LEGISLATIVE COUNCIL

Wednesday 8 December 2004

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 10th report of the committee.

Report received.

The Hon. J. GAZZOLA: I bring up the 11th report of the committee.

Report received and read.

STATE BROADBAND STRATEGY

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to the state broadband strategy made on 7 December in another place by the Minister for Science and Information Economy.

FREIGHT INDUSTRY

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to supporting the freight industry made earlier today in another place by the Minister for Transport.

LOCAL GOVERNMENT

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the Electoral Commissioner's report on local government activities conducted by the State Electoral Office 2003-04 made yesterday in another place by the Hon. Rory McEwen.

QUESTION TIME

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. R.I. LUCAS (Leader of the Opposition): My question is directed to the Leader of the Government. Is the Leader of the Government prepared publicly and unequivocally to back the Attorney-General in his handling of the scandal surrounding the Crown Solicitor's Trust Account?

The PRESIDENT: The honourable member is seeking an opinion; the minister can please himself whether or not he responds.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am not in a position to back anyone on anything, particularly when a select committee of this parliament is investigating matters. I have every confidence that—

The Hon. J.S.L. Dawkins: A kangaroo court.

The Hon. P. HOLLOWAY: Well, it is a kangaroo court. Yes, it is.

Members interjecting:

The Hon. P. HOLLOWAY: I am delighted at the question, although I do not think I am allowed to refer to the proceedings of the committee. It is a pity I cannot, because I would love to be able tell this council about some of the things that happened in there procedurally, but, unfortunately, it is against standing orders for me to do so. Let me say that the behaviour of the two Liberal members and the Hon. Terry Cameron in relation to the matter was quite disgraceful, but that is another matter. A select committee and also the Economic and Finance Committee are looking at this matter. In fact, those committees are investigating the handling of the financial affairs within the Attorney-General's Department; and, on the basis of the information that is available to date, I am prepared to accept the information given by the Auditor-General.

The Hon. R.I. Lucas: But will you back the Attorney?

The Hon. P. HOLLOWAY: It is not up to me.

The Hon. R.I. Lucas: You are the Leader of the Government.

The Hon. P. HOLLOWAY: It is not up to me to back my colleagues. I have every confidence in my colleagues.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It has nothing to do with my colleagues.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: What has happened here is that there has been some outrageous behaviour, in an accounting sense, within the Attorney-General's Department. The Leader of the Opposition is the one who should be asking the question. Why is it that, on the one hand, he is talking about the stashed funds scandal—

The Hon. R.I. Lucas: You won't back him.

The Hon. P. HOLLOWAY: What we have is a significant scandal that is occurring with the finances of the Attorney-General's Department, but at the same time—

The PRESIDENT: Minister, the matter that you are talking about is the subject of a select committee inquiry, and whether or not scandalous acts have taken place is for the committee to decide. When the leader asked you the question, I said he was seeking your opinion, which is normally out of order. You chose to answer, but you do need to remember that the subject matter is under the consideration of a select committee, and that is binding on all members of the council.

The Hon. P. HOLLOWAY: What is under consideration by the select committee is, of course, the conduct of the operation of the Crown Solicitor's Trust Account. But what we have is the Leader of the Opposition in this place going around on the one hand talking about the former chief executive officer who somehow was wronged, maligned, etc. On the other hand, he is talking about the actions that allegedly occurred in the department that are in the Auditor-General's Report being a scandal. He cannot have it both ways.

Members interjecting:

The Hon. P. HOLLOWAY: If the behaviour of those senior officers of the Attorney-General's Department in laundering funds through the Crown Solicitor's Trust Account is as bad as he says, why at the same time is he trying to turn this issue into an attack on the Auditor-General? He is not going to get away with it. What will happen is that the matters relating to the operation of the Crown Solicitor's Trust Account will be properly investigated. The matters in relation to the Attorney-General—

Members interjecting:

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

The Hon. P. HOLLOWAY: —are peripheral in relation to the operation of those accounts. The Leader of the Opposition might be trying to make them centre stage, but he is not going to get away with it. As my colleague the Treasurer said, he is flogging a dead horse.

VON EINEM, Mr B.S.

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

Leave granted.

The Hon. R.D. LAWSON: The opposition is in receipt of a letter from a prisoner at the Yatala Labour Prison who writes in relation to Bevan Spencer von Einem, who was arrested in November 1983 for the murder of Richard Kelvin and subsequently was sentenced to life imprisonment with a 36 year non-parole period for that crime. The prisoner makes a number of points, and I will number them.

First, he says that in June 2004 a female correctional officer, whom he names, was called to the Correctional Services head office and reprimanded by the Chief Executive Officer, Peter Severin, for having taken into Yatala a dress and makeup for von Einem to parade in. Secondly, the letter says that a young prisoner, who was named, was openly involved in a sexual relationship with von Einem and that the prisoner reported that he had been raped by von Einem in prison but no charges were ever laid against him, despite the fact that the victim was calling for such charges.

Thirdly, the correspondent writes that within the prison von Einem has a status amongst staff and prisoners that can only be compared to that of a celebrity. He is employed as the only education tutor for protective custody and has unlimited and unsupervised access to the education classroom, computer, printers etc. and he can 'do as he pleases'. Fourthly, he says that von Einem has been listed for corrective eye surgery this year that will cost the taxpayer in excess of $6 000. My questions to the minister are:

1. Has he heard of any of these allegations?

2. Is he aware of the fact that the chief executive officer of the Department for Correctional Services reprimanded an officer for taking a dress and make-up into prison for von Einem? If he is, does he agree that a mere reprimand is appropriate punishment for such an apparent transgression of regulations?

3. Does the minister agree that, if these allegations, or any of them, are true, they are a damning indictment of the management of the Yatala Labour Prison?

4. What investigations of these allegations will the minister undertake, and will he bring back a response to this council promptly?

The Hon. T.G. ROBERTS (Minister for Correctional Services): Is it possible for the honourable member to forward a copy of the letter to me for consideration? I have not seen the correspondence nor am I aware of the issues raised in the correspondence, and the points that are being made are many and varied. I will give an undertaking to this council to bring back a full report on all those issues. In relation to the prisoner von Einem bringing in a dress or given a dress, it would have been 12 months ago, probably, that I was told that a matter was being investigated and that that would be followed up. I will find out what processes were gone through, what procedures were followed and what action was taken.

In relation to the other issues, I suspect that he, like others, would have rights of access to educational material and to programs. I have not heard of any of the other accusations that have been laid, but I will follow them up and bring back a reply.

The Hon. R.D. LAWSON: As a supplementary question, given the minister's advice in his response that 12 months ago he was given a report regarding von Einem's dressing up, what action did the minister take to follow up that report?

The Hon. T.G. ROBERTS: I am not sure of the exact time frame but, in relation to a prisoner being in a dress, the information given to me is that there was a matter being addressed and that action was being taken. At that time I did not see the issue as being out of control. I did not see it as being an issue that needed any special ultimatums to be given. It is a process by which management is able to handle—

The Hon. R.D. Lawson: Did you know it was von Einem?

The Hon. T.G. ROBERTS: I was told the prisoner's name. The situation was being handled by the prison authorities, and that is where it was left.

The Hon. R.D. LAWSON: As a further supplementary question, has the minister ever sought any further report or assurance from the department about whether appropriate action was taken in relation to von Einem dressing up within prison?

The Hon. T.G. ROBERTS: There was a breach of protocols within the prison, and that is certainly not encouraged unless there are people who have expressed permission in relation to cross-dressing if they are seen to have that psychological problem in prisons—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: Well, that is not the information that I have. I have said that I will seek further information. It may have been a fancy dress party; I do not know. It may have been Christmas; I am not sure. But I said that I would seek further details and bring back a full reply.

The Hon. J.F. STEFANI: I have a supplementary question arising from the answer. Can the minister advise whether potential liabilities arise from the incident, such as the recent case reported in the media?

The Hon. T.G. ROBERTS: I am not sure what the honourable member is seeking.

The Hon. J.F. STEFANI: I have a further supplementary. I will enlarge on that: I refer to the duty of care that befalls government and, particular, in this instance, the Department for Correctional Services.

The PRESIDENT: I think the member refers to the alleged rape.

The Hon. T.G. ROBERTS: As I said, I was unaware of that accusation. I asked for a copy of the letter from the honourable member to get the details so that I could examine whether the details are accurate. I will get a report from the prison authorities in relation to the question.

The Hon. R.I. LUCAS (Leader of the Opposition): Is it government policy to provide expensive laser corrective surgery to prisoners whilst they are at Yatala?

The Hon. T.G. ROBERTS: It is policy to provide appropriate medical services to prisoners within prisons. I would have to seek advice as to whether the laser corrective surgery was appropriate medical treatment, or whether it was excessive or unnecessary.

The Hon. NICK XENOPHON: I have supplementary question. Is appropriate medical treatment defined as including non-essential elective surgery such as this type when a pair of spectacles could do?

The Hon. T.G. ROBERTS: As I said, I will ask the appropriate questions. If laser surgery was seen to be excessive medical treatment, then that would be included in the report. I am not in a position to judge whether spectacles could have corrected whatever the position is. I am not sure whether it was life-threatening or something that is cosmetic, but I will find out.

MINERAL SANDS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about mineral sands mining.

Leave granted.

The Hon. CAROLINE SCHAEFER: I refer to a letter to the Mining Registrar, dated 16 April this year, from Southern Titanium which is now, I believe, Zircon Australia. It states:

> Thank you for you letter of 12 December.

It does not go into any details as to what was in that letter. It continues:

> Southern Titanium NL wishes to apply for exemption from the provisions of section 40(1) of the Mining Act (1971) in respect of Mineral Lease applications numbered T2340, T2341, T2342, and T2381—T2385 inclusive. The company's application for exemption is made pursuant to section 79 of the same act.
>
> The exemption requested is that of a reduced rate of rental to apply for those years or parts of years during which mining operations will not actually be carried out on the tenement in question.
>
> The following schedule of payments is sought:
>
> - rental at 25 per cent of the full rate to apply for each year or part thereof from the grant of the Mineral Lease until mining operations commence on the lease;
> - rental at 100 per cent of the full rate to apply for the time that mining operations are underway on the lease;
> - rental at 25 per cent of the full rate to apply for time following mining under the surrender of the lease. This period will provide for any protracted monitoring which might be required of rehabilitated land.

The letter goes on. A letter was then written to one of my constituents on 24 September from PIRSA informing the land-holder of that application. On 8 November I asked a series of questions, as did Mr Lawson and Mr Dawkins. At that time the minister stated:

> I have asked my department to look at those sorts of issues so we have a benchmark to ensure that farmers and other land-holders are dealt with in a similar way.

That refers to the way farmers and land-holders in Victoria, Western Australia and Queensland are treated compared to those interstate. He continued:

> Obviously, that is being done. But in relation to the particular issue, I will talk to the honourable member about it: I will obtain the details and investigate it.

Last Saturday morning the minister held a meeting with about 40 land-holders having given them less than 24 hours' notice that such a meeting would be held; in fact, most of them were informed by phone by other land-holders. As I understand it, there was no written notification that that meeting would be held. On today's *Country Hour* the minister admitted that his department does not have the expertise to manage the proposed $135 million Zircon Sands project. He went on to say that such mining was common in Western Australia and Queensland, but, 'we don't have expertise or experience'. Again, he said that he is going to send someone from his department to have a look at what happens.

The difference with this is that apparently the amount of compensation paid to farmers is commensurate with the amount of rental which is set aside. That rental—95 per cent of it, less 10 per cent GST (85 per cent of that remission of rental) actually goes to the farmers by way of compensation. In the case of my constituent, a remittal of rental to this company would mean the difference of $140 000 compensation over 10 years as opposed to $30 000 compensation over 10 years. Needless to say that land-holders in the area are quite anxious that the minister does acquire the expertise and experience necessary to manage such a project.

Given that it is now a month since I asked my question, and I have not been briefed by the minister or his department and the farmers whose livelihoods are involved with this have been given no written notice of meetings, my questions are:

1. When and how does the minister plan to avail himself of the necessary experience and expertise to deal with the mining of mineral sands in South Australia?
2. When does he plan to avail himself of the experience and expertise necessary so that adequate compensation can be given to the farmers involved?
3. Does he consider an impromptu meeting with less than 24 hours' notice to be consultation?
4. When can farmers and Australian Zircon Ltd expect a reply with regard to rental remission?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I would have thought my giving up a Saturday at short notice at this time of the year to meet some land-holders was worth more than criticism at question time.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: That is right, but I had to put a number of other meetings aside at this time of the year, when I think all of us are busy. I would have thought that going up to the Murray Mallee to spend a couple of hours discussing the issues with the local land-holders was something positive that the honourable member would welcome. I would have thought she would welcome the fact that I was going up there and hearing first hand from the land-holders about those issues. She raised the matter and I was keen to do it. I told her in answer to her question that I would seek to meet with those land-holders as soon as possible. Given the proximity to Christmas, the only time I could make available was on the Saturday.

The Hon. Caroline Schaefer: You said that in April.

The Hon. P. HOLLOWAY: There are a number of issues, and it will take me a long time to correct all the issues raised by the honourable member. The honourable member spoke about rental payments and, yes, she is correct that, under the arrangements that existed under the Mining Act which were put into that act many years ago to deal with point source mines such as Olympic Dam and others which were at one site, there is an arrangement where rental over the site is payable, based on about $30.75 or thereabouts per hectare over the lease, with 95 per cent going to the owner of the property. That would apply only to freehold properties; for leasehold it is actually—

The PRESIDENT: Order! I draw the attention of the cameraman in the gallery to his responsibilities under the rules of parliament. He is not to take photos of people sitting in their places: he is to take broad shots of the person on his feet.

The Hon. P. HOLLOWAY: Where land is obviously under leasehold, then the Crown would be the owner of the land. The rental component is only one component of the total compensation package. Earlier this year there were a number of cases which went to the Warden's Court—and that is what the honourable member was referring to earlier this year—and which relate to compensation in a package. The point I was making on the radio yesterday is that this type of mining—sand mining—is new to this state; we have not had this type of mining before, particularly in agricultural lands. That is what I was referring to, and I have referred to this in parliament: we do not have the expertise for dealing with that, because it is a new type of mining. We certainly have members of the Department of Primary Industries and Resources with expertise in regulating the mining industry and other aspects to it. We also have expertise in government in relation to the rehabilitation questions, environmental matters and so on. This type of mining issue is new to the state. That is the point I was making in that radio interview.

The farm I visited on Saturday morning will be the first property to be mined. That farmer was one of those who disputed with the company concerned earlier this year, and the compensation payments and those matters were ultimately decided in the Warden's Court. What the Warden's Court was looking at was compensation payments to be made: that was compensation for the loss of income the farmer would suffer because his normal productive land would be taken out of production for the period of the mining until suitable rehabilitation could take place.

There were also compensation issues in relation to the inconvenience caused in the case where the farmer's farm-house is only several hundred metres, or perhaps even less, from where the mining will take place over a period of some months, so there are obviously issues there in relation to compensation for inconvenience and so forth. Those matters were negotiated by the company. In some cases it went to the Warden's Court, which made a determination; in other cases the company reached agreement with the land-holders. Certainly, it is my preferred position that, wherever a mining company seeks to operate on any land, that company should seek agreement with the land-holders.

It is not really a matter in which the minister could, or should, normally be involved. It is a matter between the company and the land-holder and, obviously, one would hope that the company would provide suitable compensation to the land-holders such that the matter would not come to court. Of course, ultimately there are powers within the Mining Act that, should agreement not be reached, the Warden's Court can determine matters of compensation, or, in relation to rental payments, in this case, where the company has sought some change to it, it has to be approved by the Minister for Mineral Resources Development who, in turn, is required to consult in relation to that matter.

My advice was that I had already met the requirements in relation to consultation, because a number of meetings had taken place with my department and the land-holders. However, I was concerned and I wanted to hear first-hand as soon as possible and, given the urgency of the matter, because the company needs decisions on these matters fairly soon, that is why on Saturday morning I drove up to Mindarie—

The Hon. Caroline Schaefer: You were driven, actually.

The Hon. P. HOLLOWAY: Yes, that is right; I was driven up to Mindarie to meet with those land-holders. In relation to the other matters that the honourable member raised in her question, the claim made by some of the land-holders who I met on Saturday morning was that land-holders in Victoria were better compensated than those in South Australia. My department, as I indicated in answer to an earlier question, has had a preliminary look at that. As I understand, the situation in Victoria is somewhat different. For a start, in Victoria, with the particular mine concerned, a much smaller number of properties is involved on a much richer deposit in a smaller area. The situation is not really comparable to that in South Australia, so I am advised, where a much larger area is involved. Basically, in South Australia these strips of sand mining are quite narrow and shallow. So, the mining can be done very quickly, but it can be done over a longer period of time.

Basically, what the company is saying is, 'We have determined compensation arrangements with these land-holders in relation to the inconvenience, the dislocation, the loss of income and so forth.' With respect to the rental payment that was prescribed in regulation, what it is saying is, 'We will only be effectively occupying that land for a certain period of time.' My understanding is that it has agreed to pay a minimum of three years' lease. Although the mining lease would technically be for 10 years, the company's agreement—its offer, if you like—is to pay a minimum of three years' rental over the property. On the surface of it, as I indicated to those land-holders, that would appear reason-able, given that the mining operations on any particular property would be likely to certainly be less than a year; it may only be a matter of months.

However, the claim made by some land-holders was that, when the company originally negotiated with them with respect to this part of remuneration, this rental component, as opposed to the compensation component that the company had sold to them, there would be a full 10-year payment. The claim was made by some of the land-holders that that obviously was factored into their decision. I have asked any of the land-holders who had any written information in relation to that—and one of them thought that might have been the case—to provide that information to me so I can make a proper determination.

In a sense, that is where the matter lies at the moment. I am seeking further information in relation to what happens in Victoria, because the additional issue that came up was the question of rehabilitation and scraping methods. Although there is some expertise in relation to that within the depart-ment, I am interested to see what the best practice is in other states; and given that we have had other—

The Hon. Caroline Schaefer: How long does it take to find that out? You've known since April.

The Hon. P. HOLLOWAY: A lot of work has already been done. In fact, trials have been done. The honourable member should be aware that Rural Solutions (which is an arm of the Department of Primary Industries and Resources) did some work and some trialing has been done on it. Nevertheless, every site is different. One of the points that was made at the meeting is that there is some difference between the strand lines in different areas. Although they are in fairly close proximity, there may be differences, and all these matters need to be looked at. In any case, it was my intention to visit some of Iluka's operations in Western Australia, because it has made that major discovery at Jacinth in the Yellabinna region, which is a major zircon deposit. That company has invited me to visit its deposits in Eneabba in Western Australia where it has done similar work.

To return to the question, I am not quite sure what point the honourable member is trying to make. The principle that is guiding me is twofold. I want to ensure that those land-holders in that region are adequately compensated, and that is why I need to look at the whole picture. That is somewhat complicated because, in many cases, the arrangements between the company and individual land-holders are confidential. Unless I am supplied with that by one party or the other, it is difficult for me to make a judgment on that matter. Obviously that is a key issue which I have to consider. They are all matters that I will consider in the near future when I decide on this issue. The whole question of this sand mining operation is much more complicated than just the mere issue of rental and any changes that are made to the rental payment schedule about whether or not it should be over that period.

There are also questions of equity with some land-holders in that, on the one hand, your property may be mined in the near future and that land will be returned to you within, say, the next couple of years; but, on the other hand, if you are in one of the strand lines which may be mined in 10 years hence, then, of course, that lease has to be held for a much longer time, and it does provide for some type of encumbrance (if I can use that word generically) over that property. All that has to be taken into account. When I refer to seeing how other states do it, they are the sort of issues that I want to find out. One of the things that is already becoming clear is that few sand mining operations—certainly not in Victoria, I understand—have such a large number of land-holders involved, and that is what makes this issue complex. It is a matter, which, essentially—and I come back to this key point—is between land-holders and—

The Hon. G.E. Gago interjecting:

The Hon. P. HOLLOWAY: It is a question between land-holders and the mining company. It is something that should be resolved between the two. My attitude all the way through has been to encourage the company to reach agreement with the land-holders—that is the preferred outcome. When we had the SEA Gas pipeline built, in excess of 600 easements were required. I think 11 of them reached some level of dispute but, in the end, only two came across my desk concerning having had a report made in relation to them. Although I had the power to compulsorily acquire all the easements for the route of that pipeline, negotiations solved in excess of 600.

In this case, again the preferred outcome would be for the company to successfully negotiate with the land-holders and the minister not to be involved. My involvement really is a peripheral one, in the sense that my approval is required under section 40 of the Mining Act in relation to this rental issue. My visit on Saturday is simply for me to inform myself properly in relation to the issues. I am seeking more information both from the land-holders and the company so that I can make an appropriate judgment, because it is very much in the interests of the Murray Mallee region of this state that the sand mining operation goes ahead, because it will provide a significant number of jobs and income to a region that has been very badly affected by drought. At the same time, it is also important that the land-holders concerned are adequately compensated. Of course, if the project is to proceed in an optimal manner, it is important that relationships between the company and the land-holders are good. That is what concerns me at the moment, and that is where I will be taking action to ensure that that is the case.

INDUSTRY PERFORMANCE

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about industry performance.

Leave granted.

The Hon. R.K. SNEATH: The eastern states—

The Hon. R.I. Lucas interjecting:

The Hon. R.K. SNEATH: You couldn't cop the flogging last night, you mob! You have been sulking all morning. What is wrong with you? The eastern states have always been a focal point for most things in Australia. However, a KPMG survey showed that Adelaide was the best place to do business. My question to the minister is: how does Adelaide industry perform in comparison with its eastern states counterparts?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank the honourable member for his important question. I am happy to provide some recent information from the Industry in the Regions report released by the Australian Industry Group. I am very happy to report that it shows that Adelaide business ranks as the most competitive of the regions surveyed, which of course complements the earlier KPMG finding that Adelaide has the lowest business cost of Australia's capital cities, as well as the findings of the Tasmanian government's competition index that South Australia is the lowest cost state for manufacturing.

Overall, businesses in Adelaide were the most competitive of all regions. Adelaide's score of 67, compared to the overall average score of 60, again demonstrates Adelaide's competitive advantages for business. Profit margins for firms based in Adelaide ranked the highest of the capital cities, with administration costs for these firms being the lowest of all the capital cities surveyed. As I have indicated previously, Adelaide-based firms have the greatest expenditure on research and development, easily outpacing R&D expenditure in all other regions.

Another pleasing factor is that Adelaide businesses export more of their products than businesses in any other region. In terms of innovation and new product development, Adelaide businesses were ranked highest of the capital cities. Product quality in Adelaide-based firms was the highest of all the capital cities. The leadership skills of Adelaide-based business people also ranked highest of the capital cities. In the adoption of new technologies and techniques and commitment to improving productivity, Adelaide-based firms ranked equal top along with Brisbane-based firms.

However, Adelaide businesses ranked in the bottom three in terms of average annual expenditure on training per employee. This is useful information because it highlights an area in which additional emphasis is required if Adelaide-based firms are to maintain their competitive position. It is obviously something I will be addressing with my colleague, the minister for training.

Overall, metropolitan firms were found to be more competitive than regionally-based firms. However, regional firms were shown to have a greater export intensity with a more predominant focus on exports as the most important path to growth. Overwhelmingly, regional industry is looking to global markets in order to grow and prosper. These regional firms also rely on their local area for raw material purchases, which is of benefit to the local economy.

Labour productivity was 6 per cent lower in regional firms compared to those based in cities. However, average expenditure on training per employee was higher in regionally-based firms. Metropolitan firms are slightly ahead in introducing new techniques and new technologies to improve competitiveness. However, non-metropolitan businesses invest more in R&D than their metropolitan counterparts. Further to this, non metropolitan businesses lag behind their city counterparts in terms of realising sales from new products or services.

Overall, the report showed that non-metropolitan firms were more profitable than metropolitan firms. Adelaide businesses ranked best of all regions in R&D expenditure as a percentage of sales and in export intensity. Adelaide businesses shared top ranking with Brisbane businesses in the adoption of new technologies and techniques. Adelaide businesses ranked best of the capital cities in profit margins, administration costs, innovation and new product development, product quality and leadership. Overall, it is a very pleasing result.

The Hon. R.I. LUCAS (Leader of the Opposition): As a supplementary question, is the minister aware that the same report indicated that Adelaide businesses were lowest or second lowest of all the regions associated with capital cities in terms of future growth prospects over the coming two or three years—or did he forget to mention that?

The Hon. P. HOLLOWAY: I mentioned the—

Members interjecting:

The Hon. P. HOLLOWAY: Can't you always rely on the Leader of the Opposition to come up with a negative? Doesn't the Leader of the Opposition love taking this state down? Isn't it a tragedy for South Australia that we have a Liberal opposition that can only find bad news? No matter how good the news is, the Liberal Party will always find the cloud in every silver lining. Normally every cloud has a silver lining: with the Liberal Party, every silver lining always has a cloud.

The Hon. R.I. LUCAS: As a further supplementary question, will the minister take advice from his department and bring back an answer to the parliament as to whether or not he has omitted to mention that particular question and answer in the answer he provided to the parliament?

The Hon. P. HOLLOWAY: I did concede in my answer that there are some areas where Adelaide businesses did not perform well, and I mentioned training as a particular matter. Those areas such as profit margins, administration costs, innovation, new product development, product quality and leadership were key issues for this state. I have read the report of the industry in regions. I have it with me. If the leader wants to borrow it, I will be quite happy to let him look at it.

The Hon. R.I. Lucas: I have read it more than you have!

The Hon. P. HOLLOWAY: I can see that there are some areas where, although this state is going very well, it is not perfect, but we intend to improve. Whenever we get reports like this we are very happy to accept that the state is leading the nation in so many areas. Where we are lagging, we will do everything we can to address those issues and catch up, as we will with training and any other areas.

The Hon. R.I. LUCAS: As a further supplementary question, is the minister in a position to be able to provide an answer to the question that was asked of him previously as to whether he can confirm that the growth in jobs in South Australia in the last 12 months is the lowest or second lowest of all the states in Australia?

The PRESIDENT: If the question was asked before, it is not a supplementary question. It is the same question.

The Hon. P. HOLLOWAY: And it is the same negativity from the opposition.

TRANSPORT PLAN

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the minister representing the Minister for Transport a question about the government's proposed transport plan.

Leave granted.

Members interjecting:

The PRESIDENT: Order! There is too much audible interjection. I cannot hear the speaker.

The Hon. SANDRA KANCK: At the last state election, which was almost three years ago, the ALP announced that within 12 months of forming government it would release a draft strategic transport plan for the delivery of an integrated, efficient transport system. That was all that was promised, so I suppose the government can argue that it has not broken its promise. However, 18 months from when submissions closed and 12 months from the date when it was expected that the final report would be provided, there is nothing to show for it. On the ALP's 2002 election web site there was criticism of the previous government for not delivering a strategic transport plan. It was stated:

> This government's track record is characterised by a series of ad hoc projects and decision making independent of a strategic assessment of the long term or the future.

I am not sure whether that is actually speaking about the present government or the past government but, somewhere along the line, the newest Minister for Transport decided that the transport plan would be combined with planning strategies—which, by the way, is something that the Democrats advocate. But the plan seems to have disappeared into the ether. My questions to the minister are:

1. What was the cost of publication and distribution of and consultation for the draft strategic transport plan?
2. At what point was the decision made to discontinue preparation of the finalised plan?
3. How is the plan to have a plan going?
4. When will the alternative plan incorporating urban planning aspects be released? Will it be released in its final form, or will it be a consultation draft and, if the latter, will anything be in place before the next state election?

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

ASBESTOS

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Premier, questions in relation to compensation cases for asbestos victims.

Leave granted.

The Hon. NICK XENOPHON: Along with the Premier and others, I am a patron of the Asbestos Victims Association of South Australia, and I note the Premier's longstanding interest in the plight of asbestos victims in this state, and his doing the right thing by them. Yesterday, the High Court of Australia handed down its decision in the Schultz case. Mr Trevor Schultz worked at the Whyalla shipyards, and he sued BHP Billiton as his employer and a number of asbestos products suppliers. Mr Schultz suffers from an asbestos disease. BHP Billiton challenged Mr Schultz having his case heard by the Dust Diseases Tribunal of New South Wales, the specialist tribunal that deals with asbestos cases, which has special rules to allow for the cost-effective and speedy determination of claims for asbestos victims.

Given that mesothelioma victims usually die an agonising death within six to nine months of diagnosis, the tribunal avoids the enormous costs involved in other civil cases by allowing asbestos victims to rely on previous judgments and general findings of a medical and historical nature. Mr Terry Miller, Secretary of the Asbestos Victims Association of South Australia, said that the decision means that asbestos victims may no longer get access to the specialist court which, with its speedy and efficient hearings, has meant 'less emotional, physical and financial distress for victims who are seeking compensation for their disease'.

I understand that up to 100 South Australians affected by asbestos-related disease were bringing cases before the tribunal each year, and many of these claimants were seriously ill and dying. It now may mean that most, if not all, of these cases will need to be transferred to South Australian courts at considerable cost. Yesterday, the Attorney-General dismissed calls from the Asbestos Victims Association for a specialist tribunal to deal with asbestos claims, and he was reported as saying that asbestos cases could be heard at short notice in the state's current court system, despite the fundamental differences in procedure and evidence-taking between the Dust Diseases Tribunal and our courts. My questions are:

1. What level of consultation did the Attorney have with the Premier over his statement yesterday, dismissing the calls for a specialist tribunal from the Asbestos Victims Association?

2. Does the Premier acknowledge that the asbestos victims in this state will be fundamentally disadvantaged by the Schultz decision, leading to increased costs, greater delays and uncertainty for victims and their families?

3. Does the Premier support the Attorney's reported statement ruling out the establishment of a specialist tribunal?

4. Does the Premier acknowledge that the rules of the Dust Diseases Tribunal are fundamentally different to the South Australian Supreme Court and District Court rules in relation to expedited hearings and rules of evidence which make for speedier and more cost-effective hearings for asbestos victims?

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

DISABILITY, CORRESPONDENCE

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Disability, a question about correspondence on disability issues.

Leave granted.

The Hon. J.M.A. LENSINK: A constituent of mine whom I will not name but who will be well known to the minister's office has been in contact with me in relation to her situation. I have not had a chance to discuss raising this matter and using her name, therefore, I will be happy to provide copies of this correspondence to the minister's office. She is the mother of a severely disabled daughter who is 27 years old, and who had brain injury at birth which has given her physical and intellectual disabilities. She also has life-threatening epilepsy, and has high health care needs.

This young lady lives at home with her mother and receives a package of care which originally provided 60 hours per week of support. The funding now pays for only 30 hours of support. I understand that these people have been at the top of the crisis list for additional funding for the past 2½ years; in that time the family has fallen into times of crisis. This lady has written to the minister, the Hon. Jay Weatherill. In a letter dated 16 October she raised a number of issues with the minister. I also wrote a letter on their behalf on 27 October this year, and I received an acknowledgment of that letter on 29 November stating:

> The Minister for Families and Communities, Housing, Ageing and Disability. . . has asked me to acknowledge your letter of 27 October. . . on behalf of [this family] regarding funding. The minister has also received a letter from [Ms X] and is having the matters raised examined. We will forward a copy of his response to you at the earliest opportunity.

I was somewhat surprised to receive a photocopy of a letter addressed from a Grace Portolesi, Chief of Staff to the Minister for Disability, which I received on 23 November. It is addressed to the constituent, and it states:

> Dear [Ms X]
>
> Thank you for your letter of 16 October. . . concerning your daughter. While he does appreciate your difficulties the minister is not able to meet with individual clients to take on 'case management' issues.
>
> If you believe you are being treated unfairly by IDSC, your situation can be investigated. I would also encourage you to continue working with IDSC as the relevant case-management agency.

My questions to the minister are:

1. Is this the format in which members of parliament can now expect to receive responses from the Minister for Disability?

2. Is the minister going to now take the tack of replying to people who are caring for people with disabilities in this manner: 'I'm not interested in case management issues'?

3. When was this policy changed?

I note that the previous minister (Hon. Stephanie Key) had written a much more fulsome reply dated 29 May 2003. It is certainly not my understanding that such short and curt letters are in order.

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 add that the minister himself, whom I know personally and have for a long time, is a very caring minister. He has done all he can within his own portfolios to carry the issues associated with disabilities into the cabinet and this parliament to try to get the funding that was so badly needed because of the slow starting point from which the budget process had to commence. We were coming off a program that needed a large injection of funds. The minister has carried that into the cabinet adequately and, over time, programs will be put in place so that this state will catch up with the rest of the states after lagging behind for some considerable time.

The Hon. J.M.A. LENSINK: I have a supplementary question. Can the minister advise whether this is an acceptable form of response to members of this parliament to have a 'With Compliments' slip and a photocopied letter in response to genuine requests?

The Hon. T.G. ROBERTS: I am not sure. If the honourable member wants to show me afterwards, I might proffer an opinion and take it back to the minister in relation to the complaint made. Each department has its own way of dealing with correspondence and there may have been reasons for that correspondence to be drafted in that way.

BARTON ROAD

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Attorney-General, questions about the reopening of Barton Road.

Leave granted.

The Hon. J.F. STEFANI: On 17 November 2004 the *Messenger* newspaper published an article regarding the reopening of Barton Road. The article stated:

> An election promise to reopen Barton Road West remains unfulfilled for more than 2½ years after the state Labor government came to power. In June 2001 Croydon MP Michael Atkinson, now Attorney-General, joked that any policeman booking a driver for using the shortcut would be sent to Ceduna.

Honourable members would be well aware that the Attorney-General was an outspoken advocate for the reopening of Barton Road, which has been closed since 1987, preventing private vehicles from using this roadway which connects the western suburbs with North Adelaide. As we are all aware, the Hon. Michael Atkinson promised to have this road reopened as soon as Labor took office. It now appears that Labor has broken another of its promises. My questions are:

1. Will the Attorney-General take a submission to cabinet for the reopening of Barton Road?

2. If he is unwilling or unable to submit such a proposal, will he assist another cabinet minister with the responsibility for this matter to introduce such legislation?

3. Will the Attorney-General advise the constituents of the western suburbs, which are part of his electorate, when he will deliver on his promise?

4. Will the Attorney-General advise how many police officers who have booked motorists using the shortcut since Labor took office have been sent to Ceduna?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): In answer to the first part of the question, I know that my colleague the Attorney-General is still a very keen advocate for having Barton Road reopened, and he has remained so all the way through. But the Hon. Julian Stefani would be aware that this government is a minority government; it does not have the absolute numbers in the parliament, but I know my colleague the Attorney remains very keen. This matter has been around for a number of years; in fact, I can probably take some responsibility for this.

As the member for Mitchell many years ago now, one of my neighbours, a Mr Gordon Howie, who is well known to a number of people, came to me expressing his view that the closure of Barton Road was illegal, and I referred him on to the local member, the member for Spence at the time, now the member for Croydon, and this may be how this all began. So, I can put my hand up for some action in that. I know my colleague has held that view, but it is a matter for the parliament whether that can happen. I will refer back to the Attorney the second part of the question concerning how many police officers have been transferred to Ceduna. I am sure some police officers have been transferred to Ceduna, but I am sure it would have nothing do with Barton Road.

MATTERS OF INTEREST

PREMIER'S FOOD AWARDS

The Hon. CARMEL ZOLLO: The theme for this year's Premier's Food Awards was 'Big Picture', recognising the many companies and individuals that contribute to the greatness of South Australia's food industry. Those involved all play their roles as part of that big picture. The industry is also part of the big picture in that it is influential and has played a big role in South Australia's now enjoying very buoyant economic times. The awards are important in that they not only recognise the hard work of those in the industry but they also give finalists and winners the Premier's endorsement and exposure to help them enter new interstate and overseas markets. Being part of the awards is an important learning and disciplinary experience in itself, in that it serves to focus individual companies on their achievements thus far and strategies for future growth, as well as serving to benchmark quality and service. The Premier also gave a special acknowledgment to Food Bank and Dr Susan Nelle for their respective contributions to the food industry. We are indeed fortunate to have so many in the industry with vision and talent being part of that picture.

I was at Lobethal the other day and visited Udder Delights, one of the finalists in the awards. This goat cheese enterprise is selling not just locally and interstate but also in New York. Joint proprietor Sheree Sullivan is also the EO of Adelaide Hills Food. I was also pleased to meet its new Food Industry Development Officer, Kate Bourke. The Premier also pointed out on the evening that the food industry benefits the state in ways which are less easily measured but which are just as real and vital. Food and wine have become such integral parts of tourism, arts and sport in our state.

I was surprised to hear some comments made recently in this place in relation to Flavour South Australia and Food Adelaide. Any changes in support given to our key industry groups have occurred after extensive consultation with industry and direct discussions with the associations. Both have received considerably more financial funding and support than the previous year and, clearly, both these two partners have not had their roles downgraded, with Flavour South Australia still being the domestic market development people and Food Adelaide being contracted by Food South Australia as the principal deliverer of food export related programs. Nor should it be inferred that our regional food groups are in any way inferior or of lesser importance to our State Food Plan, which, of course, continues to evolve. We are continually working with the industry and its associations to ensure the best possible outcomes for our state. The partnership is valued by government, with continued commitment.

The CEO of one of South Australia's most successful home-grown food franchises was named the 2004 Young Leader of the Year. The award, which is sponsored by the South Australian Farmers Federation, was presented to Shane Radbone, CEO of Wendy's Supa Sundaes. The Premier congratulated 34-year old Shane on his exceptional achievement. Shane, who is an outstanding winner, has demonstrated all the qualities of leadership and professionalism that this award seeks to recognise. The judges commended him not only for his passion for work and his ability to lead staff and drive a company to great success but also for his commitment to his young family and community through his charity work.

He has helped to raise more than $260 000 for charity in the past decade.

Some 14 other awards for excellence were also presented at the Seventh Premier's Food Awards. The recipients are: L'Abruzzese Pty Ltd, Glynde; Mitani Products, Salisbury Plains; Hi-Tech Group, Virginia; Vitor Marketing Pty Ltd; Waters Meat Store, Moonta; Holco Fine Meat Suppliers, Cavan; Turner Aquaculture, Cowell; Springs Smoked Seafood Pty Ltd, Mt Barker; Woodside Cheese Wrights, Woodside; Wendy's Supa Sundaes Pty Ltd, Eastwood; Blessed Cheese, McLaren Vale; The Food Forest, Hillier; Elders Limited, Adelaide; and Ferguson Australia Pty Ltd, Malvern. I add my congratulations to the winners, finalists and sponsors for their commitment to the industry. I endorse the Premier's comments that we all look forward to working to create even more wealth, jobs and opportunity for South Australia.

VON EINEM, Mr B.S.

The Hon. R.D. LAWSON: The opposition recently received a most startling letter, about which I asked some questions of the Minister for Correctional Services today. The letter (which is a manuscript letter) reads as follows:

> I am a prisoner in Yatala Labour Prison and this said, would appreciate if you could keep my name confidential given the sensitive nature of information in this letter.
>
> The Premier—Mr Rann—regularly cites that he is coming down heavy on law and order which is most likely true. However, I question whether he knows what exactly is going on in the state's prisons, namely in Yatala Labour Prison. I have some information which you will undoubtedly find very interesting and all of which can no doubt be verified by the Department for Correctional Services.
>
> 1. In June 2004, a female Correctional Officer [who is named in the letter but who I will not name] from the Protective Custody Unit in Yatala, was called to Correctional Services (Head Office) and reprimanded by its CEO—Peter Severin—for having taken into Yatala (last year) a dress and make-up for murderer Bevan Spencer von Einem to parade himself in.
>
> 2. Also last year, murderer von Einem (now aged 59) was openly involved in a sexual relationship with another prisoner, some [and this is specified] years younger. Not only did correctional staff condone this behaviour, but a number of correctional staff encouraged it. The young prisoner [who is also named] was later moved to another division in Yatala. Soon thereafter, he reported that he had been raped by von Einem; but no charges were ever laid against von Einem despite constant demands by [the victim].
>
> 3. Prisoner von Einem regularly preys upon other prisoners (and the younger, the better). Those whom he desires and intends to seduce, he pampers with 'gifts' from the canteen and the promise of thousands of dollars; in an attempt to coerce them into sexual compliance. Money is often sent from the community (from friends of von Einem) directly to prisoners that he is pampering.
>
> 4. Within Yatala (protective custody), von Einem has a 'status' both amongst all staff and prisoners which can only be compared to that of a celebrity.
>
> This said, von Einem has been housed in a cell adjacent to the unit staff office for over eight years and having been incarcerated in Yatala for over 20 years, he is regularly privy to much sensitive information.
>
> Employed as the only education tutor (for protective custody), he has unlimited and unsupervised access to the education classroom (computers and printers etc.) and can do as he pleases.
>
> Furthermore, von Einem has unrestricted movement within the entire protective custody unit; even regularly visiting the main laundry to make scones for staff and prisoners.
>
> 5. Prisoner von Einem has been listed for corrective eye (laser) surgery which I will cost the taxpayer in excess of $6 000.
>
> 6. A legal challenge to the High Court is being planned by von Einem to overturn his conviction (and sentence). He will be citing police corruption (at the time of his original arrest) and fresh evidence since the death of his mother (last year).
>
> If this new legal challenge fails, then von Einem is due for parole in under three years; unless stopped by public outcry and government intervention.
>
> In closing, I would prefer if you did not reply to my letter, and use the information as you deem so.
>
> Yours sincerely.

The letter is signed but I will not mention the name.

In response to my questions today, the minister made the shocking admission that he received a report over 12 months ago about von Einem being clad in women's clothing, but after that report he apparently did nothing about it. This minister and this government appear to be perfectly relaxed about this type of behaviour. The minister does not regard it as even worthy of a follow-up. Most members of the public would be disgusted and outraged by the allegations in this letter, which I have asked the minister to investigate and report back. I think most members of the community would also deplore the attitude of this minister. These revelations give the lie to Mike Rann's claim that this government is tough on law and order.

These allegations, as I say, are both alarming and disgusting. The fact that taxpayers' funds are being spent on laser eye surgery at $6 000 for a prisoner in this situation is an outrage. Many people in our community are in need of urgent medical care, and it is disgusting to think that this prisoner should be receiving special treatment of the kind which is apparently going on. We demand an immediate response from the government to this matter.

Time expired.

ABORTION

The Hon. G.E. GAGO: I was recently present at a well-attended meeting that was organised to defend a woman's right to choose to have an abortion at the Women's Health Statewide office on Tuesday 16 November this year. This meeting was organised in response to comments made about abortion by the federal Minister for Health, Tony Abbott, his Parliamentary Secretary, Christopher Pyne, and Senator Eric Abetz, Special Minister of State. I was shocked, along with many other women I know, to hear news reports of Mr Pyne calling for a ban on late-term abortions. These comments were endorsed shortly after by Mr Abbott, who suggested that Australia was currently gripped by an abortion 'epidemic'.

I challenge these claims by examining some of the facts that these religiously driven male politicians refuse to acknowledge. I add here that I respect those people who live according to religious values. However, I despise those who attempt to impose their values upon others, and, in doing so, deny other people's basic rights. Getting back to this apparent 'epidemic'—it is a complete fallacy. The fact that abortion rates decreased in South Australia by 5 per cent in 2003 compared with the previous year, clearly demonstrates that abortion is not a phenomenon of epidemic proportion. This is a reduction of 249.

Teenagers represented the most significant reduction. Perhaps this trend is most attributable, amongst other things, to the effectiveness of school-based sex education programs. I believe that Mr Abbott's comments mask his underlying pro-life agenda that would see abortion banned altogether. His comments are a political move to ignite debate about abortion and play wedge politics. However, I would like to believe that the general public would see through this.

A report by the Australian Institute of Family Studies shows that the Australian public will not necessarily be easily persuaded by our federal health minister's opinions on abortion. This report found that 'only 4 per cent of Australian adults thought abortion was always wrong' and that almost 60 per cent said 'women should be able to readily have an abortion'.

Mr Pyne's claim that late-term abortion should be banned shows his complete lack of concern for some of the precarious circumstances in which women can find themselves late into their pregnancies. There are many reasons why women have late-term abortions. These include that giving birth will seriously compromise their physical and mental wellbeing and the discovery of a serious foetal abnormality. The incidence of late-term abortion is, in fact, very rare. Approximately 95 per cent of abortions occur in the first trimester of a pregnancy and only approximately 1 per cent of abortions are performed at or after 20 weeks' gestation.

Senator Abetz also made an appalling contribution to the debate with his draconian argument to end Medicare funding for abortion except when a woman's life is in danger. However, if Medicare funding for abortion were removed, a huge number of women's lives would be in absolute danger because, out of financial hardship, they would be forced to have illegal, unsafe and potentially deadly backyard abortions. We do not want to return to those days which resulted in the appalling mutilation of women.

Senator Abetz also suggested that abortion is currently being made available to women 'on demand'. That is incorrect. In South Australia, section 82A(1) of the Criminal Law Consolidation Act states that abortion will only be lawful if it is performed by a legally qualified medical practitioner in a hospital and where 'the continuance of the pregnancy would involve greater risk to the life or physical or mental health of the woman than if the pregnancy were terminated'. What would these male politicians know about the pain, burden, hardship and complexity that any woman is faced with when deciding whether or not she has an abortion?

I was shocked on read on page 12 of today's *Advertiser*, 'Female Liberals are happy to have male federal MPs speak for them on the issue of abortion'. Female Liberal members might be happy about it, but I can assure members that most other women will take extreme offence at this. Women I know tell me they are not prepared to hand over the control of their bodies to a few right-wing male politicians who are religious zealots. I do not fear a debate about abortion—in fact, many reforms are needed. However, the debate should have less to do with religion and politics and everything to do with a woman's right to make decisions about her health and wellbeing.

CO.AS.IT

The Hon. J.M.A. LENSINK: On 29 November I attended the launch of the CO.AS.IT web site, which is also known as the Italian Assistance Association of South Australia Incorporated. CO.AS.IT has had a rather long gestation and, indeed, when I worked for the Hon. Robert Lawson when he was minister for the ageing several years ago, I attended one of the foundation meetings of a number of the groups which came together to get this going. The organisations included ANFE, the Society of St Hilarion, the Italian Benevolent Foundation, CIC and APAIA. These Italian welfare organisations for older people were supported by some MPs who have been here and some who still are, including Mr Joe Scalzi and Mr Mario Feleppa, and I note that the Hon. Julian Stefani has had a long and distinguished association with ANFE.

CO.AS.IT has been designed to be a peak body for Italian elderly people to assist with the provision of information and other services. I think that this is a very important aim, when we look at some of the demographics of the Italian population in South Australia. As we know, the majority of the Italian population, like many other Europeans, arrived after the Second World War. According to the records, in the year 1947, 2 428 South Australians were Italian born. By 1971, there were 31 712 Italian-born South Australians, and it is this group who are now in their older years. South Australia's population of people over 65 is actually more ethnically diverse than our general population and, of those aged under 65, 3.9 per cent are overseas born while, of those South Australians over 65, 32.8 per cent are overseas born. Those who are of Italian heritage, whether born in Italy or not, increased in the period 1986 to 2001 by 44 per cent, outstripping the average growth rate.

Even though Italian South Australians may on average have had more children, there will always be those who do not have family to rely on, which is where services such as ANFE and the residential aged care services are so important. The Italian community has by far the highest proportion of households where the language spoken at home is not English, at some 40 per cent, the next highest being Greek, at 27 per cent. It is important that we acknowledge that this cohort is coming through as they age and will be in need of significant services. The CO.AS.IT board is chaired by Franca Antonello and the Vice-President is Jeff Fiebig, who was at one stage the director of what was then known as the Office for the Ageing.

His comment at the launch of the web site last week was that it would have been good if we could have actually formally invited Robert Lawson who, as minister, had been very supportive not only of Italian aged care services but of ethnically diverse services, and it was he who provided the initial seed funding which has enabled CO.AS.IT to become established. There are also other representatives of these organisations on the board of CO.AS.IT, including Gino Cocchiaro from ANFE; Simon di Francesco from CIC; Vince Timpano from APAIA; and others from Saint Hilarion, PISA (the Italian meals service) and the Northern Italian Community.

In short, I would like to wish this initiative well and commend all the groups for the work that they do for Italian aged services. I hope that they are able to provide an effective working model for all our ethnic aged groups that are coming through in increasing numbers and that will be in need of services in the next few years in greater numbers.

TREASURES OF PALESTINE

The Hon. J.F. STEFANI: Today I wish to speak about an exhibition called Treasures of Palestine, which is currently showing at the South Australian Museum. The exhibition has been organised by Mr Ali Kazak, head of the General Palestinian Delegation to Australia, and was officially opened by the Attorney-General, the Hon. Michael Atkinson, on Thursday 2 December 2004. The Palestinians are the people of Palestine, a land that gave rise to one of the most ancient of all civilisations. One of the earliest permanent villages built there was Jericho, which is the oldest continuously inhabited town in the world, being some 9 000 years old.

Palestinians trace their origins back to the Canaanites and Philistines, after whom the Roman conquerors named their new province of Philistia, which later became known as Filastin in Arabic and Palestine in English. For most of the last 3 000 years, the people of Palestine have lived under foreign occupation. From a religious point of view, the most significant invasions brought Judaism, Christianity and Islam. Palestine became known as the Holy Land because of its great significance to all three religions. This is especially so in the case of the capital city, Jerusalem.

I was privileged to attend the official opening of the Adelaide exhibition which is a showcase of the many cultural and artistic values and traditions of the Palestinian people. Amongst the exhibits, one can trace the ancestry of the Palestinian people through a selection of exhibits which range from beautifully detailed pottery and ceramics to colourful straw products. In a number of glass cases, one can find a superb and delicate representation of the Nativity scene, the Last Supper and the figure of the dome of the Holy Quran, all of which have been skilfully and beautifully crafted in mother-of-pearl. In another area of the exhibition there are numerous paintings each telling an important story through the excellence of various Palestinian artists.

Amongst this colourful display of culture and customs of the people of Palestine we also find a selection of handcrafted costumes and tapestries projecting the traditions and character of the Palestinians. As I wandered through the exhibits I came across a precious collection of coins and banknotes dating back 4 000 years; they tell the story of an ancient and proud civilisation. In another section, I found an intriguing presentation of the Last Supper carved in wood, with the images of Christ and the 12 apostles beautifully detailed sitting at the table at the Last Supper. This collection, together with a carved collection of the holy family, provides visitors to the exhibition with a link to the religions of the Holy Land.

As I wandered through the exhibition, I was attracted to a display of photographs each telling a heart rending story of the suffering and persecution of innocent children and women at the hands of the occupying forces. Some of the photographs show children attending classrooms under tents, and they capture the destruction of school and church buildings bombed by Israeli forces. Other photographs show young children terrorised by Israeli soldiers with machine guns pointed at their heads, whilst the mothers pleaded with the soldiers for their safety.

As I left the exhibition I was attracted to a photograph of Jerusalem, the beautiful and historical capital city of Palestine where many people have suffered and are still suffering today through the ongoing occupation of the West Bank and the Gaza Strip and, as I paused to marvel at the sight of this ancient city, I wondered whether peace would ever return to the people of Palestine. Finally, I would like to express my sincere congratulations to Mr Ali Kazak, the Head of the Palestinian Delegation to Australia, for providing the opportunity to the South Australian community to learn more about the culture, religion, traditions and sufferings of the Palestinian people. I commend the exhibition to all honourable members.

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

The Hon. KATE REYNOLDS: There is an urgent need for the commonwealth government to get on with the job of implementing the first recommendation of the 1991 Royal Commission into Aboriginal Deaths in Custody, including annual reporting by state, territory and federal governments on the implementation of the recommendations of that commission.

On Monday 15 November a 24 year-old Aboriginal man from Point Pearce was found unconscious in his cell at the Elizabeth Police Station. He died two days later on 17 November. On Friday 19 November another Aboriginal Australian died in custody on Palm Island with autopsy reports identifying four broken ribs and a punctured spleen and liver. On Saturday 20 November yet another Aboriginal man died in police custody in the Queensland town of Normanton. That is three deaths in four days. Aboriginal people are 15 times more likely to be imprisoned than anybody else in Australian society. Indeed, last year, 75 per cent of the deaths in custody of prisoners who were detained for no more than public order offences were indigenous Australians.

In 1991 the Federal government spent enormous amounts of money on the royal commission to address these issues and deal with the 99 deaths that occurred in the preceding decade. Yet, despite the 339 recommendations, since that time the number of deaths has continued to increase parallel with the increasing rates of imprisonment of indigenous people in this country.

This is a shameful, preventable national tragedy. Recommendation 1 of the royal commission—which I remind members was conducted by a respected South Australian, Elliott Johnston QC—was that all governments at federal, state and territory levels should report annually on how they are implementing these recommendations. On Monday, in response to a question by Democrats Senator Aden Ridgeway, the Minister for Justice and Customs said that he did not know that annual reporting on the implementation of the recommendations no longer occurs and, despite the government's massive surpluses, they cannot find the funding to properly implement and monitor a national strategy to deal with the problem of over-representation and deaths of indigenous people in custody. The commonwealth funding to report on the implementation of the recommendations ended in 1997.

In the past eight years we have seen little if any improvement in conditions in indigenous communities and there is much unfinished business. We saw race relations boil over on numerous occasions earlier this year in Redfern and more recently on Palm Island in Queensland. South Australia should not become complacent. On 28 April last year my colleague the Hon. Ian Gilfillan asked the Minister for Correctional Services a question about the Coroner's recommendations on cell design. In his reply the minister said that DOSAA, which I note is now the Department of Aboriginal Affairs and Reconciliation, is a monitoring agency within government whose role is to outline potential breaches of the recommendations of the royal commission. He said, 'DOSAA is a watchdog in relation to the Royal Commission into Aboriginal Deaths in Custody.' He also stated:

> A key initiative in respect of the implementation and recommendation of the Royal Commission into Aboriginal Deaths in Custody is the Aboriginal Justice Consultative Committee. . . hosted by the Attorney-General's Department. . . DOSAA will continue to monitor and report on any Aboriginal deaths in custody in South Australia and, as defined in the Royal Commission into Aboriginal Deaths in Custody, there has been no death in custody of an Aboriginal person in South Australia since May 2001.

Sadly, we know that at least one inquiry has now been instigated by the Police Commissioner which may, in fact, find that the most recent death is a death in custody. I am aware that the Aboriginal Justice Consultative Committee has asked DAARE, some 12 months ago now, to coordinate a whole of government response for the more than 100, out of more than 300, recommendations from the Royal Commission into Aboriginal Deaths in Custody which fall outside the role of the Attorney-General's jurisdiction.

I do not know how many of those 100-plus recommendations have been acted upon or how effective any action has been. I have previously asked the minister to report on progress, but I suspect that very little has been done. The Australian Democrats urge the federal government as a matter of extreme urgency to re-instigate the requirements of the first recommendation of the royal commission, including annual reporting by all governments on the implementation of the royal commission's recommendations.

YOUNG MEDIA AUSTRALIA

The Hon. A.L. EVANS: Young Media Australia's mission is to promote a quality media environment for Australian children and to raise community awareness of children's needs in relation to the media. Children's normal developmental stages have quite specific and important implications for decision-making and information about children's media exposure. Young Media Australia undertakes to conduct, collect and review research and information relating to children and the media to maintain a significant level of expertise in child development and the impacts of media.

Another vital role of Young Media is in the provision of information to parents and caregivers via the Young Media Australia web site. Advice provided relates to a range of media issues including the impact of print, electronic and screen based media on children and young people. It undertakes to have a comprehensive range of movie reviews available and has recently begun to have some of these reviews published in a local weekend newspaper. Trained professionals provide advice and information via a 24 hour a day seven days a week national free call helpline on a range of topics. These professionals have reported consistently that they receive strong positive feedback from callers about the work of Young Media. Young Media Australia also advocates for the needs and interests of children in relation to the media. Young Media Australia represents community concerns about the impact of print, electronic and screen based media on children and young adults to legislators, regulators and the media.

Much of what is marketed through the media is not in the best interests of children. Media marketing is increasingly using sophisticated techniques which exploit children's natural developmental vulnerabilities and which have negative impacts on children's development. Messages encouraging early sexualisation or the acceptance of violence are used to raise demand from young children for various products. Parents are increasingly confused by the marketing of television and movies that are directed at children but also at parents. Movie distributors sometimes seek to maximise their box office takings without regard to whether the movie is beneficial or problematic for children at various developmental stages.

Many M-rated films have been marketed to the young via toys and fun activity books designed for four and five year olds. Some parents may be swept along by marketing pressure to conclude that the association of toys with the movie means that the movie is appropriate for these young children. Our classification system is not properly reflecting the research about media impacts, nor is it as useful as it could be in terms of being structured around children's major stages of development and parents' desire to make good parenting decisions. Young Media Australia has been at the forefront of education about how parents can best use the classification system. It is the only group trying to support parents to moderate their children's media experiences so that children's development is supported.

Who is supporting Young Media Australia? The South Australian government has been providing funding assistance for a number of years. However, it is a national organisation meeting the needs of concerned and responsible parents across Australia. It is performing a vital role in meeting the needs of families and children. These needs are not being adequately addressed by the Office of Film and Literature Classification and the national classification system. I understand that Young Media Australia is still waiting to hear whether commonwealth funding has been approved through the Stronger Families: Invest to Grow grants. Federal funding should constitute a substantial part of Young Media Australia's funding base, and do so on an ongoing basis.

Time expired.

VON EINEM, Mr B.S.

The Hon. T.G. ROBERTS (Minister for Correctional Services): I seek leave to make a personal explanation.

Leave granted.

The Hon. T.G. ROBERTS: During question time and in Matters of Interest a number of accusations were made in what appeared to be an effort by members of the Liberal Party opposition to give the impression that I had no care and concern about a prisoner or issues within the prison system. Because the request was made for me to bring back an early reply, I have taken this opportunity. I have been advised that in October 2003 the department became aware of an allegation that an officer had brought one unauthorised item of clothing into a prison. An investigation was held, which resulted in disciplinary proceedings against the officer involved. The officer pleaded guilty and a penalty was applied that included loss of entitlements. The department also advised that prisoner von Einem is not afforded any special privileges other than the entitlements that other prisoners have.

Other allegations regarding sexual abuse in prisons are taken seriously and will be fully investigated. I have not yet received the letter I have sought from the honourable member, but I understand the media have a copy. I am also told that the laser eye surgery was for the removal of cataracts, and that this is a normal procedure for the removal of cataracts in this modern day and age.

INTERNATIONAL DAY OF DISABLED PERSONS

The Hon. KATE REYNOLDS: I move:

1. That this council notes that Friday, 3 December 2004, was International Day of Disabled Persons.
2. That this council further notes—

(a) the valuable and willing contribution made by people with disabilities to the development, strength and diversity of the South Australian community;
(b) that people with disabilities continue to experience barriers to employment, education, premises, technology, transport, accommodation, support and services that diminish their access to full participation in the community; and
(c) that many people with disabilities and their carers live in poverty with increasing concern about the adequacy of future income and social support.

3. That this council calls on the federal government to address barriers to participation by leading an active response to unmet need, reviewing funding arrangements through the Commonwealth-State/Territory Disability Agreement, providing increased access to education, employment and training options, reinstating a permanent Disability Discrimination Commissioner and expediting the completion of standards under the Disability Discrimination Act 1992.

Last week, we celebrated the International Day of Disabled Persons, which was first proclaimed by the United Nations in 1992 and which provides an opportunity to recognise and celebrate the valuable contributions that people with disabilities make to our community. As with many other members of the community, that contribution is, indeed, significant. The other important function of the day is to educate the broader community about the many ways in which people with a disability can be prevented from contributing to the full extent of their abilities.

There is little doubt that the contribution that people with a disability are able to make to the development, strength and diversity of our community would be that much larger again if these barriers were properly addressed. Whether we are talking about social, cultural, physical, technological, financial or language barriers, or often a combination of several of these (and, as members would have heard in some of my contributions recently, geographic barriers), people with disabilities are often restricted in their capacity to fully or easily participate in community life. This is as a direct consequence of the environment in which we live rather than as a consequence of the disability or disabilities themselves. This social model of disability demands that more able-bodied people, organisations and institutions make adjustments to ensure that disadvantage to people who have multiple physical or intellectual disabilities is minimised. It is a model that the Democrats fully support.

Mr President, as you—and, I hope, other members—would be aware, I have been a keen and committed advocate for the rights of people with disabilities. As well as working with various peak bodies, recently I have been working with the coalition Dignity for the Disabled, which is fighting very hard for the rights of children and young people with disabilities and their parents and carers. I have hosted two briefings for members of parliament and their staff (the most recent was yesterday), in which I have outlined to the too few members who have been interested just how tough these families are doing it and, indeed, how little support is available to them to help them manage. It is with this in mind that I reiterate that the Democrats remain committed to ensuring that the rights of people with disabilities are not eroded. At a state level, we will continue our strong support for the funding of programs and services that encourage the participation of people with disabilities in the work force.

We believe that people with a disability should have access to a diverse range of advocacy and support services to meet their individual needs. We also support the provision of training and support for people with disabilities who wish to work as advocates for their communities. We believe it is vital that governments acknowledge the knowledge, skills and experience of people with a disability when it comes to developing policies, programs and services. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: WASTE MANAGEMENT

The Hon. G.E. GAGO: I move:

That the report of the committee on an inquiry into waste management be noted.

This inquiry was referred by the House of Assembly to the Environment, Resources and Development Committee on 28 May 2003 and the committee commenced its inquiry in early 2004, following the completion of its inquiry into wind farms. The committee heard from 22 witnesses during this period and received 13 submissions highlighting the importance of appropriate waste management and resource recovery in our society. Our action of the past—principally, to just throw away our waste—is no longer acceptable. Better use of these items through recycling and reuse is now being undertaken in metropolitan South Australia and, to a lesser extent, in regional and rural South Australia.

It is estimated that 86 per cent of South Australian households have access to some form of recycling. All 19 metropolitan councils offer a kerbside collection service, and 17 of the 49 non-metropolitan councils also provide a recycling service. The committee heard from several regional councils and local government groups about the difficulty being experienced by councils in providing recycling collection services to their ratepayers. The expense of infrastructure and the need to transport the materials long distances to reprocessing facilities is proving to be prohibitive in some rural areas. Hence, the committee has recommended that state government departments, such as Zero Waste SA, work with regional and rural councils and local government groups to review and identify current infrastructure that potentially can be used for recycling purposes, and to consider and identify mechanisms to improve the issues surrounding the large transport distances for these materials.

Recycling services in metropolitan Adelaide face different hurdles. Although every household has access to a bottle, can and paper kerbside collection service, there are about eight different kerbside collection systems across the metropolitan area. These vary between several collection bins, split bins, crates or a combination thereof—I think at one time I used to receive a bag. The different systems cause confusion for the public, which potentially reduces the amount of recyclables collected. The additional infrastructure requirements for each of the different systems are also a potential waste of resources. The committee encourages the government to continue to work with local councils in achieving greater uniformity in recycling collection services.

It was encouraging to hear that the industry is also starting to play its part in resource recovery. The amount of building and demolition waste recycled in Adelaide has increased, with approximately 700 000 tonnes of material recycled annually (64 per cent of available waste material). The committee also heard about the potential to salvage building and demolition waste, particularly timber. However, this could be undertaken to a greater extent in Adelaide, as there appear to be some impediments to salvaging material, such as time constraints on demolition and potential restrictions on the use of salvaged materials. These issues need to be addressed to allow for a greater salvaging and reuse of building materials.

It was also encouraging to hear about the increasing diversion of green waste from landfill. The expansion of local composting facilities has allowed and will continue to allow more councils to offer green waste collection services to their residents and for industry to appropriately recycle this valuable resource. In respect of other alternative technologies to landfill, concerns are still held by government and the community over waste to energy technologies and their environmental and health implications. Further investigations are required into the different processes that are being trialled or used interstate and overseas. Government also needs to provide the industry with a clear direction on how it intends to assess these technologies.

Although the recycling and reuse of waste materials is on the increase, there is still a need to dispose of waste. At the commencement of this inquiry, there was a concern over the closure of the Wingfield waste management facility (due to be closed at the end of this month) and what will happen with the waste that is currently being deposited there. Evidence that there is about 30 years worth of landfill capacity to the south of Adelaide and 90 years landfill capacity to the north of Adelaide (at current filling rates) was provided to the committee. With this information and the government's pursuit of Zero Waste, there should be adequate capacity to manage Adelaide's waste for the future. As such, all new landfill applications for the management of Adelaide's waste should be considered in light of these facts.

However, in rural areas things are different. The committee heard of councils' concerns regarding the recent regional approach to waste management, especially landfills, being taken by the state government. The councils are currently not convinced that a regional approach will work for all areas. They perceive that there will be an increase in waste costs to councils. They are concerned about the likely increase in illegal dumping of rubbish along roadsides, if local facilities are not available to residents, and councils will be expected to manage this. The committee believes that there needs to be further discussions between councils and state government, considering the issues of regionalisation, illegal dumping and community education to inform local residents of new services and appropriate waste management practices.

It was encouraging to hear the ongoing government commitment to hazardous waste management, such as the program commenced earlier this year by Zero Waste SA to collect household hazardous waste via a council by council service in metropolitan and rural areas. I encourage all householders to take the opportunity to dispose of their household hazardous waste via one of these collection programs when it is in their council area.

The committee also included the effectiveness of container deposit legislation within the terms of reference for its inquiry. The committee was pleased to hear of the continuing strong support and recognition for CDL by South Australians, with 97 per cent of respondents to a recent survey agreeing that CDL is good for our environment. As most of us are aware, CDL applies to many different beverage items and a variety of containers. The committee heard with interest the actual extent of the scheme: there are over 2 500 beverage containers currently approved by the EPA for sale in South Australia—and this was fascinating—and, of these, 70 to 80 items are iced-coffee containers. Although CDL is one of South Australia's success stories—and one we need to continue to encourage the rest of Australia to adopt—some issues that were raised with the committee need further consideration.

There is an anomaly relating to the legislation in respect of different capacity containers. That is, most containers required to be approved under the scheme are 'up to and including three litres'. However, there are some which are 'less than one litre', but these containers are made from the same packaging materials. This is confusing for the public and also for the collection depot operators, as it is the contents of the container and not the packaging material that dictates where a beverage container fits under the scheme. There should only be one capacity adopted under the legislation to minimise confusion.

When the legislation was introduced in the mid-1970s, the deposit value was 5¢—and, of course, it is still this today. This was of concern to the committee and was raised in several submissions. Arguments both for and against raising the deposit value were heard. Although both had merit, neither were conclusive. It is the belief of the committee that the deposit value for CDL should be further investigated to determine whether there is a need to increase its monetary value to maintain the success of the container deposit scheme.

As a result of this inquiry into waste management, the committee made 33 recommendations in total, and looks forward to their being considered and implemented. I would like to take this opportunity to thank all those who have contributed to this inquiry. I thank all the people who took the time and made the effort to prepare submissions for the committee and speak to the committee. I send my sincere thanks to members of the committee: the Hon. Sandra Kanck, the Hon. David Ridgway, the Hon. Malcolm Buckby, Mr Tom Koutsantonis and the committee's Presiding Member, Ms Lyn Breuer; and also to the current and former staff, Mr Phil Frensham, Ms Heather Hill and Ms Alison Meeks.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The Hon. J. GAZZOLA: I move:

That the 2003-04 report of the committee be noted.

The committee investigates matters relating to the administration of the state's occupational health, safety and compensation legislation and other legislation in relation to these matters, including the performance of the WorkCover Corporation. The Occupational Safety, Rehabilitation and Compensation Committee differs substantially from other standing committees. Whilst a number of factors are identical to all other standing committees of parliament, the key difference with this committee is that the members of the committee are not remunerated. However, the workload of the committee has increased exponentially due to the government's reform agenda which touches the jurisdiction of the committee.

Members are committed to the important work of the committee and have applied themselves diligently. The committee has worked well and collectively, and each member has contributed an enormous amount of time for a very important cause and can feel proud of his or her efforts and contributions. In particular, the efforts of the Hon. Angus Redford, who worked tirelessly on the inquiries which have recently been completed by the committee, should be acknowledged.

The Occupational Safety, Rehabilitation and Compensation Committee met on 23 occasions in the last financial year and undertook three extensive inquiries, two of which it has completed and already reported on. The third inquiry relates to the government's review into the workers compensation system, known as the Stanley review. The committee continues with its work in relation to that matter.

The committee notes that South Australian compensable fatality rates are lower than the national average but workplace injuries are higher than the national average. The increase in claim numbers and the decrease in return to work rates continue to have a negative impact on WorkCover's unfunded liability. The committee also notes WorkCover's significant unfunded liability which continues to rise due to a variety of factors, including new actuarial assessment methods as well as the increase in claim numbers and a delay in return to work rates of injured workers, which I have previously mentioned.

However, the committee is heartened by the efforts being made by the WorkCover board and its senior management team, who are working to address the wide-ranging problems that contribute to this liability. The committee realises that it will take the board some time, and a range of strategies will be required, to bring about an improvement in WorkCover's performance. However, this is not just a matter for the WorkCover board. It is important for every employer and employee to focus on workplace health and safety so that workplace injury, death and disease are prevented. This is one of the most important ways that individuals can help reduce the unfunded liability. More importantly, it will reduce the human cost associated with workplace injuries.

The committee notes the workplace relations ministers council's endorsement of a national occupational health and safety strategy which aims to significantly reduce the incidence of workplace fatality and injury. The council has set targets to reduce workplace fatalities by 20 per cent and injuries by 40 per cent by 30 June 2012.

The committee has been informed by WorkCover that legal proceedings undertaken pursuant to section 120 of the Workers Rehabilitation and Compensation Act, which relates to dishonesty, has saved the scheme an estimated $2.95 million. Forty-eight prosecutions were finalised at a cost of $1.13 million, of which 79.2 per cent were successful with the defendants being found guilty. The courts have awarded a total of $593 581.92 in restitution to WorkCover.

The eighth report of the Occupational Safety, Rehabilitation and Compensation Committee summarises the committee's work for the financial year 2003-04, which has been extensive whilst the cost to the taxpayer has been minimal. The total expenditure of the committee for the financial year was $1 603.

I take this opportunity to thank all those people who have contributed to the inquiries undertaken by the committee. I thank all the people who took the time and made the effort to prepare submissions for the committee and to speak to the committee. I extend my sincere thanks to the members of the committee—Hon. Ian Gilfillan and Hon. Angus Redford; and, from the House of Assembly, Mr Paul Caica MP (who is the Presiding Member and does an amazing job of keeping us on track), Mr Kris Hanna MP and Mrs Isobel Redmond MP. I also thank the hardworking staff, Mr Rick Crump and Ms Sue Sedivy.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

CASINO (UNDERAGE GAMBLING) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Casino Act 1997. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

This bill seeks to change aspects of the Casino Act and is primarily aimed at the problem of underage gambling. At the outset I should say that there is currently a matter that is being investigated by the Office of the Liquor and Gambling Commissioner and a request has been made to the Independent Gambling Authority pursuant to its powers under sections 11 and 13 of the Independent Gambling Authority Act for an inquiry into this particular matter. So I will not say anything that would in any way prejudice that investigation—both the consideration of it by the Independent Gambling Authority at its next board meeting and, particularly, the investigations currently under way by the Office of the Liquor and Gambling Commissioner.

However, under-age gambling is an issue of significant concern. In clause 4 this proposal seeks to have section 38 of the Casino Act, with respect to the approval of management systems and the like, altered so that surveillance tapes or other electromagnetic records made in accordance with the approved systems, which systems are approved by the Commissioner, be retained for at least one month. Currently, these records are kept for one week although, as I understand it, if there has been an incident of note at the casino or if it has been requested by the inspectorate or, in particular, by the Liquor and Gambling Commissioner, the casino keeps those records for a longer period. This simply extends the time for which such records are kept. The casino is a place where there is extensive surveillance at all times, as is required under its management systems approval, and that is to be commended.

The amendment also seeks to ensure that the signs approved by the Commissioner state that areas are under surveillance. That is something that members of the public, the patrons of the casino, are aware of. In a sense, this seeks to protect both the casino and anyone seeking to bring a complaint against it. It extends beyond under-age gambling, although this is the primary focus for this bill, but if an allegation that is quite unfounded has been made by a patron, having that record makes it so much easier for the Office of the Liquor and Gambling Commissioner to investigate the incident and come to a speedy conclusion. I would have thought that in premises such as the Adelaide casino, where we are dealing with a significant public company, the Sky City group, keeping tapes for a longer period of time ought to be not unreasonable and not particularly onerous.

In my experience, from having discussions with people who have had issues with the casino—and I am not saying whether or not those complaints were warranted in all cases—if there is an issue with the casino, having a record of that incident goes a long way to resolving what has occurred from the point of view of any investigation. That is the first part of this bill.

Clause 5 relates to the exclusion of children. Under the current provisions of the act, section 43(2) states that any amount won by a child by gambling at the casino is forfeited to the Crown. The proposed amendment in clause 5 states that, if satisfied that a child has lost money by gambling at the casino, the Commissioner may by written notice to the licensee direct that the amount assessed by the Commissioner as having been lost by the child be forfeited to the Crown. I emphasise that this is a discretion on the part of the Commissioner, so the Commissioner can take into account all the circumstances of the incident. It is something that the Commissioner must be satisfied of in terms of the actual amounts lost, so there are evidentiary requirements with respect to that.

Above all, it is a discretionary matter and, given the procedures in place, I would imagine that this discretion would be exercised in those cases where there is clear proof and where there are circumstances that would indicate that the appropriate order to be made is that the moneys be forfeited to the Crown. It is discretionary, and I believe it is appropriate that it remain discretionary rather than being strict liability in nature. It also provides that there be prominent signs with respect to the warning of children entering the casino. This begs some broader issues with respect to the procedures in place to ensure that under-age gambling does not take place. That is why I look forward to the outcome of any inquiries by both the Office of the Liquor and Gambling Commissioner and the Independent Gambling Authority in this regard.

In my experience, from speaking regularly at schools and talking about gambling to students who are 16 and 17 years old, I have undertaken a bit of an exercise where I ask the teachers to turn their backs on the students, or not look, and I ask students how many of them who are under 18 have been to the casino or to poker machine venues to gamble, and I am always concerned by the significant proportion of young people who have been there. Most recently, at a well-known school in this state I spoke to a class of about 15 or 20 students, and about five or six put up their hands saying they had been to the casino and they were under age. There was one particular student, a girl of 16, who said that she did not have any trouble going in there on a regular basis. I would have thought that many in the community would have asked her for identification.

So, there are some issues here in relation to the whole topic of under-age gambling and the enforcement of current laws. Having surveillance tapes kept for one month and having signs allowing for that fact to be prominently displayed in the casino, I believe, will go a long way to reducing the incidence of under-age gambling and ensuring that there is appropriate compliance with laws. I want to make clear that, if a minor is on casino premises, they ought to be subject to prosecution. If the signs state that you are not supposed to be there under the age of 18, then those minors on casino premises ought to face prosecution.

As I understand it, from answers given to me by the government about this, in the past three years there have not been any prosecutions for underage gambling despite what I have been told by many young people and gambling counsellors, and a general concern from members of the public who contact my office about the ease of the instances given to me, of minors getting into casino premises. I believe that having those surveillance tapes for a month will act to both protect the casino and assist in the appropriate enforcement of underage gambling laws. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (INDUSTRIAL MANSLAUGHTER) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Occupational Health, Safety and Welfare Act 1986. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

This bill seeks to amend the Occupational Health, Safety and Welfare Act, to include provisions for industrial manslaughter. I propose to outline some of the concerns that I have and then seek leave to conclude. I would like an opportunity to ensure that my colleagues and the broader community, including the union movement and employers, have an opportunity to digest this bill over the break, and to receive any further comment from them.

This bill is based on legislation that was passed in the Australian Capital Territory some 12 months ago—the Crimes (Industrial Manslaughter) Amendment Act 2003. It is legislation that has been the subject of scrutiny in that parliament, and those laws have been in place for some 12 months. The catalyst for me to bring forward this legislation has been the whole issue of asbestos related liabilities and the fact that, in Australia, in the next 20 years there will be some 53 000 asbestos related diseases diagnosed, according to information from medical and other sources that deal with asbestos diseases.

The estimate that I have seen is that, in South Australia—and I have discussed this with medical specialists who deal with asbestos diseases in the state—there could be up to 2 500 South Australians die because of exposure to asbestos in the next 20 years. Australia has the world's highest per capita incidence of mesothelioma, and in South Australia we formerly had the second highest per capita incidence of mesothelioma but, I understand, we are about to overtake that. Here in South Australia, we will have the highest per capita incidence of mesothelioma, the deadly asbestos related disease, which is one of the most painful and horrible ways to die.

My proposition is that, for decades, hundreds of thousands of Australians have been needlessly and recklessly exposed to asbestos. They are victims or potential victims not only of a deadly dust but also of a corporate culture that is at the very least indifferent and, in all likelihood, verging on a contemptuous disregard for the health and safety of asbestos workers and consumers. In the context of this bill, it is worth reflecting on the history of the risks associated with asbestos exposure in the context of the current need for legislative reform.

The literature indicates that factory workers in the UK as early as 1897 reported on the link between exposure to asbestos and lung disease. In 1899, an autopsy of a London asbestos textile factory worker recorded that scarring of the lungs was the cause of death. This man was the last survivor of a group of 10 who had all died prematurely in similar circumstances. By 1930, the United Kingdom factory inspectorate noted that lung disease amongst asbestos textile workers had reached near epidemic proportions.

Several years ago, in the course of a bill that I introduced with respect to asbestos diseases for the family of victims to be able to claim for non-economic loss after the death of a victim, I referred extensively to affidavit evidence of Peter Russell who was employed as a laboratory assistant with

James Hardie Industries from 1948 to 1970 and who provided evidence in a South Australian District Court case several years ago for Romano Di Maria for his claim against his former employer, James Hardie. Since that time, Rom, who was a great supporter of that legislation, died at the end of last year. That just drove home to me the terrible consequences of exposure to asbestos in a corporate culture which is, at the very least, indifferent, and many would say reckless, in respect of the safety of workers.

During extensive testing and quality control work with asbestos between 1948 and 1959, Mr Russell found that the problems with asbestos went beyond health issues associated simply with inhaling the dust. He saw and reported on the effects of a number of employees. Mr Russell was concerned, given his findings on the dangers of asbestos dust, that there was no warning placed on James Hardie's products. He raised this with management time after time, year after year; yet, the company's eventual response to those concerns in 1963 was that James Hardie's responsibilities ended at the factory door.

In his affidavit to the District Court, Mr Russell swore that he was told by management that, in effect, the company's profits were the primary consideration. The information I have is that the concerns of Mr Russell were predated years before Mr Russell even started working at James Hardie, with documents in the company's possession as early as 1942—as I have been informed by lawyers involved in these cases—raising alarm bells about the health of the company's workers. More recently I have been told that James Hardie had knowledge of this back in the 1930s. Yet, James Hardie continued to manufacture and peddle asbestos products until 1987.

Although I note that, as late as November 2003, Peter MacDonald, the then CEO of James Hardie Industries who has recently received a multimillion dollar payout from James Hardie, told Sydney's *Daily Telegraph* the following:

> James Hardie Industries Limited. . . never itself produced these products [namely] asbestos.

There was certainly a culture of denial that still continues to this day on the part of James Hardie Industries. We now know that James Hardie has been outed on the hazards of its products as a result of the Jackson inquiry in New South Wales that James Hardie outsourced, restructured, set up a head office in the Netherlands and shifted assets overseas. Many would say that it asset-stripped its company in order to protect its position.

James Hardie was not alone on the issue of asbestos. Some members may remember a front page story in *The Australian* recently of a 1962 photo of an asbestos shovelling competition at Wittenoom run by a CSR subsidiary with the first worker who filled a 44-gallon drum with raw blue asbestos filings winning a prize. Arthur Maddalena, the competition winner, happens to be the only man in that photo still alive with 39 of his 42 workmates dying from asbestos related disease.

I believe that the issue of asbestos is a prime example where there has been a corporate culture of deceit, indifference, and recklessness to the safety of workers that has had, as its consequence, an awful legacy magnified by the 20 to 40-year latency period for asbestos related diseases to become manifest. We know that there will be thousands of Australians who will be dying in the years to come because of asbestos related diseases and that that exposure occurred in the 1960s, 1970s and 1980s. In South Australia alone we have up to 2 500 South Australians who could die because of asbestos related diseases—many of them from mesothelioma.

The question that must be asked is: how many lives could have been saved if James Hardie and other asbestos manufacturers took heed of the evidence stretching back a century or at least listened to the Peter Russells of their organisations? I am absolutely convinced that many thousands of Australians would not be dying an excruciating asbestos related death in the next 20 years if industrial manslaughter laws were in place in the 1960s or even in the 1970s, because, for some companies, a worker's death was something that was reconciled by an actuarial calculation on a balance sheet or written off as a tax deduction.

The common law of manslaughter is woefully inadequate to deal with deaths in the workplace that have been caused by gross negligence or a corporate culture of reckless indifference. The fallout from the Esso Longford gas plant explosion on 25 September 1998 in which two workers died and eight others were injured provoked a widespread reflection and debate of Victoria's laws in dealing with corporate liability for workplace deaths and injuries. A detailed analysis two years ago by Karen Wheelwright from the School of Law at Deakin University outlined the constraints and limitations of common law and occupational health and safety laws in prosecuting those responsible for deaths in the workplace. Wheelwright makes the following point:

> [The offence of manslaughter has] developed in the context of individual human offenders who can form the necessary intent that is the key to criminal liability. In the case of an artificial legal entity, there is a conceptual difficulty in establishing 'intent' or 'fault'. To overcome the difficulty, this model of individual responsibility has been adapted by the common law to corporations by breaking them down, metaphorically, into their underlying human components to see if there was an individual within the company who had committed the [act] of a crime with the appropriate [mental intent].

The law in Australia is based on a 1972 House of Lords decision of Tesco Supermarkets Limited v Nattrass which held:

> [To be prosecuted this individual] must have been in a sufficiently senior and responsible position that he or she can be said to represent the company's 'directing mind and will', and this is referred to as the doctrine of 'attribution.

The only successful prosecution in Victoria that I am aware of for corporate manslaughter was the 1994 Denbo case which Wheelwright says 'illustrates the fairly narrow situation in which the attribution doctrine can lead to a conviction of a company for manslaughter.' In that case Denbo Pty Ltd pleaded guilty to a charge of manslaughter where an employee driving that company's truck was killed when, due to brake failure, he lost control of the truck and it overturned. The court found criminal negligence on the part of the company because it failed to establish an adequate system of maintenance for its vehicles. It failed to properly train its employees and permitted the truck to be used when it was known to have faulty brakes. One of the co-owners of the company was not only responsible for the maintenance system but also directed the employee to drive the truck. There was difficulty in holding the company's owner to be the directing mind and will of the company so as to attribute his gross negligence to Denbo. However, the fine imposed on Denbo was never collected due to the company's insolvency.

Wheelwright goes on to tell us that there was a very different result in the 1995 Victorian case of R v A C Hatrick Chemicals. In her research on this, Wheelwright stated:

> The company was acquitted of charges of manslaughter and negligently causing serious injury after a large vessel used to store

gum resin exploded at its Springvale plant, causing one death and one injury. Applying the attribution doctrine as stated in Tesco, Justice Hampel held that the company could not be liable unless there was criminal negligence on the part of an individual who could be identified as the directing mind and will of the company.

There were two individuals, one having the joint responsibility as the plant manager and safety coordinator and the other, the plant engineer, who bore some responsibility for the accident. But the actions of neither amounted to criminal negligence. Justice Hampel considered that common law principles did not permit the aggregation of the fault of several individuals so as to render the company criminally liable, where the fault of each individual was insufficient to constitute the offence in question. If the doctrine for determining corporate criminal liability for manslaughter and negligently causing serious injury was to change, he said, it was the responsibility of parliament and not the courts to change it. That is a responsibility that this parliament should not shirk. In recent years there has been an alarming upward trend of workplace deaths and serious injuries in our state. Nationally, a recent study by Access Economics puts the rate of workplace deaths at 4 900 each year, more than double the road toll, and many of those deaths are due to asbestos.

The ACT parliament has already enacted the Crimes (Industrial Manslaughter) Amendment Act, which was passed in November 2003, and I have used that act as a template for the bill I have introduced. Dire predictions from the corporate sector of a flight of capital and jobs from the nation's capital have not come to pass. The ACT Chamber of Commerce and Industry vehemently opposed the legislation as unnecessary and counterproductive, but the Chamber's Chief Executive, Chris Peters, who led an industry campaign opposing the legislation, has since adopted the position that, now the legislation has passed, the chamber would work with the government to educate business, saying, 'We will be working hard with our members, Government and WorkCover to educate business about OH&S standards and the need for regular safety audits to avoid them coming foul of this legislation.'.

This bill overcomes inadequacies and restrictions in the current common law by finding criminal liability in cases where a senior officer has engaged in reckless or negligent conduct that has led to the death of an employee. This bill deals with the artificial restrictions in the Tesco decision by finding a corporation liable if it 'tacitly or impliedly authorised or permitted reckless indifference about seriously endangering the health or safety of employees,' and it allows for the aggregating of conduct of any number of its employees, servants or agents. The bill also refers, for the purpose of determining liability, to whether a corporate culture existed that 'directed, encouraged, tolerated or led to the conduct that caused the circumstances leading to the death.'.

The emphasis of the bill is to ensure that those who have a reasonable degree of authority to avoid or prevent danger to the life, safety or health of another actually exercise that authority. No longer will companies be able to turn a blind eye to practices they knew or ought to have known would endanger the lives of their workers. This bill does not seek to punish employers that strive to do the right thing in workplace safety. The overwhelming majority already do so and have nothing to fear from this proposed legislation, but for those rogue employers which seek to avoid their responsibilities and which connivingly structure their corporate governance to evade accountability, this bill will be a provocative and much needed wake up call.

I will seek to leave to conclude my remarks shortly. I urge members to consider the provisions of this bill. I believe that this is long overdue and that current legislation does not have sufficient sanctions to deal with those rogue employers which do not do the right thing and which put the lives of their workers in jeopardy. Tragically, this sometimes leads to those workers dying needlessly in the workplace when that could have been avoided if appropriate safety measures had been in place. I emphasise that I am convinced that, had we had industrial manslaughter industrial legislation in the 1960s and 1970s, we would not be seeing the many thousands of tragic cases of asbestos related disease in this country. In a state that will shortly have the highest level of mesothelioma per capita in the world, this legislation is long overdue. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

LIABILITY OF DIRECTORS (ASBESTOS RELATED ILLNESSES) BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to provide for personal liability for certain directors of James Hardie Industries Ltd in relation to damages claims in respect of asbestos related illnesses. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

I indicate at the outset that my remarks will be brief, because I will seek leave to conclude my remarks. I note there are currently negotiations between asbestos victims groups in the ACTU with James Hardie Industries in relation to the massive $1.5 billion shortfall in the Medical Research and Compensation Foundation, and I also note that the federal parliament is considering legislation to give further powers to ASIC, which powers, if granted, will I believe provide ASIC with an opportunity to further investigate the conduct of the directors of James Hardie Industries. Essentially, I am proposing to leave this bill on the table and make a comprehensive contribution in the new year. I hope that will not be necessary; if there has been a satisfactory resolution for the many thousands of victims of James Hardie Industries, this bill will not be necessary. As a last resort, I believe that this parliament needs to do everything possible to ensure that South Australian perpetrators of James Hardie's culture of deceit and asset stripping are brought to account. I sincerely hope there will be a satisfactory resolution in the coming weeks and months. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STATUTORY AUTHORITIES REVIEW COMMITTEE: SOUTH AUSTRALIAN WATER CORPORATION

The Hon. CAROLINE SCHAEFER: I move:

That the Statutory Authorities Review Committee inquire into and report on the operations and management of the South Australian Water Corporation, with particular reference to—

1. The efficiency and effectiveness of the South Australian Water Corporation in the outsourcing of the corporation's database management;
2. The efficiency and effectiveness of the South Australian Water Corporation in the tendering and awarding of maintenance contracts;
3. The relationship of the corporation with public and private organisations within South Australia for the supply and maintenance of the state's domestic, public and business water supplies; and

4. Any other relevant matter.

I will speak very briefly to this motion. If there is a need to further elaborate on my reasons for moving this motion, I will do so after there has been a government response. Essentially, I am requesting that the Statutory Authorities Review Committee inquire into a number of the operations and management of the South Australian Water Corporation. It is the duty of the Statutory Authorities Review Committee to look at statutory authorities and their operations throughout the state. I (as have, I know, a number of other people) have received considerable complaints over the past few months with regard to the activities of the management of SA Water Corporation and, in particular, the alarming events that unfolded in another place in regard to SA Water's outsourcing certain parts of the maintenance required and, in doing so, allowing access to its database and the addresses and particulars of thousands of South Australian householders to a third party. It has been revealed that that database has since been destroyed. However, I am sure we all understand that it is not impossible for those particulars to have spread to areas that people who are clients and customers of SA Water would never have intended. I propose to look at that matter.

I also have received a number of inquiries with respect to what appears to be an alarming backlog in maintenance that is required by SA Water and, indeed, the confusion, I think, of the general public as to the relationship between the corporation and certain public and private organisations within South Australia, and as to the roles and functions of SA Water in comparison with the roles and functions of the utility as a corporation. If there is a need for me to speak at greater length and in greater detail, I will do so in my summing up.

The Hon. R.K. SNEATH secured the adjournment of the debate.

SELECT COMMITTEE ON STAFFING, RESOURCING AND EFFICIENCY OF THE SOUTH AUSTRALIA POLICE

The Hon. R.K. SNEATH: I move:

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SELECT COMMITTEE ON MOUNT GAMBIER DISTRICT HEALTH SERVICE

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

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SELECT COMMITTEE ON THE STATUS OF FATHERS IN SOUTH AUSTRALIA

The Hon. J. GAZZOLA: On behalf of the Hon. Carmel Zollo, I move:

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SELECT COMMITTEE ON ELECTRICITY INDUSTRY IN SOUTH AUSTRALIA

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

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SELECT COMMITTEE ON THE ROLE AND ADEQUACY OF GOVERNMENT FUNDED NATIONAL BROADCASTING

The Hon. NICK XENOPHON: I move:

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SELECT COMMITTEE ON THE OFFICES OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND THE CORONER

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

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SELECT COMMITTEE ON ALLEGEDLY UNLAWFUL PRACTICES RAISED BY THE AUDITOR-GENERAL IN THE 2003-04 ANNUAL REPORT

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

That the time for bringing up the report of the select committee be extended to Wednesday 9 February 2005.

Motion carried.

SOCIAL DEVELOPMENT COMMITTEE: POSTNATAL DEPRESSION

Adjourned debate on motion of Hon. Gail Gago:

That the final report of the committee, on an Inquiry into Postnatal Depression, be noted.

(Continued from 24 November. Page 643.)

The Hon. J.M.A. LENSINK: I speak in favour of this motion of the Social Development Committee Inquiry into Postnatal Depression. Postnatal depression has been described as a description rather than a diagnosis, and it is a description of a variety of diagnoses. It is not to be confused with what is commonly called the 'baby blues', which can last some 24 to 36 hours post-partum or up to three to four days after birth and which is related to a fairly straightforward drop in hormones. Postnatal depression affects about one in seven women in the postnatal period (some 15 per cent). It is characterised by mood changes, which might include tearfulness, crying and depression. One of the major problems is the irritability, which is the destructive component and which can affect inter-family relationships.

There are also some biological features such as sleep disturbance. Women can wake up for no reason at three or four in the morning and cannot get back to sleep. They either lose their appetite and lose weight or suffer from compensatory binge eating, put on weight and become further depressed. Postnatal depression commonly comes on between two and eight weeks following the birth of the baby but can be up to and within the period of 12 months. There are no environmental factors which seem to be necessarily the main contributors, but there is some evidence that women who have more difficult babies are more likely to get depressed. Women who get depressed find it quite difficult to bond with their baby and find it difficult to be responsive to their child's needs, which causes some complications for the baby as it grows up.

The condition becomes postnatal depression when the negative mood becomes overwhelming, and the woman feels so overwhelmed by her feelings day after day, without having any good days and without experiencing pleasure from activities which would normally provide pleasure. Such mothers often lack in energy, which is a problem because, obviously without energy, they cannot provide the care that the baby needs. Some women cannot even get out of bed or concentrate to feed their child. The stigma associated with postnatal depression is much less than it was 10 years ago, but we still have a long way to go in terms of raising awareness of the issue.

There are significant long-term costs to South Australia. They have not been quantified in financial terms, but clearly there is a high emotional cost to the individuals and, in the most tragic cases, it can result in suicide. There are also effects on the family and the community, and, as I mentioned, there is also an effect on the partner and the infant. In these times when the federal Treasurer is urging us all to have more kids, women who have postnatal depression are less likely to have subsequent children because they find the experience so difficult.

The factors impacting on postnatal depression but which cannot necessarily be called 'causes' because the factors are not that clear are as follows. Some 30 to 50 per cent of women who develop postnatal depression have symptoms during pregnancy. In the instances of people who develop postnatal depression, the support of the nuclear family may have been withdrawn. More families have grandparents interstate and there is a greater number of single mothers who have fewer supports around them. Support services provided by families for women are more limited. Rural women are more at risk of complications. They do not receive as much support, and depression is more likely to go untreated for a long time and impact on their families. I note that very little research has been done on rural mental health.

Clearly, over time, we have experienced changes to the way in which our society is structured, which has resulted in a lot less support from the extended family. The effect on infants is quite marked. In relation to children whose mothers suffered from postnatal depression, when followed up at the ages of five and 13 such children were found to be cognitively disadvantaged. Postnatal depression can have very significant impacts on infants in terms of their social, emotional and cognitive development. Children of mothers with postnatal depression are more likely to have difficulty interacting with peers and have aggressive behaviours. If a mother is depressed about how she feels, she is less likely to connect to her baby. I note that boys are affected differently from girls; and, by the time boys go to school, they are more likely to have behavioural problems and learning difficulties which can even contribute to criminal activity later in life.

However, girls are more likely to internalise their feelings and lack of bonding, but it comes out later in their teenage years in ways such as anorexia, overdoses and even depression. As a community, we are losing the community-based skills and expertise in parenting because of our highly technical and industrial way of life, with people having fewer children and less contact with extended families; and the parenting practices which traditionally have been passed down from mother to daughter and from father to son are less prevalent today.

Some evidence which I found particularly interesting was from Pam Linke from Child and Youth Health. Child and Youth Health has a particular focus on the child. She referred to the universal home visiting program, which I think, in time, will prove its own value in saving dollars in the long run in keeping children out of gaol, reducing delinquency and keeping kids in the education system and out of the mental health system. Pam Linke referred to the concept of attachment, which is not so much bonding but a feeling of safety and security which a baby develops as a result of connecting with their parent. She said that children need to develop attachment to develop their template of the world properly and to relate to others. Attachment is very badly affected in children whose mothers have post natal depression because they do not get the same cues which we are all programmed to pick up from our mothers.

There is a strong association between post natal depression and poor child outcomes, especially in boys, as I mentioned. Babies are highly attuned to their mother's mood and behaviour and can detect depression in their mother at the age of three months. Post natal depression will reduce the emotional, physiological and biochemical development of children and leads to, in less than technical terms, poor wiring of the brain, leading to poor cognitive development which reduces IQ and problem solving. Alternative attachments can be formed—for instance, with the father or grandparents—and mothers can also be trained to mimic the behaviour of a so-called 'normal' mother, and the child is able to develop in a normal way. As I mentioned, awareness is very important, particularly for early intervention, and, as with all of these things, the earlier we get involved and try to do things about it, the less the consequences will be in the long term.

In terms of treatment, there are obviously anti-depressants and also counselling services which are all quite effective in treating the condition once it has been detected. There are a number of services operating in South Australia that I think deserve to be recognised for assisting mothers and babies in this state. I believe that they operate on their own initiative, and do so because they have a very professional attitude towards caring for people in this state. They include: the Northern Women's Community Midwifery Program; the Midwifery Group Practice of the Women's and Children's Hospital (who I think have been caring for the wife and newborn of the Hon. Angus Redford); Antenatal Shared Care; Helen Mayo House; the Lyell McEwin Health Service; and Child and Youth Health.

I encourage all members to look at this report, particularly if they have an interest in health and early childhood development. I think it contains a number of important points to make about services, in that we need to ensure that women who are having babies have a cohesive service which is not hit-and-miss in terms of whether or not they happen to get a good service. If you go to the Women's and Children's Hospital, clearly, you are getting a very good service but, in some other places where the staff are run off their feet or are not able to follow up parents following birth, you are not so lucky as to get a good service.

I also commend our temporary research officer, Miss Sue Markotic, who put a great deal of effort into this report, and I think it reads exceptionally well. I also commend the other members of the committee. With those comments, I support this motion.

Motion carried.

HOMEBUYERS SEMINARS

Order of the Day, Private Business, No. 9: Hon. J. Gazzola to move:

That the regulations under the Land Agents Act 1994 concerning South Australian homebuyers seminars, made on 5 August 2004 and laid on the table of this council on 15 September 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

ELIGIBLE ROLLOVER FUND

Order of the Day, Private Business, No. 10: Hon. J. Gazzola to move:

That the rules under the Local Government Act 1999 concerning eligible rollover fund, made on 27 July 2004 and laid on the table of this council on 15 September 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

PLUMBERS, GASFITTERS AND ELECTRICIANS ACT

The Hon. J. GAZZOLA: I move:

That the regulations under the Plumbers, Gasfitters and Electricians Act 1995, concerning apprentices, made on 9 September 2004 and laid on the table of this council on 15 September 2004, be disallowed.

The Legislative Review Committee voted to recommend disallowance of these regulations at its meeting this morning. The regulations state that electricians who contract for work on electricity entities do not have to be licensed under the Plumbers, Gasfitters and Electricians Act 1995. The reason is that such electricians are subject to the Electricity Entities Safety and Technical Management Plan, which is intended to provide a scheme of regulation that protects electricians in the workplace and ensures work is carried out to appropriate standards. The committee noted that safety and technical management plans may not be easily accessed by the relevant electricians. Consequently, electricians may not be fully aware of the duty that is owed to them by their employers and the standards they must uphold in carrying out their electrical work. This would be an unintended consequence of the regulations and, as such, breaches the committee's principles of scrutiny.

Motion carried.

CHEMICALS

Order of the Day, Private Business, No. 15: Hon. J. Gazzola to move:

That regulations under the Agricultural and Veterinary Products (Control of Use) Act 2002 concerning chemicals, made on 26 August 2004 and laid on the table of this council on 15 September 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

BAIL (LIMITATIONS ON BAIL AUTHORITY'S DISCRETION) AMENDMENT BILL

The Hon. R.D. LAWSON obtained leave and introduced a bill for an act to amend the Bail Act 1985. Read a first time.

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

That this bill be now read a second time.

The subject of bail is dealt with in South Australia under the provisions of the Bail Act. Issues concerning bail frequently arise in our community, very often when a person on bail commits an offence. Members may recall that in 2003 there was extensive publicity surrounding the case of Sonia Warne, who died from injuries after a vehicle collision caused by the dangerous driving of Christopher Clothier, who was then on bail on a murder charge. The family raised the issue publicly, raised it with the Premier and with the Attorney-General, and a good deal of public sympathy was, quite rightly, engendered by this terrible tragedy. Regrettably, this type of case is not an uncommon occurrence.

Bail also frequently comes under public scrutiny when persons on bail breach conditions of bail. My colleague the shadow minister for police in another place (Hon. Robert Brokenshire) raised such a case earlier this year, and Leon Byner, the radio commentator, agitated in relation to a particular case concerning the breaches of bail, apparently at random, by an individual who the police said was not a danger to the community but was only a danger to his associates. His associates were not too impressed by the fact that this person could apparently breach bail with impunity.

The latest annual report of the Police Commissioner, which is for the year ended 30 June 2004, reveals that in that year there were 4 612 breaches of bail that were reported to or became known to the police in this state. 4 612 breaches: a considerable number; and the most alarming statistic was the fact that the number of breaches over recent years has increased markedly. For example, in 2001 there were 2 394 (almost 2 400) and the following year it had risen to 2 960. In the next year it went up by over a thousand to 4 010. Last year the increase was, as I noted, to 4 600, an increase in one year of over 10 per cent, or over 500 cases.

Because of the agitation that has arisen in relation to a number of these cases the Premier, in September of this year, announced that there would be a review of the Bail Act. In fact, the Attorney-General had, some months before that, announced that he had requested the DPP to examine the act. However, to date the government has not produced any response, and we believe that it is appropriate that this matter be addressed right now rather than delayed to some time when the Premier will consider it expedient from a media point of view.

In the public debate on this issue it is usually suggested that more stringent restrictions should be placed on those who are given bail and more severe sanctions imposed on those who break the conditions of bail. We agree with those sentiments. The current law is, as I have noted, governed by the Bail Act of 1985. Under that act, bail can be granted by a bail authority to a person charged with an offence or to a person who has been convicted of an offence but who has not exhausted all rights of appeal. The bail authority will be either a police officer or a court—any court in the hierarchy, depending upon the particular circumstances.

Under the current law, when bail is granted a bail agreement is entered into by the bailee, that is, the person bailed, or by someone on their behalf. The bail agreement sets out the terms and conditions of bail, and may provide for the forfeiture to the Crown of a monetary amount if the bailee fails to comply with the terms and conditions. The bail agreement can be supported by a third-party guarantor. A primary condition of a bail agreement is invariably that the bailee attend court when the charges are heard.

Section 10 of the act contains an important presumption. It is the presumption in favour of granting bail in cases where applicants have not been convicted of the offence for which they have been taken into custody. However, bail can be refused by the bail authority, having regard to the gravity of the offence, the likelihood of the bailee absconding or reoffending, or interfering with the witnesses or evidence. Bail can also be refused having regard to the need for the bailee's own protection or mental care, and consideration will be had to previous contraventions of bail.

The important point to remember is that there is a presumption in favour of bail under our current legislation. It is clearly based upon the presumption of innocence which underpins our criminal justice system. When considering whether to grant bail, the bail authority can impose conditions relating to the place of residence, the limitation of movement of the bailee, supervision, obligations to report to police and the frequency of that reporting, and the surrender of passport. Non-compliance with a bail agreement does constitute an offence which is punishable by a fine of up to $10 000 or imprisonment for two years.

Of course, a bail authority or any court can revoke bail if the bailee fails to comply with the conditions of the bail agreement, or the conditions upon which bail was granted, or fails to attend court when required. A court may also issue a warrant for the arrest of a person who contravenes a bail agreement. A police officer may arrest, without warrant, a person breaching bail, and the Crown can apply to the court to estreat—in the old language—or forfeit the whole or part of the sum specified in a bail guarantee. The important underpinning that we seek to alter and vary relates to the presumption that exists in South Australian law in favour of bail.

Other jurisdictions have a slightly different mechanism. For example, the Bail Act of New South Wales contains a presumption against bail for certain offences, for example, serious drug trafficking, serious firearms or weapons offences, serious repeat property offences, that is, where a person has already been convicted of one or more serious property offences in the past two years. Bail can still be granted in New South Wales to persons charged with the above offences. However, the applicants for bail have to make out a strong case for their release on bail. Rather than simply relying on a presumption in favour of bail, there is an onus cast upon the person seeking bail in those particular cases.

The New South Wales act also provides that the presumption in favour of bail does not apply to certain offences, for example, violent crimes such as robbery, murder, aggravated sexual assault, sexual offences against young children, kidnapping, and so on. The presumption does not apply in cases of serious criminal trespass, for example, housebreaking and burglary, serious drug offences, murder and manslaughter, and offences relating to domestic violence. Once again, in each of the above cases the onus is on the accused offender to satisfy the bail authority that bail should not be refused; in other words, the onus is reversed. The act in New South Wales also reverses the onus for those who have committed a breach of bail conditions.

We believe that the approach adopted in New South Wales is appropriate. In Queensland, the Bail Act has a reverse onus where the defendant is charged with a serious offence which is alleged to have been committed whilst the person is awaiting trial on another offence, where the offence involved the use or threatened use of a firearm. In Victoria, the Bail Act has a presumption in favour of bail similar to ours, but bail shall be refused in the six cases which I mentioned briefly as being within the categories similar to those which apply in New South Wales.

In the Australian Capital Territory, a Law Reform Commission report in 2001 recommended an amendment to its Bail Act which specified that bail should not be granted to a person charged with certain serious offences. These are recommendations which are similar to the Bail Act of New South Wales. In Western Australia, the Bail Act requires exceptional circumstances to be shown before bail can be granted to a person charged with certain defined 'serious offences' and which are alleged to have been committed whilst the accused person was already on bail.

The bill I introduce today seeks to take the best of some of the improvements that have been made in recent years in other states. It will preserve the existing presumption in favour of bail for most offences. However, we believe that it is appropriate to place some hurdles in the path of one who seeks to obtain bail when charged with certain offences. We propose that section 10 be amended by imposing or inserting those additional hurdles. It is proposed that the section will now have an additional provision, proposed new subsection (2a), which will provide that there is a strong presumption against bail.

That is that bail is not to be granted unless the applicant establishes that there are exceptional reasons why bail should not be refused in cases of murder, serious drug trafficking offences against the South Australian Controlled Substances Act—in particular, section 32 of that act, which makes it an offence to engage in the illicit manufacture, sale or possession of drugs of dependence or prohibited substances of significant quantities where a term of imprisonment may be imposed—and drug trafficking offences under the commonwealth Customs Act, and sections are mentioned in the bill. They are cases where the offence of trafficking narcotic goods is of sufficient seriousness to warrant imprisonment and to include, in relation to those offences, the conspiracy to commit them or being an accessory to such offences. The reason why it is necessary to include offences under the Customs Act is because most prosecutions for significant drug importing and smuggling cases arise under commonwealth legislation.

We also believe that it is appropriate that exceptional reasons should be shown why bail should be granted where the person is charged with an indictable offence alleged to have been committed whilst on bail already. As I mentioned earlier, one thing that members of the community are seriously concerned about is those cases where someone is charged with one offence, is granted bail, and then goes on a crime spree whilst on bail—a series of robberies, burglaries or the like. We believe that in those cases there ought be a high hurdle before bail be granted.

We also believe there should be another hurdle which applies to offences of a different kind. These are cases where the presumption will be against bail unless the applicant is able to establish that there are reasonable grounds for granting the bail. These are cases where the person is charged with an offence involving violence, serious criminal trespass or stalking. This is violence of a lesser order than murder where the applicant, within the previous two years, has been convicted of an offence involving violence, a serious criminal trespass or stalking, or where the applicant has been returned to custody on a breach of a condition of a previous bail agreement. In those circumstances a hurdle should be imposed, not as high as the hurdle for murder and serious drug offences where exceptional circumstances must be shown but, at least, there should be an impediment to the virtually automatic granting of bail.

I commend the bill to members. I hope that this will receive the support of members of the Legislative Council. It is one where we are certainly looking forward to the committee stage. I mentioned that it may be necessary to change the particular section references in the commonwealth Customs Act. Our bill is based upon those sections which currently appear in the New South Wales act but, as a result of discussions with parliamentary counsel, I believe that it may be necessary to change some of those sections in the committee stage. However, that will in no way undermine the principle which we are seeking to advance which is namely a more effective bail system which will deliver a safer community.

The Hon. R.K. SNEATH secured the adjournment of the debate.

PITJANTJATJARA LAND RIGHTS (REGULATED SUBSTANCES) AMENDMENT BILL

In committee.

(Continued from 11 November. Page 543.)

New clause 4A.

The CHAIRMAN: When the committee last considered this bill, it had made some progress and we were discussing amendment No. 1 from the Hon. Mr Xenophon, before progress was reported.

The Hon. T.G. ROBERTS: I thank honourable members for cooperating in moving this item forward, as other members will be then be able to involve themselves in the debate after dinner. The item has been canvassed; I think it is a matter of members voting on this issue and trying to get the bill down into another place as soon as we can.

The committee divided on the new clause:

AYES (11)

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

NOES (8)

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

PAIR

Redford, A. J.	Zollo, C.

Majority of 3 for the ayes.

New clause thus inserted.

Clause 5 passed.

Clause 6.

The Hon. NICK XENOPHON: I move:

Page 3, after line 2—

Insert:

42BA—Regulated substance misuse offences—mandatory referral to assessment service

(1) If a Pitjantjatjara who is of or over the age of 14 is alleged to have committed an offence on the lands constituted of the inhalation or consumption of a regulated substance (a regulated substance misuse offence), a police officer must refer him or her to an assessment and treatment service in accordance with Schedule 4.

(2) A referral under this section operates as a stay of proceedings (if any) for the alleged offence.

(3) A prosecution for a regulated substance misuse offence cannot proceed unless the alleged offender has been referred to an assessment and treatment service under this section in relation to the offence and the referral has been terminated by the service in accordance with Schedule 4.

(4) The fact that a person alleged to have committed a regulated substance misuse offence participates in an assessment or enters into an undertaking under Schedule 4 does not constitute an admission of guilt, and will not be regarded as evidence tending to establish guilt, in relation to the alleged offence.

(5) If the referral of a person in relation to an alleged offence is terminated under Schedule 4, evidence—

(a) of anything said or done by the person in the course of being assessed or carrying out an undertaking; or

(b) of the reasons for the termination,

is not admissible in any proceedings against the person for the alleged offence.

(6) On the expiry of an undertaking under Schedule 4, the person who entered into it is immune from prosecution for the alleged offence to which the undertaking related.

(7) The Minister must establish such assessment and treatment services as are necessary for the purposes of this section to provide assessment and treatment programs on the lands.

(8) The Minister may, by notice in writing—

(a) impose conditions on an assessment or treatment service established under subsection (7); and

(b) vary or revoke any of the conditions imposed on such a service, or impose further conditions; and

(c) abolish an assessment or treatment service established under subsection (7) for any reason the Minister thinks fit.

(9) However, the Minister must consult with Anangu Pitjantjatjara before—

(a) establishing a regulated substance misuse assessment and treatment service under subsection (7); or

(b) abolishing a regulated substance misuse assessment and treatment service under subsection (8)(c).

This relates to regulated substances, misuse offences and mandatory referral to an assessment service. This amendment, in a sense, is a test clause with respect to amendment No. 3, in that it relates to referral to assessment and treatment services. There are provisions for referral under the Controlled Substances Act, and this is modelled on the provisions of that act. I note that, in earlier debates and during the second reading stage of this bill, the Hon. Mr Lawson made a comment that, under the regulations regarding the lands, there is an offence with respect to the possession and inhalation of petrol—

The CHAIRMAN: Order! There are too many audible conversations in the chamber. I cannot hear the member on his feet.

The Hon. NICK XENOPHON: There is, in a sense, a gap in the legislation in that the provision for dealing with assisting someone who has an abuse problem is not covered. This measure provides for a treatment regime that is not currently in place, and it is based on the Controlled Substances Act. I believe that, if we are to tackle the terrible problem of petrol sniffing and substance abuse on the lands, we need to have this structure in place to allow for the appropriate referral and treatment of individuals who have this problem. Essentially, it is modelled on the Controlled Substances Act. I believe that there is a gap in the legislative framework at the moment in that, with respect to those who are afflicted with substance abuse through inhalation of petrol fumes, we do not have a structure in place to deal with that, and that is what this amendment seeks to remedy.

The Hon. T.G. ROBERTS: The government opposes the amendment on the basis that we would be in breach of our own legislation if it was passed, because there are no mandatory referral assessment services structures in the lands. We have services in the metropolitan area but we do not have a referral centre, as such, in the lands. We have programs running, but if we were to mandate a requirement to a facility that does not exist, if the legislation was passed, the government would be in breach of its own legislation.

The Hon. R.D. LAWSON: I indicate Liberal support for this initiative. We are entirely unconvinced by the government's response. The proposed section will impose upon the government an obligation to establish an assessment and treatment service. It is no excuse for the minister and the government to say that no such services are available on the lands. In September 2002, the Coroner recommended, after years of delay, that a facility be established forthwith. When the Coroner was returning to the lands late last month to continue his inquest into petrol sniffing on the lands, the government sought to pre-empt the resumption of the coronial inquest by announcing the establishment in Adelaide of a facility to enable a number of people from the lands to receive rehabilitation in the metropolitan area. That is fine. We do not mind the establishment of such a facility—in fact, we welcome it. The trouble is, it is too little, too late.

That is why we are supporting the imposition of this mandatory requirement, namely, that 'the minister must establish such assessment and treatment services as are necessary for the purpose of this section to provide assessment and treatment programs on the lands'. The time has passed for discussion and plans. The minister always tells us that it is work in progress and that something is happening, but nothing ever happens. It is about time that this parliament indicated in the strongest possible terms that the minister must establish such assessment and treatment services. I do not for a moment suggest that it will be easy: it will be difficult. But, unless there is some mandatory imposition from the parliament on the government, we will not see anything happen for the next five years. I commend the member for bringing forward the amendment, which we are very happy to support.

The Hon. KATE REYNOLDS: In the past couple of sitting weeks we have had some very interesting combinations when divisions have been called, and this will probably be another one. I wish to put on the record that I wholeheartedly support the comments of the Hon. Robert Lawson, and I will be supporting the amendment. I also understand that money either has been allocated or is soon to be allocated, I think, through the Aboriginal Lands Task Force (or in whichever form it might be) to establish such a facility, and I very much look forward to its operation.

The Hon. T.G. ROBERTS: Another ground upon which we oppose the amendment is: where else is there a mandatory referral for anyone with any illness, affliction or habit that is mandated to a form of treatment? It is an unusual form of process.

The Hon. Caroline Schaefer: It's better than nothing.

The Hon. T.G. ROBERTS: I think the honourable member has to remember that, in the eight years of the previous government, there was nothing there. We are now starting off from a low base. I have argued that. The situation now is that we have a mandated process. I would like to know, if a petrol sniffer is not referred, or someone makes a misdiagnosis, or someone makes an appeal, what will be the fine or penalty for not doing it?

The Hon. KATE REYNOLDS: The Hon. Nick Xenophon is not available to make a response, so I will proffer one on his behalf. I understand that this amendment mirrors legislation that requires referral for people who demonstrate some kind of alcohol addiction. Therefore, if it can be done in another act for another health imperative, I would have thought it could be done in this piece of legislation, too.

The Hon. NICK XENOPHON: I am not sure whether I misunderstood what the minister said. He said that there is not any mandatory system of referral, but section 36(1) of the Controlled Substances Act provides:

> Where a person is alleged to have committed a simple possession offence, a police officer must refer the person to a nominated assessment service and give the person a notice that sets out particulars of the date, place and time at which the person must attend the service.

We do have this in place. There is a mandatory referral. Rather than criminalising people's conduct, it is about giving them the assistance that they need; and I would have thought that, when it comes to petrol sniffing, that is an area which needs to be dealt with as our highest priority. Maybe I misunderstood the minister, but my understanding from the legislation is that there are mandatory provisions in place. This amendment seeks simply to extend that to an area of dire need because of the social consequences of petrol sniffing on the lands.

Amendment carried; clause as amended passed.

Clause 7 passed.

New clause 8.

The Hon. NICK XENOPHON: I move:

Page 5, after line 3—

Insert:

8—Insertion of Schedule 4

After the last Schedule of the Act insert:

Schedule 4—Referral to assessment and treatment service (section 42BA)

1—Notice of referral for assessment

(1) The police officer referring a person to an assessment and treatment service in accordance with section 42BA must give the person a notice in writing that sets out particulars of the date, place and time at which the person must attend the service.

(2) If more than one assessment and treatment service has been established under section 42BA, the police officer referring a person under that section must refer the person to the service that is, in the opinion of the police officer, the most appropriate, having regard to cultural as well as practical matters.

(3) A copy of the referral notice must be forwarded to the nominated assessment and treatment service.

2—Assessment of referred person

(1) On a person being referred to an assessment and treatment service under section 42BA, the service must proceed to carry out and complete its assessment as expeditiously as reasonably practicable.

(2) For the purposes of carrying out the assessment, the service may, by notice in writing, require the person to—

(a) give written consent to the release to the service of—
 (i) the person's medical and other treatment records; and
 (ii) records held by or on behalf of an assessment and treatment service or any agency or instrumentality of the Crown relating to previous assessments of, or undertakings entered into by, the person under this schedule; and
 (iii) the person's criminal record (ie. record of any convictions recorded against the person); and
(b) attend the service for such further number of interviews as the service thinks fit; or
(c) submit to an examination, by the service or by any other person, to determine whether the person is experiencing physical, psychological or social problems connected with the misuse of a regulated substance and, if so, the treatment (if any) appropriate for the person.

(3) The assessment and treatment service must, by notice in writing, terminate the person's referral to the service if—
(a) the person fails, without reasonable excuse, to attend the service in accordance with the referral notice or with any other notice requiring the person to attend; or
(b) at any time during the assessment it becomes apparent to the service that—
 (i) it would not, in the circumstances, be appropriate to require the person to enter into an undertaking under this schedule; or
 (ii) the person does not admit to the allegation (but the service is not required to ascertain this); or
 (iii) the person does not want the service to deal with the matter,

and may, in the same manner, terminate the referral if the person—
(c) hinders, or does not cooperate with, the service in carrying out the assessment; or
(d) without reasonable excuse, refuses or fails to comply with a requirement under this schedule to give written consent to the release of records or to submit to an examination; or
(e) refuses to comply with a requirement to enter into an undertaking under this schedule or, without reasonable excuse, contravenes or fails to comply with an undertaking entered into under this schedule.

(4) A notice under subclause (3) must set out a short statement of the assessment and treatment service's reasons for the termination.

(5) The assessment and treatment service must give a copy of the notice of termination to the Commissioner of Police.

3—Undertakings

(1) An assessment and treatment service may, on the completion of an assessment of a person under this schedule, require the person to enter into a written undertaking relating to one or more of the following:
(a) the treatment that the person will undertake;
(b) participation by the person in an approved program of an educative, preventive or rehabilitative nature;
(c) any other matters that will, in the opinion of the service, assist the person to overcome any personal problems that may tend to lead, or that may have led, to the misuse of a regulated substance.

(2) If the person enters into the undertaking—
(a) the person must be given a copy of the undertaking; and
(b) any proceedings against the person for the offence in relation to which the person was referred must be withdrawn; and
(c) the person must, if remanded in custody in relation to that offence but not otherwise subject to detention, be released from detention or, if on bail for the offence, the bail agreement must be discharged.

(3) The undertaking will be effective for a period, not exceeding 6 months, determined by the assessment and treatment service and specified in the undertaking.

(4) The assessment and treatment service may, at the request or with the consent of the person bound by the undertaking, vary the terms of the undertaking, but not so that the total period of the undertaking exceeds 6 months.

(5) The assessment and treatment service must notify the Commissioner of Police that the person has entered into an undertaking, of any extension to the period of the undertaking and, if it occurs, of the expiry of the undertaking.

(6) In this section—

approved program means a program, the contents of which have been approved by—
(a) Anangu Pitjantjatjara; and
(b) the Minister.

4—Release from custody for the purposes of assessment or undertaking

If a person who is in custody has been given a notice under this schedule requiring the person to attend an assessment and treatment service, or has entered into an undertaking under this schedule requiring the person to attend at an assessment and treatment service, the manager of the place in which the person is being detained must cause the person to be brought to the assessment and treatment service as required by the notice or undertaking.

5—Confidentiality

A person who is, or has been, engaged in duties related to the administration of this schedule must not disclose information relating to a person referred to an assessment and treatment service, being information obtained in the course of those duties, unless the disclosure is made—
(a) in the administration of this schedule; or
(b) as authorised or required by law; or
(c) with the consent of the person to whom the information relates.

Maximum penalty: $10 000.

6—Manner of giving notices etc.

If this schedule requires that a notice or other document be given to a person referred to an assessment and treatment service, the notice or document must given to the person personally and the contents of the notice or document explained to the person (with the aid of an interpreter if necessary).

In a sense, this is consequential to the previous amendment. It relates to the referral to an assessment and treatment service. It is based on the statutory regime in the Controlled Substances Act which deals with the manner of assessment and the undertakings that must be given. In essence, it is something that is already in place but it is something that ought to apply in this circumstance of dealing with the awful problem of petrol sniffing on the lands.

The Hon. R.D. LAWSON: I indicate Liberal opposition support for this amendment. I should say that, in addition to the Controlled Substances Act, the Public Intoxication Act contains a mechanism not dissimilar from the one which we have just introduced. It requires that, where a member of the police force (or an authorised officer) has reasonable grounds to believe that a person is in a public place under the influence of a drug or alcohol, a diversionary process is provided. The police officer must take the person to their place of residence, or such place as approved from time to time by the minister, or to a police station, or to a sobering-up centre for admission as a patient. That mechanism is laid down in the Public Intoxication Act, and I remind the committee that we have only recently made petrol a substance for the purposes of the Public Intoxication Act.

I believe that these forms of diversionary programs ought be introduced. The government says it is doing something, and this particular amendment, which I regard as consequential upon the earlier amendment of the Hon. Nick Xenophon, is one that is worthy of support.

The Hon. T.G. ROBERTS: The government opposes it on the basis of its previous argument that we do not have a facility up there. There are programs whereby petrol sniffers who are caught in the early stages are diverted to programs run by elders and by the community. Facilities for those intermediate sniffers and long-term sniffers will be required and needed, and we are moving towards putting them in place. However, to mandate the referral of all sniffers—whether they are early sniffers or chronic sniffers—takes it out of the hands of the people from community and health services who are devising programs to suit the flexibility that is required to deal with the various problems associated with varying degrees of sniffing.

The Hon. KATE REYNOLDS: I indicate our support for the amendment.

New clause inserted.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

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

SHERIFFS ACT

Order of the Day, Private Business, No. 23: Hon. J.M. Gazzola to move:

That the regulations under the Sheriffs Act 1978 concerning fees, made on 27 May 2004 and laid on the table of this council on 1 June 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

WATER RESOURCES ACT

Order of the Day, Private Business, No. 24: Hon. J.M. Gazzola to move:

That the regulations under the Water Resources Act 1997 concerning Lower South East commercial forestry, made on 3 June 2004 and laid on the table of this council on 30 June 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

DEVELOPMENT ACT

Order of the Day, Private Business, No. 25: Hon. J.M. Gazzola to move:

That the regulations under the Development Act 1993 concerning commercial forestry, made on 3 June 2004 and laid on the table of this council on 30 June 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

LIQUOR LICENSING ACT

Order of the Day, Private Business, No. 26: Hon. J.M. Gazzola to move:

That the regulations under the Liquor Licensing Act 1997 concerning Long Term Dry Areas—Mount Gambier, made on 17 June 2004 and laid on the table of this council on 30 June 2004, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

TEACHERS REGISTRATION AND STANDARDS BILL

Adjourned debate on second reading.

(Continued from 7 December. Page 774.)

The Hon. CARMEL ZOLLO: I rise to make a short contribution in support of this bill. Our teaching profession is, without doubt, one of the most important of all professions and this legislation recognises that importance. I note that the minister said that this bill repeals Part 4 of the Education Act 1972. I know that many would agree that after 32 years the provisions would need reviewing and updating. The minister is correct in saying that those provisions no longer meet community expectations as well as, of course, the need to meet the national standards required regarding teacher registration.

There would be few, either in this chamber or in the wider community, who do not know of someone who is a teacher or, indeed, have a teacher in their family. For post-war baby boomers, the teaching profession attracted many as a means of obtaining an education and returning to the community their commitment to their profession. All of us who are parents also understand the need to see a well-respected profession. After all, after ourselves, they are probably the people to whom we entrust our children for any length of time.

I understand there has been extensive community consultation in relation to this bill and, of course, it is part of the government's Keeping Them Safe child protection reforms. The bill serves to support the protection of children and recognises the professionalism of South Australian teachers who work with children and young people in both schools and preschools in the government and private sectors.

The legislation is a significant major reform of teacher registration and standards, but consultation reveals that it is timely for the powers of the Teachers Registration Board to be reconsidered, particularly in light of current cases of abuse. The board is being established as an independent statutory authority with the powers of a body corporate. I welcome this legislation, as it will advance and enhance professional recognition of our teachers while delivering many new safeguards for the safety and wellbeing of our children.

Provisions in the bill see rigorous measures and capacity for the Teachers Registration Board to ensure quality and fitness to teach, standards that are in line with nationally agreed measures. The government is providing the necessary funding to ensure that retrospective criminal history checks can occur on all teachers, to ensure that checks are carried out on all our teachers in South Australia. I know that those studying to be teachers are similarly checked: I had reason to drive my daughter to our nearest police station the other day to ensure that she complied with current requirements. As well, the bill will make it obligatory for all teachers to require mandatory reporting training for suspected child abuse.

Mandatory reporting is one aspect of care that is not pleasant for our teachers, and it is very important that they are well trained in such duty of care, with the overriding view of protecting our children. Nonetheless, we can appreciate that not all cases would be clear-cut and it would take courage in some cases to do so. I had a discussion yesterday with a teacher who is employed in one of our private schools, who expressed such a view to me. I share other members' concern that all individuals involved in school activities should be screened, and I am pleased to see that the Minister for Families and Communities is acting on developing a new Child Protection Act. Any legislation that assists to ensure that we can have the utmost confidence in the quality and professionalism of our teachers is welcomed.

As the minister said in the other place, the intent of this legislation has been to strike a fair balance between rigorous protection of children and procedural fairness in treatment of individual teachers. I add my support for this very important piece of legislation.

The Hon. NICK XENOPHON: I support this bill and welcome the intent of it, which is primarily about child safety and protecting our children in the community. I had the benefit of a briefing from government officers on the bill, and perhaps I could focus on issues of contention and concern and give an indication, if there are any amendments proposed by the opposition, of what my general thinking is with respect to that. I note that there has been some contention about the whole issue of ministerial direction of the board. My understanding is that the minister will need to consult with the board and that there would need to be a report to parliament within three sitting days.

I understand, and I wish confirmation from the government on this, that any such directions would be the subject of an FOI request. My primary concern is one of accountability, of transparency in the process, and also to obtain an indication from the minister of the circumstances in which such a ministerial direction would be exercised with respect to directing the board. I also note that there is not a requirement to list all the offences for which the board could make a determination. I understand there has been some concern with respect to that and that, if all offences were listed by regulation, it would involve thousands of them.

My general view on this—and I am open to be convinced to the contrary—is that, for example, there ought to be sufficient discretion for the board to determine matters on a case-by-case basis. For example, a teacher may have been guilty of drink driving a number of years earlier, or maybe not so long ago, and, whilst no one would condone that, I would have thought that the board would look at a drink driving offence quite differently. If we are talking about an instance where the teacher was convicted of drink driving while taking students on an after-hours excursion or to a school camp, that would be a very serious matter, indeed, and I believe the Teacher's Registration Board ought to have a role in determining the suitability of such a teacher continuing to teach, or to look at any disciplinary matters.

Another matter has been raised by the Independent Schools' Association. I met with Mr Garry Le Duff earlier today, albeit primarily in relation to a government bill formerly known as the fair work bill; I cannot remember the extended title, but it is the industrial relations bill that is in this place. After raising the bill with him, Mr Le Duff was good enough to provide me with some comments and, if I can paraphrase what he said, I would appreciate a response from the government with respect to that. I note that the Association of Independent Schools of SA strongly supports the government's stated intent in respect of the Teacher's Registration Bill. However, I understand that there have been some concerns with respect to clause 20 (the requirement to be registered) and clause 30(1) (the special authority to teach).

I note that the minister in the other place on Monday stated that there is some confusion about how an employer who is teaching or supervising TES subjects would be interpreted under this bill. It is a matter of having got the wrong end of the stick, and I can assure members opposite that TAFE and private training providers will be covered under special authority in part 6 where the qualifications required of teachers are not applied. That means that they would have an exclusion. The determination of who will require an authority is ultimately up to the board as it is the board that regulates and monitors the registration of teachers and those who teach in our schools.

The comment made by the Association of Independent Schools has been along the lines that, generally, these providers are currently not expected to get authorities to teach, that many secondary students attend a private provider or TAFE college to undertake VET programs, including those under a contract of training through the commonwealth's new apprenticeship scheme. The concerns of the Association of Independent Schools are also that it is feasible that the board could refuse to provide authorities to teach to TAFE staff or private providers, or any other person employed by a school, such as part-time specialist sports coaches. The object of the act, section 4, and functions of the board, section 6(b), refer to promoting professional standards, and so on, for teachers, and there are no other guidelines to granting the special authority to teach.

Therefore, it would be reasonable for the board to continue to generally refuse registration to a person who does not have appropriate teaching qualifications. I think the association's concern—and I note the association strongly supports the stated intent of this bill—is that this could have major adverse implications for the government's initiatives to provide more flexible education training and employment pathways for senior secondary students and, particularly, referring to strategies such as improved retention rates, social inclusion and enhancing partnerships between schools, industries and their communities, and that these are critical elements to the state's recently approved strategic plan under the umbrella of creating opportunity.

The Association of Independent Schools raises this concern in the context that this problem may be partly caused by the bill being about teacher registration based on an outdated version of education, and partly because the board does not have the responsibility of providing staff to meet the diverse needs of students in schools. I believe these are valid concerns raised by the association, and it may be that the government has some straightforward answers to them. I believe that the concerns of the Association of Independent Schools are valid and deserve a comprehensive response from the government so that the intent of the bill, which I strongly support, is able to be implemented appropriately and effectively. I support the second reading of the bill.

The Hon. R.D. LAWSON secured the adjournment of the debate.

STATUTES AMENDMENT (LEGAL ASSISTANCE COSTS) BILL

Adjourned debate on second reading.

(Continued from 7 December. Page 770.)

The Hon. R.D. LAWSON: This bill was first introduced by the Attorney-General in July and was reintroduced in September. I indicate that the Liberal opposition will be supporting the passage of this bill without amendment. The bill does two things. First, it harmonises the definition of legal assistance costs into acts which deal with legal aid, namely, the Legal Services Commission Act and the Criminal Law (Legal Representation) Act. Secondly, it clarifies the relationship between the Legal Services Commission, the practitioners employed by it and what I might term clients of the Legal Services Commission, namely, assisted persons. The Criminal Law (Legal Representation) Act was passed to ensure that indigent persons charged with serious offences have the opportunity to obtain legal representation. It was the legislative response to the High Court decision in the case of Dietrich which held that, where a person who is charged with a serious offence cannot obtain legal representation, the court in which he or she is charged can grant a stay of proceedings.

The Criminal Law (Legal Representation) Act and the Legal Services Commission Act both allow the commission to recover a contribution from assisted persons. The Criminal Assets Confiscation Act 1996 allows certain alleged proceeds of crime in the control of a person charged with a criminal offence to be frozen pending the trial and for the commission to have access to those proceeds to defray the costs of legal assistance. There are minor differences in the terminology employed in the Criminal Law (Legal Representation) Act and in the Legal Services Commission Act. This bill will clarify the differences by adopting common terminology to describe the recoverable amounts as 'legal assistance costs'. These amendments deal with costs of legal assistance provided both by commission-employed lawyers and also by private practitioners who are assigned by the commission. These are technical amendments; they do not raise policy issues, and we certainly support them.

The second topic dealt with in the bill arises because of the unusual relationship which exists between an assisted person and the Legal Services Commission. The commission itself is not a legal practitioner, but the lawyers employed by it are legal practitioners. In this respect the professional relationship which exists between an assisted person and the Legal Services Commission is not the same as the conventional solicitor-client relationship between a solicitor or a firm of solicitors and a client. To overcome this the Legal Services Commission Act creates an artificial retainer between the commission and assisted persons.

In order to ensure that the commission retained control over the extent of legal assistance to be provided, a new section 29 of the Legal Services Commission Act was inserted by section 11 of the Legal Services Commission (Miscellaneous) Amendment Act 2002. However, that section was deemed to be defective; it failed to recognise the potential conflict of interest which arises when the commission grants assistance to two or more co-accused persons and assigns different practitioners to act for each. It is obviously necessary to do so to avoid conflicts of interest. Also, arguably, the section, as drafted and passed, suggested that the commission might have no professional conduct obligations to assisted persons. In the light of these difficulties section 11 of the 2002 act was not brought into operation, and this bill contains a new version of section 29 which overcomes the objections to which I have just alluded.

The Law Society was instrumental in drawing attention to the deficiencies in section 11, admittedly, after that section had been passed. I have not seen any specific comment on the new version of section 29 from the Law Society, but it is certainly consistent with the comments which the society provided earlier. I would be interested if the minister could indicate in his response whether or not the Law Society has provided a response. If he does not have that material before the council and is unable to produce it during the committee, I would be certainly content with a letter confirming the Law Society's agreement or what other attitude it has taken. I would, of course, like to have his assurance that there has been no objection from the Law Society to this provision.

One technical nicety arose because section 11 of the 2002 act actually came into force automatically on 31 October this year, notwithstanding the fact that it was intended not to bring it into operation. That was because two years had lapsed from the time of its assent until that date and, as members would be aware, two years after an act is assented to, if it has not been brought into operation, it comes into operation automatically. However, section 11 is now repealed in this bill and no difficulty arises. I indicate support for the passage of the bill.

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

INDUSTRIAL LAW REFORM (ENTERPRISE AND ECONOMIC DEVELOPMENT—LABOUR MARKET RELATIONS) BILL

Adjourned debate on second reading.

(Continued from 7 December. Page 784.)

The Hon. IAN GILFILLAN: I indicate that the Democrats will support the second reading of this legislation, which may still euphemistically be called the fair work bill, although there has been some manipulation of the words to get an extraordinary title. The objects of the Industrial and Employee Relations Act include to promote goodwill in industry. To a large degree, South Australia has achieved that in the industrial legislation in the 20-odd years I have been involved in negotiations, but the goodwill has not normally been clearly apparent when legislative changes have been made; in fact, I think it has been the reverse. There seem to have been hostile, almost knee-jerk reactions; whenever Labor or Liberal governments introduce legislation it is instinctively regarded with suspicion by the party in opposition. Whether that is real suspicion or assumed posturing for the gallery I am not in a position to judge, so I will not judge it.

I think the bill does offer some quite significant reforms for the industrial climate in South Australia, and I will identify them. One of the traps that possibly parties in the employee and employer camps feel is that harmonious and constructive industrial relations will be destroyed by some variations in legislation. But, where those variations in legislation are soundly based to address some area needing reform where there is the potential for or actual exploitation, I find it quite foreign to the ethic of South Australia that a parliament, government or opposition should strenuously oppose the introduction of those measures, because I do not believe the exploitation of a work force or the intimidation of business can be productive to the prosperity of the state. If the Democrats sense that either of those matters exists, is encouraged to occur through legislation or is in evidence because of the current legislation, we will be looking for measures to reform.

The bill before us has some interesting aspects in the amendments to the objects of the act. One, 'Section 3—after paragraph (k), insert (ka)' has caused us some concern. This proposed new paragraph provides: 'to encourage and facilitate membership of representative associations of employees and employers and to provide for the registration of those associations under this act'. I am not convinced that there is a valid purpose for any legislation to encourage and facilitate membership of any organisation that is not exactly welded onto the legislative processes of government. However—and I want to make this point quite plainly—the Democrats support the involvement of the union movement in the industrial scene. We believe that it plays a very important role and that membership of unions is a desirable ingredient of a work force. However, it should never be mandatory; there should always be an alternative.

Many of those who scoff at moves to encourage the work force to join unions are the same people who are very supportive of collective negotiation. A classic case is single desk marketing, where those who are the producers and marketers of product have realised that the strength and advantage of negotiating are to be achieved in a united group. So, those who ridicule the involvement of the work force in unions are hypocritical if at the same time they staunchly defend the ability of producers, marketers and entrepreneurs to use their combined efforts to enhance their bargaining position. Although I felt a little uneasy about that being one of the expressed aims of the legislation, we are prepared to wear it.

Clause 5(5)(m) in the objects of the act deals with discrimination, and provides: 'to help prevent and eliminate unlawful or unreasonable discrimination in the workplace'. I am of a mind to remove the word 'reasonable' on the basis that what may be reasonable for some may be unreasonable for others. I am sure members have had approaches from independent schools which believe that it is not unlawful to discriminate in the selection of staff on the basis of the faith or philosophical convictions those staff may have, but it may be determined as unreasonable. I am sensitive to that, and I believe I would need to hear strong argument that 'unreasonable' should stay in the bill for it to be acceptable.

In this earlier part of the bill, in 'Interpretation', we come to the rather interesting definition of 'family', as follows:

family—the following are to be regarded as members of a person's family—

(a) a spouse;
(b) a child;
(c) a parent;
(d) any other member of the person's household;
(e) any other person who is dependent on the person's care;

I know that 'family' is a word that has been bandied about both in a political context and in respect of same-sex couples. But, for the life of me, I find it impossible to assume that a member of the family will automatically be any other member of the person's household; in fact, I think it is silly. We will be moving to remove that. 'Any other person who is dependent on the person's care' is borderline, but I believe it is acceptable, because we are now becoming much more conscious of the very important role of care givers in our society today. Where a person is dependent on a household for their care, I do not have a problem, for the purposes of this legislation (and maybe others), with that person's being considered to be part of the family.

We have had cause to have continuing contact with the Employee Ombudsman, Mr Gary Collis. By legislation, he has access to the Legislative Review Committee, upon which I serve. For some years other members of the committee and I have held his reports and his opinions in high regard. We believe that he is a dedicated representative of employees in the circumstances in which he is asked to participate. I believe that he should be considered as one of the 'peak entity' as identified in subclause (11), 'peak entity' being defined as the minister, the United Trades and Labor Council and the South Australian Employers' Chamber of Commerce and Industry Incorporated (I am not sure whether that is still its correct title: it is usually known as Business SA in common parlance). Subclause 11(d) provides:

(d) any other body brought within the ambit of this definition by the regulations;

If it is acceptable to deal with 'any other body brought within the ambit' as a peak entity, we are of the opinion that the Employee Ombudsman should be able to fit into that category.

Clearly, at this time, there is serious debate and concern about the definition of 'employment status', and various clauses in the bill refer to it in contract and in other ways. Clause 7(6) provides:

(6) An application may be made under this section by—
(a) a peak entity; or
(b) the chief executive of the department primarily responsible for assisting the minister in the administration of this act; or
(c) a person who is seeking to establish whether a particular arrangement (or class of arrangement) under which he or she may be determined to be an employee or an employer under this act is in fact a contract of employment, or a person or association acting on behalf of such a person.

Although there are other references to it in the bill, it is probably reasonable for me to include some observations that I found quite pertinent in what appears to be a perplexing matter—how to determine whether, in fact, the arrangement is one of contract or a genuine employer/employee. A source of some light on that matter has been produced by the Apple and Pear Growers Association in its newsletter No. 45 dated 17 November 2004.

An honourable member: Hear, hear!

The Hon. IAN GILFILLAN: I think I heard 'hear, hear', probably from a card carrying member well known for producing pome fruit. The newsletter states:

It's important to know the status of your workers for tax and other purposes, because you have different obligations as an employer depending on whether you classify your workers as employees or contractors. These obligations may include PAYG withholding, compulsory superannuation contributions, fringe benefits tax, payroll tax and workers' compensation insurance. It's best to seek advice about the status of your workers and any associated obligations (it can vary significantly from case to case). However, here are some 'rules of thumb' to give you an idea of what is taken into account in working out whether your workers are employees or contractors.

Employee checklist.

Your worker may be an 'employee' where he/she:

- Is paid for time worked
- Receives paid leave
- Is not responsible for providing materials or any equipment required
- Must personally perform the duties of his/her position
- Works hours set out by an agreement or Award
- Is part and parcel of the business, takes no commercial risks and can't make a profit or loss from the work performed.

An independent contractor usually agrees to produce a defined/designated result for an agreed price and in most cases:

- Is paid for results achieved

- Provides all or most of the materials and equipment to complete the work
- Is free to subcontract work
- Has freedom in the way the work is done
- Provides services to the general public and other businesses
- Is directly responsible (including costs) for rectifying poor workmanship
- Is free to accept or refuse work, and can make a profit or suffer a loss from the work.

I found that very helpful, because where there is this dire fear that this legislation will destroy the contract arrangements as we know it, the fact is that, unless the commission is totally prejudiced or corrupt, it will interpret the difference on accurate fact. There is no way the Democrats will support devious ways to get around what are genuine employer/employee arrangements. This is a very succinct description by the Apple and Pear Board—which, incidentally, does not like the bill. I am not using armament to defend the bill. It wants the bill dumped, as do most employer organisations. I am not sure what the cheer squad has been, but I suspect that it has been partly opposition driven.

I remember last night listening to the deputy leader, who said that there is no voice crying for industrial reform in this state. One of the reasons is that those who need industrial reform do not have the strident voice—the outworkers, the carers, the children. There is very good reason for a caring parliament to look at legislation, whether there is strident cause for it or not.

I do not see any dire threat to contracting arrangements, and the Democrats believe that the arrangements for subcontracting of work have been very beneficial. It may be an uncomfortable development as far as what has been a strict doctrinaire union line of keeping people strictly in the employee-employer relationship. I do not accept that. I think that there is work satisfaction and performance improvement from a properly constituted and well-arranged contract and outsourcing of certain activities. I think that when one looks at some of these bogies a little more closely, one realises that they are phantoms rather than factual threats.

I have made an observation about the general function of the Employee Ombudsman already and it is covered in a form in clause 21, which really is a matter of confidentiality. I think it is factually irrefutable that, if the Employee Ombudsman thinks fit not to disclose the name of a particular person, it is reasonable for that confidentiality to be kept and to be recognised in the legislation.

I now refer to a couple of other fears which have been raised and waved around. One of them is minimum standards. If we are living in a community where we have consideration that there will be none who slip through the safety net and that we aspire to avoid, as far as possible, sections of our community living below the poverty line, or even at an economically stressed situation when they are providing a fair day's work and they are entitled to a fair day's pay, I do not see any reason why the commission should not be required to establish minimum standards of remuneration. The bill states 'at least once in every year'. I regard that as being over the top. I do not see any reason why the commission should be exercised to go through that process every year. There could be an extension of the time in which it has a legislative obligation to deal with that.

Further on in the bill, it goes into a bit more detail. I am referring to it now because it is mentioned in clause 26 under the heading of 'Remuneration'. I then come to one measure which, even if it were the only benefit in the bill, we would support without qualification; that is, the recognition of carer's leave. The fact is that this bill recognises that an employee can take part of his or her sick leave and have it qualified as carer's leave with no loss of pay and benefits. I think it is very mean spirited if anyone deliberately targets that.

When you look at it, the minimum does not entitle the employee to any extra days: it is just empowering the person who has a certain allocation of sick leave to use for caring—and I think it might be up to five days. It is interesting that concurrently with our looking at this legislation, we have people who are protesting, people who are under extraordinary stress, because they are incapable of dealing with the terribly heavy burden that they have in caring consequences—of course, most of those are for people with long-term disabilities. However, the fact is that, from time to time, any family will have a relatively short-term situation where one member of the family needs one of those who are in the work force to care for them—and this is a sensible and humane ingredient into our industrial legislation.

I refer to other headings because the Democrats believe it is appropriate that they be subjects of the commission to review; that is, bereavement leave, annual leave and parental leave, all of which are reasonable to have a consistent and independent assessment. However, there is an anomaly under clause 28, and that is the bereavement leave. Most of these have a condition which states that there may not be another application for a review within two years after the completion of a previous review of the standard by the full commission under this section. That applies to most of these particular aspects. However, strangely with bereavement leave—and I would be very interested if the minister has an explanation for it; and it is not a monumentally important issue but the anomaly stands out—subclause (4) states:

> An application under section (3)—

that is for a review of it—

> must not be made—
> (a) within two years after the commencement of this section;

In other words, within two years after the proclamation of the act. That is assuming that the bereavement leave is in an acceptable form at the time the legislation is passed. It may well be, but that is not the point I am making.

The point is that, for some reason, bereavement leave is only one of these aspects which is obliged not to be revisited until two years after the proclamation of the act. Every other of those aspects can be reviewed at any time. However, once they have been reviewed, then there must be a two-year gap before they are reviewed again. I mentioned previously minimum standards, and clause 31 deals with it in more detail. It is important for those harping critics of this legislation to look at it a little more closely—those who are dead scared that minimum standards will destroy businesses as they know it. Subclause (4) states:

> A party to an award may, within 28 days after a standard is set by the Full Commission under this division, apply to the Full Commission to have the award excluded from the ambit of the standard (or a part of the standard).

The legislation has accepted the possibility and offered the full commission the opportunity to realise, in certain circumstances, a particular award may have grounds to be excluded from the ambit of the standard for whatever reason the full commission chooses.

There is the issue of severance payments which is dealt with here again—and properly so. Enterprise agreements seems to be an area of considerable concern around the traps one way or another. There are a couple of issues to mention in passing. The first is who may make the enterprise agreement. The answer is one or more employers (which is an amendment to the current act); or a registered association may enter into an enterprise agreement on behalf of any member or members of the association who have given them authorisation to negotiate; or any group of employees, whether or not members of the association if the association is authorised after notice has been given as required by the regulations by a majority of the employees constituting the group to negotiate the enterprise agreement on behalf of the group. I garbled that a bit, but the main point is that this legislation recognises that a union can negotiate on behalf of a group of employees who are not members of the union.

Honourable members have probably clearly forgotten, and it is not something which I raise other than as a commentary for those who are interested, that the Democrats indicated years ago that we would support a bargaining fee for those employees for whom an award or an employment arrangement was negotiated by a union and from which they benefited. The issue has raised its head again in this place in the negative, in that the opposition saw fit to try to push through legislation which would prohibit any such fee being charged. That is an extraordinary exercise, really, when you realise that the opposition is based on the philosophy of free enterprise and that there be fee for service, yet in this case they were seeking to make it illegal to be rewarded by any fee. However, the union movement did itself no favours by indicating that the fee would be so monumental that it would dissuade people from using that process and they would be forced into being members of the union. That was a very silly position to take and it is quite unrealistic, because the effort involved in many cases for the individual employee would be considerably less and, under those circumstances, may well have become an income stream for the negotiating union.

The Hon. Nick Xenophon: Are you saying it was not a genuine bargaining fee? It was not a genuine fee for the bargaining process?

The Hon. IAN GILFILLAN: No, not in my opinion. As I indicated before, we have supported the principle for years but it would need to be based on a non-coercive and realistic costing basis and, under those circumstances, it would be a reasonable financial arrangement.

Best endeavours bargaining apparently is a bogy which has the horses bolting left, right and centre. I cannot quite see where that dangerous territory arises except in one point, and this is where I fall foul of the government and the minister who is pushing this bill. In regard to best endeavours bargaining, if we want goodwill (and I quoted earlier at the beginning of the act the object to promote goodwill in industry), the best way to get goodwill in industry is to have an agreement which is amiably worked through and accepted by both parties. The formula for getting that is spelt out reasonably well in this bill. It has an addition which I think is extremely valuable in clause 34 which seeks to insert section 76A. Subsection (3) provides:

> The Commission may, on the application of a party to any negotiations, give directions to resolve any dispute as to the composition of the group of employees for negotiating purposes.

That is clear enough. Subsection (4) provides:

> The Commissioner may, on the application of a party to the negotiations, take steps to resolve a matter by conciliation.

Conciliation is a way to get some harmony into an arrangement which will then be accepted by both parties for some period of time—three years, as we hope it will be. But subsection (6) provides:

> The action that the Commission may take on application under subsection (5) is—
> (a) to make an award that applies in relation to the parties to the negotiations.

So, the conciliation will be tainted constantly by the intrusion into the attempt to get best endeavours but, if I do not get what I want, I will dig in my heels and say, 'Bugger off', or something to that effect, because they cannot lose. You will not negotiate: you will refuse conciliation because you know that there is an umpire who is likely as not to give you a good break and, under those circumstances, it puts undue pressure on the other.

I know from conversations I have had with the minister's adviser that they are not very happy with the Democrats' position on this. The only way that I think this could come close to being tolerable would be if the only way the commission could make an award was if it is approached by both parties, and I hope that may be something we can think more about. But it is a conflict in terms to have conciliation and arbitration in the same enterprise involving the same people. You cannot have it. Conciliation will not work under those circumstances, in my opinion.

In regard to the effect of an enterprise agreement, there are some quite sensible measures in this bill regarding the change of ownership or employer, and they are referred to as the outgoing employer and the incoming employer, and I will not go through all the details. But there is a point which I think needs to be recognised because this is a sensible addition to our industrial legislation, bearing in mind that there may have been an application to change the enterprise agreement on the changeover of ownership of a business. Sometimes that changeover of business is involved with a business that may be in financial stress. Clause 36(7) provides:

> The Commission may make an order on application. . . if (and only if)—
> (a) the order only relates to provisions that regulate the performance of duties by employees; and
> (b) the Commission is satisfied that exceptional circumstances exist justifying the making of the order; and
> (c) the Commission is satisfied—
> (i) that the order will not disadvantage employees in relation to their terms and conditions of employment; or—

and I emphasise 'or' because that is very significant—

> (ii) that the order will assist in a reasonable strategy on the part of the employer to deal with a short-term crisis in, and to assist in the revival of, the relevant business or undertaking.

So, this legislation recognises that in some circumstances the commission can make an order that will disadvantage employees in relation to their terms and conditions of employment if it is convinced that that will, in fact, establish the survival of the business concerned. I think that all players under those circumstances will benefit. There is a better chance of the job survival and a better chance of doing less damage to the economy than if that clause is not there.

We come now to the special provision relating to child labour. One example of child labour that was given to me was of the trolley stackers in a supermarket. This is a real example that happened in the last 12 months. These young people—child labour if they are under 18—were engaged for a 12-hour day at $6 an hour, and they had no amenities. There was no provided rest room, no provisions of any facilities at all. Those were the conditions of their employment. The supermarket found that the number of children they had engaged at $6 an hour were not enough, so they wanted to employ some more. So what did they do: they knocked the $6 back to $5 so that they could employ some more kids on that $5 an hour!

I do not accept that as a reasonable way for young people to be employed in our community. I believe that there is a crying need for us now to look seriously at making sure the conditions of child employment are reasonable and considerate. The conditions that are put in here are as follows:

> The commission may, by award—
> (a) determine that children should not be employed in particular categories of work or in an industry, or a sector of an industry, specified by the award;
> (b) impose special limitations on hours of employment of children;
> (c) provide for special rest periods for children who work;
> (d) provide for the supervision of children who work;
> (e) make any other provision relating to the employment of children as the commission thinks fit.

I would dearly like to examine the conscience of anyone in this place or elsewhere who is prepared to vote that down and say that that is not an acceptable part of amendment and reform of our industrial legislation.

There is concern about trial work, and that quite often does involve younger people. I am more than uneasy about the wording of the bill regarding it. I have had enough examples given to me of the abuse of trial work, where employers will take on young people on a trial basis, some without any pay at all, on the expectation that, if they spend a certain amount of time, there is a chance that they will get a casual or even a full-time job, and they are then rotated in a quite blatant way as cheap, if not totally free, labour.

However, the bill has taken the old sledgehammer and says that no-one can be employed in a trial work situation unless they are paid the full tote odds for the award, which virtually cuts it out. Who is going to take the risk of employing someone on a trial basis? They have no experience, they have no knowledge of their capabilities to work, and the idea is that they are just there from, in some cases, the goodness of the heart of the employer to offer these younger people—and not necessarily only younger people—a chance to have that experience so that it can be cited in their CVs.

I think it is important that this clause be amended so that the commission could be persuaded that lack of experience or skill could result in lower than award remuneration and that that would then give the opportunity for trial work to continue but there would be recognition that those who were undertaking the trial should not expect, nor would they deserve to get, the full award payment. On the subject of outworkers, as long as I can recall discussion about industrial relations in South Australia there have been those, particularly in the union movement, who have rightly recognised that outworkers in many situations are exploited.

Often they are recent arrivals in Australia, including some, I am sure, who had experienced labour exploitation in their home country and therefore were not particularly of a mind to insist on better conditions. With some of them, I was advised and have no reason to doubt, their own circumstances obliged them to accept conditions that were far from acceptable in the standards that we in the normal community of South Australia would accept. I cannot see any reason why we should not in this state, and dealing with industrial legislation, accept that there should be, through the commission, levels of remuneration that are stipulated as being acceptable for outworkers in various categories of their activity.

The bill goes on in division 2 to deal with a code of practice. Under 99C, 'Code of practice', the bill provides:

> The minister may publish a code of practice for the purpose of ensuring that outworkers are treated fairly in a manner consistent with the objects of this act.

The Democrats have no problem with that as an aim, but the point that we make, and I hope that we can persuade for an amendment, is that there should be no power of the minister to just willy-nilly publish a code of practice. It should be done by regulation so that the code of practice is presented in detail to the Legislative Review Committee and that, through the Legislative Review Committee and other means, the parliament at large can have some scrutiny and possibly some input into the code of practice. Wherever in this legislation a code of practice is referred to, we believe that it should be prescribed through regulation.

Industrial inspectors have certain powers, although I will not go into all the detail, but the Democrats do not have any particular problem with the inspector having the power to get details of payment of wages, details of how the amounts of the payments were calculated and details of any amounts that remain unpaid because, without that sort of scrutiny, and legally enforced scrutiny, how can we be assured that the conditions of employment that we have agreed should be determined through these processes are complied with?

I am not sure how many resources are needed, but I suspect the cry would be for more resources for more inspection. The inspection by the industrial inspectors, by way of its interpretation in the legislation, is to ensure compliance. In a lot of these areas I believe that employers are concerned that inspectors are a nuisance: they intrude, they cause extra time, and they come into the workplace as hostile ingredients. I think that that is unfortunate, and I do not know that there is anything the legislation can do to correct that except to make sure that the powers that the inspectors have are reasonable, and that part of their obligation is to bear in mind the disruption of work, the convenience of the employer, without losing their capacity to have access to the information that they are entitled to have.

I am uneasy about inspectors having rights to enter any workplace or any other premises, because I think 'any other premises' could embrace homes, certainly in the case of some outworkers. I do not think it is difficult to amend the legislation so that, in fact, where residential quarters may be involved in the area about which the inspector requires information, instead of having the right of entry, in those circumstances there is an obligation on the employer to provide the information within 24 hours and, in default, there could be a penalty in the legislation. I do not think that anyone should have the right just to willy-nilly enter into anyone's home unless there are special legal, enforceable reasons to do so.

Where we deal with union representatives, we are dealing with a different subject, and I will come to that a little later on. Because of the progression through the bill, the next area of particular interest is 'host employer'. I indicated before that the Democrats have no problem supporting and protecting bona fide contractor arrangements, and I repeat that now. The understanding of a host employer is that that host employer has engaged a contract form of delivery of service—labour or services. Under those circumstances it is not difficult to keep separate the form of engagement by the so-called host employer and the providing employer. In fact, the host employer is not really defined accurately as a host employer; it is an employer or business which engages contract services.

Clause 51 seeks to identify the disguised employment which is actually avoiding some of the consequences of a genuine employer-employee relationship by working through this so-called contract process. With reference to the details in the clause, subclause (2) provides:

> For the purpose of this Part, a person will be taken to be a host employer of an employee engaged (or previously engaged) under a contract of employment with someone else if—
>
> (a) the employee has—
>
> (i) performed work for the person for a continuous period of 6 months or more; or
>
> (ii) performed work for the person for 2 or more periods which, when considered together, total a period of 6 months or more over a period of 9 months; and
>
> (b) the employee has been, in the performance of the work, wholly or substantially subject to the control of the person.

It sounds pretty much like employment to me. Further on, which is relative to what we are talking about, which may be a claim for unfair dismissal, the bill provides:

> . . . the employee has, on the basis of the employer's conduct, a reasonable expectation of continuing employment by the employer.

I have had first-hand accounts given to me of people who have experienced some duplicitous placement by a quasi-independent host employer—in so far as the terms of this legislation are concerned—who, with great assurances, indicate that the engagement for the purposes that this person was first engaged would continue on indefinitely, and they had no need to worry about looking for other jobs, they did not need to look at the advertisements. Then, suddenly, at the end of certain period—I cannot recall the exact times that were given to me—they were out. In some cases there may quite genuinely be a reason for the termination of the arrangement, and I am not so naive as not to believe that there can be those circumstances.

The reason for the legislation and the reason why the Democrats are looking at this legislation more favourably than some is that we believe there are instances in which it is being manipulated as a process of employment to avoid the normal consequences of the employer-employee relationship, and some of us (and others) who are in a genuine employer-employee relationship contribute to the proper arrangements. I do not see any reason why we should not winkle out the deceptive practices and have them dealt with under the circumstances of our industrial legislation. One area where this is typically dealt with in the bill is unfair dismissal and, under the circumstances, I am not persuaded that there is any reason why we should not accept this amendment to our industrial relations.

In regard to the question of unfair dismissal, one point that I have certainly felt very uneasy about is preference for re-employment. As a small business person or as a farmer, having had the stress of what may have been a case of unfair dismissal, if we had ever been confronted with the legal compulsion to re-employ someone who had proved totally incompatible as the preferred remedy, as spelt out in this bill, we would have found that totally unacceptable. For the bill to be comprehensive in this area, it ought to delineate the capacity for the commission—in fact, even make it an instruction for the commission—to deal differently with its priorities as to the remedy where businesses are of a certain nature or size.

It is interesting moving to workplace surveillance devices, where honourable members will see a lovely similarity with the Democrat bill that is currently before this parliament. I think ours is better worded, but it probably covers the same territory. It is an area where we find no argument with the intention of the legislation. We have trouble with the legislation where it deals with the powers of officials of employee associations. Clause 59(1) provides:

> Section 140(1)—delete 'if authorised to do so by an award or enterprise agreement, enter an employer's premises at which on or more members of the association are employed' and substitute:
>
> enter any workplace at which one or more members, or potential members, of the association work

There is no way that the Democrats will support that particular right for an official of an employee association—in other words, a union official. For any honourable member or unionists who believe that our position on this is anti-union, I would say that that is a degree of bias. Why should any organisation have the right to go into an area without any other qualification or justification than that they want to do so?. I do not believe that it will in any way weaken the capacity of the union movement in the workplace. For the union movement to thrive, it will have to appeal to the modern day work force and be communicated to in terminology in the areas of interest and concern. I am not prepared to accept that, by trying to push into industrial legislation this right of entry, it will cause so much resentment from employers, and it will certainly not further the aim, as I indicated before, to promote goodwill in industry.

Following on from this, and I think it is possibly some sop, the government has tried to soften this by saying that an employer can ask for an industrial inspector to go in with a union official under certain circumstances, provided that he or she can do it within 48 hours. Frankly, I think that is a ridiculous clause and, of course, if we are successful in getting it amended, this would not apply. The other matter which we have concern about is the interruption of performance of work in the workplace. Clause 59(6)(2b) provides:

> An official exercising a power under subsection (1) must not unreasonably interrupt the performance of work at the workplace.

I know that the words 'reasonably' and 'unreasonably' appear in the drafting of legislation in several places. I have always felt uneasy about it; it is a subjective judgment. It should be borne in mind that, if there is a safety problem and if there are concerns, industrial inspectors have the power to stop workplaces and processes. To interrupt just for union concerns, in our view, is not acceptable.

There is an interesting subclause. I am waiting for the minister to explain why the Christian fellowship known as Brethren get a special subclause all of its own. Maybe in the second reading conclusion that will be elucidated. We are very pleased to see that clause 75 provides:

> After section 236 insert:
>
> 236A—Offences by body corporate
>
> (1) If—
>
> (a) a body corporate commits an offence against this Act; and
>
> (b) a member of the governing body of the body corporate intentionally allowed the body corporate to engage in the conduct comprising the offence,
>
> that person also commits an offence and is liable to the same penalty as may be imposed for the principal offence.
>
> (2) A person referred to in subsection (1) may be prosecuted and convicted of an offence against that subsection whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

I have a lot of sympathy and support for directors, members of the body corporate, who are running a lot of successful admirable businesses in South Australia, but I have no sympathy for those who may have been party to conduct comprising the offence. For that to be identified here may give some corporate board members pause to think, and so they should.

There is more detail on the carer's leave which I have indicated before and to which the Democrats give double ticks. I will not go into the detail. There is some angst about whether the schedules should be in here: schedule 9—Worst Forms of Child Labour Convention 1999; schedule 10—Workers with Family Responsibilities Convention 1981; and schedule 11—Workers' Representatives Convention 1971. The Workers' Representatives Convention in its title could sound alarming to those who are concerned that this might be an uprising by a militant union movement. I have no concern about the body of the material here. It is a universally accepted standard, basically set in place to protect workers from exploitation of a most heinous kind in many countries in the world.

There is no reason why, in my view, it should not be here. It is in the schedule, so it does not have a direct impact on the actual legislation itself. In fact, I would be most disappointed, if not disgusted, if members of this place or any other place were to move to reject the Workers with Family Responsibilities Convention. It would be ironic indeed when we have seen in many instances recently how much we are now recognising how families should be supported in all their forms and, to resent that being identified in industrial legislation, I think is going back to the Dickensian age of industrial relations. In respect of the Worst Forms of Child Labour Convention, why should we not enshrine in legislation measures which indicate that we care about children in our society and that we care about the way they are forced to work in our community?

I indicate that the Democrats will support the second reading. A range of views from outside this place are coming to us in profusion; just a few observations that are of only passing interest at this stage. The labour hire companies do not like the bill because they think it will destroy their business; independent contractors do not like it because they believe it will force contractors into employee roles, especially through the definitions of outworker, host employers and the six month rule; the Australian Computer Society (ACS) does not like it because it believes that information technology hire companies will stop employing information technology contractors in South Australia; Business SA hates it because it interferes with labour market flexibility—so it says—and will drive up costs; the UTLC loves this bill and wants it passed in toto; the ICA suggests that this bill is deliberately designed to interfere with the labour market and force people back into old fashioned employment roles; and unions hope they will get added membership, as casuals and contractors currently have the lowest rate of union membership, thus they hope more full-time employees become more union members.

Those are just throw-away observations that have come in the general mix. Our job is to look at this legislation dispassionately and constructively for an industrial scene in South Australia, and I believe that the bill, properly amended, will do some positive things for the industrial situation in South Australia.

Debate adjourned.

STATUTES AMENDMENT (RELATIONSHIPS) BILL

Adjourned debate on the question:

That this Bill be now read a second time,

which the Hon. T.G. Cameron has moved to amend by leaving out all words after 'That' and inserting:

the Bill be withdrawn and referred to the Social Development Committee for its report and recommendations.

(Continued from 7 December. Page 778.)

The Hon. SANDRA KANCK: This bill was a long time coming. It was an election promise of the ALP made in early 2002, and it is a bill which the Democrats have welcomed and which, as my colleague the Hon. Kate Reynolds indicated last night, we strongly support. Clearly, the heart of the then shadow minister for the status of women, Steph Key, was in the right place when she gave an undertaking to have this legislation introduced, and I know she has invested a lot of herself since that time in getting the bill into this parliament to this stage. Unfortunately for the Labor Party, equal opportunity issues are wider than status of women issues and, even more unfortunately, after a Labor Party government was formed, responsibility for these wider issues fell under the control of the Attorney-General, Michael Atkinson, whose personal views on progressive issues such as this do not align with the election promises. So, I think it took a bit of push-starting of the Attorney-General to get him to move on this, and, nearly three years on from the original election promises, we are finally dealing with the bill, but it has hardly been rushed.

In his speech the minister referred to the consultation which began two years ago and which produced more than 2 000 submissions. One of the consequences of that was that the government did listen, and the bill therefore does not address the issues of same-sex couples being able to adopt or widening access to IVF procedures so, clearly, the consultation process did work. But, not content with the Attorney-General's slowing down the bill, the fundamentalist activists in our society have waged a campaign since mid October calling for the bill to be referred to the Social Development Committee for yet another inquiry. Some have gone as far as to call for it to be completely withdrawn from the parliament. The machinations of those from the right faction (and I mean right as opposed to left, not right as opposed to wrong) to bring it to this state I think have been absolutely disgraceful.

I also indicate that I was very surprised to find about a fortnight ago that the Hon. Terry Cameron was proposing to move an amendment to refer the bill to the Social Development Committee. The reason I was surprised is that back in 2001 we had an equal opportunity bill before the parliament—that was under a Liberal government—and the Labor Party moved an amendment to define a putative spouse. I also had an amendment, as did the Hon. Terry Cameron, the difference being that the Hon. Terry Cameron's amendment required people in such a relationship, regardless of what sex they were, to have cohabited for a period of five years; mine was for a period of one year; and the Labor Party's amendment had no time limit at all. Given that little bit of history, I was surprised to find that the Hon. Terry Cameron was going to move such an amendment which, of course, he now has done.

I have been very saddened to see that so many members of this parliament have been so easily manipulated by the scare campaign of the fundamentalist right, and I must say I will be strenuously opposing any moves to relegate this bill to the Social Development Committee. To my gay, lesbian and transgendered friends, I express great regret that a majority of this chamber now appears to be about to buckle and send this bill to that committee. It is a further delay of justice for those who do not conform to fundamentalist prejudices. Earlier tonight I visited a friend of many people in this chamber, Mary Gallnor. Her comment to me was that this move to refer this to the Social Development Committee is a mean spirited, cruel, shameful, unnecessary and deliberate injustice.

I turn now to the principal arguments that have been advanced in letters and emails to me as to the reasons that this bill should be referred to the Social Development Committee or else completely removed from the parliament, never to enter again. One of them is that there is a need for a conscience vote. I inform anyone who is listening, or anyone who reads *Hansard* at a later stage, that I am exercising my conscience right now. My conscience tells me that equal rights under the law for all in our society is a positive thing, and that we should not have one person accessing fewer rights than others simply because of who they sleep with.

Another argument is that less than 2 per cent of the population is homosexual, therefore, this legislation is not needed. That is a very flawed argument. Do we argue that same argument when it comes to legislation to support people with disabilities—that we should not have it because the majority of people are able bodied? I have argued for people who are blind to have access to suitable transport. If this argument were to be given currency, these people should not be entitled to those sorts of transport or any of the services that the rest of us have in mainstream society because they represent only a small part of the population. I find that to be quite an appalling argument. If you take it to its logical extreme and go back into history, Afro-American people in the United States still would not have anything other than servant status because they are in the minority.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Then the member has not had all the emails I have had.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Okay. The third argument that pops up in many of the emails and letters is, 'You were elected to represent the wishes of the majority of the electorate.' Again, what utter rubbish! I was elected by 8 per cent of the South Australian population. These were the people who agreed with Democrat policies and principles. I am not about to betray those policies and principles to support the other 92 per cent. In fact, if I were to do that I would be betraying my own personal position, because in that same election, when the Hon. Steph Key made the promise about the ALP's introducing this bill, the Democrats put out a platform sheet, and I will read part of that—and remember that I was the spokesperson on this issue for the Democrats at that time, so this represents my view very personally. The document states:

> Gay and lesbian relationships fall outside the narrow definition and therefore the law discriminates. This discrimination causes much financial and emotional hardship. South Australia once led the way in social reform, repealing the act that made homosexual relationships illegal. Yet South Australia now lags behind the rest of the nation. It is time for South Australia to resume its role as social reform trailblazer by removing all discrimination from the 54 pieces of legislation which continue to ignore the existence of gay and lesbian relationships.
>
> A raft of legislative changes is needed for South Australia to comply with its human rights obligations. The Democrats central plank of its platform will be the recognition of same sex couples in all South Australian legislation. This would mean that the definition of 'putative spouse' be amended to include gay and lesbian couples. This would also apply to the definition of 'de facto' relationships.

That was my platform. I was elected on that platform, and I am not going to now go and advocate someone else's platform or vote for someone else's platform. The argument that I was elected to represent the wishes of the majority of the electorate is just pure piffle.

The next argument that is advanced is that same-sex couples already have rights. I think we have already heard contributions from other members that indicate that those rights do not exist. We know, for instance, that if you are in a same-sex relationship you cannot be guaranteed admission to the hospital bedside of your partner. You have no rights to be consulted about your partner's medical treatment. If anyone wants to call that a right—a right to be excluded at a time of crisis in your partner's life—they need their head read.

Another of the arguments that is given is that homosexuality is an unhealthy lifestyle. Because someone leads an unhealthy lifestyle, obviously, they are not entitled to rights, according to this argument. It is an argument that ignores the fact that HIV/AIDS (which is what is usually cited) is in most parts of the world transmitted between and by heterosexuals.

The Hon. T.G. Cameron: I beg your pardon?

The Hon. SANDRA KANCK: Yes.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: The member should go out there and check it. The next argument that is advanced is that children fare better in a traditional heterosexual family. What I say is that children thrive when they are brought up with love and care. I noted last night that the Hon. Andrew Evans said that children need family structures resting on stable, committed and faithful relationships. I agree with that. But it does not require a heterosexual marriage to provide a stable, committed and faithful relationship. I receive regular newsletters from the Australian Institute of Criminology, and in the opening paragraph of one of its *Trends and Issues* papers I read:

> Prior research has found that dysfunctional parenting practices often place children at risk of developing conduct problems and are among the strongest predictors of later delinquent behaviour.

There is no mention of it being heterosexual or homosexual: it is simply dysfunctional parenting. You can be a dysfunctional parent in a heterosexual or a homosexual relationship. Your sexuality, in the end, has nothing to do with it. I have to say that the most psychologically damaged people I know were brought up in a so-called traditional family.

According to the opponents of this bill, it will undermine the status of marriage, or even make marriage irrelevant. Marriage per se is neither good nor bad, just as relationships between same-sex people are neither good nor bad. How on earth can giving someone a right to attend the funeral of their same-sex partner make marriage irrelevant for those who are of a different sexuality? Amongst the emails I received supporting the bill (I think most members probably got the same one) was one from a woman who says:

> I am writing to you as a Christian who is in support of this bill.

She canvassed this argument about the relevancy, or otherwise, of marriage if this bill is passed. She says:

I do not think that this bill devalues marriage or makes it irrelevant. Marriage is not made special by the fact that the government has certain rights associated with it. Rather, marriage is special because it is a joining of a couple to each other and to God. Regardless of the government's stance, marriage is still special and is far from meaningless. If people think they need the government's approval to give marriage meaning, then I think they are missing God's plans for relationships. Furthermore, I realise that marriage is not a viable option for all people. I know of gay couples who would love to be married, but are not allowed to. I know of heterosexual couples who have made a lifelong commitment to each other, and feel that they do not need a marriage certificate to legitimate their commitment. I think it is important that people in these situations have the same rights as people in married relationships. As a married person, I very much affirm this institution. However, I do not think it should be forced on everyone.

The next thing that people go on to say in their correspondence to me when they are opposing the bill is that it discriminates against two men or two women who live in a non-sexual relationship. I go back to the Democrats' GLBTI rights election platform from the last state election, which states:

The Democrats propose to adopt the definition of 'interdependent relationship', which recognises all sorts of relationships in society which would be based on an emotional and financial dependence between two people.

When I spoke to the Equal Opportunity Bill in 2001, I had this to say:

In the Democrats' view we should value all relationships which are based on mutual caring and support. A relationship does not have more value simply because it is heterosexual. At its simplest, the current definitions of marriage or de facto relationship are based upon two people of the opposite sex who implicitly have or have had sexual relations with each other. Surely a mature society can advance beyond having sex as the criterion. We should recognise all sorts of relationships. Consider the TV series *Mother and Son*. Clearly, in that example there is a relationship of dependence and caring between those two people. Many families have two maiden aunts. These days we are increasingly seeing an elderly parent having to care for disabled children. These are the sorts of relationship that we need to consider. We need to go beyond defining relationship as simply being between heterosexual couples who have sex or have had sex with each other.

I then went on to quote the definition of 'interdependency relationship' in the federal Migration Act. I ended by saying, 'As a mature society, I believe that is what we should be moving towards.'

The argument that discrimination for two maiden aunts living together exists in the way it does for two people in a homosexual relationship just does not stand up. A maiden aunt would be guaranteed a right to be at her co-dependant's hospital bedside: she could not be turned away from her. However, if you are in a same sex relationship, you can be turned away, and occasionally it does happen. To argue that it discriminates against the two maiden aunts example is unfair but, nevertheless, if people believe that it discriminates, it can be amended. You do not vote against a bill because it is missing one clause: you move an amendment. Another of the comments being made is—

The Hon. T.G. Cameron: You have moved that amendment, have you?

The Hon. SANDRA KANCK: No. Another of the comments that has been made is that giving these rights to same sex couples is against God's laws. I am not sure which God it is they are talking about. I do not think these sorts of directives have come from Buddha or the Dalai Lama. I think they are talking about their God, which happens to be a particular interpretation of the Christian God. It is a God that I was led to believe in as I grew up as a God of love and compassion. I would certainly like to see a good old-fashioned dose of Christian caring in all this. I would like to see responses to this legislation based on courage and not on fear. Fortunately, not all Christians feel this way and amongst—

The Hon. Ian Gilfillan interjecting:

The Hon. SANDRA KANCK: Yes, my colleague the Hon. Ian Gilfillan certainly does not view his God in that way. One of the letters that I received was from the Reverend Dr Murray Muirhead, a minister of UnitingCare Wesley Adelaide. I refer to what he has to say and it is certainly a much more tolerant view than many of these apparently Christians have espoused to me in their correspondence. He says:

In a society where heterosexual relationships increasingly end in divorce or separation, any move to support, rather than undermine, long-term committed relationships between two individuals is to be welcomed. Contrary to the argument that legal recognition of the equal rights of same-sex attracted couples undermines the marriage, I believe that it focuses our attention on what makes 'marriage' a social good (i.e. the long-term, committed nature of such relationships). The covenant of love and trust between two individuals, whether expressed through marriage or other long-term committed relationships, is what ultimately makes such relationships 'morally' desirable or otherwise.

I understand that in a world of rapid change human beings have a tendency to go back to the familiar and, in this case, it is the traditional family, but their desire for security does not justify their denying justice for others, nor does it justify some of the hatred and bigotry which I have noted in some of the letters and emails.

Some of them are just so awful, I would not even want to read them into *Hansard*; and the content of some of those emails and letters has emotionally flattened me a few times. The perverted thinking of these people is just so unexpected in a civilised society, and it has sometimes left me wondering how people who are not part of mainstream heterosexual society manage to keep going in the face of such hatred. When I received one such email, I sent it off to a transgender friend of mine. I said to her:

Literally, my stomach turned as I read this. The levels of hate were so palpable. Maybe you're used to it? But can you ever get used to it?

Her response to me was:

Dear Sandra,
Get used to knowing that people believe the world would be a better place if I was not here—not likely! But by the same token even less likely to lie down and submit to their hate. A few things in this world are worth fighting for and dying for. They are not power or religion or money or land. They are the right of every inhabitant of this planet to grow and develop and contribute to the best of our ability.

That is the sort of people I want in our society. That is the sort of society I want, where everyone can equally contribute. That is why I strongly support this bill and why I will strongly oppose its referral to the Social Development Committee.

The Hon. NICK XENOPHON: This bill has generated enormous debate in the community, evoking passionate responses from those who strongly support it and those who are vehemently opposed to it. The immediate questions before us are two-fold: first, whether the bill should be read a second time; and, second, as an alternative, whether the bill should, instead, before being read a second time, be withdrawn and referred to the Social Development Committee for its report and recommendations.

In relation to the first question of whether this bill should be read a second time, I believe it should be for these reasons.

It relates to the issues of relationships and whether the rights allocated to spouses and those in a de facto relationship, as defined in the De Facto Relationships Act, ought to be extended to those in a same sex relationship. Closely linked with this debate are the views of the member for Hartley (Mr Joe Scalzi) and my colleague the Hon. Andrew Evans that the approach to take is one of extending the rights afforded to spouses and putative and de facto spouses to a broader class of domestic and co-dependants where the criteria for inclusion would be broader than that proposed by this bill to reflect close inter-independent relationships such as those between two siblings, cousins or even close friendships where there is a co-dependency between the two but it could not be categorised as that of a relationship as contemplated in the expanded categories in this bill.

I confirm again that I am very sympathetic to such a concept of domestic co-dependency, that this is an idea that deserves support and recognition and that it reflects the complex inter-relationships and co-dependency between individuals that are increasingly common. But the immediate question before us is whether this bill deserves to be read a second time and whether it ought to go into committee for further examination, possible amendment and eventual passage. I am concerned that dependent same sex partners find themselves in a difficult and often distressing situation with serious adverse financial consequences in many circumstances such as rights to compensation in the event of the death of a partner in a work accident, through negligence or by homicide.

Conversely, it appears anomalous that the present law imposes obligations and restrictions on unmarried opposite sex couples that are not imposed on same sex couples. The minister's second reading explanation states that a person who is elected a member of a local council or a member of parliament must disclose on the register of interest his or her putative spouse. However, that does not apply in the case of a same sex couple, and I believe that weakens the effectiveness of such disclosure legislation.

There is a part of the bill that concerns me as a threshold issue, and one of the key amendments proposed is that the act relates to the current requirement of the Family Relationships Act that a couple live together for five years before they can be recognised unless they have a child together. There is an inherent tension with the De Facto Relationships Act which requires only three years' cohabitation which applies to the division of property if a de facto couple separates. The bill's proposal to remove what the government refers to as a 'discrepancy' to grant legal rights across the board after a period of three years' cohabitation deserves further scrutiny, and I share some of the concerns of the Hon. Andrew Evans in this regard. I do not necessarily agree that we should, as a matter of course, have a three year period as an across-the-board time limit, and I remain to be convinced of the need for this change and I would like to explore the implications of that.

I support the second reading of the bill because I believe there is a need for reform to remedy anomalies such as in the case of rights to compensation for a same sex partner because, clearly, this leads to a fundamental injustice, and that is anomalous and unfair and needs to be reformed. It also concerns me that the government's discussion paper on this bill listed the hostility and, indeed, hatred towards homosexuals that still festers amongst some in our community. I note an extract from one letter referred to in the government's second reading explanation which states:

> Words cannot express the horror and outrage we feel at the same sex couples issues to go before parliament.

It goes on to state:

> The status of marriage for which we were created is being undermined and the nation will fall and judgment will come.

I also refer to another letter which states:

> The legitimisation of homosexuality and lesbianism as alternative lifestyles will lead to a cultural Armageddon.

With the greatest respect to the authors of those letters, I cannot accept that the status of marriage will be undermined. This bill does not purport to give same sex couples the status of marriage (in any event, that is a matter of federal law) but, as I see it, the bill is removing areas of discrimination and disadvantage and, again, I refer to the compensation example in the event of the death of a same sex partner through a work injury, negligence or homicide where that person in that relationship would miss out on compensation.

There are those who oppose this bill and see the measures proposed as 'sanctioning' same sex relationships. A generation ago this parliament, followed by other parliaments around Australia, repealed laws that criminalised homosexual conduct, and those laws, in turn, changed a culture of homophobia and outright hostility towards homosexuals, and I believe that is an unambiguously good thing.

I am old enough to remember the terrible and tragic death of Dr George Duncan, who died essentially as a result of being a homosexual man in the wrong place at the wrong time, and it is a blemish on this state's justice system that the investigation into his death was deeply flawed and charges were not brought in a timely manner against the perpetrators of the incident that led to his death. That was a great injustice, and I still remember from my time in law school in the mid 1970s when Horst Lucke, one of our lecturers, was still involved in the campaign for justice to unearth the truth of what happened to Dr George Duncan, his colleague.

So, I support the broad intent of the bill to remove discrimination against same sex couples, and that is why I believe the bill should be read a second time. To those who oppose the bill because they believe it will undermine the institution of marriage, I respectfully disagree with that proposition. I do not believe it is inconsistent to support the institution of marriage and to also support the removal of discrimination against same sex couples.

The second question relates to whether the Hon. Mr Cameron's amendment should be supported, that is, whether the bill should be withdrawn and referred to the Social Development Committee for its report and recommendations. The government's position is that there has already been consultation on this bill and that such referral is unnecessary and would unduly delay this bill and the reforms it proposes. I think it would be fair to summarise the position of those who support the Hon. Mr Cameron's amendment that a referral to the Social Development Committee would allow the full implications of the legislation to be considered in the committee context rather than obtaining submissions, as the government did and, further, to explore the concept of domestic codependency with a view to amendments being drafted to be considered in the context of this bill. I believe that the arguments are finely balanced: both sides have merit.

I also note the claim of those who oppose this motion that there are some who would see this referral to the Social Development Committee as a mechanism to unduly delay the bill in the hope that it will go away. I emphasise that I do not in any way suggest this of the Hon. Mr Cameron, the

Hon. Mr Evans or anyone else in this place who has expressed that view to me. That has been my primary concern. There is only one more sitting day left before an eight-week recess. Even if this bill passed the second reading stage tonight, no-one has suggested to me that the bill would proceed further into committee.

I also note that, while the government strenuously opposes this referral, and I respect that, I understand that the Hon. Steph Key has made a commitment to provide additional resources to the Social Development Committee in the event that this matter is referred to that committee. Those resources would be in the form of a research officer dedicated to this issue. I also note the commitment of the Hon. Gail Gago as chair of the committee to do all that she can in her power to deal with this referral expeditiously, noting of course that she fundamentally opposes the referral as being unnecessary. I hope that fairly summarises her position.

I also note the commitment that the Hon. Terry Cameron has given to me and others that he will do his best to expedite this matter and that, further, he would be seeking to ensure that copies of the reports of submissions previously made on this issue are forwarded to the committee so that the wheel does not have to be reinvented. For those reasons, particularly that the government, while not supporting such a referral and, indeed, opposing it strongly, will in all likelihood provide additional resources to the committee, I support the referral. I trust that any report of the Social Development Committee will assist in expediting the progress of the bill and any amendments in this place.

At the end of the day, however, I believe that reforms ought to be made to remove areas of discrimination. Given that there will be a two-month recess of this place and that the committee, if this is a referral to the committee, will deal with it expeditiously and there will be additional resources, any delay to the bill will be a relatively short one. I hope that any delay will be tempered by any report of the committee expediting the passage of this bill with the findings of that committee. For those reasons, with some hesitation, I support the motion of the Hon. Terry Cameron. I want to make it clear that sooner or later we will need to deal with this bill. I hope that the Social Development Committee's deliberations and report will assist the Council, but there are areas of discrimination that need to be resolved and removed and I believe that that is a good thing and a necessary reform.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank members for their contribution to the second reading debate. Let me indicate at the outset that the government members will oppose the motion moved by the Hon. Terry Cameron to refer this bill to the Social Development Committee, for the reasons that have already been spelled out by other members. Basically, the government believes that it is irrelevant. This bill after all contains provisions that were not only promised by the Australian Labor Party before the last election, almost three years ago now, but also there has been lengthy consideration already given to the measures contained in this bill. If I could just go through some of the consultation process that has been involved in this bill, it might indicate just how much effort has gone into that.

In February 2003 the Attorney-General and the Minister for the Status of Women published a discussion paper inviting comment on the government's policy of removing discrimination against same sex couples and on how the policy should be carried out. The deadline for submissions was mid-April 2003. The Attorney gave statements to the parliament on two occasions about this matter, in February and again in November 2003. Counting all the signatures, there were 2 216 responses to the discussion paper. Of these, 1 051 were against the proposed amendments and 1 600 for. There were also 11 letters that were not clearly for or against.

In the case of submissions with more one signature, each signature was counted as a response. The total number of submissions is therefore less than 2 216. Thirty-three submissions against the proposal came from institutions or groups, in most cases churches, and 34 submissions in favour likewise, for instance, from health agencies and unions. Many of the submissions on both sides were pro forma letters or were evidently constructed from sample letters in circulation. As a result, only a small number addressed the particular questions raised in the discussion paper. Most submissions simply stated a general point of view either in favour of or against the proposal to give equal rights to same sex couples, without addressing the detail of the proposed legislative approach.

It is fair to say that two issues stood out as the chief points of controversy. These were whether same sex couples should have access to assisted reproductive technology to help them conceive children and whether they should be able to adopt. The government took the decisions in light of the comments received and those matters are not included in the bill, as I am sure members are aware. The matters that are in this bill, as I understand it, have been adopted by most if not all other states in this country and, I would think, throughout most of the western countries of the world. I do not believe that there is anything particularly radical in what is being proposed here. Rather, it is about recognising the simple reality that there are same-sex relationships that exist in society. Whatever view one might have about that, it is a fact of life, and this bill simply seeks to deal with the legal reality of that.

I concede that I have been given a number of letters. The Hon. Andrew Evans referred to in excess of 3 000 pro forma letters seeking support for this bill to be referred to the Social Development Committee. At this point, even though the government is opposing that, if that amendment is carried—and it appears that it will be—the government will certainly accept the spirit of that amendment. If it is the view of this chamber that there should be further review of what we think are fairly unexceptional measures, then so be it. Although we think it is unnecessary, we will facilitate the process as quickly as possible. Again, I make the point that we believe it is unnecessary, and that is why we will certainly oppose it when it comes to the vote shortly.

As I was saying, we received a number of letters—I think there were 3 400 pro forma letters—suggesting or urging members to support the referral to the Social Development Committee. Those letters state:

> That there are very good reasons for giving special rights to married couples and elevating marriage to a special status. As Prime Minister John Howard said, marriage is the bedrock of society, and ensures that the next generation will be raised in a most stable environment possible. Research shows that children do best when raised by their two natural parents who are married. Even with the best of intentions, same-sex couples cannot provide this environment.

I will put my personal views on the record, and this is an issue about which we all have personal views. Recently, we have seen that the institution of marriage has been in decline within our community; certainly, that is statistically the case. The number of children now born outside marriage is, I think, at record level. Let us ask why that has happened, and why marriage has declined as an institution. I expect that there are several reasons for it. One is not because of what has happened with other relationships. If anything, it is to do with the obligations that are placed on marriage that people seek to avoid, rather than the rights of married couples. I think that needs to be recognised.

Also, there are simply many economic reasons why that is the case at the moment. It needs to be pointed out that marriage, after all, is conferred under a federal act. It is not the province of state law that we deal with issues of marriage; that is a matter for the federal parliament. I suggest that it is because of the many changes that have taken place in relation to the economic pressures for couples. For example, the high cost of housing, the lack of provision of child care, and such other simple economic facts are, in my opinion, the reason the institution of marriage is under pressure at this stage. It is really not the laws that have caused the change over the past decade; it is not the legal measures related to same-sex couples, or anything else; rather, it is just the simple economic pressures on families.

I believe that, if the federal government wishes to address those issues, the best thing it can do is to provide a secure financial environment for couples in relation to children. I think that is also the case in relation to some of the work force changes we have seen happening. I mention the fact that security in the work force is now at very low levels; the number of people in casual work has grown and that, in turn, is having a big impact upon the nature of relationships. To get back to obligations, the point I made in my second reading explanation when introducing this bill was how, in regularising same-sex relationships, it is not just about providing rights, as these people who have written to us are suggesting. It is also about providing obligations. I gave some examples, and one is the first home owner's grant.

In relation to that, if you have an opposite sex couple—married or de facto—if one of those partners has previously owned a house, then the other partner is not eligible under the first home owner's scheme. Of course, if it was a same-sex couple, that would not be the case. This law is regularising same-sex relationships and dealing with the reality that exists out there—tens of thousands of these relationships exist. Whatever view one might have about it, that is the reality. In regularising that, there will be what I could call both benefits and obligations that will change. I really think that bringing in these arguments, and trying to link them with marriage and what it might do is, in my view, a red herring. As I indicated, there are far more significant factors which, in my view, society should address if it wishes to look at the impact on traditional marriage and the environment in which children are raised.

I will say nothing more, because there has been a very lengthy debate on this bill, and it was a very lengthy second reading explanation that I read into the record when we introduced this bill several weeks ago. There has been enormous debate in the community. Obviously, as discussion papers and the debate indicates, there are divided views in relation to the matter. For those of us in the government, we believe that this is just a matter of basic rights, of regularising what is the reality in our community.

We do not believe it is necessary for any further studies on top of those that have been done, not just in this state but elsewhere throughout the world. We have seen a number of cases before where legislation has been referred to the Social Development Committee because it was too hard and people simply did not want to make a decision on it. Euthanasia, prostitution and a number of issues have been referred to committees—either select or the Social Development Committee—but, at the end of the day, it has not made any difference. Those reports have made absolutely no difference whatsoever to people's views, and that includes me in relation to issues like euthanasia, which I personally opposed.

Whilst they might be useful in providing information, I think that the reality is that it will not change anybody's view, but, nonetheless, if it is the wish of this council, the government will ensure that such a review by the Social Development Committee is facilitated and takes place. However, we believe it is not necessary. The government has a mandate for this measure. We believe it is desirable, sensible and just. I ask all honourable members to support the second reading of the bill and reject the unnecessary referral to the Social Development Committee.

The committee divided on the amendment:

AYES (10)

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

NOES (7)

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

PAIR(S)

Redford, A. J.	Sneath, R. K.
Schaefer, C. V.	Reynolds, K.

Majority of 3 for the ayes.

Amendment thus carried.

INDUSTRIAL LAW REFORM (ENTERPRISE AND ECONOMIC DEVELOPMENT—LABOUR MARKET RELATIONS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 818.)

The Hon. NICK XENOPHON: I indicate at the outset that I will support the second reading of this bill in order for it to go into committee and be further scrutinised. I thought that was the most useful thing I could do.

The PRESIDENT: Order! There are too many audible conversations. I am becoming very concerned that members are taking their guests—whom we always welcome into the chamber—into the Presidents' galleries without any reference to me, and it is beginning to look untidy. I will be issuing some directions in the very near future about the requirements of members taking guests into the President's galleries when the public galleries are empty and there are audible conversations going on, which are not permitted on the floor nor in the President's gallery. A note will be issued to all members about their responsibilities in respect of these matters. It is most disconcerting when I cannot hear the speaker making a contribution as his duty demands.

The Hon. NICK XENOPHON: I indicate that I support the second reading of this bill which has the tortuous title of Industrial Law Reform (Enterprise and Economic Development—Labour Market Relations) Bill and which was formerly known as the fair work bill. Perhaps, if this bill is passed, it may be better known as the industrial relations bill—a more neutral and less tortuous title. I make clear that I support the second reading of the bill in order that it can go into committee for further scrutiny by the council.

I have had briefings from representatives of the government. I have not had an opportunity to meet with the minister—the minister has not been able to meet with me—but I am sure the minister will have an opportunity to meet with me in due course if this bill goes into committee. I am very grateful for the briefing that I received from the minister's staff, and, in particular, I thank Michael Ats for his assistance and comprehensive briefing in relation to the bill. I also appreciate the briefing by Janet Giles from the United Trades and Labor Council as well as Mary Jo Fisher from Business SA and Steve Shearer from the entity representing transport operators in this state.

I also spoke with Mr Garry Le Duff of the Association of Independent Schools of South Australia. I met with him earlier today and I had extensive discussions with Mr Ken Phillips, the Executive Director of the Independent Contractors of Australia. Dare I say, I believe a number of other people will want to speak to me and other members in relation to this bill because it is contentious and there are passionate views on both sides with respect to this bill. The most appropriate thing to do with respect to my second reading contribution is to raise concerns and questions with respect to the bill so the government can respond to those in due course.

I note that there is some contention in relation to clause 5(4), where proposed new paragraph (ka) provides that one of the objects of the bill is 'to encourage and facilitate membership of representative associations of employees and employers and to provide for the registration of those associations under this act'. I note that Business SA has some concern that these objects could have some flow-on effects and, as I understand the argument, I know that using the words 'encourage. . . membership of representative associations' may in some ways impinge on individuals' freedom to associate or not to associate with an organisation, whether it be a union or an employer organisation.

With respect to clause 5(5), I note that there is a concern regarding preventing and eliminating unlawful or unreasonable discrimination in the workplace, in terms of the wording of that clause. I also note that the words 'or unreasonable' are necessarily broad. A decision as to what is unreasonable should be relying on equal opportunities legislation. The new clause might fetter the rights of Catholic schools or other schools that have a strong religious basis in their ethos and teachings to carry out their work. Further, the Association of Independent Schools has indicated that, in the past, there has been a challenge to particular decisions of schools that have a strong religious ethos, and that has been an area of concern. Can the government indicate in what circumstances it considers the words 'or unreasonable' would operate, and what does it say to the contention that we ought to rely on equal opportunities legislation? Either something is unlawful or it is not. 'Unreasonable' is simply too vague.

Clause 5(6) makes reference to ILO conventions, and the concern that has been expressed by Business SA is that it is too broad and will create too much uncertainty. I note that the view expressed by the independent contractors is that the conventions are statements of principle, and that they are themselves too broad. As I understand it, the conventions referred to in paragraphs (b) and (c) have been passed, that is, the Workers with Family Responsibilities Convention 1981 and the Workers' Representatives Convention 1971. As I understand it, they have been ratified by the commonwealth. The Worst Forms of Child Labour Convention 1999 has not yet been ratified but is in the process of being ratified, or adopted, by the commonwealth. If the government could confirm that I would appreciate it.

I ask the government whether there is a precedent for this in terms of other jurisdictions of industrial courts or industrial commissions around the country? Is it the case that this measure goes beyond what other jurisdictions are doing, or, if other jurisdictions have adopted this, how has it operated in principle? What does the government say about the argument that conventions are statements of principle, and that it would create some unacceptable degree of uncertainty? In the alternative, if the government is not successful with this clause, would it consider drafting an amendment, or having an alternative proposition in the legislation that is based on those conventions that it seeks to have the court and the commission take into account? What would be wrong with taking that approach so that we can see what those particular conventions would mean in a practical sense in terms of their drafting so that statements of principle are consolidated in a legislative sense and drafted accordingly?

Clause 6(12) adds to the definition of 'workplace' and, as I understand it, is linked to the unions' right of entry. It excludes houses unless outworkers are there. The questions that have been asked by Business SA are: who is this trying to protect; is it just for the clothing industry or does it go beyond that; and what is the intent of that clause? I agree in broad terms with the comments of the Hon. Mr Gilfillan, who is concerned that there are many in the community who do not have a voice, who work under conditions that we would find unacceptable in a civil society and who are being exploited. I share those concerns with the Hon. Mr Gilfillan. I would be grateful if the government could at least provide a response to some of the concerns of the business community saying that clause 6(12) is simply too broad.

With respect to clause 7, which will insert proposed section 4A, 'declarations as to employment status', I note this is an area of contention. Both the business community and the independent contractors vehemently oppose this provision. In proposed subsection (1), reference is made to a class of persons who would be covered by a declaration, and I understand that the building industry is concerned about this provision. I would be grateful if the government could indicate how it believes this would work in a practical sense with respect to the declarations as to class of persons, and elaborate on the assertion that some have made about this proposed section that it would in effect be deeming similar to the Queensland legislation. I understand that, according to information given to me by the Independent Contractors of Australia, the President of the Industrial Commission in Queensland has said twice in speeches that the deeming provisions in Queensland are unworkable—

The Hon. R.K. Sneath: The deeming clause has been taken out of this.

The Hon. NICK XENOPHON: I understand that. The assertion of the business community is—and I am not saying that I necessarily agree with them—that this is a de facto deeming provision. That is why I would be grateful if the government elaborated on that. My understanding is that there was a distinction, but the independent contractors say that we are going down that path in terms of deeming. Subsection (2) refers to the fact that the court must apply the common law. There does not appear to be much contention in terms of the common law being applied, but it also goes on to refer to 'the terms of definition of contract of employment under this act'. That is where the argument is that the contract of employment provisions could be de facto deeming. Again, elaboration from the government on that would be very useful.

The independent contractors under subsection (6) have also raised concerns that it should be an individual not unions that bring in an application under this section; that is, that it not be a peak entity. I have difficulty in accepting that proposition, because to me it seems to be a secondary issue as to whether you should have declarations as to employment status. Subsection (7) provides:

> A person or association acting on behalf of a person under subsection 6(c) (the relevant person) may, in accordance with any relevant rule of the court, decline to disclose to another party to the proceedings the actual identity of the relevant person, but must, at the direction of the court, disclose the identity of the relevant person to the court, on a confidential basis, in accordance with the rules.

As I understand the arguments of the union movement which have been put to me by Janet Giles and others, this is aimed at tracking down fly-by-night operators or a situation where workers are fearful of coming forward or speaking out for fear of losing their employment.

I can understand the reason for that provision if a person is struggling to pay a mortgage and has a family to support and this is the only job that they can obtain, but the working conditions are particularly appalling and the employer is such that, if they speak out, they will lose their job. However, my questions are: what would the rules of court be? What are the procedural issues to ensure that there is natural justice to the parties concerned, or that the court at least undertakes an appropriate fact finding exercise in the absence of any parties being identified? I would have thought that, in some cases, it would not be too difficult, if we are talking about records indicating very poor conditions of employment or breaching conditions of employment—and that may resolve it.

My other question to the government is: is this provision unique to South Australia? The independent contractors say that someone will be running a blind case; that there will not be sufficient natural justice; and that it will be constraining the court in the exercise of its decision making powers. I do not necessarily agree with that, but I would like some further details from the government as to how it considers it would operate.

With respect to clause 8, there appears to be some contention about what inserting the word 'clean' in section 5(1)(a)(i) would mean. I understand that Business SA's legal opinion states that this is quite broad. The government has a different view. I would be grateful if the government could elaborate on that and produce any advice or opinions that it has received with respect to this clause.

Regarding clause 13, which inserts section 32—term of office, I indicate that I am sympathetic to the government's position. As I understand it, it was a former Liberal government that required a maximum of two 6-year terms. I believe there are some good arguments for tenure, and that that is not unreasonable.

With respect to clause 21, which deals with the general functions of the Employee Ombudsman, I note that the business community has concerns about natural justice and procedural issues. However, I would have thought that, again, there must be instances where an employee might have a particular fear of being identified because of the conduct of an employer and that the Employee Ombudsman would need to proceed accordingly. Can the government indicate whether there will be a different approach to investigating matters where identity is not disclosed in terms of natural justice and other issues? I would have thought that there could be compelling reasons in some cases where the Employee Ombudsman should proceed in the absence of identifying the name of the complainant.

Clause 22 deals with the general functions of inspectors. I note that there is a conduct manual with respect to such functions. I would be grateful if the government could provide details of that or a copy of the conduct manual for members. For the sake of giving some certainty as to how those powers are used, will there be some codification of that in legislation or by way of regulation so that there can be some transparency, because I believe there may be some undue fears in the business community about these powers? As I understand it, the conduct manual prescribes the mechanisms for how an inspector should proceed in relation to dealing with such matters.

There appears to be contention between the business community and the government about whether under a formal complaint people should identify themselves. Under occupational health and safety legislation there is no need for a formal complaint or identification, as I understand it. I would have thought that there ought not necessarily be a formal complaint to investigate matters in certain circumstances, but I would like to hear from the government as to how it says this provision would operate in a practical sense. Can the government provide some reassurance that this would be operated fairly? Of course, there is always the need for extraordinary powers where there is evidence of conduct by an employer that is grossly unreasonable.

In relation to the remuneration provisions about the minimum wage (clause 26), will the government explain which other jurisdictions have a minimum wage? Will this affect the employment of children, such as paperboys? This is a time-honoured tradition. Would it fetter this sort of employment which has been going on for generations in this country? I would have thought that, in itself, that is something that ought not be the subject of heavy-handed regulation.

In relation to clause 31—minimum standards—additional matters, as I understand, the debate in the business community indicates that parliament should decide this. Can the government explain how different this clause is from other jurisdictions and how it operates in other jurisdictions? How would these new topics, in addition to that of carer's and bereavement leave, be dealt with? As I understand the briefing from the government, Western Australia and Queensland have similar provisions. How does it operate in a practical sense?

As to clause 32, who may make an enterprise agreement, I note that this is also quite controversial. As I understand it, it is there to assist from the government's point of view and it is there to assist franchisees, but employers are opposing this because of the concept of pattern bargaining and giving leverage to the union movement. I would like to hear from the government as to how it says it would operate in a practical sense and how it has operated in other jurisdictions. What is the distinction with, say, what operates in the federal sphere?

In regard to best endeavours bargaining, clause 34, I understand the intent, but my first impression was that it would allow for de facto awards. You either have an award system or an enterprise bargaining system, but this would, in effect, make enterprise bargaining an alternative stream of award setting. So I would like to hear from the government as to what it says about that. However, whether there ought to be some mechanism of compulsory reporting or compulsory mediation where parties have to state their positions rather than compulsory arbitration I believe ought to be explored further.

Clause 36 relates to the effect of the enterprise agreement and transmission provisions. My understanding is that, if businesses are now sold, the enterprise bargaining agreement does not go with the business and this proposes to allow for a transfer of that in the event of the sale of a business. As I understand the argument of the business community, if it is an ailing business you should not be bound by an enterprise agreement and there ought to be some flexibility with respect to ailing businesses.

Currently, if someone is buying a business, they buy that business knowing what the enterprise bargaining agreement is; and I query, in addition to the exemption set out in subclause (7)(a)—which allows the commission to make an order if the order only relates to provisions that regulate the performance of duties by employees—whether there ought to be a further exemption in a case where there is a genuine distress in the company and it could make the difference between the company's going under or not. So, I raise that as a query and an issue of further discussion with the government. Maybe there ought to be some flexibility but, as a general principle, we ought to allow for an enterprise bargaining agreement to transfer.

The Hon. Mr Sneath says it gives the commission flexibility. My reading of it—and I will listen to the arguments and hear from the government again on this—is that subclause (7)(a) does not give that flexibility but subclause (7)(b) relates to exceptional circumstances. One of the questions I would like to put to the government is whether exceptional circumstances would cover the financial distress of a company where there is a need to radically restructure that company in order to keep the company going.

With respect to clause 46 relating to outworkers, my understanding is that the intent of the government is to deal with this vexed issue, the exploitation of outworkers, particularly in the clothing and textile industry. As I understand it, this goes further than New South Wales and Victoria, where there has been a tripartite council to deal with outworkers. There are real issues here as to whether these provisions are too broad and whether there ought to be provisions tailored for the textile industry and not broader. I think that the complaint of the independent contractors, if I can state it fairly, is that the key question is who is an outworker. It is not restricted to the textile clothing outworkers; it would include the IT sector, and that could act as a dampener of employment. So, if you are dealing with IT consultants working from home, they would be captured by this so that, if they are doing work for a company that is, in itself, contracted to IBM for instance, that could be unnecessary. If the government could elaborate on that I would appreciate that.

Division 2 of clause 46 relates to codes of practice. As I understand it, the provision that allows for the minister to publish a code of practice is not disallowable. Can the government clarify what is has proposed and whether it would be a disallowable instrument? I also note that there are issues about the various different employee concepts set out in that clause, how it would interact, whether it is unduly complex, and whether it could be dealt with more simply.

Clause 49 deals with the powers of inspectors. As I understand it, this gives the power to an inspector to access where records are kept, and there is a procedure to go through with a code of conduct. I query whether that code of conduct should in some way be codified. My question is: what are the protocols? The business community sees this as an unnecessary power, and I guess that the issue for me is, what happens where, with a rogue employer, records are being destroyed? Ought there to be a reverse onus if you do not have these powers; how would the powers of these inspectors be dealt with in a practical sense; and ought it be codified to some extent?

With respect to clause 51, I note the host employer provisions are vehemently opposed by the independent contractors, who are saying that it would close down the labour hire industry in South Australia. I think that that puts their opposition fairly succinctly. Does the government say that this will effectively discourage independent contractors from operating at all? What are the tests that would apply as to who would come under this clause? What does it say to the business argument that it will close off opportunities? But I also note the argument of the union movement that this is about employers avoiding responsibilities by artificially structuring their labour forces. So, I think it is a contentious clause and I look forward to hearing what the government says as to the scope of this, and how it compares to other jurisdictions. I note that the Association of Independent Schools believes that this will restrict their flexibility. For instance, if they are using catering for a school, it acts as a disincentive to use those services in those circumstances. I know that there is some contention about clause 52 regarding the question of jurisdiction for unjust dismissal after a period of work.

I look forward to hearing from the government, whether at the end of the second reading stage or in the committee stage, as to how it believes reasonable expectation of continuing employment by the employer would operate. With clause 56, the remedies for unfair dismissal from employment, where the government proposes that re-employment is to be regarded as the preferred remedy, I can understand that in the context of a larger organisation but what does the government say about small businesses where there has been a fundamental breakdown in the relationship between the worker and the management? And we are talking about a relatively small workplace. Ought there to be some further discretion there?

The Hon. R.K. Sneath interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Sneath makes a good point: who has caused the breakdown if it was sexual harassment, for instance? I would have thought that in those circumstances re-employment should not be the preferred remedy. If an employee has been harassed and would be very distressed to go back in that workplace, then damages ought to be the preferred remedy. I am just concerned as to how that would work and whether there ought to be greater emphasis given in the legislation to small businesses. Using the example of the Hon. Mr Sneath of sexual harassment, if we are dealing with a large employer with hundreds or thousands of employees and that person could be re-employed in other premises or in another part of a large facility, I do not have an issue with that. But I think it unduly restrictive with respect to the interests of small businesses.

With respect to clause 58, the workplace surveillance devices, I ask: how will the regulations work? What is the existing status of current laws and how does this interact with privacy laws at a federal level, because there is a potential conflict of laws situation? What happens about work places that are already public places? How do you deal with that? I note that clause 59, amending the powers of officials of employee associations, is very controversial. What protocols will be in place for this to be exercised? I note that the amendment of the Hon. Mr Such in the other place in subclause (6)(2c) ameliorates some of the concerns, and I also note that the Hon. Ian Gilfillan has flagged his concerns with that. Can the government indicate whether there is more right of entry under the existing federal act than under the state act?

In clause 64, the proposed section 155B, which relates to conciliation conferences, I note that the business community is concerned at a flood of claims. If the government could indicate how the process would work and elaborate on that, I would appreciate that. Clause 75, 'Offences by body corporate', relates to the questions of knowledge as distinct from imputing knowledge. This is one area where I believe that the government should have gone further in certain circumstances, so it may well be that I will be moving an amendment in relation to that on the whole question of what should be imputed in certain circumstances, in terms of how a company undertakes its businesses if you aggregate the knowledge or conduct of various members that leads to a form of conduct that this legislation is attempting to remedy.

They are just some of the comments I have with respect to this bill, which I hope will be renamed at least as the Industrial Relations Bill in due course. I note that this is something that will not be dealt with in the committee stage, if it passes the second reading, until next year. I expect there will be a fulsome, robust and tortuous committee stage. It is an important piece of legislation, and the concerns expressed are important as well. I look forward to further consideration of this bill in the committee stage.

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

STATUTES AMENDMENT (MISUSE OF MOTOR VEHICLES) BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

FIRST HOME OWNER GRANT (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without any amendment.

PETROLEUM (SUBMERGED LANDS) (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without any amendment.

ADJOURNMENT

At 10.42 p.m. the council adjourned until Thursday 9 December at 11 a.m.