and the judge considers it reasonably open to the jury on the evidence to find the defendant guilty of one or more specified lesser offences, he or she may instruct the jury to this effect. If it is satisfied that the lesser offence or offences have been established beyond reasonable doubt, the jury may return a verdict of not guilty of the offence charged but guilty of one or more of these specified lesser offences. It follows that the trial judge is only required to put to the jury alternative verdicts that are either explicitly charged or are included offences that are reasonably open on the evidence.

Assault

Assault is an offence that does not necessarily depend on proof that harm was caused. The current law creates separate offences for assaults that require proof of harm (for example, assault occasioning actual bodily harm).

The Bill replaces existing assault provisions that require proof of harm with the new causing harm offences, and reconstructs the offence of common assault.

The new offence of assault reflects the case law on what constitutes assault. It retains existing penalties for the basic offence and includes an aggravated penalty provision.

The list of aggravating circumstances that apply to the new offence of assault include those that would have aggravated the repealed offences (namely that the assault was committed on a family member, or on a person acting in the discharge of official duties, or on a police officer or prison officer acting in the course of his or her official duty, or on someone who is particularly vulnerable because of the nature of his or her employment or occupation, or was committed using an offensive weapon).

Aggravated offences

In its *Report into non-fatal offences against the person* MCCOC recognised that there are some specific instances in which society, at any given time, pays particular attention to how or *the way* in which harm is caused.

MCCOC thought that offences in which harm is caused in a particularly objectionable way or circumstances deserve separate treatment. It thought the best way to achieve this was to reconstruct the penalty provisions of existing relevant offences and link them to a single list of aggravating factors, within a penalty structure that differentiates aggravated and basic offences.

The Bill adopts this approach. It amends the *Criminal Law Consolidation Act 1935* to list the circumstances that make an offence an aggravated offence, to redefine the penalty provisions for each relevant offence in terms of a basic and an aggravated offence, and to apply the existing maximum penalty to a basic offence and a greater maximum penalty to an aggravated offence.

The new penalty structure will apply in a limited way to young offenders. Under the *Young Offenders Act 1993* young offenders may be sentenced to no more than three years of detention. The period of detention cannot be longer than the maximum period of imprisonment prescribed as the penalty for the offence if committed by an adult. The Bill will allow a court to sentence a young offender who commits an offence in aggravated circumstances to a period of detention equivalent to the maximum term of imprisonment prescribed for the aggravated form of an offence, as long as the period of detention is no longer than three years.

The list of aggravating circumstances in the Bill generalises existing factors of aggravation and includes those mentioned in the Government's election platform as meriting extensions of non-parole periods in home invasion offences. They apply to all relevant offences, not just home invasion.

In summary, the new aggravating circumstances are:

- using torture (this accords with Australia's international obligations to take steps against torture);
- using, or threatening to use, an offensive weapon;
- knowing the victim to be acting in the capacity of a police officer, a prison officer of other law enforcement officer, or committing the offence in retribution for something done, or believed to have been done, by the victim in this capacity;
- trying to deter or prevent someone taking or taking part in legal proceedings or in retaliation for their doing so;
- knowing the victim to be under the age of 12 years;
- knowing the victim to be over the age of 60 years;
- the victim being a family member;
- committing the offence in company with another person or persons;
- abusing a position of authority or trust;
- knowing the victim to be in a position of particular vulnerability because of physical or mental disability;
- knowing the victim to be in a position of particular vulnerability at the time of the offence because of the nature of his or her occupation or employment. For example, it might aggravate an assault that the victim was known to the offender to be a petrol station attendant on lone night duty or a locum doctor attending a household at night;
- the victim being, at the time of the offence, engaged in a prescribed occupation or employment, and the offender knowing this and the nature of that prescribed occupation or employment. An example of an occupation or employment that might be prescribed is that of a sheriff's officer, who is responsible by law for the maintenance of security and orderly conduct in the courts and the execution of civil and criminal process.
- acting in breach of an injunction or court order relevant to the offending conduct.

This last factor accords with the Government's undertaking to provide stronger measures for non-compliance with domestic violence restraint orders.

The aggravating factors have been drafted so that knowledge of the essential ingredients is express or implied.

The Bill requires the aggravating circumstances to be stated in the summons or information, so that the defendant and the court know precisely what is being alleged. If more than one aggravating factor is alleged for the one offence, a jury finding a person guilty of that offence must say which of those aggravating factors it found to be established, so that the true basis of the verdict is known.

The offences to which these aggravating factors apply are offences of making unlawful threats, unlawful stalking, assault, acts endangering life or creating a risk of harm or serious harm, kidnapping, indecent assault, abduction of male or female persons, procuring sexual intercourse, robbery, deception, dishonest dealings

with documents, serious criminal trespass (non-residential buildings), serious criminal trespass (places of residence), criminal trespass (places of residence), and the new causing harm offences, to which I now turn. They do not apply to offences where the maximum sentence is already life imprisonment. I refer Members to the tables appended to this report, and, in particular, *Table 2*, which lists the proposed factors of aggravation, and *Table 3*, which lists the offences to which the aggravating factors apply and compares the proposed penalties with existing penalties.

Kidnapping

The *Kidnapping Act 1960* contains two offences—kidnapping and demanding money or making threat—both of which carry a maximum penalty of life imprisonment. The language and offence structure in the Act are antiquated.

The Bill repeals the *Kidnapping Act 1960* and creates a new kidnapping offence in the *Criminal Law Consolidation Act 1935* so that the new aggravated penalty provisions also apply to kidnapping.

The new offence has two components.

The first is taking or detaining another person without that person's consent with the intention of holding him or her to ransom or as a hostage or of committing an indictable offence against that person or a third person. It will not be considered consent if the person apparently giving it is a child or someone who is mentally incapable of understanding the significance of the consent. Consent obtained by duress or deception is also to be ignored.

The second component of the offence is wrongfully taking or sending a child out of the jurisdiction. The act is wrongful if done in the knowledge that someone who has lawful custody of the child (for example another parent) does not consent to it and there is no law or court order allowing it. The maximum penalties are 20 years imprisonment for a basic offence and 25 years for an aggravated offence.

These offences are based on the MCCOC model offence of kidnapping. The relativity between basic and aggravated penalties is equivalent to the MCCOC model, but the maximum penalties themselves are some five years greater.

Obstructing or disturbing religious services

The Bill amends the *Summary Offences Act 1953* by repealing the summary offence of interruption or disturbance of religious worship (in section 7A) and replacing it with a new offence of obstructing or disturbing religious services and certain other ceremonies.

The new offence carries the same penalty as the one it replaces: a maximum fine of $10 000 or a maximum term of imprisonment of two years. The new offence is constructed more simply and includes a definition of religion and religious service. It extends the offence to weddings and funerals, whether religious or secular.

Table of changes made to offences by this Bill

For the information of Members I attach to this speech three tables:

- Table 1: Offences proposed to become new offences of causing harm;
- Table 2: Proposed factors of aggravation; and
- Table 3: Offences proposed to contain an aggravated penalty.

In conclusion

In this legislation, Parliament is showing the judges how seriously it views criminal conduct and what level of penalty should be considered for particular kinds of behaviour. In rationalising penalties, some penalties have increased and others, necessarily, have decreased. By focussing on criminal fault, the Bill removes some irrational distinctions in our offences against the person.

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 *Criminal Law Consolidation Act 1935*

4—Amendment of section 5—Interpretation

Definitions of ***aggravated offence*** and ***basic offence*** are proposed to be inserted.

5—Insertion of section 5AA

New section 5AA provides for the circumstances under which an offence becomes an aggravated offence.

6—Amendment of section 19—Unlawful threats

The amendment provides that the maximum penalty for a basic offence of making an unlawful threat to kill or endanger the life of another is imprisonment for 10 years and, for an aggravated offence, imprisonment for 12 years. In respect of the offence of making an unlawful threat to cause harm to the person or property of another, the maximum penalty for the basic offence is imprisonment for 5 years and, for the aggravated offence, imprisonment for 7 years.

7—Amendment of section 19AA—Unlawful stalking

The amendment provides that the penalty for the basic offence of unlawful stalking is imprisonment for 3 years and, for the aggravated offence, imprisonment for 5 years.

8—Amendment of section 19A—Death and injury arising from reckless driving etc

A number of the amendments to this section are proposed to achieve consistency between similar offences in relation to the use of terms and penalties. For example, the term "grievous bodily harm" will no longer be used but, instead, will be described as "serious harm".

9—Substitution of heading to Part 3 Division 7

10—Substitution of sections 20 to 27

The amendments proposed by clauses 9 and 10 go together. The new heading to Division 7 is to be "Assault". New section 20 (Assault) sets out what constitutes the offence of assaulting another person. The penalty for the basic offence of assault is imprisonment for 2 years and, for the aggravated offence, imprisonment for 3 years. However, there is a further aggravating factor included for this offence—if the assault is carried out by means of using an offensive weapon. In that case, the penalty is imprisonment for 4 years.

Preceding new section 21 is to be the divisional heading "Causing physical or mental harm". New section 21 (Harm) contains definitions for the purposes of the Division, including definitions of ***harm*** and ***serious harm***.

New section 22 describes conduct that falls outside the ambit of new Division 7A—that is, conduct that might cause harm but that is not to constitute a crime (for example, most medical procedures or taking part in the normal rough and tumble of body contact sports).

New section 23 (Causing serious harm) provides for a range of offences that lead to a person suffering serious harm. The penalty for the basic offence of intentionally causing serious harm to another is imprisonment for 20 years and, for an aggravated offence, imprisonment for 25 years. If, however, the victim in a particular case suffers such serious harm that a penalty exceeding the maximum prescribed in subsection (1) is warranted, the court may, on application by the Director of Public Prosecutions, impose a penalty exceeding the prescribed maximum. A person who causes serious harm to another, and is reckless in doing so, is guilty of an offence, with the penalty for the basic offence set at imprisonment for 15 years and, for the aggravated offence, imprisonment for 19 years. A person who causes serious harm to another, and is criminally negligent in doing so, is guilty of an offence, carrying a penalty of imprisonment for 5 years.

New section 24 (Causing harm) provides that a person who intentionally causes harm to another is guilty of an offence; the penalty for the basic offence is imprisonment for 10 years and, for the aggravated offence, 13 years. The penalties for recklessly causing harm to another is 5 years imprisonment for the basic offence and 7 years for the aggravated offence.

New section 25 (Alternative verdicts) allows for judges to give juries directions in relation to alternative verdicts in relation to offences against new Division 7A.

11—Amendment of section 29—Acts endangering life or creating risk of serious harm

These amendments provide for different penalties in relation to the basic and aggravated offences of unlawfully endangering the life of another or causing serious harm. Other amendments are consequential.

12—Amendment of section 31—Possession of object with intent to kill or cause serious harm

These amendments are consequential.

13—Substitution of Part 3 Division 9

New Division 9 deals with kidnapping. A person who kidnaps another will, in the case of the basic offence, be liable to imprisonment for 20 years and, in the case of the aggravated offence, be liable to imprisonment for 25 years.

14—Repeal of Part 3 Division 10

Division 10 is otiose as a result of the introduction of the insertion of new section 5AA and the interaction with the proposed amendments to section 19 (see clause 6).
15—Amendment of section 49—Unlawful sexual intercourse
The maximum penalty for an offence against subsections (3), (5) and (6) is to be increased from 7 years to 10 years.
16—Substitution of section 56
This section has been reworded so as to take account of the fact that if the victim of the offence of indecent assault is under the age of 12 years at the time of the offence, the offence is an aggravated offence.
17—Amendment of section 59—Abduction of male or female person
18—Amendment of section 64—Procuring sexual intercourse
19—Amendment of section 137—Robbery
20—Amendment of section 139—Deception
21—Amendment of section 140—Dishonest dealings with documents
22—Amendment of section 169—Serious criminal trespass—non-residential buildings
These amendments provide for different penalties to apply depending on whether the relevant offence is a basic offence or an aggravated offence.
23—Amendment of section 170—Serious criminal trespass—places of residence
The amendments provide that the maximum penalty for the basic offence against section 170 is imprisonment for 15 years, but life imprisonment for the aggravated offence. New subsection (2) provides that a person who commits a serious criminal trespass in a place of residence is guilty of an aggravated offence if—

(a) any of the factors that generally give rise to aggravation of an offence are applicable; or

(b) another person is lawfully present in the place of residence when the offence is committed and the offender knows of the other's presence or is reckless about whether anyone is in the place.

24—Amendment of section 170A—Criminal trespass—places of residence
This amendment provides for different penalties to apply depending on whether the offence is a basic offence or an aggravated offence.
Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*
25—Amendment of section 20A—Interpretation
The definition of ***serious offence*** is to be amended as a consequence of the changes proposed to the *Criminal Law Consolidation Act 1935*.
Part 4—Amendment of *Juries Act 1927*
26—Amendment of section 7—Trial without jury
This amendment makes it clear that if a criminal trial proceeds without a jury, the judge may make any decision that could have been made by a jury and such a decision will have the same effect as a jury verdict.
Part 5—Repeal of *Kidnapping Act 1960*
27—Repeal
The *Kidnapping Act 1960* is to be repealed consequential on the passage of clause 13 of the Bill (see above).
Part 6—Amendment of *Summary Offences Act 1953*
28—Substitution of section 7A
New section 7A provides that a person who intentionally obstructs or disturbs a religious service, wedding or funeral , or persons proceeding to or from such a service in a way calculated to give offence and somehow related to their attendance at the service, is guilty of an offence. The penalty for such an offence is $10 000 or imprisonment for 2 years.
Part 7—Amendment of *Summary Procedure Act 1921*
29—Amendment of section 4—Interpretation
The amendment proposed to the definition of ***offence of violence***is consequential on the amendments proposed in the Bill to the *Criminal Law Consolidation Act 1935* and the use of the term "serious harm" (to be defined in that Act) instead of the term "serious injury".
30—Amendment of section 5—Classification of offences
This amendment is also consequential on the amendments proposed in the Bill to the *Criminal Law Consolidation Act 1935*.

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

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

In committee.
(Continued from 3 May. Page 1412.)

Clause 4.

The Hon. T.G. ROBERTS: When we broke last evening, there were some replies to questions that were posed by the Hon. Nick Xenophon and the Hon. Angus Redford. During the second reading debate, I explained the provisions of this bill and do not wish to repeat them. The first question was whether the government considered the interplay between the bill presently before us and the Law Reform (Ipp Recommendations) Bill and the extent to which this bill will be ameliorated or compromised or its effectiveness in some way reduced by virtue of the Ipp recommendations bill?

The response to that is that these two bills serve different purposes. The purpose of the present bill is to provide an independent mechanism where health and community health consumers can make complaints about their experience with a wide range of health care and other community service providers such as welfare organisations. The bill provides a mechanism for the resolution of complaints and to provide consumers with a comprehensive and straight forward system for responding to their needs.

Frequently, consumers want a frank acknowledgment of the problem created, an apology from the service provider and an assurance that the issue will be addressed so that others do not have the same experience. Complaints under this bill will not be limited to cases where a person alleges that he or she has been injured through the negligence of a health professional. They can include all sorts of possible complaints about these services including complaints about failure to respond, lack of courtesy or dignity, failure to provide sufficient information, unreasonable refusal of services, breaches of rights conferred by the charter and so on.

The Law Reform (Ipp Recommendations) Bill, on the other hand, deals with civil actions for damages for harm based on a breach of duty to take reasonable care or exercise reasonable skill. It will cover legal actions by patients against health professionals, and it makes some specific provisions about the standard of care the courts are to apply in these cases. The Ipp recommendations bill will not compromise the effectiveness of this bill in providing a mechanism to resolve complaints through an independent process. One would expect the great majority of complaints that would be made under the Health and Community Services Complaints Bill will be complaints that would not lead to a civil action for damages for medical negligence. Thus the area of overlap is small. Where overlap exists, the present bill contains mechanisms for dealing with it, which I will explain in answering the next question.

A further point in relation to the Health and Community Services Complaints Bill was: if someone brings an action in court for damages and a claim for medical negligence, a complaint can no longer be brought. Effectively, that means that you cannot go to the HCS ombudsman in those circumstances. In other words, if you have a legal action, can you bring a complaint? The response to that question is: an injured consumer may take both actions. That is, a complaint may be lodged with the HCS ombudsman and a claim for damages for medical negligence can be brought before the court. However, this bill details the actions that an HCS

ombudsman must take in handling a complaint that is before a court.

Specifically, a health complaint can be made under clause 24(1)(d) if there had been a failure to exercise due skill under 24(1)(g); if there had been a failure to provide enough information to make an informed choice about treatment; or, under 24(1)(i), if the provider is alleged to have acted in a manner that did not conform with a generally accepted standard of service delivery for such practitioners.

These grounds of complaint could overlap with situations where the provider has been negligent. If there has been an actionable loss, such as personal injury, the consumer may also be able to exercise the common law right to sue for damages. However, under clause 32(1)(c) and clause 32(1)(d), the HCS ombudsman may determine to take no further action on a complaint, if he or she considers the matter should be determined by way of legal proceedings, or if he or she considers proceedings that relate to the matter have commenced before a tribunal, authority or other person or body.

Further, under clause 32(2), the HCS ombudsman must take no further action on complaint if he or she is satisfied that all issues arising from the complaint have been adjudicated by a court, tribunal, authority, person or body. Similarly, under clause 32(3), the HCS ombudsman must suspend action on a complaint if satisfied that the proceedings relating to the subject matter of the complaint have been commenced before the courts. In other words, if the case is in reality a negligence action against a health care provider, the court process is the proper way to deal with it. It is not intended that the HCS ombudsman duplicate the functions of the court. The HCS ombudsman can, however, recommend action on a suspended complaint under clause 32(5) of any reasonable cause.

A further question was: what is the interplay between the two bills, given that this bill quite rightly follows the F v R principle as espoused by Chief Justice King over a quarter of a century ago? However, the Ipp bill is very much at loggerheads with that and follows the old House of Lords Bolam principle, which many would say is condescending and paternalistic and that it is a question of 'doctor knows best'.

The response to that question is that the Health and Community Services Complaints bill does not say anything one way or another about the respective merits of the decisions in the cases of F v R and Bolam v Frien hospital management committee. The honourable member suggests that the bill in some way adopts the decision in F v R, but that is a decision about the law of negligence. Under this present bill, the HCS ombudsman is not called upon to apply the law of negligence. That is a matter for the courts. The HCS ombudsman would be given powers to investigate and conciliate complaints, not to pronounce on legal liability.

The result of the HCS ombudsman's intervention would be either a conciliated agreement between the parties or else a report of an investigation containing information, comment, opinion and recommendations for action. This bill is about complaints, resolution and improvement of service, whereas the Ipp bill is about the law of negligence. This bill serves different purposes and performs different functions to the Ipp recommendations bill. There is therefore no inconsistency between this bill and the Ipp recommendations bill to which the honourable member refers.

The honourable member discussed the case of Rogers v Whitaker, asserting that under these two bills the injured patient in this case would have a successful health complaint but would lose her negligence action. There is not the opportunity to deal with the Law Reform (Ipp Recommendations) Bill, but I may say that I understand that the Ipp bill does not alter or adopt its duty to warn a patient about risks and complications of surgery.

The matter is at issue in the Rogers v Whitaker case, and in those cases the rule in Rogers v Whitaker will continue to apply. I do point out, though, that there may be instances in which a person can bring a health complaint under this bill but cannot sue the provider for damages. This is because the scope of the present bill is very wide and covers a wide range of events that may do actionable damage and may not find a remedy in the law of negligence. The bill is intended to be a widened scope. It is intended to provide redress when none now exists. That is not a criticism of the Health and Community Services Complaints bill but a benefit.

The honourable member asked for a comment on the interplay with, in particular, clause 40(1)(ii) of the Ipp recommendations bill which provides:

> Professional opinion cannot be relied upon for the purposes of this section if the court considers that the opinion is irrational.

He said:

> Does that mean, in terms of the interplay of this particular bill, that if, under the Ipp recommendations bill, a doctor is anything short of irrational—and, presumably, that would mean, to use the vernacular, being slack, lackadaisical, indifferent to the patient's welfare, sloppy in their work, but not irrational—that person may not have a claim for damages; that a medical practitioner will be able to say, 'Well, look, why should I be subject to a complaint here because there is another act of parliament that says that, anything short of irrational, I'm all right? I'm not going to be subject to any consequences in respect of that.

The response I have been given is that the honourable member is really seeking to redebate the Ipp bill, which was debated by this council last year. The Health and Community Services Complaints Bill does not say one way or another whether or when professional opinion may be considered irrational. It may be that the question that the honourable member is trying to ask is whether a doctor, thinking that he or she has a good defence to a negligence claim, can refuse to comply with the requirements of the present bill as to conciliation and investigation. This potentially could arise regardless of the defence given via clause 41 of the Law Reform (Ipp Recommendations) Bill. The doctor may simply think that he or she has done nothing wrong.

The bill has mechanisms to deal with this. Assuming that the HCS ombudsman accepts the complaint and that legal proceedings have not begun, the HCS ombudsman will proceed to deal with the complaint. The HCS ombudsman's powers do not depend on the consent of the health care provider. For instance, under clause 29, the HCS ombudsman can require information from the provider. Failure to provide the information is an offence carrying a maximum penalty of $10 000. Likewise, clauses 46 and 47 give legally enforceable rights to information and clause 48 provides for search warrants. So, a provider who refuses to cooperate in an inquiry or investigation does so at his own peril and may be risking criminal penalties.

If the complaint is conciliated, well and good; if not, whether because the doctor believes that he or she has a defence to a negligence action and refuses to reach any agreement with a patient or for any other reason, the HCS ombudsman may investigate further. The HCS ombudsman may serve on the doctor a notice of recommended action (clause 54(1)). The doctor will be required to reply (clause 54(3)). The HCS ombudsman may then publish a report including comments. So, again, a doctor who refuses

to conciliate a justified complaint or to carry out a recommended action is running a risk of an adverse report. I do not see that the other bill to which the honourable member has referred makes any difference to that. Again, I repeat that the question whether the patient is entitled to damages for negligence and the question of whether a health complaint should be upheld are two quite different questions. The HCS ombudsman will deal only with the latter. The honourable member also asked:

> . . . what happens if a person brings a claim before the courts but fails because the Ipp bill is passed in its present form? Where does that leave a patient who may have suffered a serious, in some cases a catastrophic, injury in the context of this health complaints bill?

The answer that has been provided is that the fact that the person has unsuccessfully sued in negligence does not in and of itself affect their entitlements to make a complaint under the present bill. However, under clause 32(2) the HCS ombudsman must take no further action if satisfied that all issues arising out of the subject matter of the complaint have been adjudicated by the court. Again, this reflects the policy of the bill that the HCS ombudsman's role is not to duplicate or usurp the role of the courts. The determination of legal liability for damages or negligence will remain a matter for the courts.

Mr Chairman, those answers to questions have been supplied on the basis on which they were asked by the honourable member. I seek your guidance in relation to how we proceed from here in relation to clause 4.

The CHAIRMAN: What has occurred in the last 24 hours is quite disturbing to me as the chair of a committee or as President of the Legislative Council. What we have just witnessed is a redebate of the Ipp bill, which is not on the agenda, a very long contribution talking about the merits of the Ipp bill compared with the Health and Community Services Complaints Bill. There has been ample opportunity for those debates to take place in the second reading stage of the bills. Since I have been a member of this council, the practice has been to allow a fair range of questioning to take place on clause 1 of the bill.

Yesterday, the Hon. Mr Xenophon fessed up that he had held up the health bill for 12 months, and that is fair enough. Now what we have successfully done is redebate the two bills. Standing order 185 says that people will address the question before the house and will not divert from the question. From now on it is my intention in respect of clause 1 to allow those free-ranging questions to get some of the issues out of the way. From clause 2 I intend to invoke standing order 185 because in my view there has been abuse of the convention. For the rest of the bill, I intend to enforce standing order 185.

The Hon. NICK XENOPHON: The matters that the minister has just raised were in response to questions I put in my second reading contribution on 15 May 2003. I just wanted that to be put into context for the record. I thought they were important issues, and when we get to clause 32 I will raise the issue of the interplay between the Ipp legislation, which has now been passed, and how that might work in the context of this act, because I think there are important issues there in relation to judicial review and the like.

The CHAIRMAN: That would be an appropriate course of action. We are dealing with the amendment moved by the Hon. Mr Redford to clause 4.

The Hon. A.J. REDFORD: I seek your guidance, Mr Chairman. Following the debate yesterday, I visited the minister's office and had a discussion with one of her advisers about some of the information that I was seeking yesterday. I understand some work might have been done on that in order to respond to my questions. Once I get that information we can proceed with the debate relatively quickly.

The CHAIRMAN: The minister made a number of attempts to answer your question. Does the minister want to conclude his answer on that issue so that we can move on? From this point on we will go back to compliance with standing order 185.

The Hon. A.J. REDFORD: Mr Chairman, I am complying.

The CHAIRMAN: I am allowing you to complete this matter.

The Hon. A.J. REDFORD: I am utterly confused. If we understood your rulings we would operate much better. I am proceeding on the basis that I am complying with your ruling.

The CHAIRMAN: There was some confusion yesterday, and that is why I am prepared to be tolerant at this stage.

The Hon. T.G. ROBERTS: In answer to the Hon. Mr Redford's question asked yesterday about establishment costs, I reiterate what I said yesterday. The cost of setting up a new office has not been finally calculated. Several options are being looked at, but a location has not been chosen. The establishment costs are expected to be in the range of $350 000 to $400 000 and will need to be refined when an office site is chosen and detailed set-up costs are identified.

In relation to the recurrent budget and source for the ombudsman, general revenue and health, I refer again to the statements I made yesterday about the recurrent budget and source of the budget for the proposed HCS ombudsman's office. Last year I reported to the council that it had been estimated that an overall $850 000 in recurrent funding will be required.

These moneys will be funded from three sources: first, the government has committed $500 000 per annum in new moneys towards these costs; secondly, fees as proposed in clause 83 to be paid by registered service providers, including providers in both the public and private sectors; and, thirdly, funds from the state Ombudsman's office specifically allocated for handling health complaints.

The Hon. A.J. REDFORD: The minister said that $350 000 is to come from fees and from the state Ombudsman. Is the minister able to provide a breakdown as to how much is estimated will come from each source?

The Hon. T.G. ROBERTS: Not at this point.

The Hon. A.J. REDFORD: Are you getting any work done on that?

The Hon. T.G. ROBERTS: The budget is constantly being reviewed and revised.

The Hon. A.J. REDFORD: When we get to the regulation-making power, I hope that the minister will have done a bit more work on it because it will be a long and tedious process if it has not been done. There is one other issue that came up in the context of this debate yesterday, and that was the role of the Ombudsman. I understand from a briefing that I received last night—and all I want is confirmation that my understanding is correct—that the role of the current Ombudsman in relation to this ombudsman under this legislation, should it pass, is a general supervisory role under the Ombudsman Act. Is that understanding correct?

The Hon. T.G. ROBERTS: My advice is that the understanding that the honourable member gathered from last night's briefing is accurate. Further to the debate on 3 May 2004, it means that the state Ombudsman, if approached by

a complainant about a complaint handled by the HCS ombudsman, is able to review the process used by the HCS ombudsman. He is not able to review the decision. Is that the understanding that you gathered?

The Hon. A.J. REDFORD: Thank you. I am grateful for that answer. In relation to the insertion of 'commissioner', yesterday I indicated to the committee that this was a test clause in relation to whether the health and community services complaints ombudsman would, in fact, be that position held by the current state Ombudsman, which is outlined in my amendment to clause 5, page 10, lines 4 to 6. I understand that some members are of the view that if I win this debate I do not necessarily win the other debate, so I will address my argument specifically to the name.

The Ombudsman and the National Conference of Ombudsmen have deprecated the wide use of the term 'ombudsman' in our community. We have private sector ombudsmen set up without any statutory backing at all, and in that respect I allude to the banking ombudsman. According to our Ombudsman, and generally ombudsmen around the country, that dilutes the status and the meaning of the term 'ombudsman' in this nation. It is the opposition's viewpoint that there should be just one ombudsman in this state, and that is the ombudsman whose position is currently occupied by Mr Eugene Biganovsky. For that reason I urge members to support my amendment.

The Hon. NICK XENOPHON: I support the amendment moved by the Hon. Angus Redford but would like to make it clear that I do so only in so far as it relates to the terminology of commissioner rather than ombudsman. I think the reasons are compelling, and I note that the Hon. Ian Gilfillan, in his contribution, made a similar reference about, in a sense, how it can be confusing to have various ombudsmen around the place. I think that it is appropriate that we have a health and community services complaints commissioner rather than an ombudsman, and so for those compelling reasons I support the amendment.

The Hon. T.G. ROBERTS: The government specifically chose the title ombudsman because it was well understood and accepted by the public to be an independent authority to investigate complaints. This bill aims to ensure that reference to an ombudsman must only be to one that is properly established by government, and the term 'ombudsman' cannot be appropriated or used spuriously by other agencies or by the private sector.

It should be noted that the previous government introduced both the Electricity Industry Ombudsman in 1999 and the Office of the Employee Ombudsman in 1994. The term 'ombudsman', therefore, has well-established credibility and association with mediation and the impartial hearing of complaints. So, we already have two ombudsmen in place: one being the Office of the Employee Ombudsman and the other being the Electricity Ombudsman.

The Hon. A.J. REDFORD: The minister's point is well made with one exception, and that is that the Employee Ombudsman is an officer of the parliament who reports to the parliament, who is directly accountable to the parliament and who, in fact, provides regular reports to the Legislative Review Committee. The structure contained within this bill does not reflect the role of the Employee Ombudsman as a parliamentary officer. In terms of appointment the decision is made by the minister: there is no committee of parliament established in relation to the appointment of this particular officer.

So, there are distinctions between the role of the Employee Ombudsman and his direct accountability to the parliament as opposed to the proposed officer in this bill, where there is a line of accountability—albeit that the officer will be independent—to the minister. The minister signs off on charters and signs off on a whole range of things, which is inconsistent with ministerial control or ministerial supervision that prevails in this case, which is inconsistent with the lack of ministerial control and supervision that applies in relation to the Ombudsman (Mr Eugene Biganovsky) or, indeed, the Employee Ombudsman. There is another ombudsman too, the Electricity Ombudsman, and personally I would deprecate the use of that term in that context, but that is another issue.

The Hon. SANDRA KANCK: I know we have been through this before, but people reading *Hansard* may not feel inclined to go back and look at the debate 12 months ago, so I put on the record again my support for the bill in its current form. I think what the opposition is doing in relation to this is grandstanding. We do have an Employee Ombudsman, and that office was set up under a Liberal government. We have a rail ombudsman office that was set up under a Liberal government, and we have an Electricity Ombudsman who was set up under a Liberal government. Suddenly, for some reason or another, the opposition has seen the light on the term ombudsman and, quite frankly, I see that this is more gameplaying than anything else. I cannot see good reason to support what the opposition is doing.

I photocopied a page out of the dictionary on my desk and it says that an ombudsman is:

> an officer appointed to investigate complaints by citizens against the government or its agencies.

That is exactly what this position is going to do. So, once again—as I did 12 months ago—I indicate opposition to what the opposition is proposing.

The Hon. T.G. ROBERTS: I will make one final comment. I make an appeal to those members who, perhaps, have not made up their mind. People of European backgrounds in particular generally have an understanding of the role and function of an ombudsman. It is a longstanding term associated with fairness, equity and appeal. 'Commissioner' has a different connotation, particularly for eastern European people. You would not go anywhere near a commissioner without expecting a knock on the door after making your complaint. 'Ombudsman' is a well-known term used by people for a range of purposes.

They see the word 'ombudsman' connected to justice, whereas the term 'commissioner' is confusing. South Australia, generally, has no connection with the term 'commissioner' in terms of an investigatory complaints office. It is generally associated with railways or such other bodies.

The committee divided on the amendment:

AYES (12)

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

NOES (9)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Holloway, P.
Kanck, S. M.	Reynolds, K.

NOES (cont.)

Roberts, T. G. (teller) Sneath, R. K.
Zollo, C.

Majority of 3 for the ayes.

Amendment thus carried

The CHAIRMAN: The next indicated amendment is in the name of the Minister for Aboriginal Affairs. I just prewarn members that, as a consequence of the success of the last amendment, and depending how quickly we go, we will have to change all amendments to now reflect 'Commissioner' where 'Ombudsman' appears. The Hon. Mr Redford's initial amendments are consequential. The table staff are getting together a process and, depending how quickly we go, we may have to make a further announcement.

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

Page 5, after line 27—Insert:

(ba) a service for the care or protection of any child who has been abused or neglected, or allegedly abused or neglected, and includes any service that relates to the notification of any case of child abuse or neglect (or alleged child abuse or neglect) or the investigation of a case where a child may be in need of care or protection, or any subsequent action taken by a service provider arising from any such investigation; or

This amendment provides the definition of community service to include a service of care or protection of any child who has been abused or neglected or allegedly abused or neglected. It is inclusive of any service that relates to the notification of child abuse or neglect, or the investigation of a case and any other subsequent action taken by a health or community service provider arising from that investigation.

The government has determined that the commissioner should handle all child protection complaints and related system matters. The HCS commissioner will be able to look at complaints relating to services for the care or protection of any child who has been abused or neglected or allegedly abused or neglected, whatever the setting. This will include all services in government, non-government and private sectors. It will cover public services, non-government services and private providers such as family day care, child care, kindergartens and schools.

The Hon. A.J. REDFORD: The opposition is still going through some consultation process over this, but we will not oppose it, our view being that the debate ought to be advanced. If our view changes, then we will let the minister and the parliament know accordingly.

The Hon. NICK XENOPHON: Does this amendment mean that FAYS, for instance, will be covered by this, or is it only proposed to cover private organisations?

The Hon. T.G. ROBERTS: It will cover all public and private areas. It will cover both government and non-government services, and organisations such as FAYS.

The Hon. NICK XENOPHON: If there is an allegation that FAYS, for instance, has not acted on a complaint promptly and it puts the welfare of a child at continuing risk, will the commissioner have the jurisdiction to deal with the complaint? Is that what is intended with this amendment?

The Hon. T.G. ROBERTS: All aspects of the continuum of services relating to child protection complaints will be handled by the HCS commissioner from notification, investigation, family support services and out-of-home placement, and will include the capacity for the HCS commissioner to look at service interfaces.

The Hon. KATE REYNOLDS: I am assuming the minister understood what he just said then; the look on his face tells me otherwise. Will the minister advise whether in the government's opinion this would preclude or obviate the need for a children's and young persons' commissioner, as recommended in the Layton report?

The Hon. T.G. ROBERTS: I am advised that the Layton report recommended two separate functions, that is, matters relating to administrative actions and decisions to continue to be heard by the state ombudsman or state commissioner, and matters relating to services to be managed by the HCS commissioner.

The Hon. KATE REYNOLDS: I am not sure that answers my question, minister.

The Hon. T.G. ROBERTS: The recommendations from the Layton report in relation to the children's commissioner are not related to the HCS commissioner.

The Hon. KATE REYNOLDS: I am sorry, but I still have some concerns. I do not see how they cannot be related, given that the Layton report was into child protection and the subject of this clause is child protection. I know we are debating who will investigate complaints or concerns, but my understanding is that there is a recommendation to the government that there be a children's commissioner; and one of their roles would be to do that. I have some considerable concern about this and the lack of clarity in the minister's answer. Will the minister advise whether the Minister for Families and Communities has been consulted on this clause and has given a view; if so, is the minister willing to put that view on the record?

The Hon. T.G. ROBERTS: The minister has been consulted and has agreed to the position that has been developed with the HCS commissioner.

The Hon. KATE REYNOLDS: Does that mean that the government does not have an intention to establish a commissioner for children and young people?

The Hon. T.G. ROBERTS: The children's commissioner recommendation is recommendation No. 1 in the Layton report. The position in relation to the current amendment relates to recommendations Nos 2 and 3. The functions of the children's commissioner will be to deal with broader policy matters, as articulated in the Layton report.

The Hon. KATE REYNOLDS: Are you saying that this position would deal with policy matters or the children's commissioner would deal with policy matters?

The Hon. T.G. ROBERTS: The children's commissioner.

The Hon. KATE REYNOLDS: The government's view is that the children's commissioner would deal with policy matters.

The Hon. T.G. ROBERTS: That is the Layton report; the children's commissioner.

The Hon. A.J. REDFORD: Reading between the lines, my understanding is that we will have a commissioner for children and young people, which will be established as a consequence of the Layton report recommendations. That office will be responsible for policy issues. The HCS commissioner will be responsible for complaints in relation to service delivery. Current structures within government will deliver policy and outcomes. Is that how it works?

The Hon. T.G. ROBERTS: The functions of the children's commissioner are still being discussed. The amendment with which we are now dealing, namely, the handling of complaints of child abuse, relates to recommendations 2 and 3 of the Layton report.

The Hon. SANDRA KANCK: Until I had a brief conversation with my colleague just a short time ago, I was

not aware of the potential conflict between the Layton report recommendations and what we propose to do here. From the brief conversation with my colleague, I know that she would like the opportunity to speak to the Minister for Families and Communities during the dinner break so that we can clarify this issue. I know that the government recognises that I am not trying to thwart what it is doing with this bill and that I am keen to see progress after nearly two years.

[Sitting suspended from 5.45 to 7.45 p.m.]

The Hon. T.G. ROBERTS: In reply to the question asked by the Hon. Kate Reynolds in relation to the interface between the Office of Commissioner for Children and Young Persons and the Layton report, the Office of Commissioner for Children and Young Persons includes functions of advocacy, promotion, public information, research and developing screening processes for work with children and young persons. The statutory body's protection of child and youth interests specifically does not include the function of deciding complaints and grievances. These are totally separate functions. That is recommendation one.

The Hon. A.J. REDFORD: Given the nature and the breadth of this amendment, I would be very interested to know the government's plan for its response to the various recommendations of the Layton report and how it envisages the administrative structure in dealing with child abuse complaints and complaints about the system within which complaints are dealt with.

The Hon. T.G. ROBERTS: I guess the difficulty we get into is the same as we had with the Ipp report and the conflict between the two bills. We now have two: one relates to child and youth protection, and we are comparing it with another bill, which is complicating the whole range of issues associated with the bill that we are dealing with. It is the government's position that we will give weight to both the Layton report and the bill we are dealing with. But we have to deal with what is in front of us. We are trying not to deal with the recommendations in the Layton report but with this bill, but the overlay is complicating the passage of this bill.

The Hon. KATE REYNOLDS: I wish to return to some of the specifics, having noted the Hon. Angus Redford's comments about the lack of response. Recommendation one suggested that an Office of Commissioner for Children and Young Persons be established. I think we have had some discussion about this previously, but I would like it specifically clarified that this clause is not intended to preclude the establishment of an Office of Commissioner for Children and Young Persons in the future.

The Hon. T.G. ROBERTS: That is a true and accurate reflection of what is happening. That is the position being developed by the Minister for Families and Communities. It will be her responsibility to deal with that.

The Hon. KATE REYNOLDS: I wish to further discuss recommendation one, because it continues to explore the issue of the investigation of complaints. Recommendation one also suggests that a joint parliamentary committee on child protection be created. Is the minister in a position to make any comment on that, given that that potentially would have a broader overview of complaints mechanisms in relation to the protection of children?

The Hon. T.G. ROBERTS: No, I am not in a position to do so. We are dealing only with complaints and grievances.

The Hon. A.J. REDFORD: I do not know whether the minister has the Layton report in front of him. Recommendation two states:

> . . . a complaints and grievance process relating to administrative actions decisions (but excluding services) include review by the Ombudsman.

It continues:

> Whilst the system of merits review in Queensland through the Children Services Tribunal appears to be an excellent precedent for a review of administrative decisions, it would be significantly more costly than extending the role of the Ombudsman by a dedicated service. The essential function could also be effectively and efficiently performed by the Ombudsman using well-trained staff who become familiar with the complex area of child protection.

So, we have here a recommendation that a complaints and grievance process be administered by the Ombudsman. This clause covers the field somewhat in relation to that area. Am I to take it from the fact that the government has moved this amendment that the government is rejecting recommendation two of the Layton report?

The Hon. T.G. ROBERTS: We do have a copy of the Layton report here, and some extracts. The Layton report recommended two separate functions; that matters relating to administrative actions and decisions continue to be heard by the state Ombudsman and matters relating to services be managed by the HCS Commissioner (as it is now). That is recommendation three. The implementation of the Layton report recommendations would result in a fragmented and restricted approach, and it is the government's position that an alternative proposal to expand the role of the HCS Commissioner to include all child protection complaints—issues relating to both administrative actions and decisions and service issues—was considered the most appropriate way to handle child protection complaints. I will comment on the Queensland position in a minute.

The information given to me is that in Queensland currently the handling of child protection complaints is split between the ombudsman and the commissioner for children and young people. This model is similar to that proposed by the Layton report. However, Queensland is undergoing major reforms and the government has recently committed to implementing the recommendations of the crime and misconduct commission on protecting children, an inquiry into the abuse of children in foster care. Enabling legislation is proposed for one body to investigate child protection matters and to undertake systemic monitoring of the department of family's performance.

The CHAIRMAN: Just before you ask your next question, Ms Reynolds, I point out the direction that I gave earlier about debating the clause before the committee. Under your standing orders, under committees, you will see that standing order 299 provides:

> Debate shall be confined to the clause scheduled for amendment immediately before the council.

We are starting to get back into that trap that we were in yesterday of debating the recommendations of the Layton report. That is a matter that is not before the committee at the moment. I can understand members' curiosity about the implications in this area. This is a definitional clause of the type of service that the commissioner will be looking at at this time. The response to the Layton report is a matter for the chamber to consider at another occasion. I can accept the curiosity and I can accept some questions, but I do not want to labour the committee with a long extrapolated debate about something which is not currently before the committee.

The Hon. A.J. REDFORD: Mr Chairman, I will respond to what you have just said. We have here the Layton report, which said that there ought to be an administrative structure in dealing with the complaints which are the subject of this clause, that is, the care or protection of any child who has been abused or neglected.

The Layton report was issued in March 2003, and we have waited more than 12 months for a definitive and extensive response from the government as to how it will react to the Layton report. We have not heard anything except that last Friday or earlier this week—but it is dated 31 March—the minister for Aboriginal Affairs tabled an amendment.

It is incumbent upon us, as Her Majesty's opposition, to determine how the whole administrative structure in relation to the important issue of care and protection of our children is dealt with in this state, and we are concerned with getting the whole picture so we understand what impact this clause will have in relation to the care and protection of children and the role that this new body will have.

I think, with the greatest of respect, they are entirely reasonable questions for us to understand the broader administrative scope. As an example, I refer to recommendation 43, which talks about the role of the health and community services ombudsman. Based on the explanation I have just had, that is not reflected in that recommendation. I think it is entirely appropriate for a committee of the Legislative Council to try to get a broad picture as to how the whole administrative structure fits together. If we do not do that, we are not doing our job, with the greatest of respect.

The CHAIRMAN: It is not my role in this committee to debate that particular issue. I am charged with the responsibility of enforcing the standing orders. I understand what you are saying. The government may be criticised by some or not criticised by some for the speed of its response to the Layton report, but it is not a matter that is before this chamber at the moment.

The problem is being addressed in the way that the government has put forward. It is my intention to proceed along the lines that at the appropriate place you can raise these issues on another occasion. The clause before the committee is a definitional provision. It talks about the types of services that the commissioner will be oversighting. This is in addition to it. We have had a fair debate and I have been reasonably flexible. The rules of the debate are governed by standing orders 185, 299 and 366, and I am going to enforce them. The question before the committee is that put by the minister on this definitional clause.

The Hon. A.J. REDFORD: This clause gives the care and protection of any child who has been abused or neglected or allegedly abused or neglected and includes any service that relates to the notification of any case of child abuse or neglect. My understanding is that the government intent with incorporating this amendment into this bill is that both administrative actions and services supervision be supervised by this body that is before the chamber.

The Hon. T.G. ROBERTS: Again, a little bit more information might clarify it in the honourable member's mind. The implementation of the Layton report recommendations 2 and 3, and consequently 43, would result in a fragmented and restricted approach. The government's approach is an alternative proposal to expand the role of the HCS, the commissioner, to include all child protection complaints and issues relating to both administrative actions and decisions and service issues. This is considered the most appropriate way to handle child protection complaints in this state.

An honourable member interjecting:

The Hon. T.G. ROBERTS: It was a decision of the government so that one person can become the follow through expert without fragmentation. The Queensland model has started off with one form and is now moving towards a form that is similar to the model that we are trying to get through here tonight.

The Hon. A.J. REDFORD: If I can just put the opposition position. In the Layton report, it says:

> In relation to complaints against decisions and actions of FAYS, including allegations of abuse against foster carers, FAYS employees and volunteers, there is to be a three-tier review process. The first is a local resolution process at district centre level. The second is a specialist review and investigation unit within DHS but removed from FAYS.

I assume that is because there needs to be a separation between FAYS, which is the service deliverer, and, from an administrative perspective, a supervisory role from DHS (which is understandable), and then a specialist unit sited within the Ombudsman's office, which is the office, as I understand it, if you read this carefully, currently held by Eugene Biganovsky.

In reference to this bill that is currently before the parliament—bearing in mind this report is dated March—the report states that that mechanism is not applicable to complaints against services which, according to a proposed bill already before parliament, are to be dealt with through the health and community services ombudsman. What I am concerned about is—other than the fact that Queensland has decided to look at changing the way it does things—why it ought to be dealt with within the one body. The investigation of child abuse is a highly specialised area. If we are to bring people to justice for engaging in that sort of conduct, we must have clear and transparent processes of investigation conducted by appropriately qualified people. I can say from experience that, if inappropriately qualified people investigate cases of child abuse, you run the risk of not being able to secure convictions.

I have been involved in cases where FAYS officers have engaged in the conduct of police officers and ruined what might have been a very good prosecution with very good prospects of success as a consequence of poor training and of having two different roles to play. FAYS officers provide a social work infrastructure with social support, family support and things of that nature. That is a very important and significant role. On the other hand, police officers provide an investigative role for the purpose of obtaining and gathering evidence to secure a prosecution. When the two are mixed together, that is usually a recipe for a failed prosecutorial outcome. What I am concerned about here is that the addition of this clause in this bill may well lead us to that particular outcome. I am interested to hear from the minister what he says in relation to how this will not prevent unqualified or non-investigative people being involved in the investigation of very serious crimes which might lead to outcomes that are undesirable as far as we in this place are concerned.

The CHAIRMAN: I do not intend to allow further debate. This is a definitional clause; it does not go to the crux of the bill. It is a definition of the type of services that will be under the purview of these people. These issues can be debated at another time. Perhaps when the government gives a response to the Layton report might be an appropriate time. We have spent a lot of time on this. Most of it has been on

debating the issue of whether the Layton report is better than the health services report, which is not within the standing orders. So, I am going to drop the guillotine. I think it is time to put the question.

The Hon. A.J. REDFORD: I move:

That the Chairman's ruling be disagreed to.

The CHAIRMAN: The honourable member must bring up his reasons in writing.

The PRESIDENT: I have to report that during the committee discussions I gave a ruling to which the Hon. Angus Redford has objected. He has moved dissent because he believes the question is relevant to the clause before the chamber. I need to determine that as your President. As President, I uphold the decision of the chair.

The Hon. A.J. REDFORD: Pursuant to standing order 205, I move:

That the President's ruling be disagreed to.

The PRESIDENT: The standing orders provide that debate on the question shall be postponed and be the first order of the day at the next day of sitting unless the council orders that it be considered forthwith.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That this matter be taken into consideration forthwith.

Motion carried.

PRESIDENT'S RULING

The Hon. A.J. REDFORD: I do this with some reluctance and, if I thought there was another way around it, I would do it. I mean no disrespect to you or your position, Mr President, but I am concerned about the effect on the nature and extent of debate that can take place in this Legislative Council if these rulings continue.

Ever since I have been a member of this Legislative Council we have fought very hard to preserve the right for a free-wheeling and extensive debate in the committee stage of a bill. What I sought to do in relation to this matter was ask a question. I will describe what occurred for those members who were not present during the debate. Before the committee at the time was an amendment to extend the jurisdiction of the proposed health and community services commissioner or ombudsman to cover service for the care or protection of any child who has been abused or neglected or allegedly abused or neglected, etc. I had indicated that the opposition may well support this clause.

During the course of the debate the government disclosed two things. First, it disclosed that this was part of the Layton recommendations. Secondly, the government disclosed that it was not fully implementing the Layton recommendations: indeed, it had decided to reject a certain portion of the Layton recommendations. This is the first public statement from the government in relation to the Layton report that we have heard. I then sought to ask a question in relation to why the Layton report had been rejected in so far as setting up complaints mechanisms in relation to the important investigation of child abuse in this state.

Having asked that question and having explained that it was relevant to the jurisdiction and to the Layton issue that had been raised by the government as a consequence of this amendment, my question was ruled out of order. So, in that respect I was extremely concerned.

The second issue that I have concern with, Mr President, is that when we were dealing with the debate my understanding was that it was your intention—as chair of the committee—to put the question without further debate on the clause. Now, there are probably not many more significant things that we can deal with in this chamber than the area of child abuse and the process of complaint and prosecution of child abuse.

There is no urgency in terms of dealing with this issue, and the Legislative Council has always prided itself on exploring every single issue to a significant extent. It is not as if the Legislative Council is overburdened: we have 10 items of government business on the *Notice Paper* of which two or three, I think, were dealt with today. So, we have very little business to deal with in any event. I can understand a question being ruled out of order if we were constrained with time or we were dealing with an insignificant issue, but I am afraid that this is so significant that I have, with great reluctance, moved the motion that is now before the chamber.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I strongly oppose the motion, Mr President, because I believe that what you have done is nothing more than uphold the standing orders of this place as they have existed for many years. In particular, what we are debating—what the Hon. Angus Redford is moving dissent from—is the fact that you simply interpreted and enforced standing order 299, which provides:

Debate shall be confined to the clause, schedule or amendment immediately before the committee.

There is no doubt that we were in committee, and we were debating a fairly narrow clause on interpretation. It is clear to anyone who has been in here that the Hon. Angus Redford and others were raising a whole lot of issues which I must say you were very tolerant of, Mr President, in relation to debate about the Layton report and a whole lot of extraneous issues.

Nonetheless, the standing orders of this council provide that the debate shall be confined to the clause, schedule or amendment immediately before the committee. If this dissent motion were to be carried it would effectively render inoperative a standing order of this council that has been in force for many years.

The Hon. T.G. Cameron: Rubbish!

The Hon. P. HOLLOWAY: How can you say rubbish? We know that the Hon. Terry Cameron would love that to happen because we know that in matters of parliamentary decency he is a terrorist. That is how he operates, so that should not surprise us in any way, shape or form. But the standing orders of this parliament exist, and have existed, for many reasons. If we look at the committee stages of the House of Assembly, for example, there are very strict restraints in terms of time limits and also limits on the number of questions which individual members can ask. We do not have that in this council and I hope that we never do, because it is important that there should be free-ranging debate.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: If we do not allow that debate to happen within the terms of the standing orders, it would provide a loophole which would mean that there could be total filibustering, and we could get to a stage where we could never pass any legislation. That is exactly why standing order 299 exists and why every other parliament in the

democratic world has similar provisions: to ensure that debate is on the matter before the parliament, and not on all sorts of extraneous matters.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: There is really no option for this council but to uphold this standing order. If we do not do that, we will turn this place into a total farce. I suggest, Mr President, that you have been very tolerant already in allowing a long debate. Let us allow the opposition to disagree with this matter, let it vote against your ruling, Mr President, and let us get on with the rest of the bill. There are no grounds whatsoever for any reasonable person to take objection to your enforcing a long-standing and very clear standing order of this council.

The Hon. CAROLINE SCHAEFER: I rise on a point of order, Mr President. I take exception to the remarks of the Leader of the Government in that, while I am quite willing to respect what you, Mr President, may consider to be extraneous or not, I object to him deciding whether legitimate questions asked by my colleague are extraneous or ridiculous matters. I ask him to withdraw.

The PRESIDENT: It is not an unparliamentary statement.

The Hon. SANDRA KANCK: Before the dinner break I moved that we report progress because the Democrats were interested in pursuing this particular amendment to a form we were happy with. We are attempting to progress the legislation and we want to be able to support this particular government amendment.

During the dinner break my colleague, the Hon. Kate Reynolds, had discussions with the minister and was attempting—prior to your ruling as the chair—to be able to get up and ask some questions that would have allowed us to progress this particular amendment. Your ruling as chair, sir, prevented that occurring. My colleague was prevented from asking those questions and, as a result, I decided that I would second the Hon. Angus Redford's motion. I believe that, if we are going to progress this legislation, it is important that my colleague get some answers on the record about this amendment and its effect.

The PRESIDENT: I will make my contribution at this stage. I take on board the enthusiasm of all members in the debate, but they must remember that the standing orders of this parliament have stood the test of time. Since I have been the President, I have been tolerant to the extreme in allowing questions to be explored. Nonetheless, the standing orders of the day must prevail. Following the dinner break, I said that I had thought about this particular matter. On two occasions today I have indicated that, for some time, I have been concerned that issues are being debated that are not in accordance with standing orders 299, 185 or 366.

I raised those matters today to give members an indication that they ought to check the standing orders. After the dinner break a series of questions were asked about the Layton report and comparing the recommendations of that report to what was being proposed in this bill. I pointed out to members that the provisions of standing order 299 are not to proceed with a debate on the merits of the Layton report. I pointed out to the committee—much further than I would normally have gone—that this is a definitional clause and that what was being talked about was a service among a number of services that would be included in the purview of this new position.

At the conclusion of that explanation there was another series of contributions about the effect of the Layton proposals (which I had already asked members not to debate) and the effect of Health Commission proposals. The minister was then asked what he thought was the difference between the two. At that point I concluded that the debate had moved away from talking about the proposal before the committee. It is not the question that is being ruled out of order. I stopped the minister from answering because, in my view, we were extending into a debate about the merits of the Layton report and the effects of the way in which that would work on the prosecutorial chances of a conviction.

The Hon. Angus Redford gave quite a long dissertation on his view of the law and the possibility of getting convictions in a case. He may well be right. That is not my job. My job is to run the committee debates and the council in accordance with the standing orders. I think that I could say with some confidence that I have always endeavoured to be fair and, on some occasions, the committee debates have taken up an inordinate length of time because I have allowed an honourable member to start a line of questioning and allowed that honourable member to finish. On two or three occasions I pointed out to all members that we were getting away from the standing orders.

It reached the stage that, having made the point twice, another proposal was put to enter another debate about the Layton report, which was not a matter before the committee. I then made the ruling that I intended to stop the debate, and I instructed the minister that he was not to answer the question. There was no further question. I ruled that I was going to put the question. The Hon. Angus Redford, as is his right, took the position that he would dissent to my ruling. In all these matters the ruling of the council must prevail. However, I warn members that, if this is the standard, do not complain to me if you are sitting here hour after hour discussing matters that are not before the chamber on the *Notice Paper*. That is my role.

I will stand by my obligation to enforce the standing orders. If someone decides that they are not going to agree with me, so be it. We will go back into committee and start again. I point out to members that the precedent they set is the precedent with which they will live.

The council divided on the motion:

AYES (13)

Cameron, T. G.	Dawkins, J. S. L.
Gilfillan, I.	Kanck, S. M.
Lawson, R. D.	Lensink, J. M. A.
Redford, A. J. (teller)	Reynolds, K. J.
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)

Lucas, R. I.	Gago, G. E.

Majority of 8 for the ayes.

Motion thus carried.

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

Committee debate resumed.

(Continued from page 1441.)

Clause 4.

The Hon. KATE REYNOLDS: I would like to ask a question in order to try to get the Democrats to a position where we are able to support this clause. We do not want to debate the merits of the Layton report, but I do need to make a brief reference to it in order to frame my question. In recommendation 3 there is comment about a special unit, which could be established within the office of what will now be known as the health and community services complaints commissioner, to investigate complaints and grievances in relation to services concerning children and young persons. This is to acknowledge the special and complex issues in relation to child protection. I am keen to hear the government's position on that and whether or not it will support the establishment of such a unit.

The Hon. T.G. ROBERTS: The answer to that question is yes.

The Hon. A.J. REDFORD: I am grateful for the minister's answer and, as I understand it, the effect of that answer—and I am sure he will correct me if I am wrong—is that a special unit will be created within the proposed office of the health and community services commissioner to investigate complaints and grievances in relation to services. There are two aspects to this, according to the minister's earlier answer, that is, investigation in relation to administrative actions. In the context of recommendation 3, is the same undertaking in relation to administrative actions being given, or will administrative actions be dealt with by the Ombudsman, namely, Eugene Biganovsky?

The Hon. T.G. ROBERTS: We have already put on record that this commissioner will deal with administrative actions and services.

The Hon. A.J. REDFORD: The question was whether a special unit will be created within this office to investigate complaints and grievances in relation to administrative actions?

The Hon. T.G. ROBERTS: Yes.

The Hon. A.J. REDFORD: Is the government proposing to introduce in the next six months any legislation which might seek to address the issues and the recommendations made by the Layton report?

The Hon. T.G. ROBERTS: As I have pointed out before, it is a matter for the Minister for Families and Communities. He will make that decision. That is the problem we have got. The Layton report is not a legislative framework. They are recommendations put to a government. If we picked up every recommendation out of the Layton report it would probably break the government. We are picking up a whole range of recommendations that are stylised by the government to come to terms with the difficulties of child protection. In the absence of anything that has been there in the eight or nine years the Liberal Party was in power, this is ground breaking legislation. It is following national standards in some cases; in other cases it is uniquely South Australian because it has been put together by a very comprehensive report. A whole range of issues are being dealt with by a range of ministers. We are dealing with one aspect of it.

The Hon. A.J. REDFORD: I understand that the minister cannot answer that question because there has not been a whole of government strategy in terms of dealing with the Layton report. I will make a general comment on this particular clause. The recommendation states that 'a statutory office of commissioner for children and young persons be created'. It is not clear to me, based on that answer, that such an office will be created by way of statute. One can only assume that in the absence of any response from the minister the government does not intend to create such a statutory office.

Recommendation 5 states that a South Australian child health and serious injury review committee be established. I assume that will not be done through a legislative form, either. Is the minister saying that this will be the only opportunity that the parliament, in a legislative sense, will have to deal with this very important issue?

The Hon. T.G. ROBERTS: No.

The Hon. A.J. REDFORD: I am grateful to the minister for that answer. The opposition very seriously wants to consider the recommendations of the Layton report. It is a very serious and significant report which contains some very important recommendations. The opposition also acknowledges that if we adopt every single recommendation in the Layton report we would break the bank, and we quite understand why the government might be taking some time to deal with this issue.

It is our view that we can pick up this extension of the health and community services commissioner when legislation is brought before the parliament to establish the other offices. We are not seeking to hold up the establishment of this office, but it is our view that we should have a comprehensive look at the implementation of the Layton report, rather than seek to do it piecemeal through the insertion of an amendment to extend these powers. I am sure that the opposition will facilitate a speedy passage through the parliament of any recommendations made in consequence of the Layton report. With that in mind I indicate that the opposition opposes this amendment until and unless we receive a comprehensive response from the government as to how it will react to the Layton report.

The Hon. SANDRA KANCK: Following the very clear, positive response from the minister in his answer to my colleague, the Democrats are happy now to support this amendment. I understand that there are some difficulties in this, given that the bill was introduced almost two years ago when we had a Department of Human Services. That department is in the process of being unbundled; so it creates a level of complexity. My suggestion is that we move forward now.

We have some idea of where we are going. The difficulty is that we have two different ministers who are, effectively, involved in this one bill. I suggest that, if we can pass this amendment and move on, the bill can be dealt with. The two ministers can get together between the bill's passing this place and the next. If need be, further amendments can be moved in the other place and the bill can be brought back to us. However, I do not see that this problem is insurmountable. We have made some genuine progress now.

The Hon. NICK XENOPHON: For the record, I indicate my support for the amendment for these reasons. I am grateful for the answers that the minister gave the Hon. Kate Reynolds; they have clarified the position for me. I believe that this will be an improvement for those parents and families who have been frustrated by the lack of action on the part of organisations such as FAYS. I think this amendment will put this in sharp focus and will give some jurisdiction for that, and that has to be a good thing. I acknowledge the opposition's concerns, but I do not believe they are a reason not to support this amendment. I look forward to the government's comprehensive response to the Layton recommendations. I believe it is important to allow the commissioner's office to have jurisdiction for these sorts of complaints.

The Hon. A.J. REDFORD: I will respond to that. I recognise the numbers, although I am not sure how the Hon. Andrew Evans will vote. To legislate in this fashion is very dangerous. I hope that the government understands and recognises some of the issues that arose in the late 1970s and 1980s. I know that I was involved in some of these prosecutions, where social workers and unqualified people were associated with the investigation and detection of serious crime, and, as a consequence, people were not prosecuted, or not successfully prosecuted. I can see that, if this is not done properly, that will happen.

Quite frankly, what I find quite frightening is the admission by the government that this issue has been raised by the minister herself. There has been no whole-of-government approach. We have had nothing from the Attorney-General, nor from the FAYS minister, nor from a whole-of-government perspective. We have had it from the health minister and her bureaucrats—none of whom, I suspect, have been involved in the criminal process.

If prosecutions fall over because there has been a failure to understand this process, that will be exceedingly disappointing. I deprecate major steps—and this is one that falls into that category—being legislated in this fashion in the absence of a second reading explanation, a ministerial statement and any whole-of-government announcement about how it will deal with this very significant issue.

The Hon. T.G. ROBERTS: The Layton report cuts across nearly every portfolio area for which the government has responsibility—probably even recreation, sport and racing and transport. Over time, other ministers will look at their responsibilities and portfolios in relation to the Layton report. The situation is that you cannot introduce and pass every bill associated with the Layton report. This bill was in the house 12 months ago. We should be looking ahead at our other responses in relation to the report, but this is the bill we have before us tonight. The honourable member says that it is very difficult to get prosecutions; we have known that for as long as I have been in this place—and that is quite a long time, but I will not tell you how long. The figures that I have read relating to successful prosecutions for child abuse are less than 5 per cent. Many difficulties are associated with securing prosecutions, and it is not the role of this bill to canvass all those issues.

It is not the fact that the government is less concerned about child abuse than the honourable member. He has been touched at a personal level by his own involvement, and he has told us that on a number of occasions and in a number of contributions. However, we have a bill before us that does at least make a difference, and we would like to pass it before we get up and not have it in the council for two years instead of one year. We can then look at how other sections of the Layton report impact on other ministers' portfolio areas, and perhaps take some bite-size chunks, but look at that through the eyes of cabinet and every minister so that there is an overall government position on the response to the Layton report.

However, what we have here is government by opposition. I can understand the honourable member's frustration at not being in government but in opposition and wanting to run the government's agenda. One section of the debate was turned over to an estimates committee.

The Hon. A.J. Redford: I would like to know what the government's agenda is.

The Hon. T.G. ROBERTS: Well, it will unfold before your eyes. We have one Independent member in cabinet at the moment: if the honourable member puts his hand up, we might have two. That is the role of government: it has the responsibility to govern, and to not hold up legislation but to show the people of South Australia that it is trying to deal with child abuse in this state. So, I ask the honourable member to curtail his frustration and perhaps talk to the ministers' advisers and the ministers themselves. I ask him how many appointments he has made with the Minister for Families and Communities and with other ministers who may be foreshadowing or drawing up legislation. I urge him to make appointments, talk to those ministers and perhaps get better explanations, and then there may not be so much frustration in this place. I have not abused the standing orders, because they allow people wide-ranging debate in this case.

The Hon. A.J. REDFORD: I will make one response. The minister says regularly that we have held up this bill. We have always been ready to debate it for the past 12 months. The Hon. Nick Xenophon told the government that he did not want to deal with this bill, and the government acceded to that. So, do not stick it on the opposition that this bill has taken a long time to get through the parliament. We have been ready, willing and able to deal with it at any time.

The Hon. P. HOLLOWAY: I would like to put this debate in some perspective. It is worth pointing out that we are debating the Health and Community Services Complaints Bill. It is a bill about complaints against health and community services. It was a clear election policy of this government two years ago to implement this bill, and it has a clear mandate to introduce it. It is extraordinary that the government should have encountered so much difficulty in getting through what is a fairly straightforward measure.

All the government is seeking to do is to ensure that, if members of the public have complaints against parts of the health system that were not previously covered by the legislation, they should be able to do so. For heaven's sake, why can we not get on and debate this bill that has been around for years and years?

The committee divided on the amendment:

AYES (11

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

NOES (10)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Redford, A. J. (teller)	Ridgway, D. W.
Schaefer, C. V.	Stephens, T. J.

Majority of 1 for the ayes.

Amendment thus carried.

The Hon. A.J. REDFORD: I move:

Page 6, after line 3—Insert:

(fa) a service provided to the students or staff of an educational institution by the educational institution itself; or

This is a definitional issue. The health and community services commissioner is responsible for community service. It lists a broad range of community services that are included, and then in paragraphs (f) and (g) says it does not include the service that provides employment search, and so on, or a service of a class excluded from the ambit of the definition

by regulations. We also seek to exclude from the purview of the health and community services complaints ombudsman a service provided to students or staff of an educational institution by the educational institution itself. The definition as it currently stands is very broad and can include an educational service. We have received submissions and had extensive lobbying from private schools and others that they do not seek to be caught up in this legislation. Without labouring the issue, I commend the opposition's amendment.

The Hon. T.G. ROBERTS: The government does not support the amendment. One of the strengths of this bill is that it includes all providers of a community service irrespective of the place of provision of that service. It is the quality of the provision of that service that is the primary focus of the bill, not its place of delivery, except in so far as that it may impact on the quality of the service provided. It is therefore entirely consistent that the bill includes a community service, as defined by the bill, provided by an educational institution. The bill does not extend to capture the primary activity of an educational institution, that is, the provision of educational information or activities that are a part of a school's curriculum and clearly part of its education service. This clause should be read in the context of the whole bill and its intent, including the grounds upon which a complaint can be made.

The Hon. NICK XENOPHON: I have some correspondence with respect to this amendment, and it was sent to me by Garry Le Duff from the Association of Independent Schools. Presumably, the minister is aware of some of the concerns referred to by the Hon. Angus Redford. My understanding is that it does not include educational services as such (and that is what the minister has just said). What sort of services would it include? As I understand it, if there was a health service or a counselling service within a school, it would include that. Would it go beyond that in terms of the definitions within the legislation? I would like some clarification in relation to that matter.

The Hon. T.G. ROBERTS: An educational institution may provide a community service for its staff and/or students as part of meeting its commitment to its employees and/or obligations to students and families under its care. For that community service to be captured under this bill, the service will need to be consistent with the definition of 'community service'. For example, an educational institution may provide out of hours care for students. If that service is provided to families on low incomes, children or parents with a disability or other characteristics that fall within the definition of 'community service', it will be a recognised community service for the purpose of this bill.

The Hon. NICK XENOPHON: Can the minister indicate to what degree there been an experience in other jurisdictions about this sort of mechanism in terms of framework? Has there has been an experience with independent schools or non-government schools? The minister gave some instances of the sorts of things that it would relate to, but can he be more specific? If there is a parents and teachers group, or a group that is set up to discuss educational and parenting issues within a school, and someone has a complaint about the way in which that group is being run, would the legislation encompass that? That may be the case in some schools, if they have courses for parents, in a sense.

The Hon. T.G. ROBERTS: Under the bill, community service is defined as follows:

> (a) service for the relief of poverty, social disadvantage, social distress or hardship, or
>
> (b) a service for the provision of emergency relief or support, or
>
> (c) a service for the social advancement of disadvantaged groups, or
>
> (d) a service of a class included within the ambit of this definition by regulations, or
>
> (e) an administration service directly related to a service referred to in a preceding paragraph.

That relates to parent groups holding activities within a school.

The Hon. NICK XENOPHON: I thank the minister. The definition is plain for us to read. Under paragraph (d), 'a service of a class included within the ambit of this definition by regulations', can we at least get some guidelines or some indication from the minister as to what is proposed by that? As I understand it, the ambit is relatively narrow now and, I think, as I understand the policy argument, if there is a group outside a school that is providing identical services, say, for disadvantaged children or children with a disability or whatever specific service falls within that, then they would be covered, and the idea is to have some uniformity. I can understand that, but I am just concerned as to what the proposed ambit might be under paragraph (d). I think it is important that we get some guidelines from the minister about what is proposed by the regulations.

The Hon. T.G. ROBERTS: At this point in time, there is no intention to have any regulations, but, again, these regulations can be considered if they are raised with the minister in relation to some points that appear on the horizon that are not there at the moment. Those regulations will be considered in broad discussions with those affected.

The Hon. A.J. REDFORD: In terms of this broad provision in respect of what community service is, surely the government can give the parliament some indication of the nature of bodies or services that might be included by way of regulation. I assume it is not going to be horse racing, but can you give us some indication of what you might cover?

The Hon. T.G. ROBERTS: The definition has to be consistent, or the group captured has to be consistent, with the definition that is consistent with the purpose of the bill's objects, so it would include community groups and community organisations that provide community services. However, a social group, for example, would not come under it. If it comes under the definition of community service as defined, it would be consistent with the objects and it would be captured.

The Hon. A.J. REDFORD: With respect, I think that is a bit circular because, if you look at the objects of the bill, it is an act to provide for making a resolution of complaints against health or community service providers. Community service provider is defined as 'a body that provides a community service.' Community service can mean certain things, including whatever the government might say by way of regulation. I will put this scenario to the minister. What would happen if the Ombudsman was investigating systemic ills within the state school system and the government of the day did not like that. A simple mechanism to subvert the activities of the current Ombudsman would be to implement a regulation defining the school system as a community service within this definition, and thereby subvert and interfere with the Ombudsman's independence—an officer of the parliament, unlike the creature we are creating with this legislation.

The Hon. T.G. ROBERTS: I would like a live example of where the Ombudsman's independence has been interfered with by that sort of interference.

The Hon. A.J. REDFORD: With the greatest of respect, the reason why there cannot be that interference is that there is no provision similar to this. However, if we pass this in its current form without the amendment that is currently before this committee, that is a possibility. That is why I am suggesting that the amendment that I am moving protects the state school system in relation to investigations by the current Ombudsman, Eugene Biganovsky, whom we on this side have great respect for.

The Hon. T.G. ROBERTS: If changes are to be brought about by regulations, the regulations can be disallowed—

The Hon. A.J. Redford: In five, six or seven months.

The Hon. T.G. ROBERTS: No government will cut across the independence of an ombudsman with intent—

The Hon. A.J. Redford: Look what you did to the DPP.

The Hon. T.G. ROBERTS: No government would be game to turn a school ground or a school precinct into a political battleground, and regulations can—

An honourable member interjecting:

The Hon. T.G. ROBERTS: The regulations are protected by the democratic processes as long as you believe in both houses being able to carry out the will of the people.

The Hon. NICK XENOPHON: In relation to this clause, in terms of the reporting mechanisms under this legislation—and I will be guided by the minister and you, Mr Chair—and in the context of passing this clause and in considering the amendment, will we know in a relatively short time, or within a year, how this is working, such as how many complaints are received about non-government schools within the confines of this amendment?

The Hon. T.G. ROBERTS: There will be reporting requirements by the ombudsman or the commissioner, and the commissioner's report will break down the number of complaints received and the type and nature of those complaints annually.

The Hon. Nick Xenophon: Even those that are just for conciliation rather than determination?

The Hon. T.G. ROBERTS: That requirement is in another part of the bill. If that is passed and the bill is enacted, that will be a requirement.

The Hon. A.L. EVANS: While I am supportive of independent schools, I think that anything we pass should be applied evenly to all schools: government, catholic and independent. On that basis, I support the government as this provision brings fairness to the system.

The Hon. NICK XENOPHON: For the record, the Hon. Mr Evans' views accord with my own.

Amendment negatived.

The Hon. A.J. REDFORD: I move:

Page 6, line 21—Leave out 'part 2' and substitute 'this act'.

This is a test clause for various other amendments that appear in my name marked 'RED5'. When I inherited this bill from the Hon. Diana Laidlaw, it occurred to me that under the current bill if conciliation is to take place with the health and community services commissioner a third party must be appointed. The current ombudsman, Eugene Biganovsky, conducts his own conciliation in both minor and serious matters. The opposition recognises that there may be occasions where matters of a minor nature which are not to be dismissed and which will not require the added cost of appointing an independent conciliator may be dealt with by the health and community services ombudsman or commissioner within his or her own office.

The ombudsman has a range of staff who are skilled and adept at conciliating complaints between government agencies and complainants. I suspect that with the establishment of this office they will develop certain skills in terms of conciliating, in particular, minor complaints without having to go to the trouble and expense of appointing a third party conciliator with all the administrative processes that that would entail. In effect, we are endeavouring by way of this amendment to give the commissioner a bit more flexibility in terms of how he or she might approach dealing with a complaint.

The Hon. T.G. ROBERTS: The government does not support the amendment. Under part 5 of the bill, a conciliator is appointed. The government does not support the proposal of the opposition for the HCS commissioner to undertake the functions of a conciliator.

The Hon. A.J. REDFORD: Why?

The Hon. T.G. ROBERTS: Because that is dealt with in part 5 of the bill.

The Hon. A.J. REDFORD: If there is a matter for conciliation, the commissioner is to go to a third party conciliator?

The Hon. T.G. ROBERTS: Yes.

The Hon. NICK XENOPHON: I indicate my support for this amendment. I do not think it detracts from the government's intent of the bill but it provides some flexibility. The government might be concerned about added layers of complexity, but this is not exactly a simple bill. I cannot see that it does any harm. Under this model the ombudsman can delegate, it does not detract from the powers of the proposed commissioner's office, and there may be exceptional circumstances where the commissioner thinks it is appropriate that he or she does the conciliation. I cannot see how it would prejudice the commissioner's office; in fact, I think it will lead to some extra flexibility.

The Hon. T.G. CAMERON: I indicate my support for the Hon. Angus Redford's amendment for similar reasons to that of the Hon. Nick Xenophon. It gives the commissioner a little bit more flexibility and discretion. I think there are lots of minor complaints which arise where this amendment will make a positive contribution to the way the commissioner goes about doing his or her work.

The Hon. T.G. ROBERTS: The explanation given to me makes sense. If the commissioner is to investigate whether conciliation has to take place, in some cases he may be prejudiced. If a decision has to be made as to whether there is to be conciliation, an independent conciliator would be seen to be fair and impartial.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 7, lines 9 to 11—Leave out the definition of 'HCS ombudsman'.

I understand that this is consequential upon the success of my earlier amendment.

Amendment carried.

The CHAIRMAN: Having established that this latest amendment was consequential on the previous successful amendment moved by the Hon. Angus Redford, we now have a procedural position where I need to put to the committee, with its concurrence, that the table proposes to clerically amend the remainder of the bill to take account of the amendment deleting 'HCS ombudsman' and inserting 'commissioner' wherever it occurs.

The Hon. A.J. REDFORD: I move:

Page 8, line 5—Leave out 'a social, welfare, recreational or leisure service' and insert:

a social work service or a welfare service

The position of the opposition is that the definition of 'health service' is extraordinarily wide. As currently defined, it includes a social, welfare, recreational or leisure service if provided as part of a service referred to in the preceding paragraph, which is a service by definition of regulations. That is extraordinarily broad. The opposition is of the view that it should be confined to a social work service or a welfare service, the net effect leaving out recreational or leisure services.

I am not sure that my beloved Port Power trainers would like the supervision of the health and community complaints commissioner and, indeed, I am sure that that would extend to the trainers that support the Millicent Football Club, of which the minister is a former president, and my old team, the Kalangadoo Football Club.

The Hon. T.G. Roberts: They would like to be recognised.

The Hon. A.J. REDFORD: They would certainly love to be recognised and they are well recognised, although in the case of the honourable member's team it is marked by a lack of success over the preceding four or five decades. But what we do not want is the intrusion of the health and community services ombudsman in relation to the services of trainers. And that is just one example. What we are seeking to do is to keep the health and community complaints commissioner focused on his core business, and we do not believe that the inclusion of recreational or leisure services—which are pretty broad—is doing anything but taking away the focus of this office from its core business.

The Hon. T.G. CAMERON: I am intrigued by the words 'recreational or leisure services': they could mean all sorts of things to all people. So, I guess I should ask: does it include the services of a prostitute?

The Hon. T.G. ROBERTS: No, on both counts, unless it has been part of a rehabilitation service prescribed by a doctor. The effect of the opposition's amendment removes reference to recreational and leisure services, whereas recreational and leisure services are recognised as significant activities as part of a person's rehabilitation process and therefore should be included with the definition of 'health service' when they are provided as part of a health service. I have not seen a doctor prescribe that the Hon. Angus Redford or I go and play centre half-back for Kalangadoo on the basis that it is going to be part of our rehabilitation.

The bill is specific in that it captures recreational and leisure service only when provided in the context, for example, of part of a rehabilitation program. The inclusion of social work services or welfare services is consistent with legislation in the Australian Capital Territory, the Northern Territory, Queensland and Tasmania. It does not capture the activities of recreational or sporting clubs in the community. This clause should be read in the context of the whole of the bill and its intent, including the grounds for which a complaint can be made.

The Hon. A.J. REDFORD: I am a bit confused by the statement made by the minister. My understanding is that we are dealing with a social, welfare, recreational or leisure service if provided as part of a service referred to in a preceding paragraph. If I recall the minister's answer correctly, he was talking about rehabilitation services and seeming to confine it to rehabilitation services. My understanding is that it relates to all the services in the preceding paragraphs including: services for the information or promotion of health care; a service of a class included within the ambit of this definition by regulations which, again, has the potential to be extraordinarily broad; a service provided by a health professional, and I think the football trainer may well fall into that category; a service to treat or prevent illness, injury, disease or disability, and knowing some of the crocks that I used to play with they would clearly fall into that category; and, indeed, a service designed to benefit or promote human health, and I would have thought that sporting and recreational activities—in the broader sense—clearly fall within that context. Certainly, Living Health promotes it on that basis.

The Hon. T.G. ROBERTS: The definition has to be confined to the objects of the act and the definitions within the act. The honourable member seeks to widen the definition to capture a whole range of areas that are not defined within the bill, and the bill is specific: it captures recreational and leisure services only when provided within the context of the bill. There are four other jurisdictions that have included that definition.

I understand from contact with those jurisdictions that there has not been one complaint or intention to broaden the application of the definitions that are included in this bill. I think that the honourable member is euphemistically calling trainers associated with country football teams health professionals. I think that the only things a trainer with Kalangadoo—and I do not want to be too harsh on Kalangadoo—would have carried with them would have been a bottle of plonk, rub-down ointment and a hot towel, which is hardly the definition of a health professional. I am sure that they are now trained in first aid and, probably, mouth to mouth and a range of other services that would be defined in some other bills. It is not intended to be a catch-all clause. It is defined and, hopefully, members of the committee will see it as that.

The Hon. NICK XENOPHON: The minister says that it is not a catch-all clause, but, as it currently stands, is a walking group—an activity group which is not directly part of rehabilitation but which is part of a health service—covered in this context? Say, for example, someone is not happy with the leader of the walking group. They could be the subject of complaint. The minister is laughing—

The Hon. T.G. Roberts: Too much walking uphill.

The Hon. NICK XENOPHON: It feels like it. That is an example in terms of the scope of the bill. If a walking group is part of a cardiac rehab program, a fitness program, an obesity program, or whatever, I can see that there is a chain of command and direct responsibility, but would a service which happened to be a recreational walking group but which is not linked directly to a health outcome, in a narrow sense, be caught by it?

The Hon. T.G. ROBERTS: No. Any complaint would have to be based on some grounds in relation to the objects of the bill, or the act as it will stand. It is not designed to capture those sorts of organisational structures. The complaint would have to have some grounds. Some of the complaints may be captured under other acts.

The Hon. SANDRA KANCK: I am a little confused by this. What is a preceding paragraph? I normally talk in terms of a clause of the bill. I do not think that I have the minister's attention.

The Hon. T.G. Roberts: You have now.

The Hon. SANDRA KANCK: What is a preceding paragraph? I have not encountered the term 'paragraph' previously when I have been dealing with a bill. I would

normally expect it to refer to a preceding section, or something like that. I really do not know what a preceding paragraph is referring to. Does this health service, for instance, redefine itself in terms of the definition that is given for 'community service' earlier in clause 4?

The Hon. T.G. ROBERTS: The term 'preceding paragraph' relates to paragraphs (a) to (h).

Amendment negatived.

[Sitting suspended from 9.46 to 10.06 p.m.]

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

Page 8, lines 10 to 12—Leave out paragraph (k) and insert:
(k) the process of writing, or the content of, a health status report;

The effect of the amendment ensures that the process of writing a health status report or the content of such a report, which is not the provision of the health service, is not interpreted to mean a health service under this bill.

The Hon. A.J. Redford: What does that mean?

The Hon. T.G. ROBERTS: The original clause excluded health assessments for workers' compensation purposes. The need to expand this provision was brought to the attention of the government. The original provision applied only to WorkCover matters. However, health assessments may be required in other circumstances that should not be subjected to a complaint under this bill. For example, a motor vehicle insurance company may require a report on a person's health status as part of its assessment of a claim in relation to that person. This amendment ensures that such a report, or the process of writing it, is not subject to a complaint under this bill. The amendment is consistent with the ACT legislation—a fine example of legislative perfection.

The Hon. A.J. REDFORD: Would a complaint about the slowness of the provision of a medical report in relation to a third party claim be excluded as part of this definition?

The Hon. T.G. ROBERTS: Yes.

The Hon. NICK XENOPHON: I indicate my support for this amendment. This is something I raised with the Hon. Lea Stevens and her office a number of months ago as a result of representations made to me by Patricia Deane, who is an advocate at Disability Action who has assisted workers who are having all sorts of problems with the workers' compensation system. This does not go to the content of the report but, rather, the process of the report. Given some of the horror stories we have heard on occasion in relation to the workers' compensation process, I think this is a good development.

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 8, after line 12—Insert:
(ka) a service provided to the students or staff of an educational institution by the education institution itself; or

This is slightly different, but I accept that I probably will lose it on the vote. It relates to educational institutions. One amendment was in relation to the definition of community service. This is in relation to the definition of a health service.

Amendment negatived.

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

Page 8, line 20—Leave out 'nursing home' and insert:
aged care facility

The effect of the amendment is technical. It is needed for consistency and interpretation to remove reference to 'nursing home' and replace it with 'aged care facility'. It is a definitional change.

Amendment carried.

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

Page 8, after line 26—Insert:
'health status report' means a report prepared by a person, agency or body on the physical, mental or emotional health of a person where the purpose for preparing the report is not for the purpose of providing a health service within the meaning of paragraphs (a) to (j) (inclusive) of the definition of 'health service';

Amendment carried.

The Hon. A.J. REDFORD: I move:

Page 9, after line 1—Insert:
'public authority' means—
(a) a government agency; or
(b) a body included within the ambit of this definition by the regulations;

This amendment inserts a definition of a 'public authority' which is said to mean 'a government agency or a body included within the ambit of this definition by the regulations'. The work that the definition of public authority has is in relation to my amendment to insert proposed new clause 4A, which provides:

Subject to this section, this act applies to or in relation to a health or community service provided—
(a) by a public authority, whether or not the service is provided for fee or reward;. . .

This is a test clause in relation to the provision that I propose to move in relation to proposed new clause 4A.

In relation to proposed new clause 4A, we seek to apply this act to a public authority, irrespective of whether or not there is a fee or reward, or a personal body, other than a public authority, that provides the service for a fee or reward. I do not think I need to expand on that much further. To assist the committee, I suggest that we deal with proposed new clause 4A in bites—that is, we vote on new clause 4A(1) and then on new clause 4A(2).

The Hon. T.G. ROBERTS: We oppose the amendments standing in the honourable member's name. We will debate proposed new clause 4A when it is moved.

The Hon. A.J. REDFORD: I am sorry; I am at a loss. There is no point debating proposed new clause 4A(1) if this amendment is lost.

The Hon. T.G. ROBERTS: You are saying that it is consequential.

The Hon. A.J. REDFORD: Yes; clause 4A(1) is consequential upon this amendment.

The Hon. T.G. ROBERTS: My advice is that it is not consequential. We oppose both amendments.

The Hon. A.J. REDFORD: It would assist if the minister humoured me and explained why he opposes proposed new clause 4A(1).

The Hon. T.G. ROBERTS: We will debate that clause when it is moved.

The CHAIRMAN: In the appropriate place.

The Hon. T.G. ROBERTS: Yes—in the appropriate place.

The Hon. A.J. REDFORD: I am told by parliamentary counsel that proposed new clause 4A(1) is a test clause and is consequential upon this amendment. If the government says that it will not debate clause 4A(1), I will not move it if this amendment is lost. For the record, I want to know why the government opposes clause 4A(1). It is not rocket science, nor is what I am asking unreasonable.

The Hon. T.G. ROBERTS: So that we are not seen to be unreasonable at this late hour, the position of the government is that the amendment will have the effect of excluding those non-government services that are provided free of charge. In most instances, those services are provided to the most

disadvantaged groups and individuals, and removing the right of those groups to complain will only further disadvantage them. Just because a non-government service is free is not a sufficient argument to justify its exclusion from the bill. It suggests that you have no right to complain about a service, even though it may cause harm and it is free. This proposition will alienate the right of a consumer to make a complaint.

The HCS ombudsmen or commissioner will ensure that the complaints process is as informal and non-intimidating as possible. It is likely that the non-government provider, if it is committed to the service it is providing, will want a quick and informal resolution of a complaint to enable it to improve and/or continue with what it believes is worth while doing.

The Hon. SANDRA KANCK: Will the Hon. Mr Redford give me an example of what sort of body he believes should be included in the ambit of the definition of 'public authority', other than the government agencies? The definition of public authority is a body included within the ambit of this definition by the regulations. The honourable member must have some idea of what sort of bodies or groups he intends to be covered by the regulations. I am asking for some examples. At the moment, I know what a government agency is, but I truly do not know what paragraph (b) is likely to mean. I certainly cannot support such a clause when I have no understanding of its meaning.

The Hon. A.J. REDFORD: The best way I can assist the honourable member is to give an example. Guide Dogs for the Blind (of which I was once a board member) provides all services for free as part of its charter, and there is a range of such organisations. There may well be good public policy grounds for including Guide Dogs for the Blind in the ambit of this legislation and, as currently defined, it would be automatically included. It is the opposition's view that there ought to be a process, and if the government wants to include Guide Dogs for the Blind that organisation ought to be specified.

What we are seeking to do here is to provide a degree of clarity. Many organisations, because of the nature of the services they provide and the broad nature of some of the definitions in this bill, may not understand that they fall within a category that might be the subject of the jurisdiction of the commissioner. We are saying that, if you can do this by regulation, you can provide clarity. The organisation can be named, rather than its trying to determine whether or not it might fall within the ambit of this legislation.

A whole range of organisations, from very small groups to those as large as Guide Dogs for the Blind, might provide services that fall within the definition of 'health service', and they would be caught up in this legislation. We are trying to provide that degree of clarity so that those bodies are specifically nominated and named.

The Hon. SANDRA KANCK: If we can continue on, using Guide Dogs for the Blind as an example, and given that this is a pre-sequential amendment, I ask the Hon. Mr Redford to explain what will happen to that organisation from hereon in if this amendment is passed.

The Hon. A.J. REDFORD: The government would decide whether or not a body should be the subject of a regulation. If, in fact, the government decided that that body should be incorporated or included within the jurisdiction of the commissioner, the government would regulate the inclusion of that body within the jurisdiction. Obviously, the regulation making process would unfold with the consequential parliamentary supervision. I suspect that a body such as Guide Dogs for the Blind would be prescribed. However, many small groups—and they may well be small neighbourhood groups, or groups comprising a small number of people—may not be aware that they will be caught up in this legislation.

It might be that those organisations provide services of such a significant nature that the government decides that it will nominate such bodies. If that is the case, the government would regulate to that effect. As much as anything, this amendment provides certainty to those bodies that provide those free services to the public.

The Hon. NICK XENOPHON: Following along the line of questioning instigated by the Hon. Sandra Kanck, in terms of this pre-sequential amendment the Hon. Angus Redford is saying that, in a sense, there is a check that the organisation would need to be included in the regulations. If that organisation is included, even if it is providing a service that is free or below commercial rates, it would still be covered in the ambit of the act, but it would need to be included in the regulations. Have I misunderstood the Hon. Mr Redford?

The Hon. A.J. Redford: No; the honourable member understands me quite correctly.

The Hon. NICK XENOPHON: Further, what does the Hon. Mr Redford say in relation to the government's policy which, as I understand it, is for a consistent rather than a piecemeal approach?

The Hon. A.J. REDFORD: At the end of the day, we want to provide certainty to these organisations—which, after all, provide services for no fee. A lot of these organisations are not used to this sort of supervision, and there may well be organisations (as I mentioned earlier) of the size of guide dogs and others that provide free services. But there are a lot of organisations, particularly small ones, that just are out there to do the right thing. I am sure the honourable member has bumped into them on many occasions in his capacity as a member of parliament. It is just to provide that degree of certainty. If the honourable member wants to say, 'We will have a broad brush approach and we will bring every organisation into this bureaucratic web,' he can vote against my amendment. It is as simple as that.

The Hon. NICK XENOPHON: I feel more comfortable with the Hon. Mr Redford's approach rather than that of the government. I still think it gives the government an option to include organisations by regulation, and it would encourage a broader education campaign in terms of people's responsibility under the act.

The Hon. A.L. EVANS: I prefer the government line. Many of the small groups would not have the organisational ability to tap into it. As a service provider, from the church angle, where we counsel people with mental problems, sometimes our councils make mistakes and wrong decisions and we do not know about it. We would be more than delighted for the ombudsman, or the commissioner, to relate that to us so we could correct the errors that sometimes occur.

The Hon. T.G. ROBERTS: Our position is the same as that of the Hon. Mr Evans. There are many organisations out there and, in a lot of cases, it is the small organisations that do not abide by the minimum standards of service delivery. We would prefer to regulate to include them rather than regulate to have them excluded because of the number of organisations out there. If they want to be excluded, they would have to have a good argument. But we would certainly like to have them—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: Administratively, I am not too sure. You could regulate to exclude them if they made an

application and were found not to be caught by the definitions and objects of the bill.

An honourable member interjecting:

The Hon. T.G. ROBERTS: It can, under the definition of 'community service'. If the objects of the definition are not met, they are not brought in.

The Hon. SANDRA KANCK: At this stage, I am still uncertain about this amendment. I do not feel that I have fully grasped the implications of it. I have a suspicion that there are more implications to the amendment than I am seeing. However, the government's arguments have not been persuasive against the amendment. Rather than labour the point, because I am uncertain, I feel it would be easier to support the amendment. When the bill is returned to the House of Assembly the government will be able to amend it and, if need be, it will come back to us and we can further argue it and even go to a deadlock conference, if it comes to that.

There may be some merit in what the opposition is proposing: I am just not totally certain. If the amendment is knocked out, that is the end of the story. If it gets up, there is still an opportunity to talk about it in the process of the bill moving from this chamber to the other chamber.

The Hon. T.G. ROBERTS: I will make a last-ditch attempt to convince the honourable member. We believe that the non-government services that are provided free of charge are usually supplied to the most disadvantaged groups within the community and they have a right, as anyone else should, to make a complaint.

The Hon. P. Holloway interjecting:

The Hon. T.G. ROBERTS: That is right—if they are non-government organisations with government funding or grants from the commonwealth or state, and some of them are locally funded by hard-earned community funds. We believe that, if they are in those services that are defined in the definition, they should be responsible to the rest of the community for their actions and activities and it should be open for scrutiny, the same as the large organisations.

Amendment carried.

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

Page 9, lines 2 to 8—Leave out the definition of 'putative spouse'

The effect of this amendment is to remove an interpretation of 'putative spouse'. Clause 23 defines who may complain to the HCS commissioner. The amendment to clause 23(h) will provide for a person who can demonstrate to the HCS commissioner that he or she had an enduring relationship with the deceased person or a personal representative of the deceased person rather than specify terms such as 'putative spouse'.

The Hon. Sandra Kanck interjecting:

The Hon. T.G. ROBERTS: Possibly. This amendment is consequential to the amendment to clause 23(h).

The Hon. SANDRA KANCK: I indicate the Democrats' support.

The Hon. A.J. REDFORD: The opposition supports the amendment.

The Hon. NICK XENOPHON: I support this amendment.

Amendment carried.

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

Page 9, lines 24 to 28—Leave out the definition of 'same sex partner'.

This amendment removes an interpretation of 'same sex partner'. The same rationale applies as with the previous definition of 'putative spouse'.

Amendment carried.

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

Page 9, line 29—Leave out the definition of 'spouse'

This amendment removes the interpretation of 'spouse'. The same argument applies and, hopefully, we will get the same result.

Amendment carried.

New clause 4A.

The Hon. A.J. REDFORD: I move:

Page 9, after line 34—Insert new clause as follows:

4A.(1) Subject to this section, this Act applies to or in relation to a health or community service provided—

(a) by a public authority, whether or not the service is provided for fee or reward; or

(b) by a person or body, other than a public authority, who or that provides that service for a fee or other form of reward that is charged or payable at normal commercial rates.

(2) This Act does not apply to or in relation to a health or community service provided by, or delivered through, a volunteer.

(3) If—

(a) a service is provided by an approved provider under the Aged Care Act 1997 of the Commonwealth; and

(b) a complaints resolution mechanism has been established under Division 56 of Part 4.2 of that Act in relation to the service,

then this Act does not apply to or in relation to the service.

I understand that this will be put in two parts. I have already addressed the argument in support of proposed new clause 4A(1). I want to deal with the other two proposed new clauses, 4A(2) and 4A(3). Proposed new clause 4A(2) states that the 'Act does not apply to or in relation to a health or community service provided by, or delivered through, a volunteer'. In other words, this is the volunteer clause. Proposed new clause 4A(3) states that 'If a service is provided by an approved provider under the Aged Care Act of the Commonwealth; and a complaints resolution mechanism has been established under Division 56 of Part 4.2 of that Act [i.e. the Commonwealth Aged Care Act] in relation to the service, then this Act does not apply to or in relation to the service.'

If I can just deal with the volunteer issue, and I think this has been debated fairly extensively during the course of the second reading debate, and I think the issues are fairly clear, unless anyone has got any questions. It is the view of the opposition that we should not be interfering in the activities of volunteers. We should be endeavouring as best we can to encourage volunteers. So, it is our view that they should not be covered. In relation to the aged care issue, this is narrowly prescribed where there is a pre-existing complaints mechanism under commonwealth legislation, and it is our view that this would prevent duplication in relation to complaints mechanisms in relation to those aged care services.

The Hon. T.G. ROBERTS: The effect of the opposition amendment is to exclude from this bill non-government services provided free of charge. It provides for volunteers to be excluded from the interpretation of 'community service' so they may not be subject to a complaint under this bill, to exclude services provided by the commonwealth under the Aged Care Act 1997 and ensure that complaints against these services are heard through the commonwealth complaints mechanism and not through the HCS commissioner. The amendment will have the effect of excluding those non-

government services which are provided free of charge. In most instances these services are provided to the most disadvantaged groups and individuals, removing the right to complain by those groups.

The HCS commissioner will ensure that the complaints process is as formal and non-intimidating as possible. It is likely that the non-government provider, if they are committed to the service they are providing, would actually want a quick and informal resolution of the complaint to enable them to improve and/or continue with what they believe is worthwhile doing.

In relation to complaints against volunteers, the bill under clause 24(5) provides that complaints against volunteers will be against the person or body for whom the volunteer is working and not the volunteers themselves. The bill has the support of Volunteering SA, who wrote to the Minister for Health on 20 August 2002 saying that Volunteering SA supports this initiative. We expect volunteers will be able to comply with the spirit of the legislation. ACT and NT specifically describe a volunteer in their interpretation as a provider, while Western Australia, Victoria and Tasmania include a broader interpretation. For example, Tasmania says, 'any other service provided by a provider for or purportedly for the care or treatment of another person'

The broader interpretation is consistent with this bill. Responding to a complaint against a volunteer, the HCS ombudsman would make an inquiry of the service provider for whom the volunteer is working. The bill provides that the process would be as informal as possible for those concerned. The bill also allows the HCS commissioner to provide assistance if he or she believes it necessary. Thus the bill supports volunteer services in this state. The issue has been addressed in the government's amendments in other places, in clause 24(5).

The Hon. NICK XENOPHON: If I could just indicate my position on parts of these amendments and ask a couple of questions in relation to subclause (1) of the amendment. I supported the pre-sequential amendment. The Hon. Sandra Kanck referred to the concerns about the implications. I was comforted by the definition of 'public authority'—or include a body defined by regulations. So, I will support that amendment; I think there are some issues with respect to its implications and I think it is important to keep this amendment alive.

In relation to subclause (2), with respect to volunteers, I have a similar view. I am concerned about the impact of volunteers. I know the government has sought to deal with this under clause 24(5), and I can appreciate that the government has made an effort here, but my concern is that it would still mean, notwithstanding the intent of the legislation, that some volunteers could be brought into a whole process of dispute resolution, and I just worry about the implications in terms of what it would do to volunteers. I may well be wrong, but I am concerned about that, and in terms of the spirit of volunteerism. I know Volunteering SA has a different view, but I just wonder whether we have thought through the implications of this.

In relation to subclause (3), the Hon. Angus Redford is concerned about duplication. I do not share those concerns to this extent: that the dispute resolution mechanisms that are established under this legislative framework would be necessarily different from the commonwealth framework. Given that I think a lot of these things will be resolved informally then I can see that the two can co-exist. I acknowledge the Hon. Angus Redford's concern, but, on balance, that is the one amendment that I do not support. I am not sure where that leaves the Hon. Angus Redford's amendment with respect to that, whether he is moving them separately or not.

The Hon. SANDRA KANCK: I make a similar point. I am happy to support (1), but not happy to support (2). So, I am just seeking some clarification as to how this going to be moved, or has it already been moved in its entirety?

The CHAIRMAN: It will be put in three parts—(1), (2) and then (3).

The Hon. T.G. ROBERTS: Volunteering SA has come around and said that it is prepared to accept the responsibility for any of the volunteers that it is responsible for, affiliated with it, to become a mature part of a process that provides some discipline, not too extreme, to conform to the bill. There are many volunteers in this state who have a long dignified record of community service in a wide range of areas, but it has been found not only in Australia but overseas that some volunteers have been attracted to some services provided by government but they go into those services with an entirely different attitude and motive. We have looked at a whole range of bills—

The Hon. A.J. Redford: You're going to target the lot, are you?

The Hon. T.G. ROBERTS: No. That is why you oppose the clause and have moved in this way. Volunteers are sacrosanct; you can say nothing against them. I am not saying that all volunteers fall into one category; what I am saying is that there are volunteers and organisations that approve of the government's bill.

The Hon. A.J. Redford: I'm not talking about organisations; I'm talking about volunteers.

The Hon. T.G. ROBERTS: It is not the volunteers who are investigated; it is the organisations to which they belong and which they service. If we exclude volunteers from the bill, then whole sections of communal activities will not be subject to the scrutiny that we expect of professional bodies. I am not sure that that would stand scrutiny in terms of fairness and equity across the broader community. To be consistent, the same standards of behaviour, service delivery and responsibility should apply to volunteers as they do to professionally paid people.

If you compare the CFS with the MFS, you will see that the professionalism of the volunteers is equal to that of many of the professionally paid firefighters. The community expects CFS officers and volunteers to be of a standard to protect property and life. Fortunately, in South Australia we have a good record of people wanting to be volunteers, and I would like to see it stay that way. The government would also like to see the standard of approach in relation to the professionalism and dedication of volunteers supported by governments and governance so that the broader community has confidence and faith in volunteers that they are maintaining those standards within the community. The covering letter from Volunteering South Australia basically sums that up.

The Hon. A.L. EVANS: I have wrestled long and hard with this. At first I was attracted by the liberal approach to it, because I like the freedom and I do not like too much government interference, and so on. I am chairman of a care group that uses many volunteers, but over the years that organisation has been hurt by volunteers who have done harm. You do not hear about it until it gets whispered down through the traps. People say, 'I'm not going to that organisation any more because that guy swore at me.' I would have liked to know about that, but I tend to hear about these things a year

later. I would like to know about these incidents so that we can quickly stamp on them if there are complaints.

That is why I went through this struggle. I would prefer the government proposal to be for 12 months and then reviewed. I do not like having it set in law and then find that we have this huge bureaucracy and laws and regulations that push people out of the program. I think a sunset clause of 12 months or two years would help me in making my decision, because I am not sure what the effect will be. The Liberal argument is that we will lose volunteers, that people will not want to be volunteers if they have this hanging over them, and that is a possibility. However, as one who has supervised many volunteers, we have been hurt by mistakes made by volunteers, and it is often a long time before you hear about them and the harm continues. So, I would like to have the possibility of a sunset clause for two years.

The Hon. P. HOLLOWAY: I would like to make a personal contribution in relation to this matter. If subclause (2) of the Hon. Angus Redford's amendment were to pass, it would mean that this health complaints system would not apply to health or community services provided by volunteers. In many of our public hospitals, for example, those services would not exist without the contribution of volunteers. I do not think anyone would underestimate the contribution that volunteers make to our health services and a number of other services within the community but, as the Hon. Andrew Evans has just said, sometimes things can go wrong.

If this clause is passed it would mean that those services provided by volunteers in places such as public hospitals would not be subject to any of this health and community services complaints system, and I think that would be most unfortunate. That is clearly why subclause (2) of the Hon. Angus Redford's amendment should be rejected. I strongly oppose subclause (3) because of my own experience as a local member. Anyone who has retirement villages or institutions in their electorate that provide for aged care would be well aware of the many complaints in that industry.

The Hon. J.M.A. Lensink: They have their own system.

The Hon. P. HOLLOWAY: Yes, but it is ineffective.

The Hon. J.M.A. Lensink interjecting:

The Hon. P. HOLLOWAY: Rubbish! Look at what happened in Victoria a few years ago with the kerosene baths. That really worked well, didn't it? The honourable member who interjects had an involvement in the industry but my experience as a local member has been that most of the restraints on some sections of the retirement village industry are not ineffective. We are talking specifically about health services. Would it not be better to have one person, the health services complaints commissioner, having that jurisdiction across-the-board so that where those medical services are provided within those systems there can be that coverage? I cannot think of anywhere else in the system where there is a more important need for additional coverage under this bill, because the fact is that the system does not work well. I do not think anyone who has had any experience of it could possibly argue that the provisions in the commonwealth act are comprehensive enough.

The Hon. A.J. REDFORD: I would like to respond to what the Hon. Andrew Evans said. He suggested there ought to be some sort of a sunset clause. To put this in place with the bureaucracy that that would involve for a period of 12 months would be a waste of time. To put it in place for two years would be a waste of time. The damage that could be done to the volunteer community by that process could be irreparable. As a former national president of a volunteer organisation, you have to be careful about how you manage volunteers, because once you have lost them it is hard to get them back.

All I can say to comfort the Hon. Andrew Evans is that clause 84 says that the minister must, as soon as practicable after the third anniversary of the commencement of the act, prepare a report on the operation of the act. Now, if there is a gap that is apparent in relation to volunteers, and with a cost benefit analysis and the focus that would be put on that, that would be an ideal time to assess whether or not the enormous structure and body that we are about to set up should be extended to the volunteer sector. That seems to me to be the less risky way of proceeding in relation to dealing with volunteers.

I respect what Volunteering SA has said, but over the past 10 to 15 years we have had some pretty big drops in the number of volunteers in all sorts of organisations. They are a very precious resource, and they are not a resource to be fiddled with and not one that we should be pushing around. My real concern is that if we adopt the Hon. Andrew Evans' regime we might lose our volunteers, and then if we have a sunset clause we will say, ' Well, that did not work.' And I can say to the Hon. Andrew Evans that it is hard to get them back; once you lose a volunteer it is almost impossible to get them back.

In the case of volunteers—a very precious resource in our community—let us take this very carefully. It may well be that in three years—with appropriate structures and with an organisation that is going full steam ahead, that is doing a job and that has public confidence—we can extend its jurisdiction to volunteers. But I would urge members to be more cautious, particularly in relation to this precious commodity—one that can so easily be dissipated.

The Hon. T.G. CAMERON: I probably should know the answer to this but I do not. Does the current act governing the affairs of the Ombudsman give him the power to conduct investigations into volunteers or volunteer organisations?

The Hon. T.G. ROBERTS: The answer to that question is that if volunteers operate within government departments then they can be investigated the same as a government employee. While I am on my feet—

The Hon. T.G. Cameron: What about outside government departments?

The Hon. T.G. ROBERTS: No.

The Hon. T.G. CAMERON: So I am correct in assuming that this legislation would create a situation where the commissioner for health and community services would have the power to investigate volunteers outside government organisations in relation to health or community services but the Ombudsman—who I see as being above this person—does not have that power or right in relation to services other than health or community services.

The Hon. T.G. ROBERTS: The situation is that the Ombudsman can investigate a person working as a volunteer in a government department or hospital, etc. Under this bill the organisation is investigated and not the volunteer. So, there is a difference in focus. I think the other thing that needs to be said from the government's position is that—and the Hon. Andrew Evans has a lot of experience with those people who have worked in volunteer organisations—volunteers who are working alongside volunteers who are not acting ethically feel uncomfortable in blowing the whistle on those other volunteers because there are very few bodies that they can appeal to, as the honourable member knows and understands.

The Hon. A.J. Redford: How is this going to fix that?

The Hon. T.G. ROBERTS: If there are volunteers that are acting unethically then they can be—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: If someone makes a complaint they have someone to investigate it. The government has a position in relation to a sunset clause, or as near to it as we can explain it in this bill, because clause 84 provides:

> The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, appoint a person to prepare a report on—
>
> (a) the operation of this Act over its first three years. . .
>
> (3) The minister must, within 12 sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.

So there will be an investigatory process and a sunset clause built in but, again, it depends on your experience in relation to how you view the seriousness of volunteers acting unethically in the community. I think that there is a wide range of examples where, had there been a body that may have been able to investigate complaints in the early stages—and the honourable member probably knows some of the ones I am talking about within church organisations—a lot of the problems associated with unethical behaviour may have been able to be curbed a lot earlier.

The Hon. A.J. Redford: Can you give an example of how this would have assisted them?

The Hon. T.G. ROBERTS: I think honourable members will have to draw on their own experiences to—

The Hon. A.J. Redford: You have to give us examples. How would it work with a volunteer? Walk me through a process.

The Hon. T.G. ROBERTS: You have a complaint process that would at least give the person making the complaint or blowing the whistle some faith that an independent investigation might uncover the basis for the complaint. If it is some other person acting unethically, then people who work with other unethical employees or volunteers like external investigations, particularly in closed communities and country areas.

The Hon. A.J. Redford: What is an example of this heinous, unethical conduct that you are referring to?

The Hon. T.G. ROBERTS: I have not referred to any heinous, unethical behaviour.

The Hon. J.F. STEFANI: With all due respect to the minister's belief that volunteers are not likely to report malpractice or, in fact, blow the whistle I would have to say that the minister would have to rethink that statement, because it has been my experience that any organisation with volunteers has human nature playing its role to the effect that if something is amiss there will be people within the organisation who are volunteers who will blow the whistle, and who will blow it hard.

The Hon. A.J. REDFORD: Can the minister give me one example of the sort of heinous conduct that he is referring to and how this complaints process will make all that much difference in any event? The point I am trying to make is that, if you weigh up what you might get out of this—which I think is pretty marginal—and the impact of the fear on volunteers as a consequence of bringing in this whole new regulatory regime, the balance is against the public interest.

As an example, I visited Washington in the US a couple of years ago, and there were organisations there that had people providing services to children and young people. One particular organisation lost a third of its volunteers because they brought in compulsory police checks, and the volunteers just left. Everybody was saying that they had probably got rid of all these child sex offenders but, in fact, the Clinton administration did an audit and found out that people were resigning because they were scared that their fellow workers or colleagues might find out that they had a speeding offence or some other minor offence—something totally not associated with that sort of conduct.

At the end of the day these organisations were decimated over what was thought to be a good public policy decision. When one looked at it at first blush one would say, 'Well, no-one will have anything to fear. All we will do is weed out child sex offenders.' In fact, that is not what happened. The volunteers, who were volunteering their own time, walked because of nothing to do with those sorts of issues. All I can say to members is that, as a person who was involved in leading some 20 000 volunteers over a four-year period, volunteers are a precious commodity that can be lost at the drop of a hat.

It is hard work maintaining volunteers. It is even harder work to recruit them. We have seen a big decline in the volunteer population in all sorts of different areas over the past 30 years. That is not to say that some organisations have not grown—they tend to be the activist organisations. All I am saying is that I cannot see, when you weigh up the risk of losing the volunteers and what you might get out of it in terms of the public good, that the balance does not come down to excluding volunteers. The minister cannot give me an existing example of some heinous crime that might have been prevented or ameliorated if we had had this body, say, two, five or six years ago.

The Hon. T.G. ROBERTS: I think that many members here would be familiar with the volunteer bus driver who was driving disabled children to and from activities that were organised by other volunteers.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: That abuse did not take place on just one occasion at the time the police caught that individual: that abuse went on for a long period of time.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I am saying that if a government puts in place a body that volunteers can contact anonymously, or give their name and address if they feel confident enough, some of those issues associated with these abuses could be nipped in the bud. There could have been a position where the interests of those disabled children could have been preserved.

Members interjecting:

The Hon. T.G. ROBERTS: There are a lot of cases where people suspect that there are issues involved with abuse but they are unable to prove it. If they had someone to talk to about it without making a formal complaint—

Members interjecting:

The Hon. T.G. ROBERTS: Surely members of this place can understand that if you put in place a process that could preserve the interests of children, particularly disabled children, then, even if we saved one or two children from any further abuse, that would be a good thing. It will be painless as far as this exercise is concerned. I am sure, as I have said, that if volunteers and paid employees operating in a community alongside people who are acting unethically could contact an organisational structure and explain their circumstances, then that body could, perhaps, refer that claim to the police for investigation.

It is something that, I think, needs to be looked at. As a member of parliament, issues have been raised with me about volunteers working in nursing homes for the sole purpose of relieving some of the people living in the nursing homes of their wealth. That happened quite regularly and is still happening quite regularly. The other issue relates to the reporting of volunteers assisting in the provision of home care to severely disabled people, because, in a lot of cases—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: Well, I think that, if we did put in place a process with which people felt comfortable, we may be able to save some of the intimidation and fear that comes with old age, infirmity and protecting young children in our community, particularly intellectually disabled people.

The Hon. T.G. CAMERON: If a church or some similar charitable organisation was providing counselling services to its members free of charge and the person who received the advice acted upon it and was then unhappy about it, would they be able to apply to the health and community services commissioner?

The Hon. T.G. ROBERTS: If it falls within the ambit of the bill which is providing community service.

The Hon. T.G. CAMERON: Well, the answer is yes. Who would the commissioner then take action against? The individual providing the volunteer service, the children or both?

The Hon. T.G. ROBERTS: It would be the organisation for whom the volunteer is working. With respect to part 3, 'Complaints against aged care services', clause 28(3) requires that the HCS commissioner consult with the commonwealth complaints body for aged care services. He or she may then refer the matter to the commonwealth body under clause 50. It is important to allow some discretion to the HCS commissioner since it is a compliant body operating in the state. It is anticipated that the HCS commissioner will develop a set of protocols with the commonwealth body that will expedite the handling of complaints between them and ensure that the same complaint is not heard twice.

As has been advised to several aged care providers, including Rest Haven Aged Care and Community Services SA and Northern Territory Inc., there is sufficient capacity under this bill for the HCS commissioner to refer complaints to the commonwealth when it involves a commonwealth aged care facility. The HCS commissioner is able to establish the protocols to facilitate this process. In addition, the HCS commissioner is not able to hear a complaint if it has already been dealt with by the commonwealth complaints body, that is, a consumer cannot necessarily have access to multiple complaint mechanisms to pursue a complaint.

Proposed new subclause (1) inserted.

The council committee on proposed new subclause (2):

AYES (11)

Cameron, T. G.	Dawkins, J. S. L.
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J. (teller)
Ridgway, D. W.	Schaefer, C. V.
Stefani, J. F.	Stephens, T. J.
Xenophon, N.	

NOES (10)

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

Majority of 1 for the ayes.

Proposed new subclause thus inserted.

The committee divided on proposed new subclause (3):

AYES (10)

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

NOES (11)

Evans, A. L.	Gago, G. E.
Gazzola, J.	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Reynolds, K.	Roberts, T. G. (teller)
Sneath, R. K.	Xenophon, N.
Zollo, C.	

Majority of 1 for the noes.

Proposed new subclause thus negatived.

Progress reported; committee to sit again.

ADJOURNMENT

At 11.25 p.m. the council adjourned until 5 May at 2.15 p.m.