LEGISLATIVE COUNCIL

Thursday 24 November 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 11.03 a.m. and read prayers.

STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

STATUTES AMENDMENT (VEHICLES AND VESSEL OFFENCES) BILL

Second reading.

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

That this bill be now read a second time.

I seek leave to have the second reading speech and explanation of clauses incorporated in *Hansard* without my reading them.

Leave granted.

The Bill deals with a matter of great concern to the Government and the public. The recent outcry about penalties imposed in prominent road accident cases, and one in particular, has highlighted the need for changes to the laws dealing with causing death by dangerous driving and leaving the scene of an accident.

The Government finds it abhorrent that a person could kill or seriously injure another in an accident and then drive off without stopping to provide assistance and pay so little by way of a penalty. The law must reflect the serious nature of such action and ensure penalties are sufficient. We must deter people who think about shirking their responsibilities.

The Bill amends the *Criminal Law Consolidation Act 1935*, the *Bail Act 1985*, the *Harbors and Navigation Act 1993* and the *Road Traffic Act 1961*.

It creates a new offence of leaving an accident scene after causing death or physical harm by careless use of a vehicle or vessel, restructures the offence of causing death by dangerous driving and increases the penalties for failing to stop and give assistance to persons injured in motor-vehicle accidents.

The Bill redefines the terms 'motor vehicle' and 'vehicle' and extends the offences in Part 3, Division 6 of the *Criminal Law Consolidation Act 1935* to accidents involving vessels and motor vessels, such as jet skis.

The Bill also carries out some of the recommendations of the Kapunda Road Royal Commission. For example, it includes a new aggravated penalty for careless driving, allows breath testing for up to eight hours after driving and imposes a new obligation on a driver involved in a accident in which a person is killed or injured to present to a police officer not more than 90 minutes after the accident.

Amendments to the *Criminal Law Consolidation Act 1935*

Cause death or injury by dangerous driving

Section 19A of the *Criminal Law Consolidation Act 1935* makes it an offence to cause death or injury to a person as a result of driving a vehicle in a culpably negligent manner, recklessly or at speed, or in a manner dangerous to the public. The maximum penalties for a first offence range from imprisonment for a term not exceeding 10 years where death or grievous bodily harm is caused, to four years where non-grievous injury is caused. The offence attracts a higher penalty for second or subsequent offences.

Where a vehicle other than a motor vehicle is used and injury is caused, the maximum penalty is two years imprisonment.

The amendment restructures the offence in section 19A so that there is a basic offence and an aggravated offence. It adopts the same structure and terminology as is used in the *Statutes Amendment and Repeal (Aggravated Offences) Bill* currently before Parliament. References in section 19A to 'grievous bodily injury' and 'injury' will be replaced with 'serious harm' and 'harm' by that Bill.

An aggravated offence is an offence committed in any of these circumstances:

· the offender was attempting to escape pursuit by police;

· the offender was disqualified from holding or obtaining a licence or had his or her licence suspended by notice under the *Road Traffic Act 1961*;

· the offender committed the offence as part of a prolonged, persistent and deliberate course of very bad driving or vessel operation;

· the offender committed the offence with a blood alcohol content of 0.15 grams or more in 100 millilitres of blood; or

· the offender was driving in contravention of section 45A of *the Road Traffic Act 1961* (That is the new section contained in *the Road Traffic (Excessive Speed) Act 2005* to deal with high-range excessive speed), or section 47 of the *Road Traffic Act 1961*, driving under the influence of drugs or alcohol so as to be incapable of exercising effective control, or operating a vessel in similar circumstances in contravention of section 70(1) of the *Harbors and Navigation Act 1993.*

The Bill provides that the maximum penalty for a first basic offence of cause death will be 15 years imprisonment with licence disqualification for 10 years. The maximum penalty for any subsequent offence, or an aggravated first offence, will be life imprisonment with licence disqualification for 10 years. This is consistent with the recommendation of the Kapunda Road Royal Commission that the penalty for driving in a manner dangerous causing death should be the same as the penalty for manslaughter. Life imprisonment is the maximum penalty for manslaughter.

Section 19A will be amended to cover death caused by a vehicle or vessel. Such a scenario is not currently within the scope of the section—as section 19A(1) is limited to cases where the driving of a motor vehicle causes a death.

The penalty for the new offence where death was caused but a motor vehicle or a motor vessel is not used in the commission of the offence will be imprisonment for seven years.

The revised penalties will also apply where serious harm is caused to a victim. This is what happens now in that the maximum penalties for causing grievous bodily injury in section 19A(3) are the same as for causing death in section 19A(1).

The maximum penalties where serious harm has not been caused reflect the increases contained in the Aggravated Offences Bill. The maximum penalty for a first basic offence will be imprisonment for five years and disqualification from holding a driver's licence for one year, or such longer period as the court orders. The maximum penalty for a subsequent or aggravated offence will be imprisonment for seven years and disqualification from holding a driver's licence for three years, or such longer period as the court orders.

The maximum penalty where harm was caused but a motor vehicle or motor vessel was not used in the commission of the offence will be imprisonment for five years. This reflects the increase from two to five years contained in the Aggravated Offences Bill.

New offence of leaving an accident scene after causing death or serious injury by careless driving

The Bill also creates a new offence related to causing death or physical harm by careless driving or vessel operation, and failing to stop and give assistance and to satisfy the statutory obligations of the driver of a vehicle or the operator of a vessel.

The statutory obligations to be imposed on a driver are contained in section 43 of the *Road Traffic Act* and the statutory obligations imposed on an operator of a vessel are set out in sections 75 and 76 of the *Harbors and Navigation Act 1993.*

This provision is squarely aimed at drivers or operators who cause an accident resulting in death or physical injury, but who do not stop and provide all possible assistance to the victim. This is not to say that people must stop and perform first aid when they are not qualified to do so. Rather, they must take steps to assist a dead or injured person directly, or by obtaining expert help, for example, by calling police or an ambulance or emergency services. Such an action could save a life, minimise the extent of the injury and improve the chances of recovery.

A failure to observe these basic steps is reprehensible. The applicable maximum penalty must reinforce the public's view that failure to fulfil these obligations is a serious breach of the law. The

maximum penalty for a first offence, where death or serious harm results, will be imprisonment for 15 years, and disqualification from holding a driver's licence for five years or such longer period as the court orders. The maximum penalty for any subsequent offence will be imprisonment for life and disqualification from holding a driver's licence for 10 years or such longer period as the court orders.

The penalties in the new section generally reflect those applicable to the basic offences of causing death or serious harm by dangerous driving under section 19A.

Disqualification of licence where a vehicle or vessel is used in the commission of offences of manslaughter or reckless endangerment

The Bill amends section 13 of the *Criminal Law Consolidation Act 1935* to provide a mandatory period of licence disqualification where the victim's death was caused by the convicted person's use of a motor vehicle.

A court already has power to order licence disqualification for the offence under section 168 of the *Road Traffic Act 1961*, but the amendment will make it mandatory.

A similar amendment to section 29 will provide for a mandatory period of licence disqualification where the act or omission constituting the offence was done by the convicted person in the course of the convicted person's use of a motor vehicle.

This is consistent with the inclusion of mandatory licence disqualification periods for causing death and injury by dangerous driving.

Amendments to the *Bail Act 1985*

Part 3 of the Bill will amend the *Bail Act 1985* to deal with drivers who commit serious driving offences in the course of attempting to escape police. It targets those who endanger lives when involved in a police pursuit, including those escaping police, baiting them or taking part in a car chase.

Clause 13 provides that bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail.

A prescribed applicant is a person taken into custody for committing or allegedly committing certain offences in the course of attempting to escape pursuit by police or attempting to entice a police officer to engage in a pursuit. The relevant offences are manslaughter, where the victim's death was caused by the applicant's use of a motor vehicle; an offence against section 19A; and reckless endangerment where the act or omission constituting the offence was done or made by the applicant in the course of the applicant's use of a motor vehicle.

Amendments to the *Harbors and Navigation Act 1993*

Part 4 amends the *Harbors and Navigation Act 1993.* Similar amendments are to be made to the corresponding provisions of the *Road Traffic Act 1961* in response to the recommendations of the Kapunda Road Royal Commission.

Section 69 of the *Harbors and Navigation Act 1993* sets out two offences: operating a vessel at a dangerous speed and operating a vessel without due care for the safety of any person or property.

The section will be deleted and two new sections 69 and 69A will be inserted.

New section 69 will deal with careless operation of a vehicle. The penalty for the basic offence will remain unchanged. However the amendment introduces an aggravated offence with a maximum penalty of 12 months imprisonment.

The aggravated offence will apply where:

- the offence caused the death of, or serious harm to, a person; or
- the offence was committed in any of the following circumstances:
  - the offender had a blood alcohol level of .08 grams or more of alcohol in 100 millilitres of blood;
  - or the offender was, at the time operating the vessel, in contravention of section 70(1) (operating a vessel under the influence).

New section 69A deals with dangerous operation of a vessel. The offence is unchanged but the maximum penalty will be increased to two years imprisonment.

Clause 15 will amend section 71 of the *Harbors and Navigation Act* to increase the period of time within which an alcotest or breath test can be taken from two hours to eight hours after operating a vessel.

This is consistent with the recommendation of the Kapunda Road Royal Commission about testing of drivers of motor vehicles. There is no basis for having different rules applying to drivers of vehicles and operators of vessels.

Section 73 will also be amended. The current section provides that, in proceedings for an offence against Part 10 Division 4, if it is proved that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis, it will be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the analysis.

The section will be modified to make it clear that that the conclusive presumption will only apply where the breath analysis is taken within two hours of operating a vessel etc.

Section 76 of the *Harbors and Navigation Act 1993* deals with the duty to give assistance and provide particulars. Subsection (1) imposes a duty where an accident involving a vessel results in loss of life or personal injury or possible loss of life or personal injury, or damage to a vessel or possible damage to a vessel. The duty rests on a person who is in a position to take action that is reasonably practicable in the circumstances to prevent or minimise the loss, injury or damage.

Subsection (2) places a duty on the person who was in charge of the vessel at the time of the accident to inform any person injured in the collision and the owner of any property damaged in the collision of his or her name and address and of the registration number of the vessel.

Subsection (3) provides that a person who fails to discharge a duty is guilty of an offence and subject to a maximum penalty of $1250.

Clause 17 restructures section 76 and increases the penalty for breach of the duty to provide assistance. The penalty for breach by the operator of a vessel involved in the collision is increased to a maximum penalty of five years imprisonment. The maximum penalty for a breach by any other person is a fine of $2500. The five year penalty is consistent with the penalty proposed for the corresponding offence in the *Road Traffic Act 1961*.

Amendment to the *Road Traffic Act 1961*

Section 43 of the *Road Traffic Act 1961* requires the driver of a vehicle involved in a collision where someone is killed or injured to stop and give all possible assistance. The Bill amends section 43 to provide that a driver of a vehicle involved in a collision in which a person is killed or injured must, not more than 90 minutes after the accident, present to a police officer for the purpose of providing particulars of the accident and submitting to any requirement for an alcotest or breath analysis.

The 90-minute time frame will mean that a driver should present to police in time to allow an alcotest or breath analysis to be taken within the two-hour time frame within which the conclusive presumption as to blood-alcohol concentration applies.

The Bill also increases the penalty under section 43 from a maximum penalty of $5 000 or imprisonment for one year to imprisonment for five years. The section differs from the new section 19AB of the *Criminal Law Consolidation Act 1935* in that it covers all drivers involved in an accident, whether or not the accident was caused by the person driving without due care.

It will be a defence to establish that the defendant was unaware that the accident (being a collision causing death or injury) had occurred and the lack of awareness was reasonable. There will also be an additional defence for a failure to stop and give assistance so as to deal with those few situations where the driver genuinely believes on reasonable grounds that to stop would endanger the physical safety of the driver or another person. The defence is not a means by which drivers can flee the scene because they are scared of the consequences of their actions, or because they do not want to face up to the collision scene or the injured person. It is intended for those few cases where a person would genuinely be at risk if they stopped. For example, a group of pedestrians is walking on a roadway abusing and threatening drivers, and one of the pedestrians is hit by a car.

If the driver genuinely believes that his or her personal safety, or the safety of a passenger is at risk, because of threats from the acquaintances of the injured person, and that belief is reasonable, the driver may leave the scene of the accident. The defence does not excuse the driver from all responsibility, and does not mean that the driver can continue to drive to his or her original destination as if nothing had happened. The driver must, at the earliest opportunity, notify the police, ambulance or an appropriate emergency services of the collision.

It will be a defence to a failure to comply with the requirement to present to police within 90 minutes of the accident if the defendant has a reasonable excuse for the failure and presented to police as soon as possible after the accident. For example, it may be physically

impossible for a driver to present to police within the time. Provided the driver presented to a police officer as soon as possible after the accident, he or she would not be in breach of section 43(1)(b).

Clause 19 amends section 45 by introducing an aggravated offence of careless driving. The aggravated offence will apply where:

- the offence caused the death of, or serious harm to, a person; or
- the offence was committed in any of the following circumstances:
  - the offender was in the course of attempting to escape pursuit by police; or
  - the offender was disqualified from holding or obtaining a licence, or suspended from holding a licence by notice under the *Road Traffic Act 1961*; or
  - the offender had a blood alcohol level of .08 grams or more of alcohol in 100 millilitres of blood; or
  - the offender was driving in contravention of section 45A or section 47 of the *Road Traffic Act 1961.*

The aggravated offence will attract a maximum penalty of 12 months imprisonment and mandatory licence disqualification of six months.

This amendment is consistent with the recommendation of the Kapunda Road Royal Commission that more severe penalties should apply to aggravated versions of drive without due care. It is also consistent with the amendments to the *Harbors and Navigation Act 1993.*

Section 46 of the *Road Traffic Act 1961* will also be amended to increase the maximum penalty. Section 46 provides that a person must not drive a vehicle recklessly or at a speed or in a manner which is dangerous to the public. The penalty for a first offence is a fine of not less than $300 and not more than $600. For a subsequent offence, the maximum penalty is a fine of not less than $300 and not more than $600 or imprisonment for not more than three months.

The Government has reconsidered this penalty in light of the recommendations made in the Kapunda Road Royal Commission and accepts that the penalty should be increased and that imprisonment should be an option for a first offence. The new maximum penalty of two years imprisonment reflects a large increase but the Government believes this is justified when it is viewed against the potentially drastic consequences that such driving can cause.

Clause 21 of the Bill replaces section 47E(2b) of the *Road Traffic Act 1961*. The amendment will provide that an alcotest or breath analysis may not be commenced more than eight hours after the conduct that gave rise to the requirement to submit to the test. The current limit is two hours.

The amendment is consistent with the recommendation of the Kapunda Road Royal Commission that the period for testing uninjured drivers should be the same as applies to injured drivers.

This will give police a longer period within which to locate and test a person who attempts to avoid detection. The Act currently provides that if it is proved that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis, it will be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of two hours immediately preceding the analysis.

The provision will be modified to make it clear that that the conclusive presumption will apply only where the breath analysis is taken within two hours of driving or attempting to put a vehicle in motion.

New section 47EAA is contained in the *Road Traffic (Drug Driving) Amendment Bill*. The section will be amended to provide that a drug screening test, oral fluid analysis or blood test may not be commenced more than eight hours after the conduct that gave rise to the requirement for the person to submit to the alcotest or breath analysis.

This will ensure that the same time periods apply to drug testing as breath testing.

Section 164 provides that all offences under the *Road Traffic Act 1961* are summary offences. Given the increase in penalty for the section 43 offence, this is no longer appropriate. The Bill removes section 164 of the *Road Traffic Act 1961* so that offences under the Act will be classified in accordance with the general rules of classification under section 5 of the *Summary Procedure Act 1921*.

The Bill also makes it clear that, where the court convicts a person for an offence and imposes a sentence of imprisonment and a period of licence disqualification, the person will have to serve that full period of licence disqualification after his or her release from prison.

I commend this Bill to Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 5—Interpretation

This clause inserts various definitions for the purposes of the measure.

5—Amendment of section 5AA—Aggravated offences

This clause amends section 5AA (as proposed to be inserted in the *Criminal Law Consolidation Act 1935* by the *Statutes Amendment and Repeal (Aggravated Offences) Bill*) to define certain aggravating factors for the purposes of an offence against section 19A of the Act, which deals with causing death or harm by dangerous use of a vehicle or vessel. The circumstances that will make such an offence an "aggravated offence" are that—

- the offender committed the offence in the course of attempting to escape police pursuit;
- the offender was, at the time of the offence, driving the vehicle knowing that he or she was disqualified from holding or obtaining a driver's licence or that his or her licence was suspended by notice under the *Road Traffic Act 1961*;
- the offender committed the offence as part of a prolonged, persistent and deliberate course of very bad driving or vessel operation;
- the offender committed the offence with a blood alcohol content of .15 or more;
- the offender was, at the time of the offence, driving in contravention of section 45A or 47 of the *Road Traffic Act 1961* or section 70(1) of the *Harbors and Navigation Act 1993*.

6—Amendment of section 13—Manslaughter

Section 13 is amended to ensure that a person who is convicted of manslaughter in circumstances where the victim's death was caused by the convicted person's use of a motor vehicle, will be disqualified from holding or obtaining a driver's licence for a period of 10 years or more.

7—Substitution of heading

This clause substitutes a new heading for Part 3, Division 6 (consequentially to other proposed amendments).

8—Insertion of section 19AAB

This clause inserts definitions for the purposes of Division 6.

9—Amendment of section 19A—Causing death or harm by dangerous use of vehicle or vessel

This clause amends the penalties applying to offences under section 19A and extends the application of the section to cover use of vehicles and vessels generally. Currently, the penalty for causing death or serious harm by driving a motor vehicle is, for a first offence, imprisonment for 10 years and licence disqualification for 5 years or more and for a subsequent offence, imprisonment for 15 years and licence disqualification for 10 years or more. This is to be varied as follows:

- for a first offence that is a basic offence involving use of a motor vehicle or motor vessel, the penalty will be imprisonment for 15 years and, if the offence involves a motor vehicle, licence disqualification for 10 years or more;
- for a first offence that is an aggravated offence, or for any subsequent offence, involving use of a motor vehicle or motor vessel, the penalty will be imprisonment for life and, if the offence involves a motor vehicle, licence disqualification for 10 years or more;
- for an offence involving use of neither a motor vehicle nor a motor vessel, the penalty will be imprisonment for 7 years.

The penalties for causing harm, other than serious harm, by driving a motor vehicle and for causing harm by driving a vehicle other than a motor vehicle are to be increased under provisions of the *Statutes Amendment and Repeal (Aggravated Offences) Bill* and this clause does not further increase those penalties, other than to introduce the concept of an aggravated first offence for causing non-serious harm by

driving a motor vehicle. The aggravated first offence will carry the same penalty as is prescribed for a second or subsequent such offence. As for death and serious harm, the non-serious harm provision will be extended to apply to vessels.

The clause also makes some minor clarifying and consequential amendments to section 19A.

10—Insertion of section 19AB

This clause inserts a new section as follows:

19AB—Leaving accident scene after causing death or harm by careless use of vehicle or vessel

This provision creates new offences related to causing death or physical harm by careless driving or vessel operation and failing to stop and give assistance and to satisfy the other statutory obligations of the driver of a vehicle or the statutory obligations of the operator of a vessel. Under subclause (1), a person who—

- drives a vehicle or operates a vessel without due care or attention and, by that conduct, causes the death of another; and
- having caused the death, fails to satisfy the statutory obligations of the driver of a vehicle or operator of a vessel (as the case may be) in relation to the accident,

is guilty of an offence.

The penalty for a first offence involving the use of a motor vehicle or motor vessel is imprisonment for 15 years and licence disqualification for 10 years or more and the penalty for a subsequent such offence is imprisonment for life and licence disqualification for 10 years or more. If neither a motor vehicle nor motor vessel is used in the commission of the offence, the penalty is imprisonment for 7 years.

Under subclause (2), a person who—

- drives a vehicle or operates a vessel without due care or attention and, by that conduct, causes physical harm to another; and
- having caused the harm, fails to satisfy the statutory obligations of the driver of a vehicle or operator of a vessel (as the case may be) in relation to the accident,

is guilty of an offence.

The penalty under this provision for a first offence where serious harm was caused by driving a motor vehicle or motor vessel is imprisonment for 15 years and licence disqualification for 10 years or more and the penalty for a subsequent such offence is imprisonment for life and licence disqualification for 10 years or more. The penalty for a first offence where non-serious harm was caused by driving a motor vehicle or motor vessel is imprisonment for 5 years and licence disqualification for 1 year or more and the penalty for a subsequent such offence is imprisonment for 7 years and licence disqualification for 3 years or more. If neither a motor vehicle nor motor vessel is used in the commission of the offence, the penalty is 5 years imprisonment.

The provision also provides that offences against section 19A are to be counted as previous offences in certain circumstances and contains a provision equivalent to section 19A(7), allowing separate charges to be laid in respect of each person killed or harmed by the same act or omission.

11—Amendment of section 19B—Alternative verdicts

This clause amends the alternative verdicts provision to allow alternative verdicts where a vessel was used in the commission of an offence against section 19A and to allow a person charged with an offence against section 19AB to be convicted, by way of alternative verdict, of a lesser offence against the *Road Traffic Act 1961* or *Harbors and Navigation Act 1993* if the person was also charged with that lesser offence.

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

This clause amends section 29 of the *Criminal Law Consolidation Act 1935* to ensure that a person convicted of an offence against that section where the act or omission constituting the offence was done or made by the convicted person in the course of the convicted person's use of a motor vehicle, will be disqualified from holding or obtaining a driver's licence for a period of 5 years or more.

Part 3—Amendment of *Bail Act 1985*

13—Insertion of section 10A

This clause inserts a new provision as follows:

10A—Presumption against bail in certain cases

This clause provides for a presumption against the grant of bail where the applicant has been taken into custody in relation to certain specified offences committed in the course of attempting to escape pursuit by a police officer or attempting to entice a police officer to engage in a pursuit.

Part 4—Amendment of *Harbors and Navigation Act 1993*

14—Substitution of section 69

This clause deletes the current section 69 and substitutes new sections 69 and 69A as follows:

69—Careless operation of a vessel

This proposed provision introduces an aggravated penalty for careless operation of a vessel, consistently with other proposed amendments to the *Road Traffic Act 1961*. The maximum penalty for an aggravated offence is to be 12 months imprisonment whilst for a basic offence the penalty will remain at the current $2 500. An aggravated offence is, for the purposes of this provision, defined to be any of the following:

- an offence that caused the death of, or serious harm to, a person;
- an offence committed by the offender while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
- an offence committed while the offender was operating the vessel in contravention of section 70(1).

69A—Dangerous operation of a vessel

This clause reinstates the offence currently contained in section 69(1) of the Act and increases the penalty for the offence to 2 years imprisonment (consistently with the proposed new penalty for reckless and dangerous driving in the *Road Traffic Act 1961*).

15—Amendment of section 71—Requirement to submit to alcotest or breath analysis

This clause replaces the current requirement that a breath test be requested within 2 hours of the relevant conduct with a requirement that it be requested within 8 hours.

16—Amendment of section 73—Evidence

This is consequential to the amendment to section 71 and deals with the presumption contained in section 73(2a). The provision needed to be recast so that the presumption would only operate in cases where it was alleged that the relevant conduct occurred within 2 hours of the breath analysis.

17—Amendment of section 76—Duty to give assistance and provide particulars

This clause amends section 76 to make the penalties more consistent with those proposed for section 43 of the *Road Traffic Act 1961*.

Part 5—Amendment of *Road Traffic Act 1961*

18—Amendment of section 43—Duty to stop and give assistance where person killed or injured

This provision—

- introduces a new requirement into section 43 that the driver of a vehicle involved in an accident in which a person is killed or injured must , as well as stopping and giving assistance, present to police within 90 minutes of the accident to provide particulars and submit to any drug and alcohol testing; and
- increases the penalty for failing to stop and give assistance after an accident to 5 years imprisonment (increased from $5 000 and imprisonment for 1 year) and substitutes a new provision setting out defences to a charge of such an offence; and
- substitutes a new defence provision for the offence. It will be a defence in all cases to establish that the defendant was unaware that the accident (being an accident causing death or injury) had occurred and that the lack of awareness was reasonable in the circumstances. If, for example, the defendant knew there had been an accident but was reasonably unaware that anyone had been injured in the accident, this would be a defence because, although the defendant was aware that **an** accident had occurred, the defendant was not aware of the features of the accident that bring it within the requirements of the provision and so was not aware of **the** accident causing injury or death. It will also be a defence (in relation to a failure to comply with the requirement to stop and render assistance) to establish that the defendant genuinely believed on reasonable grounds that compliance with that requirement would endanger his or her

physical safety or the physical safety of another and at the earliest opportunity notified police, ambulance or other emergency services of the accident. Finally, it will be a defence (in relation to a failure to comply with the requirement to present to police within 90 minutes) if the defendant had a reasonable excuse for that failure and presented himself or herself to police as soon as possible after the accident.

19—Amendment of section 45—Careless driving

This proposed provision introduces an aggravated penalty for careless driving, consistently with the proposed section 63 of the *Harbors and Navigation Act 1993*. The maximum penalty for an aggravated offence is to be 12 months imprisonment. An aggravated offence is, for the purposes of this provision, defined to be any of the following:

- an offence that caused the death of, or serious harm to, a person;
- an offence committed in the course of attempting to escape pursuit by a member of the police force;
- an offence committed by the offender with knowledge that he or she was disqualified from holding or obtaining a driver's licence or that his or her licence was suspended by notice under the Act;
- an offence committed by the offender while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
- an offence committed while the offender was driving in contravention of section 45A or 47.

20—Amendment of section 46—Reckless and dangerous driving

This clause increases the penalty for reckless and dangerous driving to 2 years imprisonment.

21—Amendment of section 47E—Police may require alcotest or breath analysis

This clause increases the time limit for commencement of an alcotest or breath analysis under section 47E(1) from the current 2 hours after the relevant conduct to 8 hours after the relevant conduct. This provision, however, is expressed to not derogate from section 47DA (which deals with breath testing stations and requires, among other things, that stations be established so as to allow alcotests to be made in quick succession) or section 47EA (which deals with any exercise of random testing powers under the provisions and requires, among other things, the Commissioner of Police to establish procedures for the exercise of random testing powers that are designed to prevent, so far as is reasonably practicable, any undue delay or inconvenience).

22—Amendment of section 47EAA—Police may require drug screening test, oral fluid analysis and blood test

This clause proposes to amend a provision that is to be inserted in the *Road Traffic Act 1961* by the *Road Traffic (Drug Driving) Bill 2005* that is currently also before the House. The proposed amendment would increase the time limit for commencement of a drug screening test, oral fluid analysis or blood test under the provision from 2 hours after the relevant conduct to 8 hours after the relevant conduct. This provision, like the provision in proposed clause 21, is expressed to not derogate from section 47DA or section 47EA.

23—Amendment of section 47GA—Breath analysis where drinking occurs after driving

This clause is consequential to clause 18 (because under the amendments proposed by that clause not all the duties of a driver of a vehicle in an accident need to be discharged at the scene of the accident).

24—Amendment of section 47K—Evidence etc

The *Road Traffic (Drug Driving) Amendment Bill 2005* redesignates section 47G of the *Road Traffic Act 1961* as section 47K and relocates the section. This clause makes a consequential amendment to the section to adjust the wording of the presumption in subsection (1ab) so that the presumption will only operate in cases where it was alleged that the relevant conduct occurred within 2 hours of the breath analysis.

25—Repeal of section 164

This clause repeals section 164 (which provides that offences against the Act are summary offences).

26—Insertion of section 169B

This clause inserts a new section 169B which provides that where a court imposes imprisonment and a specified period of licence disqualification on a convicted person, the person will be disqualified for the period while they are in prison as well as for the period specified by the court following their release or, if the person is serving another disqualification that is still operative on release, for the period specified by the court in addition to that other period.

The Hon. R.I. LUCAS secured the adjournment of the debate.

TERRORISM (POLICE POWERS) BILL

Adjourned debate on second reading.

(Continued from 23 November. Page 3212.)

The Hon. IAN GILFILLAN: I indicate Democrat dismay that the government is hell bent on following the United States of America into the grim dark future that we know as George Orwell's *Nineteen Eighty-Four*. We do not support the second reading of the Terrorism (Police Powers) Bill 2005 and will do whatever we can, if it is inevitable that we go into the committee stage, to mitigate the damage to society that this bill foreshadows. Before I turn to the manifest flaws inherent in the bill, I will remind members of this place of some of the features of the world of Winston Smith in Orwell's prescient novel.

The population live in a climate of constant fear, and this fear is maintained by the government. Of particular concern is the perpetual war, requiring all citizens to submit to abhorrent regulation as part of the war effort. The story suggests that this war does not really exist, as the unseen enemies change as alliances shift and merge, leaving the reader to wonder whether the government is bombing its own citizens into docility. How closely does this match a world where Saddam Hussein is the friend of the United States in one instance and being supplied arms by one Donald Rumsfeld, and then in the next instance he becomes the United States' public enemy number one? The pretext for attacking Iraq and hunting down Saddam beggars belief.

The Americans claimed that Saddam Hussein had sponsored a terrorist act against the United States. That act was actually sponsored by Osama bin Laden, a sworn enemy of Saddam Hussein, who persuaded a group of militant religious fanatics to fly jets into the World Trade Centre. He was, of course, a sworn enemy because, amongst his many failings, Saddam was keeping a lid on the sort of religious fanatics that are needed to perpetrate this kind of terrorist act. For reasons known so far only to themselves, the Americans fixated on Iraq as a target and attacked while making statements about Saddam Hussein being a supporter of bin Laden and possessing weapons of mass destruction.

So, based on a link that never existed and weapons of mass destruction that have never been found, the United States unilaterally declared war on a foreign power and, meek as lambs, our government followed suit, clutching the coat-tails of America, desperately seeking a cause to distract the electorate from its failings at home. Naturally, the inevitable has happened. We have made the world less safe for ourselves and others. The Iraq conflict is an ongoing festering sore that must be boosting the recruitment of would-be terrorists around the world. Now, having created this mess, we are starting to make laws to make Orwell's dystopian nightmare a reality. I must ask: have members been paying attention to what we are being asked to do? Do we really

want to create a climate of fear like that in London where an electrician can be gunned down by the police because he looked unusual in some way? We are considering giving the police stop and search powers that can be applied to anyone in the vicinity of a public event. Is this not the kind of law that you would expect to find in a totalitarian state?

We are considering giving the police the power to detain a person within a designated area, purely because that person happens to be in that designated area. So, if you happen to drive along Memorial Drive and pass a cricket match, there is a risk that you could be stopped, strip searched, have all your possessions removed and be held without charge for whatever period the police deem fit—all because someone on the ground reckons that you might look a bit like a terrorist. I can see the tourism commercials now: come to sunny Australia and be subjected to systematic harassment and abuse because you do not look 'Aussie' enough. This bill is designed to prevent any review of an authorisation of special powers—an Orwellian term in its own right.

It is beyond comprehension why someone believes that it is reasonable to have a clause like clause 25, which provides:

> A special powers authorisation or special area declaration may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

But that is all right—is it not?—because the special powers authorisation can come only from the Commissioner of Police, unless that person is unavailable, in which case the special powers authorisation can come only from the Deputy Commissioner of Police, unless that person is unavailable, in which case the special powers authorisation can come only from any Assistant Commissioner of Police, unless none of them are available.

Well, at least we can reassure ourselves that, in the event of the top ranks of the South Australian police force are incommunicado for some reason, we can have the special powers declaration made by any officer over the rank of superintendent. Let us hope that they do not make a mistake because there can be no judicial review. I have spoken about the chilling similarities between current events and *Nineteen Eighty-Four*, but I also want to leave members with another comparison given to me by a member of the public who had the misfortune of being in South Africa during the beginnings of apartheid. I received this communication by email, after having made some observations on ABC Radio from Port Lincoln about the draconian nature of the legislation.

He explained that the evils of that regime started with a government granting extraordinary powers to the police, powers that allowed people to be detained for holding views that are different from the government. He explained how a neighbour's daughter was imprisoned for six months on the word of the local police sergeant. No courts, no review, because the policeman felt that she was likely to commit a seditious crime. What was her crime? She worked on a college newspaper. After six months of imprisonment under horrendous conditions, the very same police sergeant extended her sentence for another six months—no courts, no due process of any kind—for working on a newspaper.

The Democrats urge this chamber to wake up and reconsider what appears to be majority support for this bill. I will refer to some observations that were made by Mr David Neal writing in *The Melbourne Age* of 10 November this year. David Neal is a Melbourne barrister and a former Victorian law reform commissioner. I will only refer to some paragraphs. His heading is 'The use of existing laws in this week's terror arrests shows police don't need a swathe of new powers'. The article is headed 'Proof new law not needed'. In part, the article states:

> Criminal law has had a range of offences to deal with violent acts for years. These apply both to crimes which have been committed, and to crimes which are planned. One of the great furphies in this debate has been that police are powerless to act until a bomb has gone off. This is simply wrong.
>
> It is a crime to commit murder. It is also a crime to conspire with others to commit murder, or to incite others to commit murder. The penalty for each of these offences is a maximum of life imprisonment. The offence of conspiracy is completed when two or more agree to commit a murder. Incitement to commit murder is completed when a person urges, encourages or commands another person to commit murder, intending that the other person will commit the murder. There is no requirement that the killing take place.
>
> Possession of bomb-making substances has also been an offence in Victoria for many years. It carries a 10-year maximum penalty.
>
> And the Victorian criminal law has been bolstered since the September 11, 2001, attacks on the World Trade Centre in New York by some 20 new pieces of commonwealth anti-terrorism legislation. This includes offences such as being a member of a terrorist organisation, associating with a person who is a member of a terrorist organisation, possessing things connected with terrorist attacks, collecting or making documents likely to facilitate terrorist acts, sending funds to a terrorist organisation, providing support to a terrorist organisation, and providing or receiving training for a terrorist act, to name a few.

This is the balanced view of thousands of Australians: a large majority of calm, sane, sensible members of the public who are fully aware of what are threats of terrorism, who are fully aware of instances that have occurred overseas and who are fully aware of the damage that can be done to our community on a far longer term than just in the next couple of months or next couple of years because of this perceived need for a knee-jerk reaction in a quite exaggerated and unnecessary way.

What we lose in the implementation of these extreme measures is so precious to us as a society and a community that we should not be rushed into passing legislation in the short time available to us in this sitting. The irony and the tragedy, if I can put it that way, is that these legislative measures, first, on balance, are regarded to be unnecessary; secondly, they are futile; and, thirdly, in no way can they guarantee that we will be any safer if there is to be a dedicated terrorist act. I believe we should defeat this bill on the second reading. I have indicated that, if that is unsuccessful, there will be attempts by the Democrats at least to ameliorate some of its worst effects in the committee stage.

Debate adjourned.

ADELAIDE PARK LANDS BILL

In committee.

(Continued from 22 November. Page 3162.)

Clause 19 passed.

Clause 20.

The Hon. IAN GILFILLAN: I move:

> Page 16, line 11—
>
> After 'land' insert:
>
> and when the state authority plans to relinquish ownership, occupation or care, control and management of the land

I believe that this is a non-controversial amendment. The clause deals with state authorities, and then it gets to a management plan. There are some points under that which stipulate what the management plan should deal with. Subclause (2)(g) provides:

state the state authority's plans for the future use of the land;

That is quite significant because some state authorities have areas of land on the Parklands. Any proper appraisal needs to be aware of what the authority's intentions are with that land; for example, the former EWS depot, South Australia Police and Transport SA (just to name three) are quite substantial authorities. We believe it is important to include the requirement that the authority must indicate the plans it has to get off the Parklands. We are inserting the words 'and when the state authority plans to relinquish ownership, occupation or care, control and management of the land'.

The Hon. R.I. LUCAS: The Hon. Caroline Schaefer is handling the legislation for the Liberal Party. She is on her way down to the chamber. She has been doing a radio interview. Perhaps we can hold off for a moment.

The Hon. IAN GILFILLAN: With the expectation and understanding that the Hon. Caroline Schaefer is on her way down, I say that I suspect the opposition would find this amendment amenable. I have had discussions with Mr Duncan McFetridge, who has carriage of the bill in the other place and shadow ministerial responsibility for it. I think it is a fairly plain addition to what is required of a plan. I personally cannot say that it places—I would not mind if it did place—some sort of mandatory time limit for these authorities to get off; it does not.
All it requires is that there be some indication from those authorities as to what their long-term plans are. I think it will prove to be an unexceptional amendment, and it should be supported by all members.

The Hon. R.I. LUCAS: My understanding is that, as the Hon. Mr Gilfillan has indicated, Dr Duncan McFetridge is handling the legislation and has indicated support for the nature of this amendment, so I suggest that the amendment be passed. When my colleague the Hon. Caroline Schaefer is able to join the committee, if there is a problem, we will seek to recommit and the honourable member will outline any concerns we may have with it. I am happy for the amendment to be passed and for the committee to proceed.

The Hon. T.G. CAMERON: I, too, add my support to the Hon. Ian Gilfillan's amendment for the reasons he so eloquently outlined.

Amendment carried; clause as amended passed.

Clause 21.

The Hon. IAN GILFILLAN: I move:

Page 17, line 12—Delete '21' and substitute '10'.

This amendment is aimed at reducing the amount of time involved in subclause (2), which provides:

However, before the [Adelaide City] Council grants or renews a lease or licence over land in the Park Lands for a term of 21 years or more (taking into account any right of renewal), the Council must submit copies of the lease or licence to the Presiding Members of both Houses of Parliament.

This in itself is a reasonable improvement, but from informal conversations I have had 10 years would be a more suitable time frame.

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

Page 17, lines 8 to 14—Delete subclauses (1) and (2) and substitute:

(1) The maximum term for which the Adelaide City Council may grant or renew a lease or licence over land in the Adelaide Park Lands is—

(a) unless paragraph (b) applies—42 years;
(b) in the case of a lease over Victoria Park granted to the SAJC—99 years,

(taking into account any right of extension and despite the provisions of the Local Government Act 1999).

(2) However, before the Council grants (or renews)—

(a) a lease or licence over land in the Park Lands for a term of 21 years or more, other than a lease over Victoria Park to the SAJC; or
(b) a lease over Victoria Park to the SAJC for a term of 21 years or more that allows Victoria Park to be used for a purpose other than—
(i) horse racing; or
(ii) an authorised purpose,

(taking into account any right of renewal), the Council must submit copies of the lease or licence to the Presiding Members of both Houses of Parliament.

I draw members' attention to the fact that I spoke in my second reading speech exclusively on this clause and do not propose to hold up the committee by repeating my arguments. Suffice to say that it is a matter of great interest to the racing industry in general that it have the capacity to get on with the job of either getting out of the place or, alternatively, upgrading the place. It is unacceptable for Victoria Park to be in the state it is currently.

The Hon. T.G. ROBERTS: This amendment creates a unique right for the SAJC to negotiate a lease of up to 99 years over a significant part of the Adelaide Parklands. This is effectively a lifetime tenure. It is worth remembering that after considerable debate the opposition, when in government, put through this chamber the Local Government Act 1999. One of the amendments I put through, which was accepted by the then government, was the current framework of a maximum lease of 42 years on the Adelaide Parklands. In addition, any leases of 21 to 42 years must be submitted to parliament for scrutiny. The principle for this is that such a long-term occupation over iconic public lands needs to be reviewed and examined to ensure they are in the public interest.

This scheme replaced the ad hoc mixture of systems that existed previously over the Parklands involving a maximum lease term of 25 years for the racecourse, 50 years for Adelaide Oval, 25 years for the West Parklands and 50 years for the Memorial Drive Tennis Centre. All bar the last one had provisions involving the leases being submitted to parliament for scrutiny and potential disallowance.

The scheme inserted in the Local Government Act 1999 is now being transferred into this bill. However, the honourable member wants to override this principal and provide a sole right for only the SAJC to negotiate an exclusive occupation for up to 99 years without further parliamentary scrutiny. In addition, any such lease could be for not only horse racing but also to use as a major function venue.

There are several things wrong with this proposal. First, its lifetime term of 99 years way exceeds any term approved by this parliament over the Adelaide Parklands in living memory, let alone the 42-year term currently enshrined in legislation. Secondly, it does not provide for the lease being brought before parliament for scrutiny. Thirdly, not only does it have the capacity for horse racing but also as a major function and event centre, which could work on a daily or weekly basis.

Finally, as an exclusive right for the SAJC (at least when the Memorial Drive tennis centre bill was before this council), provision merely provided the head power for the lease; it did not enshrine a right in any one body. No other sporting or recreational club has been given such a right to exclusively negotiate an occupation of the Adelaide Parklands for 99 years. There is no justification for such an amendment and it is counter to the basic principles in the bill before us. Consequently, the government opposes the amendment.

The Hon. IAN GILFILLAN: We oppose the amendment moved by the Hon. Angus Redford for two reasons: first, there is no reason why any organisation should need and be granted a 99-year lease. The justification for some of the other enterprises, which have reasonably extended leases, is partly that they have invested significant capital and that they want some reasonable expectation of continued use. The SAJC has had extended use for over 100 years, and there is no reason why, if it continues its modus operandi (or with relative adjustments to its current use of the Parklands), it should not be extended for another 100 years. However, the risk that we take in giving any organisation 99 years is that the intention of those who support the legislation now may well be contravened over a very long and extended period of time. Without going into any further detail, I indicate that the Democrats oppose the amendment.

The Hon. A.J. REDFORD: First, I will respond to the Hon. Ian Gilfillan. We are not, through this device, giving the jockey club a 99-year lease. What we are doing is authorising Adelaide City Council to negotiate such a lease. There is a practical and real difference between the former and the latter position. Adelaide City Council, over approximately the past 100 years, has, in my view, proven to be the best custodian of the Parklands. I am sure that the honourable member would agree with me that the most significant intrusions in the Parklands have not come from Adelaide City Council; they have come from state governments and state parliaments. That is the first point I would make.

Secondly, in response to the government, I point out that the permission to do the lease or licence really covers only that area that is currently occupied by the racetrack. It does not increase the footprint on the Parklands at all. Indeed, the plans that I have seen and the discussions that I have had with Adelaide City Council and the South Australian Jockey Club would indicate that if it can get on and build something, subject to the approval of Adelaide City Council, it would have a smaller footprint. The third point I make is that, if you want the jockey club to invest money in the upgrading of these facilities, you must give it a reasonable term of lease.

It will not invest significant sums of money on a piece of land over which it has no security of tenure. Any one who understands any form of business would acknowledge that you need some security of tenure whether you are borrowing money or whether you want to have an asset against which you want to borrow money. You need some security of tenure. Now, when you are talking about the sort of investment that the jockey club will need to make, 42 years is not sufficient and, certainly, it is not commercial. I am just starting to get the impression that this government is anti-racing. Not only is it anti-racing but it is anti racing in the centre of the city.

The government can sit there and argue and play its silly little games (which it has been playing down at Cheltenham), but what is wrong with giving Adelaide City Council—the best custodian of our Parklands—the opportunity to give racing a reasonable tenure so that we can have outstanding and first-class facilities for horse racing in this state? What is wrong with that? It has been there, as the Hon. Ian Gilfillan acknowledged, for 100 years. To say, 'Look, 42 years is enough', with the greatest respect to the Hon. Ian Gilfillan, is naive.

The Hon. Ian Gilfillan: Why was it good enough for the Next Generation and the SACA? Are they naive? How many millions of dollars have they put into the Parklands?

The Hon. A.J. REDFORD: The fact is that SACA is in a slightly different financial position than the South Australian Jockey Club. The nature of the investment and the nature of the property is in a different category. I will not go into all the details of that, but that is clear on any public disclosure of documents. I must say that if we want to have racing in this state and if we want to have racing in the metropolitan area, which is unique to any racing facility in this state, we must allow the city council and the jockey club to get on and do their job.

This is how absurd it is: a grandstand was burnt down some time in the early 1990s, I think it was. A claim on insurance was made, and I think that the jockey club got about $1 million, or thereabouts. The insurance company is insisting that the jockey club use that money to reinstate the grandstand. So, for the best part of a decade this money has been sitting in a trust account, either to be spent on upgrading the facilities or to be returned to an insurance company. It is about time that this government got off its butt, made decisions and allowed industry, and in particular the racing industry, to get on and do what it does instead of holding it back. That is what you are doing. I know that you are going down to Cheltenham and saying to the people down there and to the racing industry, 'Look, shut up about this before the election and we will let it go through after the election.'

If you want to be duplicitous in the way you deal with the people of Cheltenham, that is a matter for you. Certainly, I have the guts to go down there and fess up. However, in relation to the future of Victoria Park, there is a real risk that racing will walk from Victoria Park. I look forward—and maybe I will get the numbers on this, maybe I will not—to counting how many Labor members are wandering around Victoria Park at the Christmas Eve twilight meeting when they get literally thousands of people down there in decrepit facilities for that particular meeting. The industry always gets better crowds at Victoria Park because of its unique location—it always does. It has always managed to co-exist with all of the people who use the Victoria Park precinct for jogging, walking their dogs, playing cricket in the centre or various other sports, and they have always managed to co-exist with various other uses that Victoria Park has been put to from time to time.

Those facilities are a disgrace, and this government is doing absolutely nothing about it. Quite frankly, this government is going to be exposed, and I am hearing this when I door knock and visit people, because it has a unique incapacity to get on with the job and deliver outcomes for the people of South Australia. When this government lost office, it had about a $7 billion budget. It now has $10 billion. When I drive around, I do not see any evidence of all this extra money the government has, because it is incapable of delivering any projects. This is yet another example of the government's standing in the way of progress because either it cannot make a decision or, more accurately in this case, it wants to sneak past the next election and then proudly announce that there is going to be something at Victoria Park.

The Hon. T.G. Cameron: They've been pretty good at job creation.

The Hon. A.J. REDFORD: Yes, in the media unit. I can only say that I am really disappointed that we have a visionless, rudderless government when it comes to so many things, and this is a classic case. Isn't it time that we allowed the Jockey Club and the racing industry to redevelop that eyesore down at Victoria Park to allow investment to go into that area to allow the Adelaide City Council, which has

demonstrated a capacity for more than 160-odd years to manage that part of the Parklands, to get on with the job? Isn't that what we are all about here?

The Hon. CAROLINE SCHAEFER: I rise to support my colleague. The purpose of this bill paraphrased is, as far as is possible or practical or whatever, to adhere to the vision of Colonel Light. How can we know what the vision of Colonel Light, almost 200 years ago, actually was for South Australia other than the city square be surrounded by a green belt? This was to be a green belt of parklands, as I understand it, for the use and enjoyment of the people of the city of Adelaide. One of the premises of planning is acknowledgment of existing use. Surely, Victoria Park racecourse has been in use for over 100 years and we could say that, in fact, it was part of Light's vision.

My colleague is endeavouring to produce the opportunity for the council, as the landlord, and the racing club, as the tenant, to reach an agreement where the use and enjoyment of the public is enhanced by a decent set of facilities and some security of tenure. I do not think it is unreasonable. I do not think it is outside the parameters of the overall intent of this bill, because I think the limited amount that I have read and heard about Colonel Light is that he would have loved a day at the races, and he would have loved a day at the races in good facilities.

The Hon. T.G. CAMERON: I, too, rise to support the Hon. Angus Redford's amendment. It is not so much that I am a racegoer these days but, in my youth, I was an avid racegoer and spent many an enjoyable afternoon down at Victoria Park. I finally decided to give the races away, and punting on horses, because I just was not good enough to beat the bookies. It is almost impossible to beat them. However, from time to time, I wander into the races and have a look. During my nearly 10 years as an industrial advocate of the Australian Workers Union, I had carriage of the horseracing industry, so I have some detailed knowledge of what goes on down there at Victoria Park right from when the horses are brought on to the course to when they leave.

On one occasion, on my many visits to Victoria Park, I was unfortunate enough to be removed from the racecourse and thrown into the cells at Angas Street. However, since those days, I have patched things up with the racing industry and the SAJC, as members here in this council would know. To argue that the facilities down there at Victoria Park are not in need of upgrading is an absolute nonsense, and to anybody who argues that they do not, I suggest they go down there and spend an hour touring around the place. Race days are very active days. You have hundreds of cars coming in and out of Victoria Park, and you have many AWU members, who are the strappers and stable hands, working in and around—and I say this sincerely—in conditions that are substandard. It is not only the facilities at Victoria Park that need to be upgraded—

The Hon. Caroline Schaefer: The change rooms for the jockeys are a disgrace.

The Hon. T.G. CAMERON: As I am saying, it is not only the facilities for the public that need to be upgraded but it is also the working conditions and the amenities, not only for the jockeys, as referred to by the Hon. Ms Schaefer. I am also talking about the conditions in which the blue-collar workers, such as the strappers and the stable hands, work. In addition to that, the Australian Workers Union also has coverage of the racecourse groundsman's award, and I think there are still some 30 or 40 employees working under that award, including about a dozen or so at Victoria Park. I feel very confident that if, for example, an official of the AWU was to go down there, one of the first things that its members would point out to them is that the working conditions and the facilities for the workers down there are substandard.

The CHAIRMAN: Order! I point out to the cameraman in the gallery that you can only record shots of people who are making a contribution, and I have to ask you to comply with that.

The Hon. T.G. CAMERON: The Hon. Mr Redford's amendment seeks to provide for an opportunity to see whether the Adelaide City Council and the SAJC can negotiate suitable leasing arrangements. I suspect that he is after the certainty that the lease between the SAJC and the ACC would provide for much needed funds to upgrade Victoria Park, not only the facilities for the public but also for working conditions—

The CHAIRMAN: Order! Remove that camera. I pointed out what is required and you went straight back to what you were doing. I ask that it be removed.

The Hon. T.G. CAMERON: I was about to conclude, Mr Chair. Not only would we get some very necessary upgrading of the facilities for the public, there would also be the opportunity to upgrade the working conditions and amenities, not only for the permanent workers of Victoria Park but also for the hundreds of strappers, stable hands, jockeys and members of the clerk's union who work down there. It is sorely needed.

The Hon. A.J. REDFORD: My question is to the minister. Have either Gerry Harvey or John Singleton of the Magic Millions Consortium told the government that they prefer that the Magic Millions Race Carnival be transferred to Victoria Park once the facilities are made up to a reasonable standard?

The Hon. T.G. ROBERTS: Unfortunately, I have no knowledge, nor does my adviser, of any agreements that have been touched on with John Singleton about the Magic Millions. That question would have to be directed to the minister for racing.

The Hon. A.J. REDFORD: Can the minister give any assurance that a failure to upgrade Victoria Park will not put the Magic Millions racing event in jeopardy and the potential for many millions of dollars to go into our breeding industry as a consequence?

The Hon. T.G. ROBERTS: I think that the clause itself is not about upgrading the facilities, although the honourable member touches on the fact that having a longer lease period would enable the SAJC to have more security about the investment it puts in there. The Hon. Terry Cameron's contribution is an accurate reflection of the conditions of the facilities down there. I think that everybody who goes down there would agree that there needs to be an investment made in the facilities to bring them up to a certain standard. I think everyone in Adelaide has been talking, and everyone I have spoken to has a different proposal on how to upgrade it. The latest one in the local newspapers was something similar to an American-style racecourse—all glassed in.

The Hon. A.J. Redford: Teletrak.

The Hon. T.G. ROBERTS: Not Teletrak, no. My personal opinion is that the good thing about Victoria Park is the openness, the open air and the country style that it presents as a racecourse within the Parklands. The point that I am making is that everybody has a different opinion on how it should be upgraded and how it should be developed. They are not the issues that we are debating. The honourable member's amendment and the Hon. Angus Redford's

amendments are to do with tenure and the possible length of a secured arrangement.

As to the honourable member's amendment, it still does not give any security to outcomes with the Adelaide City Council. By providing a 99 year lease term, it does not necessarily mean to say that it will be negotiated with any certainty within the SAJC and the Adelaide City Council. I think the reasonableness within the amendment put forward by the Hon. Ian Gilfillan is that it provides the flexibility that is required to still allow negotiations to continue while providing some security for those people who have care and concern about any changed role and function that might occur given a longer lease period.

The Hon. A.J. REDFORD: What the minister does not understand is the position the Jockey Club is in. It has made it quite clear that, unless it gets a long-term lease, it will not invest in Victoria Park. I can tell you that this is the vision of this government if this goes down, and that is what I suspect will happen, as I think that Cheltenham will be a long time coming, whatever the Jockey Club decides to do or not do there and whether or not it is sold. What this will do is change quite significantly the face of racing in this state. I suspect that this is what will happen: it will spend the million or so dollars at Morphettville and create a wet weather or cinder track, as it is called. The SAJC runs about 60 meetings a year, give or take a few. It will then run about 40 meetings a year at Morphettville and run the other 20 at either Gawler or Murray Bridge. That will be the future of racing in this state.

This is an industry for which I can tell you that the stake money on Saturday afternoons is only a couple of grand more than the stake money you can get running your horse around a midweek event in Victoria. The stake money on Saturday afternoons is almost getting to the point where it will be half of that in Western Australia, putting aside what happens in Victoria, New South Wales and Queensland. It is fast getting to the point where South Australian racing will be the equivalent of Victorian country racing. The government does not seem to have any capacity to recognise some of the problems this industry faces and does not seem to want to do anything for it, other than do a deal with a couple of impoverished millionaires, John Singleton and Gerry Harvey, over Magic Millions and shift the date of a horse carnival—and that is it.

Whatever honourable members opposite might think, the South Australian horse racing industry is not an insignificant industry. Indeed, the breeding industry is quite a significant industry. You are now seeing trainers starting to leave the state. At least four trainers in trots have left this state in the past six months because of the lack of stake money. You are now seeing major South Australian trainers seriously considering moving interstate. These are not the top trainers moving interstate but the middle-ranking trainers. After a while, you will not have a horse racing industry as a consequence of the complete and utter neglect by this government.

The industry has been knocking on government doors about the clawback issue. So far all it has received in exchange is a mouthful of abuse from the minister and this government. The only thing the minister has promised so far in relation to the industry is that he would get rid of Betfair. He promised that six months ago, and yesterday he reissued his press release for the fifth time saying that he would ban it. I told him, 'You've got bipartisan support. Bring your bill into parliament and we'll fix it,' but he has not done so.

What is it about this government that it seems to be so paralysed by inaction that it cannot make a decision? Ministers receive $160 000 or $170 000 a year, and they get that for one reason: to show some leadership. That leadership is completely absent—completely absent—from the top to bottom of this government. All I can say is that it is all well and good for ministers and backbenchers of this government to say to the industry, 'Don't worry about that. We'll support this after the election.' That approach is utterly dishonest in dealing with this issue. Why can this government not stand up and say, 'Look, we have to make a decision on this, and we'll make it one way or the other'? The government will not do that in this case. It just allows this whole thing to drag on and on and, in the meantime, the racing industry dies because of government neglect.

It beggars belief that this government cannot stand up and say, 'Let's get on with something—anything.' The facilities at Victoria Park are a disgrace. Most of the buildings would not pass an inspection by any occupational health and safety inspector. You are not allowed near the grandstand. It is a heritage grandstand, and it is decaying before our eyes because of neglect and this government's inactivity. It is so disappointing that the government sits there thinking that it can play politics with this industry or that industry and watch trainers either go broke or move interstate. It is symptomatic of its whole attitude towards the management of this industry.

What is wrong with having some 21st century facilities at Victoria Park? What is wrong with taking advantage of the unique location of this racecourse? I have not heard anyone say that there is anything wrong. Even the Hon. Ian Gilfillan says that racing has a right to be there, but he wants just to neuter it so that it cannot have any sensible commercial outcome.

The Hon. Ian Gilfillan: I will make an explanation, and I will get my chance in a moment.

The Hon. A.J. REDFORD: I will give it to you now.

The Hon. IAN GILFILLAN: I could be mistaken in thinking that this is purely to support the racing industry in South Australia, judging from this amendment. The fact is that the purpose of the bill is to provide for the protection of the Parklands and 'for their management as a world-class asset to be preserved as an urban park for the benefit of present and future generations'. Supporters of the racing industry, with whom I have no argument, are still a minority (although comprising quite a reasonable number of people) of the population of Adelaide and certainly of South Australia.

What I think has been most unfortunate is that the SAJC in its continued existence in Victoria Park is not dependent on a 99-year lease. It is dependent on having some reasonable grounds of tenure so that it can invest what money it can get available to it to put in upgraded facilities for horse racing. The threat that has loomed—and I have had discussions with the SAJC—is that the SAJC has not realised in any positive way that it has the resources to do the development on its own, so it has been looking to get into bed with the motor industry and put in the middle of Victoria Park a so-called joint-use facility. If that is part of this 99-year lease, it will mean that Victoria Park would then become virtually alienated for the use of the large proportion of the population.

So it is not an amendment which is needed to support horse racing throughout the whole of South Australia. That is in a far more complicated situation than what we are addressing this morning. Nor is it needed, and nor have I been approached by any member of the SAJC for an extension to the 99-year lease. They were not fussed about that but what we, the Democrats, and the Adelaide Parklands Preservation

Association are saying is that there is no reason why there cannot continue to be a reasonable use of Victoria Park for horse racing. There have been investments in the stabling and saddling up areas. They have been quite substantially improved in later years. There is frustration at not being able to use the $1 million, and there has been quite detailed discussion of what the racing industry and the council would agree to, such as demolishing that unnecessary wall and the unsightly buildings and upgrading facilities. All that can go ahead—and all that would go ahead quite happily—with a lease which is embraced in the term of 42 years.

The Hon. T.G. ROBERTS: I could not have put it better myself. Regarding the issues the honourable member passionately raises, I think a lot of us agree with the points that he has made in relation to the South Australian racing industry's condition. The sale of the TAB did not help prize money a lot in South Australia, either. There have been a lot of other impacts that governments have made that have impacted on racing over the years, but we are not discussing those issues. If 42 years is not long enough, the issue of the lease can be brought back to this parliament at some future time for an extension, if that is an agreed position between the SAJC and the government of the day. We are not debating that at the moment. What we are debating is a reasonable term for those discussions to take place in, and we think that a 42-year lease is adequate. The Democrats have stated their case and we agree with their contribution in relation to a lot of the issues that they raise.

The CHAIRMAN: We have two amendments which overlap. The first question the committee will be asked to consider is that all words in subclauses (1) and (2) down to but excluding '21' in line 12 stand as part of the bill. If that is agreed to, we will then consider the amendment of the Hon. Mr Gilfillan. If it is struck out, the question posed by the Hon. Mr Redford will be considered.

The Hon. J.S.L. DAWKINS: I have a point of clarification, Mr Chairman. I understood that the Hon. Mr Redford's amendment was on file first. You might clarify why we are doing the Hon. Mr Gilfillan's first.

The CHAIRMAN: Because we overlap at that particular point with this 21, and of course the Hon. Mr Redford's proposition is that it remain at 99. We have to get the question down to where the amendment kicks in. So we have to put the question that up to 21 stand as part of the bill. If that is agreed to, we will test the Hon. Mr Gilfillan's amendment. If that is accepted, that is the end of the matter. After we have dealt with the test case, we have to deal with the rest of the proposition, and the first proposition is the Hon. Mr Gilfillan's. If it stays in, we will test the Hon. Mr Gilfillan's amendment. If it is struck out, we will test the Hon. Mr Redford's amendment.

The Hon. IAN GILFILLAN: My amendments were on file before the Hon. Angus Redford's, but I am not making an issue of that. My amendment relates to a detail—I will not say minor—in subclause (2) and, whether or not my amendment is successful, the substance of clauses 1 and 2 as they currently sit in the bill would not be seriously damaged.

The CHAIRMAN: The question is: that all words in subclauses (1) and (2) down to but excluding '21' stand as part of the bill.

The committee divided on the question:

AYES (11)

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

NOES (10)

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

Majority of 1 for the ayes.

Question thus carried.

The Hon. Mr Gilfillan's amendment carried; clause as amended passed.

Clauses 22 to 26 passed.

Schedule.

The Hon. IAN GILFILLAN: I move:

Page 20, after line 24—
Insert:
3A—Amendment of section 38—Public notice and consultation.
(1) Section 38(2)—delete 'subsection 2a)' and substitute: subsections (2a) and (2b)
(2) Section 38—after subsection (2a) insert:
(2b) A development within the Adelaide Park Lands is, by force of this section, a category 3 development.

This amendment deals with part 3, amendment of the Development Act 1993. Clause 3 deals with the amendment of section 4, definitions, and provides:

Section 4(1), before the definition of adjacent land insert:
Adelaide Park Lands has the same meaning as in the Adelaide Park Lands Act 2005;

That may not sound momentous in its own right. Our amendment is to insert new clause 3A after that. The punchline to our amendment is:

A development within the Adelaide Park Lands is, by force of this section, a category 3 development.

I am not by nature a pessimist, but I think the amendment is unlikely to succeed. I think it is important to argue for it on the basis that any development in the Parklands, just in essence of the principle and ethics of it, ought to be a category 3. Category 3 means that the public would know what is proposed to be developed and have the opportunity to have a say. In certain circumstances there may be environmental calculations as to its impact on the Parklands.

Those with whom I have discussed the matter—principally members of the department and the government—believe that this would be too cumbersome and that a lot of minor works (the phrase is) ought to be able to proceed without going through the tedious process of category 3. Those who care for the Parklands make no apology for it. Anything that goes on the Parklands should be treated in the same way as a development on someone's front garden, or any area to which a person holds some proprietary right and ownership. Even if it is somewhat tedious that developments anywhere should go through the category 3 process, we make no apology for that.

I anticipate that this will not be supported enthusiastically by the government and, I suspect, the opposition. The fallback is to be very clear and definitive about the so-called minor works, the so-called developments, which would not require the category 3 obligations being presented before the development can go ahead. I move the amendment. I have had previous conversation, so I am not anticipating it will be successful. I could be pleasantly surprised, in which case that will be good news. However, if it is to be opposed, I would

like to hear from both the government and the opposition the reason that they do not believe that any development anywhere on the Parklands should be a category 3 development.

The Hon. T.G. ROBERTS: I think the honourable member's intentions are well founded, but it would be unnecessarily weighty on the responsibilities of a range of people who would have the category 3 section of the management tied up in a lot of unnecessary trivia, which could lead to prosecutions if they do not. As far as an event occurring in my private residence, probably the biggest event would be a garage sale and a cardboard sign I would be placing somewhere to indicate that I had a garage sale at my place, as opposed to a lot of the activities that take place in the Parklands.

This amendment to section 39 of the Development Act 1993 would result in all development within the Parklands being category 3. Consequently, this means that all developments, including such things as erecting toilets, temporary scaffolding or signs for events, internal fitouts of university buildings, and so on, must be publicly advertised; and all people who make representations must be given an opportunity to appear before the planning authority. This should be opposed as it runs the risk of having the planning system unnecessarily bogged down by frivolous and vexatious representations and appeals.

The appropriate system is to have development categorised as either complying or non-complying and, consequently, consultation and appeal rights spelt out by the Development Act. A review of this arrangement is a role for the new authority to take on (as set out in its functions). It is important to establish a system which balances Parklands protection against public administration of the development of the planning system, rather than make arbitrary and draconian judgments that all developments, no matter how small, should be category 3. Consequently, the amendment is opposed.

The Hon. CAROLINE SCHAEFER: The opposition is opposing this amendment. In my view, Mr Gilfillan outlined quite well in his explanation why we should oppose it. It would bog down minor works and delay anything happening, either good or bad, in the Parklands.

The Hon. IAN GILFILLAN: I showed a great degree of prophecy in anticipating it would be opposed. I am sad that, in relation to the opposition's point of view, at least, it is a higher priority not to be a bother for those entities or authorities who want to do something on the Parklands. That is a higher priority than protecting the Parklands and ensuring that any development is scrutinised properly; and the only way in which to do that is a category 3 development.

Obviously, I will not get the numbers, and I will not divide on it, but I repeat that, unless, on the other side, we are diligent in pinning down specifically what will be described as minor works, which will not have to have any scrutiny by way of development assessment, we leave ourselves open to a big gap in activities and developments which could take place on the Parklands without proper approval.

The Hon. CAROLINE SCHAEFER: I take exception to that. I do not think the Liberal Party has any less affection for the Parklands surrounding the city square than does the government or the Democrats. I have said consistently that this is a very good bill. It sets in place a procedure for planning what does happen, so it is no longer done on an ad hoc basis. It allows for flexibility. If we were to accept this amendment, what we are saying is that every minor thing that happens in the Parklands becomes a category 3. Anyone who has tried to get through a category 3 planning amendment knows that there are inordinately long delays and it is complicated. It would be in relation to anything we wanted to do. It might be to make a small bend in a road or take out a road, or it might be to plant some trees. All those things would be category 3. If that were not enough, they would then have third party appeal rights to the ERD Court. It would be a recipe for nothing to happen in the Parklands. The Parklands are parklands and not a conservation park.

The Hon. A.L. EVANS: I support the Hon. Mr Gilfillan's amendment. The Parklands at all cost must have maximum protections. Having been through category 3 issues from time to time it may take a bit longer, but you generally get what you want through if you have a reasonable case. I support the amendment.

Amendment negatived.

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

Clause 5, page 21, lines 1 to 4—Delete subsection (19) and substitute:

(19) Subsection (18) does not apply—

(a) so as to exclude the Governor making a regulation under subsection (3) with respect to minor works of a prescribed kind; or

(b) so as to exclude from the operation of this section development within any part of the *Institutional District* of the City of Adelaide that has been identified by regulations made for the purposes of this paragraph by the Governor on the recommendation of the Minister.

(20) Before making a recommendation to the Governor to make a regulation identifying a part of the *Institutional District* of the City of Adelaide for the purposes of paragraph (b) of subsection (19), the Minister must take reasonable steps to consult with the Adelaide Park Lands Authority.

(21) A regulation under subsection (19)(b) cannot apply with respect to any part of the *Institutional District* of the City of Adelaide that is under the care, control or management of The Corporation of the City of Adelaide.

(22) For the purposes of this section, the *Institutional District* of the City of Adelaide is the *Institutional District* identified and defined by the Development Plan that relates to the area of The Corporation of the City of Adelaide, as in existence on the commencement of this subsection.

Since introducing the bill the government has reviewed the crown development powers and believes there is a case to retain its application in some situations within the highly developed institutional precinct on the north side of North Terrace. In particular, proposals are now being developed for the institutional innovative precinct centred on North Terrace and Frome Road as a key initiative that will help drive economic development in the state. Consequently the government's amendment allows, following consultation with the new authority, the prescribing by regulation of specific areas within this institutional precinct, and the crown development powers may still be used despite the ban on its application in all other areas of the Parklands.

The government believes it is important that specific strategic crown infrastructure developments in this area, which are consistent with the existing and ongoing uses of these land-holdings, are facilitated and not subject to frivolous appeals. In the process of putting this government amendment we are recognising and endorsing the proposed amendment by the Hon. Ian Gilfillan and have incorporated it into our amendment.

The Hon. IAN GILFILLAN: This amendment is worthy of support. It has been an improvement. It shows how pathetic our approach is: we are grateful that this legislation recognises that the institutional developments are actually on the Parklands. I suggest that 99.9 per cent of the population and members of this place probably could not care less, but

it is refreshing to know that they trespass on the Parklands, but they are there. I am quite happy for us to support this amendment because at least it is a substantial step in recognising that they are there by grace and favour on the people's land. They were taken by previous governments without any seeking of approval. With the old School of Mines building on the corner, the premier of the day chortled when asked how he got the land. He said, 'Well, we just took it'. Bonython built Bonython Hall down there to stop Pulteney Street going any further—whacked it on the Parklands. It has been ravaged in the past. Heaven forbid that it be so treated in future, and this is at least a step forward.

The point I emphasise is that my amendment, which I have no need to proceed with, is that I was very concerned about this definition of 'minor works', which was mentioned in an earlier amendment. My amendment was to have minor works defined by regulation, and this amendment through paragraph (a) says, in so many words, 'so as to exclude the Governor making a regulation under subsection (3) with respect to minor works of a prescribed kind'. Without trying to translate all of how it dovetails in, I am led to believe and accept that it does the same work that my amendment did. We support the minister's amendment.

Amendment carried.

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

Clause 6, page 2, lines 12 to 15—Delete subsection (23) and substitute:

(23) Subsection (22) does not apply so as to exclude the Governor making a regulation under subsection (3) with respect to minor works of a prescribed kind.

The government does not object to the intent of the amendment made by the Hon. Ian Gilfillan but submits revised wording in keeping with the wording in the preceding amendment. It is consequential.

Amendment carried.

The Hon. IAN GILFILLAN: I move:

Page 24, lines 20 and 21—Delete 'wider, narrower, longer or shorter' and substitute 'narrower or shorter'.

Page 25, lines 6 and 7—Delete 'wider, narrower, longer or shorter' and substitute 'narrower or shorter'.

Page 26—

Line 19—Delete 'wider, narrower, longer or shorter' and substitute 'narrower or shorter'.

Lines 29 to 33—Delete subclause (13).

To get an understanding of the significance of those amendments, I refer to part 8 of the bill, which provides:

(Amendment of Roads (Opening and Closing) Act 1991, 20—Insertion of section 6B

After section 6A insert

6B—Special powers to alter roads associated with Adelaide Park Lands

(1) a road to which this section applies may be made wider, narrower, longer or shorter by the minister in accordance with part 7B.

A lot of those roads have just landed through the Parklands without any specific consideration of anything other than the convenience of the motorists and those who want to use the roads. They are a significant intrusion in area and ambience to the Parklands. There should be only grudging acceptance of any wider or longer changes to the road. Were it to be a road made narrower or shorter, clearly, that is in keeping with the understanding of the intention of the legislation; so that if there are arguments that any road needs to be made wider or longer, that is a much more tenuous process, which would probably require (depending, to a certain extent, on the detail) its coming forward to parliament for a substantial decision.

The wording in those amendments to which I have referred implies that the making wider or longer of roads in the Parklands is acceptable for consideration. I believe that this legislation should make it quite clear that there are adequate roads currently in the Parklands, and there should be no widening or lengthening of those roads. As a matter of observation, the Bakewell Bridge legislation (and this is how easily these things can happen) is an excellent project in its own right, but perhaps what we have not considered in this place yet is that that project will lose 900 square metres of the Parklands. That is a widening.

If there are to be these activities which result in a loss of actual Parklands, they should not be identified in the form of acceptance that is in the text of this legislation. I am hoping that this amendment will be supported by both the government and the opposition because, without this amendment, I believe that the wrong message is being put in the legislation as to how roads in the Parklands should be viewed.

The Hon. T.G. ROBERTS: I am afraid that the honourable member's optimism is misplaced in relation to the government's position. The government will be opposing the amendment. This amendment seeks to delete the references to widening and lengthening of roads so that this will not be able to occur in the Parklands under the Roads (Opening and Closing) Act. This will be a primary test case for the later amendments by the Hon. Ian Gilfillan to this part. The amendments should be opposed. Both the council and the state government will need a mechanism from time to time to widen sections of roads for public safety or traffic management purposes.

This is not about creating new roads; rather, it is just about adjusting existing roads. In some cases we may be talking about shifting a road alignment so that some land returns to Parklands in exchange for an area that is converted to road for public safety reasons. Under this amendment, even that may be prevented without having to go back to parliament—even for a single square metre. It would be more sensible to do this by way of a publicly accountable process created in this bill under the Roads (Opening and Closing) Act so that the appropriate public agency consultation occurs, and all administrative steps necessary are undertaken to adjust the land parcels and records.

Having to come to parliament for legislation each time for minor adjustments is a questionable use of parliamentary time, and it gives food to those who would like to get rid of this chamber. Consequently, the government opposes these and other related amendments.

The Hon. CAROLINE SCHAEFER: The opposition opposes these amendments which refer to the Roads (Opening and Closing) Act and which propose to delete sections. By supporting these amendments it would be accepting, as has been said, that roads are to be made narrower or shorter through the Parklands but not wider. There are cases within the Parklands where intersections of some roads need to be engineered for traffic purposes. There needs to be the ability for roads to be made wider where necessary and, in some exceptional cases, possibly longer. We are opposing the amendments.

Amendments negatived.

The Hon. IAN GILFILLAN: I move:

Page 27, lines 11 to 1—

Delete subclause (1) and substitute:

(1) Section 20—after subsection (1) insert:

(1a) If the minister makes a declaration under subsection (1)(a), the minister must also declare a speci-

> fied period or periods (prescribed works periods) under this act during which the board may have access to land within the declared area for the purpose of carrying out works in the manner contemplated by section 22(1a) (and different periods may be specified in respect of different categories of work).

I understood from conversations that the government itself intended to address this matter, which involves the prescribed work period which is aimed at putting bookmarks on either end of the time through which such things as the Clipsal 500, or any other activity on the Parklands, has the opportunity to erect and dismantle infrastructure.

This amendment is not unreasonable, and I think that any organisation running an event such as a motor sport on the Parklands should welcome, if they are properly recognising the privilege they have to hold events on the people's Parklands, and accept willingly that their impact on the Parklands should be confined to as narrow a time frame as is reasonable and, to a large extent, possible with the facilities they have. I am not clear—and we will find out in the discussion in the committee stage what the government intends to do with this—because my understanding is that the government certainly did believe that there ought to be an understanding that one of the conditions of the right to use the Parklands by an organisation running a motor sport is that their facilities should be up and down within an anticipated and agreed period of time. I would be very pleased if my amendment is successful.

The Hon. T.G. ROBERTS: The government opposes the amendment. This amendment is to the South Australian Motor Sport Act 1984 to replace one of the bill's amendments to that act. The Hon. Ian Gilfillan is trying to make it explicit that if the minister declares a race area, then he/she must also declare prescribed works periods. This is a variation on the government's provision. This amendment is not necessary because a prescribed works period is not set, then the board does not have a free reign over the sites because of the other clauses in the bill.

The amendment would appear to be counterproductive in that it appears that the Hon. Mr Gilfillan is trying to say that we must set aside times for the board to occupy the Parklands rather than our provision which is optional. If we do not set it, the board cannot set up at all without getting approval from the council on its terms. The amendment may also be administratively problematic if passed in that it separates the provision within the act's subsection to consultation with the board or an ability to subsequently vary it. Consequently, the government opposes this amendment.

The Hon. CAROLINE SCHAEFER: The government opposes this amendment. There are responsibilities already placed on the board by the existing South Australian Motor Sport Act for access to the declared areas during the year. The Hon. Mr Gilfillan's amendment appears to assume that, if a prescribed works period is not set, the board will have free rein over the sites of construction which is not the case due to other clauses within the bill and due to the other motor sports act.

Amendment negatived.

The Hon. IAN GILFILLAN: I move:

Page 28, after line 23—
Insert:
(ab) the Adelaide Park Lands Authority; and

This amendment is to include the requirement that the Adelaide Parklands Authority—which honourable members will remember is established through this legislation and is representative of government, council and the community—should be consulted as well as any relevant council and the board where there is a determination to be made regarding the board to have power to enter and carry out works on a declared area. It seems a sensible requirement because, having gone to the trouble of seeing the value and importance of the authority, it should be included in the consultation process in this matter.

The Hon. T.G. ROBERTS: It is not that we are addicted to opposing sensible amendments, it is just that in this case we oppose this one as well. This amendment is to new subsection 22(4) in the South Australian Motor Sport Act 1984 so as to include consultation with the new authority in respect of any ministerial determinations related to management and use of Parklands. However, this should be rejected as it would unnecessarily involve the new authority in operational management issues associated with the Parklands. The new authority should retain its role as a strategic policy body and have power to comment in general terms about the arrangements, agreements and determinations being made by virtue of its proposed powers, rather than being a party involved directly in such arrangements regarding determinations over management of on-site agreements. Consequently, the government opposes the amendment.

The Hon. CAROLINE SCHAEFER: The opposition opposes this amendment, and in some ways I think it is similar to an earlier amendment that we opposed in that it seeks to involve the authority in operational management issues when the purpose of the new authority is that of a strategic policy planning body. So, in some ways, I see it as conflicting with the purpose of the authority. We oppose the amendment.

Amendment negatived.

The Hon. IAN GILFILLAN: In moving my next amendment, I seek again to move it in an amended form. I seek to insert that the Environment, Resources and Development Court may restrain a breach of this section, on application, by any relevant council or any person having a right of occupation of the land or any part of the land or the Adelaide Parklands Authority or—and this is the paragraph I seek to delete—(d) any other person or body who or that can demonstrate an interest in the matter. In discussion it was pointed out that paragraph (d) in the text of my amendment could prove to be quite bothersome and used in a vexatious manner, so I seek leave to move the amendment in an amended form.

Leave granted.

The Hon. IAN GILFILLAN: I move:

Page 28, after line 24—
Insert:
(5) The Environment, Resources and Development Court may, on application by—
(a) any relevant council; or
(b) any person having a right of occupation of the land or any part of the land; or
(c) the Adelaide Park Lands Authority,
restrain a breach of this section.
(6) The Board must also comply with any direction (including a specific direction) of the Minister—
(a) to ensure compliance with this section; or
(b) or to rectify any matter that, in the opinion of the Minister, constitutes a breach of this section.

I do not know that I need to go into any detailed argument about it except that it does open up the opportunity for justified interested parties to look at being involved before the

Environment, Resources and Development Court to restrain an activity which is seen to be a breach of this section.

The Hon. CAROLINE SCHAEFER: With the removal of paragraph (d), can the minister outline who or what bodies specifically would have the right to appeal through the ERD Court?

The Hon. T.G. ROBERTS: Only the three mentioned in (5)(a), (b) and (c) of the amendment, as follows:

(a) any relevant council; or
(b) any person having a right of occupation of the land or any part of the land; or
(c) the Adelaide Park Lands Authority;

The Hon. CAROLINE SCHAEFER: I understand that. I want to know who 'any relevant council' is, who 'any person having a right of occupation of land or any part of the land' is, and I understand who the Adelaide Parklands Authority is.

The Hon. T.G. ROBERTS: You want it to be more specific. The Adelaide City Council would be one; the neighbouring council might be impacted; (b) could cover a leaseholder; and (c) is narrowly defined as the Adelaide Parklands Authority.

The Hon. CAROLINE SCHAEFER: This amendment, then, now removes the right of any interested person (we will take that as being a member of the public, for example) to appeal. However, my understanding of it is that it actually shifts the appeal process to the Environment, Resources and Development Court as opposed to the Supreme Court, where it is currently held. Is that correct?

The Hon. T.G. ROBERTS: Yes.

The Hon. CAROLINE SCHAEFER: I probably will not have the numbers, but I will still be opposing this. One of the issues with an appeal to the Supreme Court is that it is not a matter to be taken lightly; it tends to be an expensive process. We have now removed the people who would, if you like, need a cheaper option before they could appeal, and put the right of appeal back to the professional bodies, such as local governments and other professional bodies. They would now be the only ones who could appeal. Why should they then not submit to the Supreme Court as opposed to the ERD Court, which would be the cheaper option? So that, if you had a mischievous council, you could have three or four appeals before the ERD Court at any time.

My understanding of the ERD Court is that it is a relatively streamlined and considerably cheaper option for appealing on environmental matters than the Supreme Court. I stand to be corrected on that but, if that is the case, we are now giving professional bodies, who do not need it, access to a much cheaper option.

The Hon. T.G. ROBERTS: I am advised that it is a cheaper process and cheaper for the Motor Sport Board. The honourable member is right that the ERD Court would be a cheaper and perhaps more streamlined process under most circumstances, but even the ERD Court gets very expensive from time to time. However, my advice is that it would be cheaper for the Motor Sport Board to defend itself in the Supreme Court.

The Hon. CAROLINE SCHAEFER: The assumption there is that it will always be the Motor Sport Board that is being complained about. The way I read this, it might well be another council, the Victoria Park racing board, or the Adelaide City Council versus another council that complains. Mr Gilfillan's original amendment was about giving Joe Bloggs who likes jogging on Saturday morning the right to appeal against something that is within—

The Hon. T.G. Roberts: A third-party appeal.

The Hon. CAROLINE SCHAEFER: Yes—the right to appeal. Therefore, I can understand the rationale of his wanting it to go to the ERD Court, which is a cheaper option. We have now removed the third-party right of appeal and we are still offering all these local government bodies, as an example, a cheaper option. My question is: why?

The Hon. IAN GILFILLAN: As the Hon. Caroline Schaefer realises of course, I have a lot of sympathy with that approach. Where a person can demonstrate an interest in the matter, my original wording provided that they should then have the right to go to the ERD Court and seek a restraint on a breach of this section. It is a fairly narrow area that can be dealt with and would have to be confined to a breach of the clause controlling the Motor Sport Board. I am not familiar with the exact wording of that clause.

The reason I have been persuaded to move this amendment in an amended form is that, in the conversation I had, what was portrayed was that, for mischievous reasons, a person or body could seek to continually agitate to have hearings before the Environment, Resources and Development Court from a vexatious motive, as I said before. For that reason, I can see that it could be a nuisance. However, as the text states, the Democrats' original intention was that paragraph (d) be included. We are in the committee stage and, if the opposition feels that, with paragraph (d) included, it would then be—

The Hon. Caroline Schaefer: We still could not support it.

The Hon. IAN GILFILLAN: In that case, we will not waste a lot of time on it. I have done my best to explain why paragraph (d) has been removed. I believe that, even with paragraph (d) removed, if my amendment is successful it adds substantially to the protection of users of and people concerned about the Parklands.

The Hon. CAROLINE SCHAEFER: I do not want to labour the point either, as the opposition will be opposing the amendment. I think that Mr Gilfillan has made this a better amendment by removing the third-party right but, in doing so, I cannot understand why he now wants the appeal process to be before the ERD Court and not the Supreme Court. My understanding is that, under the current regime, any aggrieved party can take action in the Supreme Court.

The reason that such aggrieved parties do not take action, that is, third parties with a passing interest perhaps, is that the Supreme Court is an expensive process. We have now taken out that third party. We have left the professional institutions in there with the right to appeal or to take action, but we have still left it in the hands of the ERD Court, which is the cheaper option. My question is: why then are we saying that the ERD Court process is a better process for local government and the professional bodies that are there than the Supreme Court? Essentially, what the Hon. Mr Gilfillan has now done, as I understand it, is taken out any right of third party appeal which previously was, in fact, there, except it had to go to the Supreme Court. I am just a bit fascinated by the machinations of this amendment.

The Hon. T.G. ROBERTS: It is less expensive, and some of the lease holders could be small business individuals who come under that category. As I have said, the ERD Court on occasions is not inexpensive either, but it is certainly a lot less expensive and less onerous a process and you get your case heard a lot quicker, I would think, in the ERD Court than you would in the Supreme Court.

Amendment carried.

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

Page 30, after line 14—Insert:
29—Special financial contributions by State Government.
The Minister must take reasonable steps to come to an agreement with the Adelaide City Council about the provision to the Council of State Government funding towards the costs incurred by the council for watering the Adelaide Park Lands.

The Hon. IAN GILFILLAN: I indicate support for the new clause. My understanding is that it does embrace, pretty much, the intention of our amendment, which was to ensure that there is agreement between the council and the government regarding the compensation not only for water but also for other services in lieu of rent, for example, for certain public uses. I was led to believe that there had been some attempt or work done to get a deed of agreement between the council and the government. The minister may like to indicate whether it is in process or whether it has been concluded.

The Hon. T.G. ROBERTS: It is in the final stages and it will be completed very shortly.

The Hon. CAROLINE SCHAEFER: The opposition supports the government's amendment.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

[Sitting suspended from 1.03 to 2.18 p.m.]

ABORTIONS

A petition signed by 53 residents of South Australia, concerning abortions in South Australia and praying that the council will do all in its power to ensure that abortions in South Australia continue to be safe, affordable, accessible and legal, was presented by the Hon. Sandra Kanck.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

Reports, 2004-05—
- Arid Areas Catchment Water Management Board
- Clare Valley Water Resources Planning Committee
- Department for Administrative and Information Services
- Eyre Peninsula Catchment Water Management Board
- Northern Adelaide and Barossa Catchment Water Management Board
- Onkaparinga Catchment Water Management Board
- Pastoral Board of South Australia
- Patawalonga Catchment Water Management Board
- Save the River Murray Fund
- South Australian-Victorian Border Groundwaters Agreement Review Committee
- South East Water Catchment Management Board
- South Eastern Water Conservation and Drainage Board
- Torrens Catchment Water Management Board
- Water Well Drilling Committee

By the Minister for Mental Health and Substance Abuse (Hon. C. Zollo)—

Reports, 2004-05—
- Balaklava and Riverton Districts Health Inc
- Barossa Area Health Services Inc
- Booleroo Centre District Hospital and Health Services Inc
- Bordertown Memorial Hospital Inc
- Central Yorke Peninsula Hospital Inc
- Crystal Brook District Hospital Inc
- Eastern Eyre Health and Aged Care Inc
- Education Adelaide
- Eudunda and Kapunda Health Service Incorporated
- Eyre Regional Health Service Inc
- Gawler Health Service
- Hawker Memorial Hospital Inc
- Hills Mallee Southern Regional Health Service Inc
- Kangaroo Island Health Service
- Kingston Soldiers' Memorial Hospital Inc
- Leigh Creek Health Service Inc
- Lower Eyre Health Services Inc
- Lower North Health
- Loxton Hospital Complex Incorporated
- Meningie & Districts Memorial Hospital and Health Services Inc
- Mid-West Health and Aged Care Inc. and Mid-West Health
- Millicent and District Hospital and Health Services Inc
- Mount Gambier and Districts Health Service Inc
- Murray Bridge Soldiers' Memorial Hospital
- Northern Adelaide Hills Health Service
- Northern Yorke Peninsula Health Service
- Orroroo and District Health Service Inc
- Penola War Memorial Hospital Inc
- Peterborough Soldiers Memorial Hospital and Health Service Inc
- Port Pirie Regional Health Service Inc
- Quorn Health Services
- Riverland Health Authority Inc
- Rocky River Health Service Incorporated
- South Coast District Hospital Inc
- South East Regional Health Service Inc
- Southern Yorke Peninsula Health Service Inc
- Tailem Bend District Hospital
- The Jamestown Hospital and Health Service Inc
- The Mannum District Hospital Inc
- The Whyalla Hospital and Health Services Inc
- Wakefield Health

By the Minister for Emergency Services (Hon. C. Zollo)—

Reports, 2004-05—
- South Australian Country Fire Service
- South Australian Metropolitan Fire Service
- State Emergency Service.

CENTRE FOR INNOVATION

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I seek leave to make a statement.

Leave granted.

The Hon. P. HOLLOWAY: Yesterday in response to a question from the Leader of the Opposition in this place on the Department of Trade and Economic Development I was incorrect in saying that appointments had been made at the northern node of the Centre for Innovation. I am advised that positions have been advertised, interviews have been conducted and appointments are imminent. This is the case for both the north and south nodes. The core of the Centre for Innovation has been operating within the department since 1 July 2005. The availability of funding for salaries within the Centre for Innovation nodes has in no way been a restriction on the establishment of those innovation nodes. Through DTED the Centre for Innovation has been continuing to deliver services in product development, supply chain management, process thinking and lean manufacturing.

LEGISLATIVE COUNCIL

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I seek leave to table a ministerial statement made by

the Premier on a referendum on reform and abolition of the upper house.

The Hon. Caroline Schaefer: Read it out.

The Hon. P. HOLLOWAY: I think perhaps I should read it out. It states:

> Today I have given the people of South Australia notice of a referendum the government intends to hold at the 2010 state election, in the event that we win the election in March next year. It is time to either substantially reform or totally abolish the upper house of the South Australian parliament. It is time that the people of this state were given the opportunity to decide once and for all whether the Legislative Council will continue as it has been or whether to reduce the number of members of the upper house in this state. This is about whether South Australia wants to see a parliament that is more accountable to the people—one that is more efficient, more productive and makes better use of the time that we spend in this place.

Members interjecting:

The Hon. P. HOLLOWAY: Yes. The ministerial statement continues:

> This would be one of the most significant and fundamental reforms to our constitution in a century—one that both major parties have been debating internally for decades. I want to throw that debate open to the wider community. It is the people's constitution, and it is for the people to decide over the next four years whether they want to keep two houses of parliament or one. The Legislative Council is meant to be a house of the people, dedicated to the intelligent oversight and considered review of legislation sent to it by this place. It has become apparent to many observers that it is not so much a 'bear pit' as a 'sand pit'.
>
> All too often I have heard the complaint that it is used as a vehicle for smear—

The Hon. A.J. REDFORD: I rise on a point of order, Mr President.

The Hon. P. HOLLOWAY: —and partisan petty game playing.

The Hon. A.J. REDFORD: I have a point of order. Sit down!

Members interjecting:

The PRESIDENT: Order! Both members will sit down. I will not tolerate screaming across the chamber. When a point of order is called, I must take the point of order. The honourable member on his feet should desist from his contribution and take his seat. It is no excuse for the Hon. Mr Redford to be twice as disorderly in screaming across the chamber. I give the Hon. Mr Redford the opportunity to raise his point of order.

The Hon. A.J. REDFORD: As I understand it, it is against our standing orders to reflect on decisions made by this chamber, and that is what the minister is seeking to do in relation to this ministerial statement. Indeed, it is also against standing orders to reflect on decisions of the other chamber.

The PRESIDENT: The honourable member cannot debate the point of order any further. What is happening here is that the minister has sought leave to table a ministerial statement from the Premier, and he had leave to do that. Someone said, 'Read it out.' The minister could quite easily have laid it on the table. He has been asked to read it out. He is reading it verbatim, so that if there is a point of order, certainly, it is not against the minister. The honourable member might have a strong disaffection with the author of the press release, but this minister cannot change the content of the press release.

The Hon. A.J. REDFORD: Mr President, that is a matter for the minister. He sought to table something against the standing orders of this place. He was the honourable member who did that. He has been here long enough to know what the standing orders are. The fact is that if you want this to descend into a war of abuse between the two chambers then that is where we are headed, because this government does not seem to want to follow simple standing orders. Mr President, I ask you to apply the standing orders.

The PRESIDENT: I understand what the honourable member is saying, but the problem is that the minister sought leave, and by leave of the whole council he was granted leave to present the ministerial statement. The only way that cannot be done is for leave to be denied. The minister is not responsible for the content of it. There may be a situation which the chamber wants to address in another way or at another time if it is of that point of view, but the minister sought leave of the council and he was granted that leave to read out a ministerial statement provided by the Premier today. The minister can finish that statement, unless someone denies him leave.

The Hon. A.J. REDFORD: Mr President, I seek your clarification. Does that mean then, according to your ruling, that, once leave is given to make a ministerial statement, the minister is entitled to breach every standing order because we have given leave? My understanding is that the granting of leave—

The PRESIDENT: The answer is no.

The Hon. A.J. REDFORD: —does not give him permission to breach the standing orders.

The PRESIDENT: No. The minister sought leave to present a ministerial statement presented by the Premier in another place today. The council gave leave and, until the council ceases to provide leave, the minister is entitled to proceed.

Members interjecting:

The PRESIDENT: Any person can revoke leave.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! Unless someone is on their feet, I do not hear any request. The minister has the floor.

The Hon. T.G. CAMERON: Well, I will get on my feet and seek a point of clarification. Does your ruling mean that any time a minister of the Crown, irrespective of who is in office, wants to make a ministerial statement or a personal statement, gets leave of the council and it is just an automatic procedural thing, they can get up and say whatever they like? We do not know what is in that statement. It is a bizarre ruling, with respect, Mr President. It is absolutely bizarre.

The PRESIDENT: That is opinion and it is not necessarily a point of order, and you are debating the issue. I think that I have been pretty tolerant and I—

The Hon. T.G. CAMERON: I rise on a point of order. I did not call for a point of order; it was a point of clarification.

The PRESIDENT: I have taken your point of clarification.

The Hon. IAN GILFILLAN: I ask that leave be revoked.

Members interjecting:

The PRESIDENT: Order! Any member—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! The Hon. Mr Gilfillan, as he is entitled, has revoked leave. Leave is not granted. The minister can table it.

ASHBOURNE, CLARKE AND ATKINSON INQUIRY

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I seek leave to table a ministerial statement made

today by the Attorney-General in relation to claims made by Edith Pringle.

Leave granted.

Members interjecting:

The PRESIDENT: Order! The Hon. Paul Holloway will come to order. Mr Sneath will come to order. All honourable members will come to order. If they wish to avoid criticism of unruly conduct that is contrary to the standards of the Legislative Council, they should remember to follow the standing orders.

QUESTION TIME

LEGISLATIVE COUNCIL

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government questions about the government announcement regarding the Legislative Council.

Leave granted.

The Hon. R.D. LAWSON: I had the misfortune to hear the ministerial statement made by the Premier in another place today. It was a statement which will be seen by many commentators as profound as that made by the Premier on 13 April 1989 when he described the brilliance of the managing director of the State Bank, Mr Tim Marcus Clark, and he described the bank as one of the 'greatest success stories in the economy of this state'.

The Hon. T.G. Cameron: Who said this?

The Hon. R.D. LAWSON: That is the Premier on 13 April 1989, condemning the Liberal opposition for—

The Hon. P. HOLLOWAY: I rise on a point of order. I withdraw leave for the question.

The Hon. R.D. LAWSON: My questions are—

The Hon. T.J. Stephens: They would be the highest-paid garden gnomes in South Australia.

The PRESIDENT: Order! The Hon. Mr Stephens will withdraw, and I will not let you repeat it. I want you to withdraw it on the basis that it is offensive.

The Hon. T.J. STEPHENS: I withdraw.

Members interjecting:

The PRESIDENT: Order! Your House of Commons training has stood you in good stead.

The Hon. CARMEL ZOLLO: On a point of order, Mr President, I ask the Hon. Terry Stephens to withdraw those comments in relation to both members. I think that was very cruel.

The Hon. T.G. CAMERON: I have a further point of order. I do not know what she is talking about, so what are the comments?

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Cameron and I have played this game before; we will not play it today. The Hon. Mr Lawson—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! There is a point of order.

The Hon. P. HOLLOWAY: I rise on point of order, and it relates to the fact that the clock has been stopped. Why is it that, if members opposite continue to waste the time of this parliament in question time, we have the clock stopped? If they want to waste their own time, I believe they should do it without the rest of us having to put up with it.

The PRESIDENT: The point of order is well taken. It is happening by the good graces of our table staff, who are trying to give members the opportunity to put sensible questions and receive sensible answers. However, I think that they, like I, have been quite discouraged by the conduct so far. The Hon. Mr Lawson is putting his questions to the minister.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: No; leave to make an explanation. He has to put his question.

The Hon. R.D. LAWSON: My questions are:

1. Given the fact that the government is now foreshadowing a referendum in 2010 for, amongst other things, the views of the electorate on limiting the terms of members of the Legislative Council to four years, why prior to now has the government not supported two bills introduced in another place on 13 October 2004 by the member for Mitchell to achieve that very end in the election next year, and not waiting until 2010?

2. Is it not the case that the government was motivated in making today's announcement by the fact that a select committee of this council was meeting this morning to hear sensational evidence from Ms Edith Pringle about this government's maledictions?

3. Is it not the case that today's announcement was in part prompted by the fact that this chamber has passed a number of amendments—important and significant amendments—to government legislation, and that the threats are retribution for the fact, first, that we are doing our duty by making amendments to legislation and, secondly, that we are threatening to continue sitting after this Premier wishes to close down parliament?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am absolutely delighted to have the opportunity to answer some of those questions. Let us begin with the last one first. The Legislative Council, by next Friday, will have sat a little under four years. The Rann Labor government came to office on 6 March 2002 and was sworn in. The next election will be 18 March. In that time this parliament will have sat for 239 days. The previous Legislative Council sat for four years and four months—the longest parliament in the modern history of this state. It sat for 208 days; so did the Brown government before that. Before that, if one goes back to the Bannon government, it sat for 225 days. So, here it is, Mr President. By next week, this parliament will have sat for 31 days more over its term than the Liberal government did in each of its previous four-year terms—more than any other parliament in the history of this state.

My colleague in another place has given the statistics for the questions in that house. Almost twice as many questions have been provided to the opposition in that period of time. So, how dare these people opposite talk about the lack of accountability and suggest that the decision from this government should have something—

The Hon. R.K. Sneath: They think they are born to rule.

The Hon. P. HOLLOWAY: Yes; that is right. We can see that the born to rule syndrome we had for 100 years with the property franchise lingers in this place. In relation to the second—

Members interjecting:

The PRESIDENT: Order! I just draw the minister's attention to the fact that, although I know he has been provoked, I must insist that he does not cast derogatory statements on the Legislative Council, its members or others.

I understand the minister's frustration, but he is required to provide—

The Hon. P. HOLLOWAY: My derogatory remarks are not against the council; they are against some of the members of the council who believe that they were born to rule.

The PRESIDENT: I do not think that the minister should identify individuals.

The Hon. P. HOLLOWAY: In relation to whether it had anything to do with Edith Pringle, one should read the statement from the Attorney-General, which includes a statutory declaration from him which totally repudiates any such suggestion. What we had this morning was a complete circus.

The PRESIDENT: Order! The minister should not refer to the evidence.

The Hon. P. HOLLOWAY: I draw any member's attention to that statement.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The Hon. Angus Redford interjects, which is a bit rich. He loves this place so much that he wants to get out of here as quickly as he can! He respects the traditions of this place so much that he wants to go as quickly as he can. I would have thought that he was one person who would sit quietly at the back and read his book. I see that that is what he is now doing, and it is probably a very good idea. What we have seen, through some of the select committees set up by this council, are some abuses that have put at threat the entire law and order system of this state. What we have seen are situations—

The Hon. R.I. LUCAS: I rise on a point of order, Mr President.

The Hon. P. HOLLOWAY: They do not want the truth to get out, either.

The Hon. R.I. LUCAS: Mr President, will you rule on whether or not the minister is entitled under standing orders to reflect on members and its committees?

The PRESIDENT: Standing orders are very clear that members should not reflect on any members (and certainly not on an individual basis), the committees or the processes of the council. The minister must remember at all times that he cannot refer to any of the evidence that has been put before a committee.

The Hon. CARMEL ZOLLO: I rise on a point of order, Mr President. The Hon. Rob Lawson did that in his explanation.

Members interjecting:

The PRESIDENT: Order! Two wrongs do not make a right.

Members interjecting:

The PRESIDENT: Order! I am trying to assist the minister to give his answer against incredible odds (most of which is coming from behind him, I am afraid to say). He is trying to give his answer. I am advising him of his responsibility not to refer to the deliberations of the committee.

The Hon. R.K. Sneath interjecting:

The PRESIDENT: Order! The Hon. Mr Sneath will come to order. I do not want to have to call him or anybody else again. This has gone far enough. I will not put up with any more nonsense. I will do my duty regardless of the consequences. The minister will give his answer, and I ask him to remember the standing order in relation to his not referring to evidence; I am sure he will not.

The Hon. P. HOLLOWAY: Of course, it is a bit difficult to answer a question framed in terms of whether the Premier's decision to make an announcement had anything to do with the fact that a select committee met this morning. The answer is an emphatic no. But certainly I would have to say that one of the contributing factors must necessarily have been what the Premier referred to in his statement in relation to some of the game playing which really has nothing to do with the good government of the state of South Australia and which has come about as a result of this.

I think that it is a bit rich for members opposite to interrupt and refuse to hear the statement from the Premier and then ask questions about it. It is quite extraordinary. The point the Premier was making in his statement was that, ultimately, the future of this parliament is in the hands of the people of South Australia. It is the people of South Australia who will ultimately decide this issue—and why shouldn't they? Members opposite seem to think that this is such a small club that they should not let the people of South Australia have a say. So, all I say is: let the people of South Australia decide. I just wish that more people would come in and see some of the things that have happened in this place over the past few weeks. I wish that they would come to select committees and so on and see for themselves the sort of behaviour that happens. They would realise that the $6 million, by which the state would profit with the abolition of this place, would go towards other things and would be money very well spent.

The Hon. NICK XENOPHON: I have a supplementary question. Can the minister confirm that four-year terms are something that can be dealt with in an act of parliament and it does not require a referendum, and will the government be supporting any legislation for four-year terms in the next parliament?

Members interjecting:

The Hon. P. HOLLOWAY: It is a pity those matters were there, but the point is that it is a political tradition in this country, and I know traditions do not seem to mean a lot to members of the Liberal Party, that if you have those sorts of reforms, you do not do them within the course of the term of the government but you put them up for election and then you introduce them following the election. The government, through the Premier, has put down what it believes is a worthwhile change and what should be done, but it is ultimately the people of this state who will decide it. It is a different matter to change that during the course of the government when one does not have a mandate.

One only has to look at some of the industrial relations changes that are being put through the federal parliament at this moment where the Howard government had its election policies slipped away in a tiny little back pocket, and the people of Australia had no idea what they were getting, but in relation to this matter this government will, as always, be quite up-front. It is just a pity members of the house could not have heard it. It is a pity that those opposite did not want the statement, but this government will put it up and ultimately it is the people of South Australia who will decide. Of course, that is always subject to the fact that they are allowed to do so by this parliament, because this parliament could have a veto on it if it chooses to exercise it. We will see what happens in the next parliament.

The Hon. R.I. Lucas: Hear, hear!

The Hon. P. HOLLOWAY: 'Hear, hear!' That demonstrates the contempt for the people of South Australia that just drips through the people opposite.

ASHBOURNE, CLARKE AND ATKINSON INQUIRY

The Hon. R.D. LAWSON: I have a further supplementary question arising out of that answer.

The PRESIDENT: Before we proceed, I have a question on the standing orders. There has clearly been a breach and I needed to bring it to honourable members' attention. The Leader of the Government was given leave to table a ministerial statement, which was not read, about Ms Edith Pringle. I have had the opportunity to look at this and it clearly breaches standing order 190, which provides that no reference shall be made to any proceedings of the committees of the whole of the council or a select committee until such proceedings have been reported.

An honourable member: A disgrace!

The PRESIDENT: Order! I am ruling that this is a document that should properly be referred to the select committee for its consideration and any action that may or may not be necessary. So I have to instruct *Hansard* that it has to be removed from the record so it cannot be tabled.

The Hon. R.I. LUCAS: On a point of order, Mr President, was this breach of the standing orders committed by the Leader of the Government earlier in question time? Can you clarify who breached the standing orders?

Members interjecting:

The PRESIDENT: Order! My memory of the situation was that the minister sought to table two ministerial statements.

The Hon. T.G. Cameron: Which minister?

The PRESIDENT: The Leader of the Government sought leave to lay upon the table two ministerial statements. The first he was asked to read by members of the council. He proceeded by leave to do that. Leave was withdrawn. When he came to the second document, it was laid on the table without being read. It was because of that that I was not aware of the content, otherwise I would have ruled on it at the time.

Members interjecting:

The PRESIDENT: Order! He had sought leave.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: The Hon. Mr Cameron will come to order! The minister sought leave to lay two ministerial statements on the table. One he was asked to read. He sought leave to do that, received leave to do that and then was denied. When it came to the second one, having received leave to lay it on the table and by leave of the whole of the council, all of you are involved in this, he was given leave to do that. Because the minister did not read it—whether through timidity, his previous experience, or for some other reason—I was not aware of the content. I have now been made aware of the content and it clearly breaches standing order 190. It is a document which should be presented to the select committee of the Legislative Council for its consideration and action, if necessary.

the person who has breached the standing orders is the Leader of the Government. You indicated, I think by way of comment, that you believed that he had not read the statement. Mr President, I ask you to look at the *Hansard* record because it is certainly my recollection that the minister referred to the deputy leader and said, 'Have a look at this ministerial statement and the details of it.' He certainly indicated by way of that response that he had read the statement, contrary to your belief, Mr President.

Members interjecting:

The PRESIDENT: Order! The only one who needs to give an explanation concerning a point of order is me. It is my responsibility to explain the standing order and any reason I have for making a determination. I have heard what the minister said. I will look at the standing orders. I am not convinced that there has been a breach. I believe the minister rose to his feet and said, 'I seek leave to table two ministerial statements.' He was invited to read one. He attempted to do that when leave was granted and was denied leave; and when it came to the second one, leave was granted by the whole of the council. Any member can resist the provision of leave. No-one did, and that was the reason why I was not aware of the contents of the ministerial statement made by the Hon. Mr Atkinson in another place.

Having availed myself of a copy of the document, I have ruled accordingly. I have withdrawn it from the record and directed that it be sent to the select committee of this chamber for its consideration.

The Hon. P. HOLLOWAY: Mr President, I have two points of order in relation to that. First, if it goes to the select committee in this way (which has now become standard but, in historical terms, is unprecedented), it allows any document that goes to the committee to be published immediately and therefore circulated in the media. Does that mean that, once this document goes to the committee, it immediately becomes public so that everyone can read it, other than members of this council? Is that the effect of this ruling, Mr President?

The PRESIDENT: Minister, I have to stop you. You are now referring to the considerations and deliberations of the committee. The decision in respect of the release of documents or any witnesses has also been made by resolution of the council under standing orders—although I cannot remember the specific standing order. Standing orders allow that to happen. The consequence of this going to the select committee is clearly the responsibility of the select committee, which this council has set up to undertake an investigation on its behalf and to report back to us. Until such time as it has completed that task, there can be no discussion on those proceedings or the deliberations before the committee.

The Hon. P. HOLLOWAY: I have a further point of order, Mr President. As I understand it, it has been a long-standing tradition of this parliament that ministerial statements made in another place are automatically tabled in this council. Given your ruling, does this now mean that statements made in the other place should not automatically be tabled here? Because, if that is the wish of this council, if that is its direction, then I will cease seeking leave to table statements made in another place.

The PRESIDENT: Order! I make one point. The responsibility for a ministerial statement made in another place is that of the minister who made the statement. As there is no select committee in conduct before his house, the minister in another place is able to comment on the proceedings of the select committee, but we cannot do so. What has occurred on this occasion is that the minister has chosen to do that and, in line with the traditions, the ministerial statements are delivered to the lower house and the upper house. On this occasion, I was not made aware of the contents of the ministerial statement and the minister, as he would normally do, sought to table it. He has tabled it. I have now had the opportunity to view it and it breaches our standing orders, and I have ruled accordingly. I do not think that we need to refer to any more standing orders.

The Hon. R.D. LAWSON: I have a point of order, sir, and a point of clarification in relation to your ruling. The

council gave leave for the presentation of a ministerial statement, but the document that was tendered was not only a ministerial statement; it had an attachment, which was a statement made by a third party. Is it the case that leave to table a ministerial statement entitles a minister to table documents which might happen to be attached to it.

The PRESIDENT: No. In answer to your question, if they are going to be considered as two separate matters—and there is strong argument for that to occur. The document I have here consists of two pages, and it is headed 'ministerial statement, Thursday 24 November 2005 by the Hon. Michael Atkinson MP'. At the bottom it states:

> I now table the statutory statement of Mr Tim Bourne.

If the first page had been read to the council, we would have dealt with a separate question as to whether the statutory declaration could be tabled; and the council would make the decision. Because of the peculiar circumstances of today, we were not able to determine whether there were one or two documents, because the minister had sought leave to table the document, and, without knowledge of its contents, the council—all of you collectively—stands responsible for giving him leave to table it.

When it was brought to the attention of my table staff and me, it was clear that the first page and, indeed, the contents of the declaration are matters for the select committee—which I have explained extensively; I do not wish to go over them again.

LEGISLATIVE COUNCIL

The Hon. R.D. LAWSON: I have a supplementary question arising out of the minister's answer to the supplementary question asked by the Hon. Nick Xenophon about referenda and terms of members of the Legislative Council.

The PRESIDENT: That is certainly in order. It is a supplementary question.

The Hon. R.D. LAWSON: Is it not the case that the government has advice to the effect that a referendum is required to alter the terms of members of the Legislative Council—a point reflected in the fact that Mr Hanna has moved a bill in another place for such a referendum?

The Hon. P. HOLLOWAY: I would be surprised if there were not some government advice around, but I think we all are capable of reading the state Constitution. Anyone who has would know that there needs to be a referendum before anything in relation to this council can be changed. I am sure the deputy leader of the opposition is capable of getting his own advice on it. There is no rocket science involved with this.

PIRSA, ANNUAL REPORT

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Resources Development a question about the PIRSA annual report.

Leave granted.

The Hon. CAROLINE SCHAEFER: PIRSA is in the department answerable to the Minister for Mineral Resources Development. The 2003-04 report shows that 56 overseas visits were made by PIRSA employees for a total agency cost of $277 000. However, in 2004-05, 98 overseas visits were made by PIRSA employees for a total cost of $426 000. Will the minister outline the reasons for an additional $149 000 in overseas travel within his department; and will he also give a brief outline of the net benefits to the taxpayers of South Australia for that increase?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): As I have informed the honourable member on a number of occasions, the lead minister in relation to Primary Industries and Resources is the Minister for Agriculture, Food and Fisheries. By far, the largest number of employees in the agriculture, food and fisheries division of SARDI is under that part of PIRSA. Clearly, of course, mining and energy come under that department. In the future it will be Planning SA, although I do not believe they have been consolidated in the most recent report. I will get that information from my colleague and bring back a reply.

GOVERNMENT ADVERTISING

The Hon. A.J. REDFORD: My question is to the Leader of the Government. Given that the government has entered a contract with Starcom Australia for the provision of media services and advertising for—wait for it—$77 million, how can the expenditure be justified when one considers that the total budget of the CFS in this state is only $53 million?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I am not sure what the honourable member is on about.

The Hon. A.J. Redford: No amount of spending will save your life.

The PRESIDENT: Order! It is customary to let the minister start the answer before you start the interjections, even though they are out of order.

The Hon. P. HOLLOWAY: Whatever amount of money this state government would spend on advertising would not be a tiny patch of the South Australian proportion his federal colleagues are spending on matters at the moment, even on the IR bill alone. With the GST, I think it was up to $400 million. The South Australian share would have been $40 million or $50 million. If the honourable member is serious about wanting an answer he will have to refer to exactly what contract he is referring to, because I do not know what he is talking about.

The Hon. A.J. REDFORD: By way of supplementary question arising from the answer, given that the precise contract is 'Master media agency services for campaign and non-campaign for the South Australian government, DAIS 011019', does that assist the minister in answering my question as to how this government can justify the expenditure of $77 million which, in a national context, would equate to something of the order of $1 billion?

The Hon. P. HOLLOWAY: I have been in this parliament long enough to know that any figures the Hon. Angus Redford or any of his colleagues refer to have to be regarded with the greatest degree of suspicion. Time and again we have had members asking questions—

The Hon. A.J. Redford: $77 million!

The Hon. P. HOLLOWAY: The Hon. Angus Redford: we all know where his heart lies and it certainly is not here. We know he has only four more days in this parliament and he will be off. He will no longer have to worry about these things and we will not have to worry about him, either. If the honourable member wishes to ask credible questions, he should provide a little more information than he has.

MINING EXPLORATION

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question regarding the state of mining in South Australia.

Leave granted.

The Hon. J. GAZZOLA: As most members of the council would know, there is currently a resources boom in the country. Thanks to the government's PACE initiative, South Australia's share of exploration expenditure is increasing. The minister has kept the council informed of developments in the Eucla Basin in the state's far west, as well as the progress of other mining projects. Have there been any further developments of note?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): Yes, we have some excellent news. While the Hon. Angus Redford is going out, he may care to reflect on the $110 million the previous government spent on the ETSA sale.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, you didn't actually and that is the other lie this lot have been telling. They talk about this $5 million: they forget about what had to be paid off with it. They do not talk about the net figure but about the gross figure.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The internal debt within ETSA, the net ETSA figure, was closer to $3 million than it was to $5 million. There is a discussion paper on the Liberal Party web site which grossly—

Members interjecting:

The PRESIDENT: Order! There is too much excitement in the chamber.

The Hon. P. HOLLOWAY: There is a quite erroneous article on the Liberal Party web site under the title of 'discussion paper', which also has that gross representation on it, but that can wait for another day.

In relation to the honourable member's important question, I am happy to tell the council that a third very significant discovery has been made in the South Australian section of the Eucla Basin. I am sure members would agree that this is very good news for South Australia. The Colona joint venture—between Adelaide Resources Limited and Iluka Resources Limited—has announced that a continuous zone of zircon-rich mineralised sand approximately 800 metres wide and up to 15 metres thick has been discovered in EL 3316, about 180 kilometres north-west of Ceduna.

Named Tripitaka, the prospect is the first mineral sands discovery for Adelaide Resources and for the Colona JV, which today described Tripitaka's geological character and setting as very similar to Iluka's Jacinth and Ambrosia deposits discovered last year 90 kilometres north-west in 100 per cent owned Iluka acreage. Tripitaka's mineralogy indicated a zircon-rich assemblage containing 63 per cent zircon, which is very high by world standards. The new mineralised zone, located on a pastoral lease outside of the Yellabinna Regional Reserve, was identified from laboratory testing on samples from one drill traverse, line 5084SE, with further drilling intersecting visible mineralisation both north and south of the discovery line traverse.

Zircon is by far the most desirable component in any significant mineral sands discovery. While considerable work remains to prove up a resource at Tripitaka, these initial results are highly encouraging for this area's continued emergence as one of Australia's richest mineral sands provinces. Zircon prices have risen in recent years to around US$600 per tonne currently and, with a significant global supply deficit looming, exceptional zircon-rich assemblages can potentially generate high value, heavy mineral concentrates.

I am advised that the laboratory results suggested that the prospect has the potential to be mined and treated using conventional technology. Follow-up in-fill drilling at Tripitaka is now proposed early next year to provide data to enable a resource estimate to be published. I congratulate Adelaide Resources and Iluka on their work and its results. Mr Keith Yates of Adelaide Resources has been a tireless worker for the mineral industry in South Australia, and he is currently Chair of the Resources Industry Development Board. I wish both parties well in their efforts to bring this deposit to fruition as a working mine. They will certainly have my support and that of the government, my office and my department.

While we are on the subject of industry news, I am able to inform the council of record production for the month of October at Dominion's Challenger goldmine, as well as some spectacular drilling results. Challenger achieved a new production record for the month of October 2005 of 10 823 ounces at a cash operating cost of A$241 per ounce. Production for the month of October was achieved from processing 30 800 tonnes of ore at a grade of 11½ grams per tonne extracted from the 1 000Rl and 980RL stopes.

The result eclipses the previous best ever monthly production for September 2005 of 9 065 ounces at a cash operating cost of A$247 per ounce, putting Dominion on track to comfortably achieve its forecast production for the December 2005 quarter of 25 000 ounces. Dominion also today reported further results from underground drilling, which has clearly defined the structure of the M1 shoot, confirming the high-grade nature of the lodes being mined. The latest results included the following:

- 2.8 metres at 45.92 grams per tonne gold
- 8.5 metres at 125.25 grams per tonne gold
- 7.5 metres at 47.49 grams per tonne gold
- 2.25 metres at 66.2 grams per tonne gold
- 7.5 metres at 216.09 grams per tonne gold

I am advised that these results confirm the presence of very high gold grades and widths of mineralisation at depth within the M1 shoot, providing a very strong outlook for the Challenger operation. The 940RL level, where the latest drilling has been carried out, is scheduled to be mined during the March 2006 quarter. Speaking at this week's AGM, the Chairman of Dominion, Mr Peter Joseph, said:

> Our faith in the potential of the Challenger ore body to extend at depth has also paid off handsomely this year with exploration achieving a significant increase in reserves and mine life. I am pleased to acknowledge the support both financial and otherwise of the South Australian government in this successful endeavour.

I congratulate Dominion on its success, and I thank the Hon. John Gazzola for his question.

PRISONERS, MENTAL HEALTH

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Correctional Services a question about correctional officers dealing with mentally ill people within the prison system.

Leave granted.

The Hon. IAN GILFILLAN: In the August/September edition of the *Public Sector Review* an article, entitled 'Correction officers doing incredible job under difficult circumstances', states:

> Correctional service officers have been praised for their work in dealing with increasing numbers of mentally ill people within the South Australian prison system. Parole Board of South Australia chair, Ms Frances Nelson QC, told the PSA's Biennial Conference that the Officers were doing 'an incredible job in very difficult circumstances'. Ms Nelson said a shortage of State Government funding and resources meant the Officers were receiving very little professional support from Psychiatrists and Social Workers as the mental health population inside prisons continued to grow.

Ms Nelson was again quoted:

> 'There are 2.5 Psychiatrists in the State's Forensic Psychiatry unit when there are probably 200 prisoners with serious mental health issues.' Ms Nelson said Port Lincoln Prison was one example of a prison with an increasing mental health population, with 80 per cent of inmates receiving psychotropic medication on a daily basis.

Ms Nelson continued:

> 'When Ken O'Brien (the State's most senior Forensic Psychiatrist) visits Port Lincoln Prison, he must see 20 people between 10 o'clock and 12 noon and between two and four in the afternoon,' she said. 'He hardly has time to write prescriptions let alone examine these people properly or to talk to them.'

My questions are:

1. Is the minister satisfied that this is a satisfactory state of affairs within the state's prison system?

2. If not, which I would like to assume is the case, what has he arranged to be done and/or what is he arranging to be done to correct the issue?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I thank the honourable member for his question. As I have stated in this council on a number of occasions, one of the challenges for government not only across South Australia but for Australia generally is: how are we as governments—state and commonwealth—going to deal with the increased number of mental health patients who are fronting in our mental health services of both our health system and, as the honourable member points out, our correctional services system? In the past, many of the people who fronted the correctional services system who had mental disorders or mental problems avoided assessment and treatment because there were virtually no services provided. Now at last there is recognition that, as mental health problems grow within the community generally, our services will increasingly come under pressure—our health services and our correctional services—and the government has to have a plan, which it has, to deal with it.

As the honourable member points out, there are a number of issues within the mental health field within correctional services that are putting pressure on how we deal with them, including the training of correctional services officers in how to deal with patients with mental disorders. We have a number of beds available in the health services system that are available generally for mental health patients either in the correctional services system or the community, but the demand is outstripping supply. That is where governments need to address these issues.

In a submission by the department and chief executives addressed to the Select Committee on the Assessment and Treatment Services for People with Mental Health Disorders, the following issues were raised: the adequacy of funding and staffing of mental health, best practice treatment services for people with mental health needs, the incidence and management of mental health in prisons, the impact of legal and illegal drugs on mental health, the efficiency of diversion programs upon recidivism—and that is a general case—criteria for the release of potentially dangerous mental health patients, the adequacy of offender supervision post release from institutions, including those on parole, who present difficulties for health services—and once they leave the correctional services system, they no longer come under the auspices of correctional services but then fall back into community health issues—the identification of offender mental health difficulties and the case management of those. The issues themselves are being discussed across agencies for those who are dealing with mental health in the community and in prisons, and resources are being apportioned to them as they become available at the state level.

A joint news release put out by the Hon. Lea Stevens when she was minister for health and the Hon. Carmel Zollo, the minister assisting in mental health, states:

> The Rann government is doubling the number of forensic liaison workers for prisons, improving mental health services. Health Minister, Lea Stephens, says applicants will soon be sought for two new clinical nurse positions, a social worker and occupational therapist.
>
> 'We are rebuilding mental health services across the community,' says Ms Stephens.

She goes on to state:

> The recruitment of these workers will double the size of forensic mental health team which is currently based at Glenside.

That is coming off a very low base, as the honourable member will probably point out in a supplementary question. As the Hon. Carmel Zollo has said in this chamber many times, the starting point for servicing mental health problems, not only in community but in the correctional services system, is coming from a very low base and a starting point that does not give any pride to any past governments for not having begun to put in place mental health services as they were seen to be needed. Certainly, the use of drugs and alcohol, both illicit and prescriptive, in the community is raising the level of demand for mental health services. The joint statement, which quotes the Minister for Mental Health, now Ms Carmel Zollo, states:

> . . . individually tailored packages of supports are currently being established for former prisoners who are mentally ill.

So, those services are being provided post release.

The Hon. Ian Gilfillan: On what date was that statement made?

The Hon. T.G. ROBERTS: It was 12 October 2005. It was issued during Mental Health Week when the joint statement was made. We have allocated an additional $65 million over four years, and this year alone we are spending around $37 million more on mental health services than the previous government did when it left office. One of the recommendations that I made that will probably please the honourable member was that, in areas where there is a lack of mental health services in regional areas and where there are prisons, the mental health services for prisons can be shared across agency through general health when they are set up and in support. In areas such as Port Lincoln, Cadell, Mount Gambier and Port Augusta, those general services that are operated out of the health services can be jointly accessed.

The Hon. KATE REYNOLDS: I have a supplementary question. Can the minister tell us how many correctional services officers have been offered training in mental health this year, how many have completed their training, and

whether or not any of that training has been available outside of metropolitan Adelaide?

The Hon. T.G. ROBERTS: I will have to take that question on notice—

The Hon. Kate Reynolds: Just say, 'Very few,' and 'no'.

The Hon. T.G. ROBERTS: I will get an accurate figure, and relay that information to the honourable member and bring back a reply.

WORKCOVER

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industrial Relations, questions about WorkCover, passive smoking claims and confidentiality agreements.

Leave granted.

The Hon. NICK XENOPHON: Last Sunday I had the privilege of meeting 29 year-old Phil Edge who, as a 21 year-old, began working as a bar and gaming room attendant at southern suburbs pub, Mick O'Shea's. A non-smoker, Mr Edge was continuously subjected to the tobacco smoke of others, especially in the pokies room, where he noticed that it was particularly concentrated.

By June 2001, Mr Edge had been diagnosed with cancer of the tongue, with the cancer spreading into his lymph nodes. A 12-hour operation on 4 July 2001 involved half of his tongue being removed and radical surgery to remove cancerous lymph nodes, followed by over 6½ weeks of radiotherapy and a two-year recovery period. He then brought a case against his employer through, I presume, the WorkCover Corporation. His trial went before the South Australian Workers Compensation Tribunal and commenced on 18 July 2005. Following quite damning evidence in his favour by his treating ear, nose and throat specialist, Dr Guy Rees, the insurer sought an adjournment.

Following that evidence, the insurer initially offered a lump sum to get rid of all its future liabilities for Mr Edge, which he rejected. The insurer offered to accept his claim on the basis that Mr Edge sign a confidentiality agreement. Mr Edge refused, as he wanted people to know what had happened to him and about the risks involved with passive smoking. By doing so, he risked losing his case, and costs were increased because of the delay. Eventually, on Friday 7 November (the trial was due to resume on the following Monday) WorkCover caved in on its demand for the confidentiality agreement. On 10 October, Auxiliary Justice Olsson made orders accepting Mr Edge's claim, including arrears of wages and medical expenses.

On 26 August 2002, I obtained a number of answers from the minister in relation to passive smoking. One question was, 'How many WorkCover claims have been made with respect to health conditions caused by passive smoking since inception of the WorkCover scheme?' The response was as follows:

> There have been 15 claims for registered employers and 10 claims for self-insured employers for passive smoking related conditions since inception of the WorkCover Scheme. The types of conditions include migraine, respiratory complaints such as asthma and bronchitis, rhinitis, sinusitis and vocal cord sensitivity. Occupations and industries involved include nurses, waiters, barpersons, welders and drivers.

My questions are:

1. How many WorkCover claims have now been made with respect to health conditions caused by passive smoking since inception of the WorkCover scheme, and how many such claims are continuing?
2. In the answer of 26 August 2002, why was no reference made to the claim lodged by Mr Edge for cancer of the tongue and resulting secondary cancers? Was there a claim lodged at that time?
3. How much has been paid or is payable in relation to such accepted claims?
4. What is the policy of the WorkCover Corporation in relation to requesting such confidentiality agreements (some would call them a 'shut up' clause) in relation to passive smoking claims?
5. In what circumstances does WorkCover, either directly or through its agents, request or insist on confidentiality agreements in settlement of claims?
6. Will the minister review such arrangements when the injured worker wishes the circumstances of his or her injury to be made public?
7. Given the terrible consequences of environmental tobacco smoke, as evidenced by Mr Edge's case, what steps have been taken and what resources have been made available, through the minister's department and Safework SA, for inspectors to monitor complaints. What level of monitoring exists for environmental tobacco smoke in the workplace?

The PRESIDENT: That is an extensive raft of questions.

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I will refer those questions in relation to WorkCover and WorkSafe to the minister in the other place and bring back a response. The honourable member might be interested in information relating to compliance and tobacco smoke. He obviously knows that from November 2007 smoking will only be allowed in outdoor areas that meet the criteria of being at least 30 per cent unenclosed but, since smoking bans were introduced in workplaces, hotels and clubs last December, officers from the Department of Health's Environmental Surveillance Unit have conducted over 800 inspections at hotels, sports clubs, community clubs, nightclubs, wine clubs, lounge clubs, live music venues, adult entertainment, function centres, cafes and workplaces throughout metropolitan and regional South Australia.

Until 30 June the focus of these inspections was education and awareness of the new laws, and helping premises and individuals to comply. Although an educative approach is still being taken, particularly with any first-time visits, the grace period for the new laws ended on 30 June, with venues and individuals that do not comply now being subject to fines. It is anticipated that, by 31 December 2005, every hotel in South Australia will have been inspected at least once. Evening hotel inspection runs are being carried out from time to time to test compliance. The inspection run of 17 hotels on 27 October resulted in breaches being detected at four different locations, resulting in 10 expiations in total being issued for the offence of smoking in a non-smoking area under sections 46(2) and (3) of the Tobacco Products Regulation Act 1997.

Five patrons were expiated for smoking within 1 metre of a bar counter; two patrons expiated for smoking in a smoke-free foyer; and one patron expiated for smoking within 1 metre of a non-smoking gaming machine, with a penalty of $75. Two hotel proprietors were expiated for allowing smoking to occur in non-smoking areas, and the penalty there is $160. A further evening inspection run of 15 hotels on 11 November detected no offences.

On the whole, most hoteliers appear to be making a consistent, thorough and proactive effort to monitor and manage smoking within their premises. Eighteen fines of $315 have been issued pursuant to section 38A(1) of the Tobacco Products Regulation Act 1997 in the past eight months to retailers who sell cigarettes to minors by means of the department officers conducting controlled purchase operations whereby minors are engaged in an attempt to buy cigarettes. Fifteen of those expiations were issued to the person who sold the cigarettes to the minor, while the other three were issued to the proprietor of the business where the sale had occurred. As I said to the honourable member, I will refer those questions in relation to WorkCover and bring back a response for him.

HOMELESSNESS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Families and Communities, a question about homeless numbers.

Leave granted.

The Hon. J.F. STEFANI: During the last election campaign, the then leader of the opposition, the Hon. Mike Rann, promised the people of South Australia that, if elected into office, a Labor government would halve the homeless rate in the first term of office. The statistics for homelessness in South Australia show that more than 7 000 people are homeless in this state. Having been elected to office, the Rann Labor government appointed a number of people to the Social Inclusion Board, including the Vicar-General of the Catholic Church, Monsignor David Cappo, as chairman of the board.

An honourable member interjecting:

The Hon. J.F. STEFANI: I will not be tempted to answer that. Great publicity has been generated by the Chairman of the Social Inclusion Board regarding its achievements. However, it appears that the significant promise made by the Premier will not be kept. I now refer to an article published in the *City Messenger* in which Thinker-in-Residence Roseanne Haggerty recommended that funds be redirected from shelters, hospitals and other emergency services into housing in order to end homelessness in South Australia. The article noted that, without redirecting money away from institutions and without a significant transfer and reinvestment of funds, South Australia's goal of reducing homelessness will not be achieved. In view of this recommendation and these observations, my questions are:

1. Will the minister provide a copy of Ending the Homelessness in South Australia report?

2. What steps has the minister taken to redirect funds as recommended by the report?

3. Will the minister provide details of the existing areas which will be affected by the transfer of funds as recommended?

4. Has the minister identified any suitable city buildings that would provide accommodation for students, artists and homeless people as suggested by Roseanne Haggerty?

5. What amount of money is the government prepared to spend in order to address the problem of homelessness?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): On behalf of the leader, I will refer the honourable member's question to the Premier in another place and bring back a reply.

BUSES, MURRAY BRIDGE

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

Leave granted.

The Hon. D.W. RIDGWAY: Recently, I was sent a copy of the Murray Bridge integrated transport study preliminary report. There has been some coverage of the issue of funding for regional bus services in *The Murray Valley Standard* and whether Murray Bridge should move towards a dial-a-ride service. In fact, there was a letter to the editor from the Minister for Transport (Hon. Patrick Conlon) saying that that was all Murray Bridge was going to get—a dial-a-ride service. On page 37 of the report, appendix 6 shows the cost to the Department of Transport, Energy and Infrastructure for a dial-a-ride service. Currently, the Department of Transport, Energy and Infrastructure pays $148 000 per annum to run bus services in the rural city of Murray Bridge.

The dial-a-ride option would cost the department $175 000 per annum. The cost of providing school services is $110 000; and the current cost of providing the town service is $113 000. My questions are:

1. Currently the town service costs $113 000 according to the figures in the Murray Bridge integrated transport study, but under the government's preferred option only $65 000 will be left for the town service. Will the government give an assurance that the service delivery for Murray Bridge residents will not be compromised?

2. Who within the rural city of Murray requested the Murray Bridge integrated transport study?

3. Was the study area confined to the city of Murray Bridge area, instead of incorporating the entire rural city of Murray Bridge?

4. On page 15 of the report, it states that approximately 5 per cent of households in Murray Bridge do not have access to telephones, which means that they will not be able to access a dial-a-ride service. Murray Bridge has approximately 13 000 residents, meaning that more than 600 residents (according to the government's estimates) will be without transport services. What options is the government canvassing to assist these people?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): If 600 people do not have access to telephones, it does not necessarily mean that they will be without transport services, but that is another matter.

Members interjecting:

The Hon. P. HOLLOWAY: There are other ways of doing it. I will refer those questions to the Minister for Transport in another place and bring back a reply.

The Hon. D.W. Ridgway: You really do look after the country!

The Hon. P. HOLLOWAY: We do, yes. I hope that comment goes on the record. The honourable member says that we really do look after the country—and we do. In fact, enormous benefits have come from this government. We look after all South Australians, and we particularly look after our rural constituents.

MENTAL HEALTH

The Hon. G.E. GAGO: My question is to the Minister for Mental Health and Substance Abuse. I understand that the government is funding a new peer support program in the

Central Northern Adelaide Service area for people with mental illnesses. Will the minister inform the chamber how this initiative will assist people?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I thank the honourable member for her question. Today, I am delighted to announce a new and innovative program to provide peer support for mental health consumers and carers, particularly in the northern suburbs. Some $500 000 has been allocated to the peer support program that places peer workers and care consultants in emergency departments and inpatient units. As part of the mental health teams, these workers will be based at Modbury Public Hospital, Queen Elizabeth Hospital, Lyell McEwin Health Service, Royal Adelaide Hospital and Glenside. Peer workers will be people who have a mental illness and who are currently well and managing their condition, as well as carers who have first-hand experience living with people with a mental illness. They will act as role models and be trained to provide coaching for life skills and self-management, including relapse prevention.

The peer workers will benefit also by experiencing a meaningful sense of belonging and attracting a positive sense of identity while contributing to the broader community. Recruitment will get under way shortly, with the program expected to be in place in January. There will be approximately 12 to 14 part-time workers. The number of workers will depend on the number of hours worked by each person, which will be negotiated according to their needs for managing to their own condition or care arrangements.

Two of the positions are specifically identified for Aboriginal peer support workers. The aim will be to have peer workers available in Central Northern Adelaide Health Service hospitals seven days a week. The Mental Illness Fellowship of South Australia, the Baptist Community Services Council and Carers SA have been funded to provide ongoing training over the next two years for these workers. The peer workers will meet together regularly to be provided with mental support services for themselves. These peer workers will be employed to provide support in living skills to people with complex illnesses, such as schizophrenia and bipolar disorder.

This innovative initiative is yet another example of the Rann government's returning funding to front-line services for mental health. The $500 000 program is part of the extra $5 million per year agreement with the Australian Nurses Federation to provide more services in local communities to keep people well.

RUBBISH DUMPING

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Environment and Conservation, a question about strategies to deal with roadside dumping of rubbish.

Leave granted.

The Hon. SANDRA KANCK: My office has been contacted by a constituent concerned about people using public and private land as no-cost dumping grounds. The particular complaint relates to the suburb of Brompton, where rubbish has been dumped along the corridor of the Outer Harbor railway line on an empty Housing Trust block, a number of privately-owned blocks and the footpaths of several streets. I am informed that months can pass before the rubbish is cleared from the public spaces, including the footpaths. My travels around Adelaide confirm this is not just a local problem. My questions are:

1. Who is responsible for removing illegally dumped rubbish from footpaths, railway lines and Housing Trust land; and what penalties apply to people who dump rubbish?

2. Is any assistance provided to private land-holders who are the subject of unwanted dumping; and, if not, what legal remedies do they have?

3. What is the state government's strategy for reducing the amount of illegal dumping on public and private land?

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

SPEED CAMERAS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Transport, questions about the operation of speed cameras.

Leave granted.

The Hon. T.G. CAMERON: Recent figures released to Terry Mulder (Victorian shadow minister for transport) under freedom of information laws show that Victorian speed cameras are almost never used in the early hours, despite young drivers being more at risk of collision then. Instead, the cameras are used during the high volume daylight hours when more vehicles are on the roads and more speeding fines can be issued. Mr Mulder said that the government was putting operators' penalty rates ahead of lives, and that the government was using the cameras to raise as much revenue as possible.

The figures give a snapshot of speed camera use for one week from 1 July 2005, and show that of 589 mobile speed camera sessions during the week only four were conducted in the early hours of the morning and at dawn. There were no sessions at all recorded between 2 a.m. and 5 a.m. This is despite a recent government discussion paper into young drivers showing that inexperienced drivers faced a much greater risk of dying between 10 p.m. and 6 a.m. The figures show the risk rises from .02 per million kilometres driven to .12 per million kilometres after 10 p.m.—a significant increase. The chances of being involved in a casualty accident rose from almost 2.1 million kilometres to 4.5 million kilometres. According to the government's discussion paper, novice drivers were particularly disadvantaged when their vision was compromised by darkness. Mr Mulder said that only three speed cameras operated anywhere in Victoria after 11 p.m. during the sample week. My questions to the minister are:

1. As a percentage of total operational use, how frequently are South Australian speed cameras used between the hours of 10 p.m. and 6 a.m.?

2. For the period 2004-05, how many operating hours were speed cameras deployed during 6 a.m. to 2 p.m., 2 p.m. to 10 p.m., and 10 p.m. to 6 a.m.?

3. Finally, how many deaths, serious accidents or crashes occurred on South Australian roads between the hours of 10 p.m. and 6 p.m. for the period 2004-05?

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

MENTAL HEALTH

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about mental health.

Leave granted.

The Hon. J.M.A. LENSINK: Correspondence has been referred to previously from a GP located at Mount Barker, Dr Paul Lehmann, and I am also in receipt of some of his correspondence, some of which has been quoted. He sent an email to a number of members on 7 November, including to the minister concerned, and said:

> Please find attached a letter to John Hill that I have also posted today. It has been over three months since I wrote to Lea Stevens and about four months since I wrote to Jonathon Brayley without response. I hope the new health minister is more approachable.

In the contents of the letter he refers to the lack of community and mental health resources in the Adelaide Hills and to a position within CAMHS, which has now thankfully been made permanent. He also refers to the research that has been referred to previously in this chamber about population based funding that shows that the Mount Barker region is severely underfunded. The statistics show that the amount of services not just for young people but also for adults with mental health disorders is well below average on a national and metropolitan basis.

Dr Lehmann states that the Labor government was elected on a health, education and policing platform, and the previous health minister, Lea Stevens, had consistently stated that mental health was her No.1 priority. He says further down:

> I have written to Jonathon Brayley, the state's Mental Health Director, on 16 June 2005. Despite having subsequently having meet with him, I have received no response in writing. Unfortunately the meeting was unproductive as Dr Brayley was being minded by Danny Broderick at the time.

I understand he was one of the health minister's advisers at the time. He continues:

> I subsequently wrote to both Lea Stevens and Carmel Zollo on 2 August. . .

The figures that he has quoted show that the full-time equivalents in the Adelaide Hills area for the 0 to 18 group are at three. However, if you were to apply the national average it should be 6.3 and for the metropolitan area 8.9, and then different figures again for the adults. As a total, the actual FTEs in the Adelaide Hills is 7.4, but when applying the national average it should be 22.1, and for the metropolitan area 31.7. I do understand that the minister has since met with Dr Lehmann, but my questions to the minister are:

1. Does she support the population based funding model for mental health?

2. Is it this government's practice for senior public servants to require political appointees as minders when they meet with other Public Service officers or, indeed, with other stakeholders in the community?

3. Has Dr Lehmann now received a formal reply from either Dr John Brayley or any government minister?

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): The honourable member is correct, I did have the opportunity to meet Dr Lehmann last week, and I commended him for his passion.

The Hon. R.D. Lawson: How patronising!

The Hon. CARMEL ZOLLO: I am not being patronising at all. I think that if the Hon. Mr Lawson met him he would realise that he is very passionate and very much believes in what he is doing. I have no idea why the honourable member says that. It is my understanding also that Dr John Brayley has responded formally to Dr Lehmann. The paper that he espouses is a population health model funding allocation. Such an approach, of course, was recommended in the Generational Health Review.

The department, of course, is developing along that model. This will replace the historical systems of resource allocation. In discussions with him, I am certain that we also talked about the fact that South Australia is reasonably unique in that, essentially, it is a city/state, and that there will always be some specialist services that country South Australians will have to access in Adelaide. I think that most members would probably recognise that. In relation to some of the statistical comparisons that he was making, I understand that the Queensland benchmarks to which Dr Lehmann refers are targets which, I am sure, that state does hope to achieve but which they have not yet achieved.

The figures for the Child and Adolescent Mental Health Service (CAMHS) show that South Australia's actual statewide performance is favourable compared to Queensland; although we have been unable to obtain that state's metro/rural breakdown.

I also have to say that looking at such data alone is limited because targets can be arbitrary. Different states have markedly different population patterns in rural areas, with larger populations and cities in the country. Issues such as remoteness, social disadvantage, availability of alternative services and proximity to other specialist services also need some consideration.

As I said, I was really very pleased to have the opportunity to meet with him. We also talked about the $25 million one-off funding and the $6.44 million allocated for the benefit of country areas in South Australia. I know that there has been funding for mental health services in the Hills Mallee Southern region. The NGO 'Life without Barriers' has received $1.03 million to provide services in the Hills Mallee Southern area, which is from that $25 million NGO funding.

In addition, $175 000 per annum was allocated to UnitingCare Wesley Adelaide in the Hills Mallee Southern. That is reallocated funds within the department. Other new funds for country South Australia include $600 000 to support additional mental health workers in country South Australia, which was allocated prior to Dr Lehmann even meeting me. I understand that a third position has been created by the Southern Adelaide Health Services for CAMHS services at Mount Barker.

As the honourable member knows, I recently announced four-year funding of $1.9 million to engage those six additional country child and adolescent workers. I am certain that that will improve outcomes for young people in regional South Australia. That recruitment has been given high priority by this government. We have also funded $330 000 for the expansion of the rural and remote triage service which will assist country South Australia. I could continue. I also noticed that $175 000 will fund an expansion of the after-hours service at the Women's and Children's Hospital which provides telephone advice for practitioners right across our state. Another very good initiative is the statewide funding of $3.25 million to the South Australian divisions of general practice. That will be spent across South Australia, including the Adelaide Hills division of general practitioners, to improve mental health care services and shared care between local GPs and local mental health workers.

The Hon. J.M.A. Lensink: What about minders?

The Hon. CARMEL ZOLLO: When the honourable member means minders, I assume that the minister's chief of staff was with the minister when she met Dr Lehmann. Why she would find that extraordinary, I have no idea.

The Hon. J.M.A. Lensink: It was Dr Brayley.

The Hon. CARMEL ZOLLO: I do not know whether the minister was there at the time at all.

The Hon. J.M.A. Lensink: No; it was not. It was a meeting with Dr Brayley.

The Hon. CARMEL ZOLLO: I do not think I need to worry about nonsense like that, quite frankly. That is nonsense.

TERRORISM (PREVENTATIVE DETENTION) AMENDMENT BILL

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

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

That this bill be now read a second time.

I seek leave to have the second reading speech and explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

The Council of Australian Governments (COAG) held a special meeting on Counter-Terrorism on 27 September 2005. The communiqué contained many policy announcements. Some of the most urgent of these were a pledge of change to the law on counter terrorism. This part of the communiqué read:

> "COAG considered the evolving security environment in the context of the terrorist attacks in London in July 2005 and agreed that there is a clear case for Australia's counter-terrorism laws to be strengthened. Leaders agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism and contain appropriate safeguards against abuse, such as parliamentary and judicial review, and be exercised in a way that is evidence-based, intelligence-led and proportionate. Leaders also agreed that COAG would review the new laws after five years and that they would sunset after 10 years.
>
> COAG agreed to the Commonwealth *Criminal Code* being amended to enable Australia better to deter and prevent potential acts of terrorism and prosecute where these occur. This includes amendments to provide for control orders and preventative detention for up to 48 hours to restrict the movement of those who pose a terrorist risk to the community. The Commonwealth's ability to proscribe terrorist organisations will be expanded to include organisations that advocate terrorism. Other improvements will be made, including improvements to offences about the financing of terrorism.
>
> State and Territory leaders agreed to enact legislation to give effect to measures which, because of constitutional constraints, the Commonwealth could not enact, including preventative detention for up to 14 days and stop, question and search powers in areas such as transport hubs and places of mass gatherings. COAG noted that most States and Territories already had or had announced stop, question and search powers.

Commitment to that part of the communiqué, which deals with strengthening counter-terrorism laws, obliged States and Territories, including South Australia, to legislate in three general areas of criminal law and police powers. Those areas are:

- special police powers to stop and search people, places and things;
- special police powers to search items carried or possessed by people at or entering places of mass gatherings and transport hubs; and
- preventative detention laws which "top up" Commonwealth proposals where there is advice that the Commonwealth (but not the States) lack constitutional power to legislate.

The first two of those three commitments are contained in the *Terrorism (Police Powers) Bill 2005* currently before the Parliament. This Bill deals solely with the third of those pledges: preventative detention.

The COAG communiqué lacked detail, for practical reasons. After the COAG agreement, Commonwealth, State and Territory officers went to work on draft provisions, exploring every detail of a possible draft Bill, the results of which the Prime Minister wanted before the Australian Parliament by November 1, 2005. South Australia had, as we all know, a very particular problem. With so few sitting weeks before the break and then an election looming, there was little legislative time and space in which to accomplish the pledge—unless it was to be delayed for months. As the world knows, a first draft was produced in early October. The world also knows it because Chief Minister Stanhope of the ACT put it on his website. The Commonwealth was not amused. But the complexity of the task ahead was revealed for all to see.

The pledge of the States and Territories was about only one part (albeit an important part) of the draft Bill. That part was the provisions on preventative detention. Put another way, perhaps to the comfort of all States and Territories, they were not called upon to enact State or Territory versions of control orders or sedition offences, nor the extension of the notions of terrorist act and terrorist organization. Those matters were left solely to the Commonwealth.

However, the Commonwealth determined to enact a regime of preventative detention modelled on that in the United Kingdom. The object of a preventative detention order is that a person is to be detained without charge, trial or any other official reason for a short period to either (a) prevent an imminent terrorist attack occurring or (b) preserve evidence of, or relating to, a recent terrorist attack. The Commonwealth had advice that it could not constitutionally legislate for the preventative detention of a person for more than 48 hours. The primary reason for this lay in the provisions of Chapter III of the Commonwealth *Constitution* and its interpretation by the High Court. Stripped of technicalities, the effect of the advice was that the High Court was likely to uphold preventative detention for the purposes outlined for a short period, but the longer the period the more likely that it would be held to be punitive rather than preventative—and hence unconstitutional as authorising the use of judicial power to punish without the benefit of judicial due process as required by Chapter III. Forty-eight hours was a rough guess of where the High Court might put the boundary. However, the Commonwealth wanted detention for 14 days to be possible (as was so in the United Kingdom) and hence the communiqué obliged the States and Territories to take up the slack. It is fair to say, in general terms, that the States do not suffer under quite the same constitutional strictures as the Commonwealth in this respect, although the extent to which this is so is conjectural and one result of this legislation may be a detailed exploration of that proposition. Constitutionally, though, this State Bill makes it quite clear that a Supreme Court Judge acts in his or her personal capacity only, not as a court, and always with that person's continuing consent to act.

This Bill, the *Terrorism (Preventative Detention) Bill 2005,* has been drafted with close reference to successive Commonwealth drafts of its Bill, called (to date) the *Anti-Terrorism Bill 2005*. The reasons for this are clear and compelling. Although it is true that the decision was made early in the process that the States and Territories should enact free-standing preventative-detention legislation that did not require Commonwealth detention as a pre-condition for State detention, that eventuality could not be ruled out. Indeed, it may be regarded as probable that Commonwealth detainees could well become State detainees. Not only would it make no sense at all for the States and Territories to have differently operating regimes, but it would also be nonsense for each State and the Commonwealth to have different regimes. That does not mean word-for-word transcription. The States require some legal changes—for example, complaints against police are made to the Ombudsman in the Commonwealth but to the Police Complaints Authority in South Australia. Judicial review processes are different, as are the jurisdictions of courts. Constitutional requirements are different (as already remarked), and so on. In addition, house-drafting styles differ and some Commonwealth refinements are unnecessary at a State level. Most important of all, though, was that it was necessary to bear steadily in mind that detention of this kind for 14 days was a

different proposition than detention for a comparatively mere 48 hours at most.

The Premiers collectively fought for and won concessions to civil liberties in the State version of the Bill. These included, most importantly, judicial review, a sunset clause and reversal of the Commonwealth position on what became known as the "shoot to kill" power."

The Bill proposes the enactment of a free-standing State preventative-detention regime. The Bill contemplates that either a senior police officer or a Judge of the Supreme Court or District Court, a retired Judge of the Supreme Court or District Court, may make a preventative detention order but severely restricts the occasions on which a senior police officer may do so. The policy of the Bill is that, so far as is reasonably practical, all applications should be issued by an officer of judicial rank. That officer is an officer who acts in his or her personal capacity and by written consent and does not act as a Court or as a Judge of a Court. The occasions on which a police officer of or above the rank of Assistant Commissioner can make an order are if (a) there is an urgent need for the order; and (b) it is not reasonably practicable in the circumstances to have the application for the order dealt with by a Judge. Even so, such a police issued order is limited to 24 hours.

There are two grounds on which an order can be made. These might helpfully be thought of as orders of a preventive type and orders of a reactive type. The first (preventive order) is that the issuing authority or officer:

(a) suspects on reasonable grounds that the person—

(i) will engage in a terrorist act; or

(ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(iii) has done an act in preparation for, or planning, a terrorist act; and

(b) is satisfied on reasonable grounds that making the order would substantially assist in preventing a terrorist act occurring; and

(c) is satisfied on reasonable grounds that detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose; and

in addition, the terrorist act must be one that is imminent; and must be one that is expected to occur, in any event, at some time in the next 14 days.

The second type (reactive order) can be issued if:

(a) a terrorist act has occurred within the last 28 days; and

(b) the issuing authority or officer is satisfied on reasonable grounds that it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and

(c) the issuing authority or officer is satisfied on reasonable grounds that detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to.

The order may be made for any period by a judicial officer up to a limit of 14 days. There are detailed provisions designed to ensure that orders cannot be piggy-backed onto other orders to by-pass this essential restriction. What is more, the 14 days includes any time spent in preventative detention under any corresponding Commonwealth or State preventative detention law. The 14 days cannot be extended by jurisdiction hopping either. There are close restrictions placed on the capacity of the detaining authorities to question the detainee. Obviously, it is not possible to prohibit all questioning. The question "would you like access to your rights?" would seem, in most cases at least, innocuous enough and there has to be scope for it. However, if police want to question (in the legal sense) a suspect who is being held in preventative detention, they can take that suspect out of preventative detention and treat that person as an ordinary suspect, in which case the ordinary rules apply. If that happens, investigative time elapsed counts as time in preventative detention. That includes time counting as investigative time under ASIO legislation. If the Commonwealth authorities want to invoke that power at any time, they can do so and time continues to run.

The Bill contains things called prohibited-contact orders. These are orders that are ancillary to preventative detention orders and are made in the same way. The effect of the order is that the person named in the order is prohibited from making contact with a person or persons named in the order for the currency of the order (which runs with the accompanying preventative detention order). The prohibited contact order cannot run for longer than the preventative detention order to which it relates. The purpose of such an order (and other disclosure offences, detailed below) is obvious. It is to prevent communication between a cabal that it has been rumbled.

After detailed negotiation with the Commonwealth, and other States and Territories, there has been agreement that the drastic nature of the consequences of a successful application under this statute should be leavened by as effective a provision for formal judicial oversight as possible. There is a general provision preserving existing general rights of action at law. In addition, a Part of the Bill has been included which requires that as soon as possible after a preventative detention order is made, the police officer detaining the subject must bring him or her before the Supreme Court acting in its full judicial capacity for review of the order. This review process can be expedited by audio or video-link. The Court is given wide ranging powers to make any orders about the detention that it thinks fit. It is intended that this be a full inter partes review of the order. It should not escape notice that, in order to aid this process, the detaining authority is obliged to provide the detainee with a copy of the detention order and a summary of the grounds on which the order is made. In addition, the detainee must be informed of the existence of this review procedure.

During the course of this heated debate, necessarily constrained by time, there has been controversy over the authorisation of the use of force in enforcing a preventative-detention order. The Bill contains a careful provision about this. There was much said about shoot-to-kill. Whatever may be so about the Commonwealth Bill (and that matter is not addressed here at all), the State Bill is consistent with the pledge made by the Premier. There is an injunction about the use of force generally confining it to that which is necessary and reasonable, and reference to the lawful use of force in self-defence and defence of another. That is designed as reference to the existing and much debated provisions on the *Criminal Law Consolidation Act* that have been considered by Parliament more than once since 1991. Whatever the newly-drafted Commonwealth provisions might mean, it is intended that the State provisions be clear. The existing State law of self-defence and defence of another applies to a police officer as it does now. The existing State law of the use of force in making an arrest applies to a police officer as it does now. The enforcement of a State detention order under this Bill is not, in and of itself, the making of an arrest. It is a general State offence to resist or hinder a State police officer in the execution of his or her duty. That will continue to be so. That offence can be enforced—as now. The existing law prevails.

These general provisions are supplemented by much detail. This is a complicated measure. The detail is helpfully outlined in the clause notes. What follows is a general indication of topics which may be of interest or otherwise attract attention.

- There are special provisions for people under the age of 16 and 18 years of age. It is true that any age is in that sense arbitrary. The Bill tries to take a principled and consistent position about it.
- There are various and very detailed provisions about what must be in applications for, and in orders made as a result of those applications. All have been carefully thought about for the protection of the person the subject of the orders.
- There are relevant and limited authority to enforce the provisions, including power to demand identification, searches and the power to break and enter premises.
- Safeguards include the requirement to explain a lengthy range of matters to the person detained, the period of detention and any other extension of the order, the supply of a copy of the order, the requirement of humane treatment, the right to contact family members, a lawyer and the Police Complaints Authority, and serious offences of breaching the protections inhering to the detainee under the Bill.
- On the other hand, it cannot be denied that there are severe offences attached to the unauthorised disclosure of information about the fact of detention (and its character) that is not within the ambit of the protections offered by the Bill. There are serious attempts within these offences to provide a measure of protection to the legitimate interests of the person detained given the hurdles that have already been jumped to authorise such an extraordinary detention.
- There is a serious attempt to give an annual report meaningful content and the legislation sunsets after 10 years.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Object

The object of the measure is to allow a person to be taken into custody and detained for a short period of time in order to—

- prevent an imminent terrorist act occurring; or
- preserve evidence of, or relating to, a recent terrorist act.

A terrorist act is defined by reference to Part 5.3 of the Criminal Code of the Commonwealth.

3—Interpretation

Definitions necessary for the measure are set out in this clause.

4—Issuing authorities and limitation on powers

The issuing authority for a preventative detention order is—

- a Supreme Court or District Court Judge, or retired Supreme Court or District Court Judge, appointed by the Minister with consent;
- the Police Commissioner, Deputy Police Commissioner or an Assistant Commissioner, but only if—
- there is an urgent need for the order; and
- it is not reasonably practicable in the circumstances to have the application for a preventative detention order dealt with by a Judge.

The powers of a senior police officer are limited:

- the officer may only authorise detention up to a maximum period of detention ending 24 hours after the subject is first taken into custody under the order;
- the officer may not exercise, in relation to the subject, any other power conferred on an issuing authority under the measure after the end of the maximum detention period except the power to revoke an order.

5—Police officer detaining person under a preventative detention order

This clause places responsibility on the most senior of a number of police officers involved in the detention of a person under a preventative detention order.

Part 2—Preventative detention orders

6—Basis for applying for, and making, preventative detention orders

There are 2 grounds for an application for and the making of a preventative detention order:

- the police officer and issuing authority—
- must suspect on reasonable grounds that the subject—
- will engage in an imminent terrorist act; or
- possesses a thing that is connected with the preparation for, or the engagement of a person in, an imminent terrorist act; or
- has done an act in preparation for, or planning, an imminent terrorist act; and

(An imminent terrorist act must also be one that is expected to occur, in any event, at some time in the next 14 days.)

- must be satisfied on reasonable grounds that—
- making the order would substantially assist in preventing an imminent terrorist act occurring; and
- detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for that purpose; or
- if a terrorist act has occurred within the last 28 days, the police officer and issuing authority must be satisfied on reasonable grounds that—
- it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and
- detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for that purpose.

7—No preventative detention order in relation to person under 16 years of age

An order cannot be made in relation to a child under 16 and, if a police officer who is detaining a person under an order is satisfied on reasonable grounds that the person is under 16, the person must be released.

8—Restrictions on multiple preventative detention orders

Only 1 order for detention of a particular person may be made to prevent the same terrorist act within a particular period. A further order may be made to prevent a different terrorist act, but only if relevant information became available to put before an issuing authority after the making of the earlier order.

Only 1 order for detention of a particular person may be made to preserve evidence of or relating to the same terrorist act.

The period for which a person may be detained under a preventative detention order may not be extended by using a combination of orders from different jurisdictions.

9—Application for preventative detention order

This clause sets out what must be in an application for an order and requires the information in the application to be sworn or affirmed by the police officer.

10—Making of preventative detention order

A preventative detention order is an order that a specified person be taken into custody and detained for a specified period. If the order is issued by a Judge, the period may be up to 14 days. If the order is issued by a senior police officer, the period may be up to 24 hours.

11—Duration of preventative detention order

A person may only be taken into custody under an order within 48 hours of the making of the order.

12—Extension of preventative detention order

If an order is issued by a senior police officer for a period of custody that is less than 24 hours or an order is issued by a Judge for a period of custody that is less than 14 days, the order for detention may be extended by an issuing authority on application if the issuing authority is satisfied on reasonable grounds that is reasonably necessary for the purposes of the order.

The order must still cease to have effect—

- if the extension is granted by a senior police officer—no later than 24 hours after the person is first taken into custody;
- if the extension is granted by a Judge—no later than 14 days after the person is first taken into custody.

13—Prohibited contact order (person in relation to whom preventative detention order is being sought)

A prohibited contact order may be applied for and made in conjunction with a preventative detention order if the issuing authority is satisfied on reasonable grounds that it will assist in achieving the purpose of the preventative detention order. The order prohibits the detainee, while being detained, from contacting a specified person.

14—Prohibited contact order (person in relation to whom preventative detention order is already in force)

A prohibited contact order may also be sought subsequent to the making of a preventative detention order.

15—Revocation of preventative detention order or prohibited contact order

This clause provides for revocation of an order if the grounds on which the order was made cease to exist.

16—Status of person making preventative detention order

An issuing authority is given the same protection and immunity as a Judge of the Supreme Court.

Functions conferred on a judge are conferred on the judge in a personal capacity and not as a court or a member of a court.

Part 3—Review of preventative detention orders

17—Review of preventative detention order

As soon as practicable after a person is detained under a preventative detention order, the police officer detaining the person must bring him or her before the Supreme Court for a review of the order.

The Supreme Court may, however, relieve the police officer from the obligation to bring the subject before the Court and conduct the review proceedings by audio/videolink or audiolink if satisfied that is it appropriate in the circumstances to do so.

On a review the Supreme Court may exercise any of the following powers:

- it may quash the order and release the subject from detention;
- it may remit the matter to the issuing authority with a direction to reduce the period of detention under the order or not to extend the period of detention beyond a specified limitation;
- it may award compensation against the Crown if satisfied that the subject has been improperly detained;
- it may give directions about the issue of further preventative detention orders against the subject.

18—Review not to affect extension etc of preventative detention order

Subject to any direction made in the review proceedings by the Supreme Court, an issuing authority may, during the course of those proceedings, exercise powers under this Act—

- to extend or further extend the preventative detention order; or
- to revoke the order.

Subject to any direction made in the review proceedings by the Supreme Court, the police officer detaining the subject may exercise powers under this Act to release the subject from detention during the course of the review proceedings.

Part 4—Carrying out preventative detention orders

19—Power to detain person under preventative detention order

Any police officer may take a person into custody and detain the person under a preventative detention order.

When a preventative detention order is made, the Commissioner of Police must nominate a senior police officer to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order. The detainee, the detainee's lawyer, and a parent/guardian or other person with whom a detainee who is a child or is incapable of managing his or her affairs has had contact, may make representations to the nominated senior police officer.

20—Endorsement of order with date and time person taken into custody

The order must be endorsed with the date and time when the person is first taken into custody.

21—Requirement to provide name etc

A police officer may require a person who the police officer believes on reasonable grounds may be able to assist in executing a preventative detention order to provide his or her name and address.

22—Power to enter premises

A police officer may enter premises using necessary and reasonable force to search for a person to be detained under an order if the police officer believes on reasonable grounds that the person is on the premises.

However, a dwelling house may not be entered between 9pm and 6am unless the police officer believes on reasonable grounds that—

- it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or
- it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

23—Use of force

This clause limits the police officer in respect of the force used or the extent to which the person is subjected to indignity, but recognises that it may be necessary to use force in self-defence or defence of another.

24—Power to conduct a frisk search

A police officer may conduct a frisk search of a person taken into custody under a preventative detention order if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items.

A frisk search is—

- a search of a person conducted by quickly running the hands over the person's outer garments; and
- an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

A seizable item is anything that—

- would present a danger to a person; or
- could be used to assist a person to escape from lawful custody; or
- could be used to contact another person or to operate a device remotely.

25—Power to conduct an ordinary search

A police officer may conduct an ordinary search of a person taken into custody under a preventative detention order if the police officer suspects on reasonable grounds that the person is carrying evidence of, or relating to, a terrorist act or a seizable item.

An ordinary search is a search of a person or of articles in the possession of a person that may include—

- requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
- an examination of those items.

26—Warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979*

A police officer detaining a person under a preventative detention order must take steps as necessary (including temporarily releasing the person from detention) to ensure that the person may be dealt with in accordance with a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979*.

27—Release of person from preventative detention

A police officer detaining a person under a preventative detention order may release the person from detention. Written notice of the release must be given to the person unless the person is to be dealt with under an ASIO warrant or for a suspected offence. If the period of detention has not expired, the person may be taken back into custody under the order after being released (ie the release can be temporary).

28—Arrangement for detainee to be held in prison or remand centre

A senior police officer may arrange for a detainee to be detained at a prison or remand centre.

Part 5—Informing person detained about preventative detention order

29—Effect of preventative detention order to be explained to person detained

This clause sets out matters that must be explained by a police officer to a person being taken into custody under an order.

It is enough if the police officer informs the person in substance of these matters. An interpreter must be provided if the police officer has reasonable grounds to believe that the person is unable to communicate with reasonable fluency in the English language.

30—Person being detained to be informed of extension of preventative detention order

A police officer detaining a person under an order must inform the person of any extension of the order.

31—Compliance with obligations to inform

A police officer need not comply with the requirements to inform a person detained under an order if the actions of the detainee make it impracticable to do so.

32—Copy of preventative detention order and summary of grounds

A detainee is to be given a copy of the order, a summary of the grounds on which the order is made and of any extension of the order and can request that a copy be given to a lawyer. There is no requirement to provide a copy of a prohibited contact order.

Part 6—Treatment of person detained

33—Humane treatment of person being detained

A person being taken into custody, or being detained, under a preventative detention order—

- must be treated with humanity and with respect for human dignity; and
- must not be subjected to cruel, inhuman or degrading treatment,

by anyone exercising authority under the order or implementing or enforcing the order.

34—Restriction on contact with other people

Except as set out in the measure, while a person is being detained under a preventative detention order, the person—

- is not entitled to contact another person; and
- may be prevented from contacting another person.

35—Contacting family members etc

The person being detained is entitled to contact—

- 1 of his or her family members; and
- if he or she—
  - lives with another person and that other person is not a family member of the person being detained; or
  - lives with other people and those other people are not family members of the person being detained,

  that other person or 1 of those other people; and
- if he or she is employed—his or her employer; and
- if he or she employs people in a business—1 of the people he or she employs in that business; and

· if he or she engages in a business together with another person or other people—that other person or 1 of those other people; and

· if the police officer detaining the person agrees to the person contacting another person—that other person,

by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being.

A prohibited contact order may override this entitlement in relation to particular family members.

36—Contacting Police Complaints Authority

The person being detained is entitled to contact the Police Complaints Authority in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

37—Contacting lawyer

The person being detained is entitled to contact a lawyer but solely for the purpose of—

· obtaining advice from the lawyer about the person's legal rights in relation to—

· the preventative detention order; or

· the treatment of the person in connection with the person's detention under the order; or

· arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the review of the preventative detention order by the Supreme Court; or

· arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a court for a remedy relating to—

· the preventative detention order; or

· the treatment of the person in connection with the person's detention under the order; or

· arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Police Complaints Authority under the *Police (Complaints and Disciplinary Proceedings) Act 1985* in relation to—

· the application for, or the making of, the preventative detention order; or

· the treatment of the person by a police officer in connection with the person's detention under the order; or

· arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.

Certain assistance must be provided in relation to choosing a lawyer. A prohibited contact order may override this entitlement in relation to a particular lawyer.

38—Monitoring contact with family members etc or lawyer

Contact with family members or a lawyer must be monitored by a police officer. The contact may only be in a language other than English if an interpreter is present.

39—Special contact rules for person under 18 or incapable of managing own affairs

A child or person who is incapable of managing his or her affairs is entitled to have contact with—

· a parent or guardian of the person; or

· another person who—

· is able to represent the person's interests; and

· is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and

· is not a police officer; and

· is not employed in duties related to the administration of the police force; and

· is not a member (however described) of a police force of the Commonwealth, another State or a Territory; and

· is not an officer or employee of the Australian Security Intelligence Organisation.

In this case the person is not limited to telling the parent etc that he or she is safe and unable to be contacted but may inform the parent etc about the order and the period for which the person is detained. In addition the contact may be through a visit of up to 2 hours each day or such longer period as is specified in the order. A prohibited contact order may override this entitlement.

40—Entitlement to contact subject to prohibited contact order

A prohibited contact order may override the entitlements to contact particular family members or particular lawyers.

41—Disclosure offences

Offences are established in relation to intentional disclosure of matters relating to preventative detention orders. Detainees, lawyers, parents/guardians and interpreters are all obliged not to disclose information relating to preventative detention orders. Police officers who monitor contact with a lawyer are obliged not to disclose information communicated in the course of the contact.

42—Questioning of person prohibited while person is detained

The only questioning that can take place during detention is questioning for the purposes of—

· determining whether the person is the person specified in the order; or

· ensuring the safety and well being of the person being detained; or

· allowing the police officer to comply with a requirement of the measure in relation to the person's detention under the order.

43—Taking identification material

Identification material may be taken from a detainee who is over 18 years of age and capable of managing his or her affairs if the person consents.

Identification material may be taken from a detainee who is under 18 years of age and capable of managing his or her affairs if—

· the person consents to the taking of identification material and either—

· a parent, guardian or other appropriate person as defined consents; or

· a Magistrate so orders; or

· a parent, guardian or other appropriate person as defined consents and a Magistrate so orders.

Identification material may be taken by a sergeant or police officer of higher rank from a detainee who is under 18 years of age or is incapable of managing his or her affairs if the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order and a Magistrate so orders, but then only in the presence of a parent or guardian or another appropriate person.

Identification material may be taken by a sergeant or police officer of higher rank from a detainee who is over 18 years of age and capable of managing his or her affairs without the detainee's consent if the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.

44—Use of identification material

The identification material may be used only for the purpose of determining whether the person is the person specified in the order. The material must be destroyed after 12 months if not then required for specified purposes.

45—Offences of contravening safeguards

An intentional contravention of the listed provisions is an offence.

Part 7—Miscellaneous

46—Nature of functions of Magistrate

The functions of a Magistrate in relation to the taking of identification material are conferred on the Magistrate in a personal capacity and not as a court or a member of a court. The Magistrate is given the same protection and immunity as if the function were performed as, or as a member of, the Magistrates Court.

47—Supreme Court to establish procedures for ensuring secrecy of proceedings under this Act while terrorist threat exists

Despite any rule or practice to the contrary, proceedings under the measure are not to be conducted in public nor publicised in any public list of the Supreme Court's business.

The Supreme Court must establish appropriate procedures to ensure that information about—

· the Court's proceedings on review of a preventative detention order under the measure; and

· any other proceedings brought before the Court in relation to a preventative detention order or a prohibited contact order;

is confined within the narrowest possible limits.

The Court is not, however, required to suppress the publication of information if—

· the Minister authorises its publication; or

· the Court determines that the publication of the information could not conceivably prejudice national security and that its publication should be authorised in the public interest.

48—Annual report

An annual report is required in relation to the following:

· the number of preventative detention orders made during the year;

· whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;

· particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to—

· the Police Complaints Authority; or

· the internal investigation division of the police force;

· the number of prohibited contact orders made during the year.

49—Police Complaints Authority's functions and powers not limited

The measure does not derogate from a function or power of the Police Complaints Authority under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

50—Law relating to legal professional privilege not affected

The measure does not affect the law relating to legal professional privilege.

51—Legal proceedings in relation to preventative detention orders

Proceedings may be brought in a court for a remedy in relation to—

· a preventative detention order; or

· the treatment of a person in connection with the person's detention under such an order.

52—Sunset provision

A preventative detention order, or a prohibited contact order, that is in force at the end of 10 years after the day on which the measure commences ceases to be in force at that time.

A preventative detention order, and a prohibited contact order, cannot be applied for, or made, after the end of 10 years after the day on which the measure commences.

The Hon. R.I. LUCAS secured the adjournment of the debate.

TERRORISM (POLICE POWERS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from 3218.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to speak briefly on the legislation. The carriage of the legislation appropriately rests with my colleague the Hon. Robert Lawson who, in his inimitable fashion, will handle it magnificently—the detail, in particular. Having read some of the contributions in the House of Assembly, and having listened to some in the Legislative Council, I will speak relatively briefly. I speak not from the technical and legal aspects of the bill but just as a parent and ordinary citizen. I think that one of the challenges for us in this chamber is sometimes to take off our hats to try to look at some of these pieces of legislation through the eyes of ordinary citizens of South Australia. That is what I hope to do and, as I said, in a brief period.

At the outset, I say that I accept that by and large—and I cannot speak for everyone—even though a wide diversity of views is being expressed in this chamber and another place, all of the views that are being expressed are genuinely held by individuals. I know that those who are opposing the legislation are not doing so through a sense of trying to cause grief to the government of the day but through their genuine sense of what they believe to be right in terms of South Australian society.

I do not intend to be directly critical of those who oppose the legislation. It is a challenge for all of us, and I know that we have had the debate within our own party. I would never have even contemplated supporting some of the issues canvassed in this legislation 20 years ago or, indeed, 10 years ago. I imagine that that is probably the same within the Labor Party. I could not imagine the Hon. Terry Roberts, for example—a member for whom I have a great deal of respect, given his contribution over the years—even contemplating supporting the legislation 10 or 20 years ago. Here he is together with his colleagues and his Premier supporting this bill, or something similar to it, through the parliament.

What is it that has caused governments and alternative governments, comprising people who generally would not contemplate legislation like this, to do it? I think it is—putting on the hat of parents out there—just the genuine fear that this whole world has changed. There is genuine fear that governments do have to do things which, in the past, we might never have even contemplated. I do not deny the fact that there is a very useful debate going on within party rooms at the national level, and within the parliament also, in relation to what is the appropriate balance in the level of safeguards. I know that federal members of the Liberal coalition are having and have had some impact in terms of strengthening safeguards. I know that the debate between the federal and state government has seen some further strengthening of safeguards. I know there are some in this and the other place who would want to see an even greater level of safeguards in relation to the operation of this legislation.

I was in the United States in January this year. When you are in queues up to a kilometre long trying to get in and out of airports, whilst everyone complains about the additional security measures, some of them are, indeed, quite onerous. The unlucky few get the full body search, and rather than just going through the cameras and the detectors, you get taken off to the side—

The Hon. Kate Reynolds: You get the treatment.

The Hon. R.I. LUCAS: I certainly got the treatment twice. I obviously look like a terrorist. It is enormously frustrating because you are trying to meet a connecting flight, and you have been through the security, and you get taken to the side where they go over your baggage in greater detail. They get you to take off your shoes, belt and a variety of other things like that, and security check you to a much greater degree, and it is frustrating. When you speak to people in the queues you find that they are frustrated, but in the end most of them end up saying, 'But I'd much prefer they did this rather than not make the effort to check and double check.'

Some of the things, as have been raised in recent discussions in the media, have demonstrated that maybe all of the things that we are doing might not be super successful in terms of deterring would-be terrorists. But, I know as sure as anything that, in the event that something was to happen here in Adelaide, in the aftermath, whoever was in opposition or was not in government, and wherever the media happened to

be in the previous debate, they would be forensically tearing apart committees and inquiries to find out what the government knew, what it had been advised, what it had been told, and in the end what it did or did not do, and whether it had had advice from security agencies, or from wherever, or whether it had to go down a particular path in terms of legislation and it had not done so. As a result of that, someone might report that the government was hamstrung in terms of its security techniques or its approach, and then the government of the day, or the minister, or the person responsible would be absolutely and politically hung out to dry in terms of responsibility. Potentially, they would also have on their shoulders the responsibility for the death or injury of a number of South Australians. It is a frustration, and I am sure that we all feel and experience it when we go in and out of airports.

We will see sad examples when security forces get it wrong, and no-one defends errors or excesses by them. I note that, in his contribution, the Hon. Mr Xenophon referred to a number of examples, including what would on the surface appear to be the very sad case in the UK of the Brazilian man. He also referred to another example, as follows:

> A third incident, reported in September by *The Guardian*, concerns the arrest, detention and charge, again under the Anti-Terrorism Act, of David Mery, a 39-year-old French citizen, who wanted to catch a London train. Because Mery did not look at police when he entered the tube station, might have been in the company of two other males, wore a suspicious vest and a bulky rucksack, looked around him and played with his mobile phone, he was arrested, searched, handcuffed. Mery was released at 4.30 a.m. after being detained for nine hours. During this time, police searched his apartment under the anti-terrorism laws and seized computer equipment.

Those who have been following the recent debate about the London bombings will note that a number of the descriptors—that is, a suspicious vest, a bulky rucksack, the company of other males and the issue of not looking at police and playing with a mobile phone—are similar to what security cameras have demonstrated in relation to those bombings. Some aspects are similar to other suicide bombings we have witnessed around the world. Is it fair to say that everyone with a bulky rucksack and a suspicious vest ought to be apprehended? The answer of course is no.

Ultimately, there are difficult issues of judgment, and cautious police and security forces will make mistakes. However, in the end, as a parent I say that, if the police and the security forces, with a reasonable level of safeguard against excesses (which we are obviously trying to negotiate at both federal and state levels and through this parliament), can apprehend just one of these suspicious looking persons with bulky rucksacks, mobile phones, suspicious vests, and whatever else it might happen to be, and prevent my sons, daughters, grand sons, grand-daughters, relatives, friends or acquaintances from suffering what many others throughout the world have suffered, I will be eternally grateful.

I say, not only as a member of parliament but also as a citizen of South Australia, that I am prepared to put up with the frustrations and the delays. I will grumble and complain about them with the best but, in the end, it is a balance that has to be struck, and I think that we have to look at it that way. I do not believe that governments, whether they be of Liberal or Labor persuasion, want to do these things to the people of South Australia or Australia. But, on the basis of their advice, and on what they believe we need to do to try to tackle this scourge of terrorism, that is why this legislation is before us at the moment. That is why some of us, both Labor and Liberal, support such legislation with aspects we would never have contemplated supporting 10 or 20 years ago.

Unlike my colleagues and others, I will not go through all of the technical and legal details. I respect the views of all members who have spoken in this debate. I do not seek to personally denigrate in any way their motives or their approach but, putting on my hat not as a lawyer and not as a legislator but as a parent and as a citizen of South Australia I indicate that, sadly, I think we have reached the stage where we have to support legislation of this type.

The Hon. T.G. CAMERON: I rise to support the second reading and to indicate to the government that I will be supporting this legislation. I notice that the Hon. Ian Gilfillan has some 20-odd amendments. I usually find him fairly persuasive on these civil liberties issues. However, for many of the reasons that were outlined by the Hon. Robert Lucas, it is my intention to support this bill. The Hon. Robert Lucas said that 20 years ago he would not have supported a piece of legislation like this or, more correctly I think, supported legislation that contained some of the bits and pieces in this bill. I would go even further than the Hon. Robert Lucas and I would say that the date that changed my mind on issues like this was 11 September 2001 when, sitting in one's lounge room, one was able to see two planes crash into the Twin Towers in New York in which some 4 000 people lost their lives.

It is important that we continue to be vigilant in relation to security. One only has to read the papers and surf the internet to see that people are now talking about terrorist acts involving nuclear bombs, fissionable material, dirty bombs, bombs containing various toxic chemicals, herbicides, pesticides, etc. It also raises the spectre of suicide bombers. These things were all unheard of just a few years ago, and some of the steps that have been taken—not only in this country but around the world, and it is noticeably felt when you travel and move through airports—are quite unprecedented. You have the security, for example, at Changi Airport in Singapore which could act as a model for airports all over the world.

This morning I was listening to Radio 891. They had made an announcement that the Premier was going to release a policy on the Legislative Council, but as I listened they were talking about statements that had been made by the Attorney-General in relation to terrorism, and they played a quote back which had the Attorney-General (Michael Atkinson) saying that we have people here in South Australia who support Osama bin Laden. I must say I was shocked to hear that. I can only hope and trust that the Attorney-General, if he has been given information by members of the Islamic community about people here in South Australia who are supporting the terrorist Osama bin Laden, passes on that information to the appropriate authorities. The Attorney-General is duty bound as the senior law officer in this state, if he receives information of potential terrorist activity here in South Australia, to refer all of that information to the appropriate Federal Police authorities or the Australian Security Intelligence Organisation; although not necessarily ASIO, because I think we have some seven different intelligence organisations in this country.

I do appreciate that the Law Society is opposed to this piece of legislation. It believes that it will constrain freedoms, civil liberties and possibly allow innocent people to be caught up in this web. No piece of legislation is perfect, particularly

legislation that deals with incidents or matters such as this. Some of the concerns have been outlined by the Hon. Ian Gilfillan and referred to by the Hon. Nick Xenophon. Mistakes have occurred in the past. There have been instances of innocent people who have had some terrible experiences, as a result of perhaps autocratic, over zealous, or overly officious behaviour by police or people at immigration centres, etc. I have no doubt that, at some time in the future, stuff-ups will occur again, but I do not see that the odd isolated stuff-up (to use that term) which may occur in the future should be a reason for refusing to pass a piece of legislation which will inevitably lead, in my opinion, to a safer South Australia. Notwithstanding some of the problems associated with legislation of this kind, quite clearly the greater good will be served by the passage of this legislation.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank members for their contributions to the debate. There is no doubt that the subject of this bill and the other bill (which has just arrived) is important and one on which different people and political parties can hold strong and honestly differing views, which are entitled to respect. The subject which can generally be described as 'terrorism' has dominated public debate in all sorts of ways as the bombs have gone off twice in Bali, London and Spain, and as allegations have been made against a number of people in Australia. Of course, I will not pass comment in any way upon the last controversy. Those caught up in these events are entitled to the presumption of innocence for they have been charged with criminal offences in the normal way.

The route question upon which this parliament and all other parliaments around Australia have been asked to contemplate is whether existing laws are sufficient to combat a necessarily shadowy threat to our normal lives, which no-one dares to deny exists, but which no-one can confidently quantify. The answer to which every government in Australia has given to this base question is that existing laws are not sufficient. Not one government has come to the opposite conclusion—not one. And if we look overseas at other democracies, we will find exactly the same answer. It has to be conceded then that doing nothing is not an option. If we have to rehearse all the policy arguments all over again on this general question, so be it. I do not intend to do so. They have been thrashed to death already. There is no point in going over the what ifs either. I am not going to deal with what if we had not intervened in East Timor, Afghanistan or Iraq and so on. We did and there is an end to it.

So, to those who argue that the proposed legislation should be defeated because there is no need for it and that the ordinary law as it has existed, so it is said, for centuries, suffices to deal with whatever is going on, I say that you are wrong. I repeat: doing nothing is not an option. The argument then descends a step to details. The government participated in a national process about this, the most visible and most important aspect of it being the two COAG meetings.

The outcomes of those meetings committed the governments of Australia—all of them—to the enactment of laws. The outcomes were unanimous, in general, with minor variations in detail. This government has an obligation to the public of South Australia to honour its commitment to the national COAG agreements and its undertakings to the public of South Australia—not least to do its best to protect the people of South Australia from harm at the hands of terrorists or would-be terrorists. This bill is about doing that. It proposes to give the police a measured increase in powers to deal with an imminent terrorist threat or a terrorist attack that has already happened. One could be forgiven for thinking that would be desirable.

The second reading explanation and the contribution of the Hon. Mr Lawson both outline the nature of these powers, the need for them and the gap that they fill, and the extensive and practical protections that the bill proposes. I do not propose to go over that ground yet again. The speeches traverse the ground in detail and, no doubt, we will do so in committee; so we get to another level of detail.

The Hon. Mr Lawson asked a number of questions, to which he desired a response from me. I will do my best to answer those questions. First, he wanted to know why there were different judicial oversight regimes in the two bills. The answer is that the bills, while dealing with terrorism, deal with it in entirely different ways. These different ways demand different judicial roles. This bill is about police powers to search and seize and detain things. It is about criminal investigation. There is a traditional judicial role in overseeing warrants. The other bill, which has just arrived here, is not about any of that. It is not a bill about criminal investigations. It is not a bill about police powers to search and seize and detain things. It is a bill about the preventive detention of people. It expressly forbids the use of the powers that it grants for these investigative purposes. This is an unprecedented bill. It requires the strongest scrutiny possible, consistent with the requirements of Chapter III of the Commonwealth Constitution. That is a different judicial role entirely.

Second, the Hon. Mr Lawson asked what a Law Society comment about regulations meant. I think it means this: the bill provides in clause 18 that the process for seeking the essential judicial confirmation for the issuance of the authorisation will be prescribed in the regulations. This process will be detailed, including processes for electronic, telephonic and fax approval in urgent cases to the kinds of forms and duplicate authorisations that will be necessary. It has been decided that this should be in the regulations rather than in the act. The Law Society would prefer it to be detailed in the act. The government disagrees.

Third, the Hon. Mr Lawson asked about the differences in judicial oversight and review in what are known as privative clauses between the two bills. This has been answered, in part, already. The bills, while superficially about terrorism, deal with very different remedies against terrorism. I quite agree with the honourable member when he said, in exactly this context, that 'we should not invite judicial challenges in these circumstances, there is simply not time'. I would add that there is not time. We cannot have the investigation of an actual or imminent terrorist attack halted by someone—anyone—because that is what we are speaking of here—with a penchant for judicial review. The other bill is different. There is time. There is not such obvious urgency.

Fourth, the honourable member spoke of compensation. Again, I can only agree with what he says. In matters of inconvenience and damage caused by criminal investigation, it is not the case that we compensate. That is true across the board. It should not be so for these criminal investigations either, but being personally detained for an extended period of time is another matter entirely. The government is trying to be as fair as possible and is trying to give remedies for possible arguments of injustice where it can and where it is practical. I commend the bill to the council.

The council divided on the second reading:

AYES (18)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Gago, G. E.
Gazzola, J.	Holloway, P. (teller)
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Redford, A. J.
Ridgway, D. W.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	Stephens, T. J.
Xenophon, N.	Zollo, C.

NOES (3)

Gilfillan, I.	Kanck, S. M.(teller)
Reynolds, K.	

Majority of 15 for the ayes.

Bill thus read a second time.

MILE END UNDERPASS BILL

Adjourned debate on second reading.

(Continued from 22 November. Page 3168.)

The Hon. IAN GILFILLAN: We are generally supportive of the bill. I was privileged to get a briefing from officers of the Department of Transport SA, with representation from a member of minister Conlon's staff. It clearly is an advantage to traffic flow. Considerable thought has been given to the nature of the design to be user friendly to both pedestrians and cyclists. It is worth putting on the record that the design will improve the traffic for cyclists in respect of entry into the Parklands and through to the western suburbs. However, it is rather coincidental that today we dealt with the Parklands bill and passed it in this council, but the effect of the works proposed in the legislation before us now will result in the loss of 900 square metres of Parklands.

The Hon. Sandra Kanck interjecting:

The Hon. IAN GILFILLAN: The minister's explanation I have been assured several times contained no recognition or acknowledgment of the loss of 900 square metres, yet the people who briefed the representatives of the Adelaide Parklands Preservation Association clearly acknowledged that there would be a net loss of 900 square metres of Parklands.

The Hon. Caroline Schaefer interjecting:

The Hon. IAN GILFILLAN: I don't know whether I heard an interjection, or it might have been fantasy in my brain, but it sounds as though the minister has deliberately misled the parliament in indicating there was to be no loss. Sometimes those who wish to disguise real facts play deceptive games. If previous regimes have taken large areas of the Parklands, giving some of that back to those from whom they stole it is justice. It is not some magnanimous gesture by the authorities in returning property to those who originally owned it. There is no excuse in saying, 'We take 900 square metres but, wait for it, we may do something nice down the track; we may actually take steps to pay back some of that which we have stolen from the parklands in previous regimes.' That is not logical and is a deception of the reality. It is no good beating around the bush. The breach is a welcome development as far as traffic flow goes. There are the pluses of the pedestrian and cycle traffic, but the substantial black mark is the loss of 900 square metres of parklands to bitumen and other forms of alienation.

The other undertaking we seek to follow up and on which we would like to hear an assurance from the minister relates to considerable works that will be done. Normally, when considerable works are done. areas of the Parklands are sequestered for the dumping of material and the parking of machinery, and generally it finishes up with some quite extensive devastation on a large area of the Parklands. I would like to hear from the minister in either summing up or in some other way a clear assurance that an undertaking is given that the Parklands will be restored at least to the condition they currently enjoy in that area, if not further improved with tree planting and other enhancement.

In summary, the Democrats support the bill, but we feel it absolutely obligatory to make the point that a large part of this will make an impact on the Parklands—some permanently (a loss of 900 square metres) and some on a so-called temporary basis. We want the assurance that the government will guarantee that the land that will be temporarily used, taken over for the construction of the bridge, will be properly restored.

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I thank the Hon. Caroline Schaefer for her contribution, as well as the Hon. Ian Gilfillan and other members (if, in fact, there were any) who spoke in support of this bill. In her speech on 22 November, the Hon. Caroline Schaefer raised the issue of the alignment of roads in the Parklands and the possibility of additional Parklands being taken, or some parts taken and other parts given back. I would like to respond on this point, because it was also mentioned by the Hon. Ian Gilfillan during debate on the Adelaide Park Lands Bill, and it is likely to be of interest to other members.

In terms of this bill, which affects Glover Avenue and the Parklands, clause 4(3) specifies what work the Commissioner can undertake in the Parklands, and states that Glover Avenue must be no wider than it is immediately before the commencement of the act. Schedule 2 states that Glover Avenue continues as a public road and sets out the survey coordinates of Glover Avenue where it currently exists in the Parklands. These provisions will ensure the continuation of the road in its existing legal road corridor. In the railway corridor and beyond into the West Torrens council area, the road may depart from its existing horizontal footprint in order to improve its alignment into Henley Beach Road.

This would be a minor variation, and the bill provides that it must be within the underpass construction area, which is also defined by survey coordinates in schedule 1. The government and the Adelaide City Council intend to use the opportunity provided by the underpass project to improve pedestrian and cyclist access to and from the Parklands in line with both the council's cycling strategic plan for the Parklands and the government's policies for promoting cycling and walking. This means providing for recreational cyclists to pass through the underpass away from the traffic, and widening the pedestrian facilities by comparison with the existing bridge.

These improvements are likely to increase the use of the structure by these user groups but do require the permanent use of a small area of Parklands. The actual area may vary as the design is progressed but, at this stage, it is estimated at 900 square metres, as the Hon. Ian Gilfillan suggested. The permanent use of Parklands for this purpose is appropriate as it complies with the dedication of the land for the purpose of 'public recreation, amusement, health and enjoyment'. It is important to note that the new structure could be designed to have no permanent additional area impact on the Parklands

by simply not providing the additional facilities for cyclists and pedestrians described above.

It is the government's view that this would be a wasted opportunity. The use of this small area of Parklands for pedestrians and cyclists will be more than offset by the 6 000 square metres of land in Victoria Square that is being rededicated for the use of the public, and by the government's restoration and return to Parklands usage of approximately 12 000 square metres of land currently owned by SA Water between the rail corridor and Deviation Road immediately to the north of the current bridge. SA Water is currently working through the process of determining the works required to restore the site prior to its transfer to the council's care and control as Parklands.

In addition, the government is actively pursuing opportunities to relocate SA Water from the depot site between Deviation Road and East Terrace at Mile End, so that this land of some 40 000 square metres can also be considered for return to Parklands use in the future. I thank members for their contributions and indications of support for the bill. The bill will enable an important piece of infrastructure—which provides many benefits to the people of Adelaide and South Australia—to proceed and be completed on schedule.

Bill read a second time.

In committee.

Clause 1.

The Hon. IAN GILFILLAN: It cannot go without observation (although, apparently, it was in response to matters raised by the Hon. Caroline Schaefer) that the minister did indicate into *Hansard* the return to the Parklands of some area in Victoria Square (which is an interesting equation), but more relevantly the return of the old EWS depot and Deviation Road. I wonder whether the minister would acknowledge what we attempted to clarify in our second reading contribution: that, although the return of the area is very welcome, the area was dedicated as Parklands and it always remained as Parklands. In fact, to its credit, this government is taking an action, which previous governments should have done, and returned areas to Parklands.

However, in no way is that a sort of quid pro quo for taking 900 square metres for the bridge. It is not a justification for it. I am gracious enough to acknowledge, and will do so quite vociferously, that the giving back is welcome, and the government should be congratulated for it. However, it ought not camouflage the fact that, at the same time, this legislation is taking 900 square metres. I ask no more than acknowledgment by the minister that that is a fact.

The Hon. P. HOLLOWAY: I said that the actual area may vary as the design is progressed, but at this stage it is estimated at 900 square metres. Also, I did point out that the new structure could be designed to have no permanent additional area by simply not providing the additional facilities for cyclists and pedestrians, but the government's view is that that would be a wasted opportunity. There is always some loss in relation to that and, unfortunately, that is the choice we have to make. That is the estimated area that would be removed.

Clause passed.

Remaining clauses (2 to 10) and schedules passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

ROAD TRAFFIC (DRUG DRIVING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 November. Page 3155.)

The Hon. SANDRA KANCK: Road safety is one of the most important issues that this parliament deals with and, since 1950, more than 12 000 people have lost their lives on South Australian roads. I have to say that that is terrorism for you. Most of those deaths were preventable—many easily preventable. The number of fatalities peaked in 1974 with 382 deaths. Since the mid-1970s there has been a steady decline in the number of fatalities on our roads, although it has recently plateaued at around 150 fatalities per annum. When you consider that we have more people on the roads than have we ever had before, with the increased population, it is quite a significant reduction.

Numerous factors have contributed to the decline in the number of fatalities since the seventies—better roads, safer cars, the introduction of the legal compulsion to wear seatbelts (which has been very significant), greater policing of speed limits, new and steeper penalties for drunk driving, and the introduction of random breath tests. In the seventies, it was not uncommon for people to remark that they could not remember how they got home, and I imagine that there would be many members in this chamber who would have heard that proudly boasted on occasion.

Fortunately, today, people are much less likely to drive blind drunk, indeed, less likely to drive under the influence of alcohol full stop. Many young people, when they go out together as a group on Saturday night, choose one of their number to be a nominated driver, and that person does not drink for the course of the night so that everyone gets home safely. That has come as a result of education as much as anything else. The relationship between road accidents and alcohol is a settled fact. The more people drink, the greater the impairment of their motor skills.

Further to that, the drinking of alcohol encourages risk-taking. People are likely to drive a bit faster with a few drinks in them—a very dangerous combination. They tend to lose their sense of what is appropriate and their sense of caution. Hence, we have a statistically verifiable relationship between driving under the influence of alcohol and road fatalities. Not that the statistical relationship is absolutely precise—the effects of alcohol vary from person to person, and the skills that individual drivers possess vary.

There is a solid body of incontrovertible evidence to justify our drink driving laws. However, this legislation takes one of the means that we have of controlling drink driving, and we apply it to driving under the influence of cannabis and amphetamines, up to six hours after ingesting cannabis and 24 hours after taking methamphetamines. What scientific evidence is there to support that these laws will be effective in the fight to lower the road toll in South Australia? The answer is limited evidence and contradictory evidence. I find it very strange that the government introduces a bill when that is the state of the scientific evidence.

To quote Dr Matthew Baldock, Research Fellow, Centre for Automotive Safety Research at the University of Adelaide, overall, 'drugs other than alcohol are likely to increase crash risk but no conclusive case-control studies have been conducted to determine the size of the increased risk'. After Victoria, we will be only the second jurisdiction in the world to implement random roadside saliva drug

testing. The trial period in Victoria is not even completed. Not even an interim study has been released, and we are going ahead with this legislation. When the legislation was announced, I argued that we should wait to see what the Victorian trial discovered, and I still think that this bill should be put on hold until we can properly assess the Victorian evidence, but clearly that is not going to happen.

In his second reading explanation, the minister claims drug driving is one of a number of contributors to road deaths in South Australia, and throws out the figure that 23 per cent of driver and motorcycle rider fatalities tested post-mortem had either THC or methamphetamine in their blood at the time of the crash. What he does not say—and he is really, really careful to avoid saying this—is that there is a scientifically verifiable relationship between those individuals' deaths and the presence of either THC or methamphetamine (or both) in their blood. The reason he does not make that claim is that he cannot; there is not a verifiable relationship.

There is a growing number of scientific studies on the relationship between driving under the influence of drugs and road accidents, but the evidence from those studies is mixed and inconclusive. For example, a 1999 University of Adelaide study by the Department of Clinical and Experimental Pharmacology found, 'Conversely, a lower percentage of drivers who only tested positive for THC were culpable for the crash compared with drug-free drivers.' For those who are listening or reading, you were not mistaken. This particular study has found the evidence that people testing positive to THC only are less likely to have an accident than drug-free drivers. Other studies that I have seen have found either no verifiable increase in risk or a slightly elevated risk.

The Hon. T.G. Cameron: They drive slower.

The Hon. SANDRA KANCK: Exactly! People under the influence of cannabis have diminished motor skills—

The Hon. T.G. Cameron: They slow down.

The Hon. SANDRA KANCK: That's right. There is a lot of evidence to show that people who have smoked marijuana tend to drive slower after consuming cannabis. In effect, they compensate for the impairment the drug produces by reducing the speed they travel at. Quite often, if you are travelling home from a party at night, and you find a driver who is travelling at 40 in a 60 zone, you can almost always point to him and say, 'I know what you've had.'

The Hon. J.M.A. Lensink: It depends on whether he's wearing a bowling hat.

The Hon. SANDRA KANCK: After a party on Saturday night, I don't think so. The case against methamphetamines is not as straightforward as may be thought, either. To an extent, it is the inverse of the cannabis studies. At low doses, methamphetamines actually sharpen the reflexes, but they also result in people driving faster and taking more risks. So, as it gets up, that effect diminishes. I have also spoken to users of cannabis and methamphetamines regarding their views on the proposed laws. While this is merely anecdotal, I was interested to hear that they thought it would be better if people did not drive whilst under the influence of these drugs. They agreed that a driver is at greater risk of having an accident whilst driving under the influence of drugs. However, they were also concerned that the tests would see them picked up after the effects of the drugs they had taken had worn off, after they were no longer under the influence of those drugs. This legislation makes that a very clear possibility.

By testing orally for only the presence of the drug, we have no idea of the concentration of the drug in the system of the driver who tests positive. It is possible for the dosage of the drug to be so negligible as to have no impact upon the driver at all. Yet, it is strange that we are saying that people who are tested and found to have methamphetamines or THC in their blood will not be tolerated, not a single trace of it, yet we allow up to .04999, or whatever, for alcohol. By way of analogy, in terms of the amounts of THC in the blood, or methamphetamines at low levels, it is a bit like having the same penalty for drink driving after having a couple of shandies as for four double whiskies; the difference being point .01 or .1 when you blow in the bag. Further, other drugs which, according to the scientific literature, indicate an increased risk of accidents are not included in this bill.

The study by the Department of Clinical and Experimental Pharmacology at the University of Adelaide concluded:

> For those drivers with benzodiazepines at therapeutic concentrations and above, there was a significant increase in culpability.

Yet, there is no penalty in this bill for driving under the influence of these legal prescription drugs. Why not? Well, the truth is it would be a political hot potato. You can imagine the talkback radio, to which this government seems to be highly sensitive, and it would be damaging to the government. The bill does not include LSD, cocaine, heroin or MDMA to be detected by the tests. Hence, we will end up with a highly compromised and confused bill.

The Hon. T.G. Cameron: They'll switch to other drugs.

The Hon. SANDRA KANCK: You've got it; you're ahead of me.

The Hon. T.G. Cameron: They'll switch from marijuana to amphetamines.

The Hon. SANDRA KANCK: Yes. I am a firm believer in the power of education to change people's behaviour, and I mentioned that in regard to drink driving. The educative effects of this legislation on driver behaviour will be diminished if cannabis and methamphetamine users believe they are being singled out. They will look at our drink drive laws and see that .049 blood alcohol content is legal but that .05 is not. A tiny bit of THC will be an offence whilst driving under the influence but, if you have taken magic mushrooms, that will not be detected. These people—and we are talking about particularly young people—may very well think, 'What hypocrisy!' and be less inclined to obey the law—and they will have every right to accuse MPs of hypocrisy.

Of course—and this is what the Hon. Terry Cameron touched on—having this law may also encourage a move to the use of other drugs that are not detected by these proposed tests. One means of making the law more consistent would be to have a blood test following a positive result on the initial saliva test. That would enable an accurate reading of the level of THC or methamphetamine in the driver. Then, just as with alcohol, a scientifically established blood concentration limit would determine whether the driver was in breach of the law. This would be more expensive and more intrusive but, I believe, fairer. Of course, it would not catch people driving under the influence of a range of legal and illegal drugs that are not going to be detected by the saliva test, as they would not get to the blood test stage. I believe the only way to achieve that outcome is to introduce random blood tests, where all drugs that impair a person's ability to drive, licit and illicit, are tested for.

Whatever the answer, the introduction of random blood testing is not an option I favour. It would be too much of an imposition on all motorists; hence, I find myself in a dilemma. I support attempts to reduce the number of people driving

whilst under the influence of any mind-altering substance that diminishes their capacity to drive safely, but I am wary of supporting legislation that is neither scientifically based nor consistent in how it approaches the issue.

However, having carefully weighed up all the issues, I have decided, on balance, to support the move to random drug testing in the hope that it will have a positive effect on our road toll. If and when it is found to be flawed (as I have no doubt that it will be), the government will find itself back here with an amending bill.

The Hon. T.G. CAMERON: I rise to support the second reading, but I indicate that I have grave reservations about the legislation for a whole host of reasons, most of which were clearly enunciated by the Hon. Sandra Kanck in her address, and I hope that she takes that in the right way. I listened very intently to what she had to say, and I could not disagree with one statement she made. This is an overly simplistic approach to the problem. There is no scientific basis for the enactment of this law. I believe that it is a ham-fisted approach and uses a sledgehammer to crack a peanut. I have grave reservations about the basis—that is, if there is a basis—upon which the government has introduced the bill.

Like every other member of the council, I am concerned about people getting behind the wheel and onto our roads with any mind-altering substance in their body. The reports and scientific studies I have read only support the contentions made by the Hon. Sandra Kanck. In fact, I think that I would go a little bit further than she did in relation to how long THC, for example, can stay in your body. I can envisage a whole number of situations when people may still register positive for THC in their body yet suffer no effects from it whatsoever. They may well have just had a blow-out two or three days before and some residual THC is still in their system. I can only support what the Hon. Sandra Kanck said in relation to scientific studies.

I do not want to be precious at all about this. I have argued against a whole host of laws in relation to marijuana and opposed what the government wanted to do in regard to alcohol and the .08 and .05 situation. However, I know from personal experience just how dangerous it can be when you get behind the wheel when you are drunk, because I have been stupid enough to do it in the past. I know that my own experiences are only anecdotal but, when you drink alcohol and start to go over .05 and .08, the evidence is that drivers will speed up and become quite aggressive behind the wheel. I have also been evil enough to have tried marijuana in the past.

The Hon. Sandra Kanck: Have you inhaled?

The Hon. T.G. CAMERON: I was asked by *The Advertiser* whether I inhaled. My response was, 'Yes, of course I did; if you don't, it doesn't work,' but I do not think they printed it. My experience of smoking marijuana and driving is that, if anything, it slows you down. I can bear out the Hon Sandra Kanck's example. In the past, I have been a bit of a lead-footed driver but, as with my experience with alcohol, I have seen the error of my ways. However, I can back her up when she says that, if you want to find the marijuana smoker on the road, look for someone doing 40 km/h in the left lane in a 60 km/h zone. Quite honestly (and I will stop at this point), when you smoke marijuana and drive, you slow down and become acutely aware of every other car on the road. I cannot even begin to explain why, but I suspect that a wave of paranoia comes over you. I have had that experience, although I suppose I should not admit it. Having smoked marijuana and been behind the wheel, driving—

The Hon. T.J. Stephens: And that was only yesterday!

The Hon. T.G. CAMERON: The Hon. Terry Stephens should not interject and say that it was only yesterday. I was driving along the road when I heard all this tooting—six cars were backed up behind me. I was driving down Port Road, I looked at the speedo and I was doing 35 km/h in a 60 km/h zone. I can go back to the Canadian scientific studies in the late sixties and early seventies. As to all of that material that was presented to the Senate Committee of Inquiry into Drugs, nothing much has changed. Alcohol still makes you become aggressive and speed up; marijuana will make you slow down and become overly cautious. As I have indicated, I will be supporting the second reading. One can count; this bill quite clearly has the numbers. In conclusion, I thank the Hon. Sandra Kanck for what I thought was an extremely informative contribution in this debate.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank honourable members for their contribution to this bill and for their indications of support although, within that acceptance, we have had a fairly broad range of debate as to reasons for their acceptance.

The ACTING PRESIDENT (Hon. R.K. Sneath): I am a bit confused about whether somebody who smokes marijuana and drinks at the same time might drive at the speed limit.

The Hon. P. HOLLOWAY: That is an interesting thought, but I think we need to be serious here about this issue. This bill is not just a matter of marijuana. I just repeat what was said in the second reading explanation. These amendments will not enable random testing for drivers' drugs other than THC and methamphetamine. The drugs will be prescribed in the regulations and it may be the case that in future years other drugs will be tested for. General police patrols will also be able to test for prescribed drugs. This testing will be predicated on driver impairment and will occur in prescribed circumstances; that is, where a person has committed a prescribed road traffic offence, behaved in a manner that indicated ability to drive is impaired and has been involved in an accident.

So, notwithstanding the comments others might have made, these measures are very much aimed at addressing those motorists who pose a danger to others. I thank honourable members for their support and, as I said, any other issues we can address during the committee stage next week.

Bill read a second time.

VICTORIA SQUARE BILL

In committee.

(Continued from 23 November. Page 3210.)

Clause 1.

The Hon. R.I. LUCAS: Last evening, we called for the traffic modelling, and the government provided the Development Submission for the Glenelg Tramway Extension to the Adelaide Railway Station, and within that is the section on traffic control measures. It is quite complex and complicated and, as I said, the Liberal Party's position is clear in that we are going to vote against it anyway, so I do not intend to unnecessarily delay the committee by going through all the detail of this. However, through the minister, I want to get a

view from the government's advisers as to whether I understand this aspect of the submission correctly.

I refer to page 13 of the submission. Pages 11, 12 and 13 basically highlight some significant traffic problems that might exist unless traffic mitigation measures are taken. At one stage, for example:

> There will be longer queue lengths on the North Terrace western approach to King William Street intersection if no traffic mitigation measures are introduced, with the consequence that vehicles at the end of the queue may have to wait for up to three cycles of the traffic signals before they travel through the intersection. Adjusting traffic signal timings along North Terrace and King William Street will allow this intersection to perform more efficiently so that cars experience no net increase in travel times through this busy intersection.

A number of others are also highlighted. On page 13 it summarises it by stating:

> The table below details the traffic management measures that have been modelled. The traffic modelling indicates that if these measures were adopted there would be no additional delay to traffic travelling to and from destinations within the city. These measures may, however, lead to changes in the routes that vehicles use to make their journeys.

The middle sentence is the one that I have heard the minister and others quote in relation to the traffic modelling; that is:

> The traffic modelling indicates that if these measures were adopted there would be no additional delay for traffic to and from destinations within the city.

The sentence that I want to ask the government's advisers about is the next one, as follows:

> These measures may, however, lead to changes in the routes that vehicles use to make their journeys.

Can I clarify that what the traffic modellers are saying here is that the only reason we will be able to say that is if cars that currently travel through those routes because of the business of the intersections and so on will be moved on to other routes, other than their preferred route? As I said, 'These measures may however lead to changes in the routes that vehicles use to make their journeys.' Can I confirm that, to be able to make the assessment of no additional delay, there has to be this assumption that a number of vehicle users will have to stop using that particular route?

The Hon. P. HOLLOWAY: Part of this obviously relates to the fact that there would be no right turns, but that is the situation, as we discussed yesterday, during peak hour, anyway. People do adjust their routes. I think all of us who drive to parliament in the peak hour in the morning choose our route, and if you come from the side of town which I do, you know you cannot turn right into King William Street, at least between Victoria Square and North Terrace, so you make other arrangements. It does not mean that there is any additional delay, but it does mean that you will take a different route. In relation to the other part of the question, I am advised that there is some spare capacity in the network and it is really a matter of utilising that spare capacity. The modelling shows that that can achieve that result.

The Hon. R.I. LUCAS: As I said, I will not delay the committee by further exploring that issue, but obviously that will be an issue of some discussion before the Public Works Committee. The other issue I highlight is that page 15 deals with the matter of the reduction of volume of bus movements as one of the traffic mitigation measures. It is clear that the government has contemplated or has talked about getting rid of the Beeline bus service. However, this also says that additional reductions have been implemented or are planned, including rerouting of some services to Grenfell-Currie streets, which, in total, will result in the number of buses using King William Street being reduced by 18 per cent. If the minister cannot answer this question now, can he take it on notice?

In terms of the modelling being a computer model, I am assuming that the only way in which this can be done is that specific buses, bus routes and movements must have been slotted into the sausage machine for it to churn out the traffic simulation issues. Was the decision in relation to which buses were going to be removed from King William Street and which routes were going to be changed, a decision taken by the modellers; or did Transport SA put to the modellers, 'This is what we contemplate in terms of the particular routes which will be affected. Please model those particular route changes.'?

The Hon. P. HOLLOWAY: The modelling just applied to the Beeline bus and the reduction was 12 per cent, as a result of that part of Beeline going. The City Loop will stay. We are only talking about the Beeline, which leaves from Victoria Square. That is about 12 per cent. Some of the additional reduction has been achieved by buses which have already been moved, for example, the T500 and the T501.

The Hon. R.I. LUCAS: What about the ones which are unplanned, including rerouting of some services to Grenfell-Currie streets?

The Hon. P. HOLLOWAY: I am advised that the planning is ongoing with bus operators. These changes will be associated with the opening of the Mawson Lakes interchange. The intention is to get a better public transport service through the Mawson Lakes interchange through the fast train service, so that should reduce the number of buses that go direct to the city.

Clause passed.

Remaining clauses (2 to 9), schedules and title passed.

Bill reported without amendment; committee's report adopted.

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

> That this bill be now read a third time.

The Hon. R.I. LUCAS (Leader of the Opposition): On behalf of Liberal members, I will speak briefly to the third reading to indicate our very strong opposition to the legislation. As we indicated at the second reading and during the committee stage, we see this as a tragic waste of the taxpayers' resources. The amount of $51 million on the extension to North Terrace and ultimately to Brougham Place is an example of the wrong priorities of the Rann government and that a government that was interested in schools, hospitals, mental health services, children with disabilities and the sorts of services which ought to be priorities for families and governments in South Australia would want us very strongly to oppose this legislation so that that money ($51 million) can be more sensibly spent on the priorities that ordinary South Australian families would wish.

As we indicated during the second reading, I believe, as a result of the questions, it is highly unlikely the government can lock a future government into this particular folly prior to the election. It would appear that if there is an appropriate process with the Public Works Committee, and a two-stage process in terms of expressions of interest and then deciding on a tenderer for the actual construction work, that would not be able to be completed, unless inappropriately rushed, prior

to early February when this government will go into caretaker mode.

If this government is re-elected, while clearly it will not be a referendum just on this issue, nevertheless, it will have the legislative authority and capacity to proceed with its priorities. However, in the event that this government is not re-elected, then a new government with different priorities—one that puts schools and hospitals before the folly of a tram extension up King William Street—should be able to implement those new priorities; and move the money out of this section of the budget into more appropriate sections of the budget. Again, I repeat the Liberal Party's very strong opposition to what it believes will be known as Rann's folly.

The council divided on the third reading:

AYES (11)

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

NOES (8)

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

PAIR

Evans, A. L.	Lawson, R. D.

Majority of 3 for the ayes.

Third reading thus carried.

Bill passed.

TRANSPLANTATION AND ANATOMY (POST-MORTEM EXAMINATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 November. Page 3169.)

The Hon. J.M.A. LENSINK: I rise on behalf of Liberal members to indicate our support for the second reading of this bill. It has taken a while to develop the contents and detail of the bill. The purpose of it is to amend the Transplantation and Anatomy Act following the disclosure and discovery in 2001 that body parts had been removed from deceased persons and used in research without the consent of their families. This bill will ensure that the families of deceased persons have an opportunity to be appropriately involved in the authorisation of post-mortem examinations. It will also ensure that post-mortem examinations are carried out with dignity to the deceased and will empower the Minister for Health to override any objections to a post-mortem examination on the grounds of interest in public health.

I will not go into a great deal of history, but if members are interested in it I refer them to the speech by the then spokesperson for health in the Liberal Party, the Hon. Dean Brown, on 9 November, because he was extensively involved in the early days of these new protocols. Following the discovery in 2001 of this inappropriate activity, an Australian health ministers conference endorsed a national code of ethical autopsy practice in 2002. This bill does not affect any of the provisions in relation to organ donations.

The member for Finniss successfully moved some amendments to penalties during debate on the bill in the House of Assembly, raising the penalties from $5 000, which was the price in 1983, and adding an inflation value to take most of those penalties to $20 000 for offences in relation to the removal of tissue and in relation to providing misleading information for donors of blood or semen; but the amendments did not raise the penalty for one of the other areas. It also includes the trading of tissue. Because we know it happens in other parts of the world, we need to protect ourselves from any of that sort of activity here.

The government also undertook to put the forms in the regulations. They were previously mooted to be a document to be approved by the minister. The opposition still has some concerns with that. I have received a copy of the form to authorise and approve hospital autopsy examinations, but we are yet to receive a copy of what the ministerial or coronial autopsy examinations would be.

I believe that a commitment was given to consult with the opposition in relation to some of the form issues, and that has not taken place. I will put some questions on notice to the government and indicate that we are not happy to proceed through further stages of this debate until those questions are answered. I foreshadow that I will be drafting some amendments and consulting with other members in this chamber prior to next week's sitting in order to assuage those concerns. The first and, I think, the most important matter that was raised in the other house is the proposed new ministerial power for autopsy.

I think the concern is that a minister could potentially use that sort of power for political purposes. A minister might of his or her own discretion choose to issue an autopsy on the ground of public health interests. In this day and age, I think we can envisage some instances where that would be fair and reasonable, such as avian flu or some other sort of pandemic, but 'public health interest' can be a fairly broad term. The minister might choose to act before the Coroner has had an opportunity to issue that directive, and therefore the Coroner would not be involved in the process.

It was suggested in debate in the other place that there be some process for tabling reasons to the Social Development Committee, to the Coroner or some other similar body. That seems to me to be a rather delayed process, one which does not really cut to the chase in the most desirable fashion. Another suggestion was made during that debate that ministerial-ordered autopsies could be referred to the Coroner within a set period of time, and that is something that we will explore in more detail with other members of this chamber.

In that way the authority for the autopsy goes to the Coroner rather than residing with the minister solely in that instance. The Coroner's consent form has not been provided to the opposition. I did state that the hospital consent form has been provided, but the Coroner's consent form has not. I am also advised that this particular form has not been provided to the advisory committee, which was involved in drafting this bill. That is probably the second issue I want to raise with the government, the first being to advise the government that we have grave concerns about the process of the ministerial-ordered autopsies.

We would like a copy of the Coroner's consent form, which, I understand, is to be very similar to the ministerial form, which is not yet available. On 9 November in the other place, the Hon. John Hill said:

> As I understand it, the consent forms, other than the one that I have tabled [that is, the hospital autopsy form], have not yet been created, and discussion is going on as to the shape they should be in. Between the houses I will be happy to provide a detailed briefing to

the deputy leader on what is envisaged if that would assist him, but there is no form yet that we can show him.

I indicate that that is a concern. It may well be a concern for other parties within this chamber, because looking at these forms, if one changes a couple of words here or there one can see that it can change the intent and, perhaps, the disclosure to families. I think that, given that they have expressed such a lack of confidence in the system, it is absolutely imperative that as much of this process be as transparent as possible. Also, I have some questions in relation to new section 5A. In his second reading explanation, the Hon. Paul Holloway stated:

A new section 5A has been inserted to help South Australian families understand that when authorisation is given to remove or use organs or tissues for a particular purpose, such as post-mortem or organ donation, that the authorisation includes such retention as is reasonably necessary for that purpose.

I would like an explanation as to how this will work in practice, that is, whether a form of words will be part of the forms, whether there will be a code of practice, or how it is that the government intends to implement that provision. We might be familiar with some of the language, as well as the medical professionals, but it is very important to the families that these provisions and their understanding of the process be very clear. I note that, in her contribution to this bill, the Hon. Sandra Kanck indicated that she is somewhat supportive of the inclusion of the form as a schedule, and that is an area which we will also explore. Could the government take note of the fact that we do not have the other forms? We would like to see them or have a briefing.

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I will make some concluding remarks and take the bill to committee but not proceed any further. Do members have any problems with that? I will not go into committee.

The Hon. Sandra Kanck interjecting:

The Hon. CARMEL ZOLLO: All right. I thank members for their contribution to this bill. The purpose of the bill is to ensure that the family of a deceased person has the opportunity to be appropriately involved in the process of authorising a post-mortem examination and also to ensure that post-mortem examinations are carried out with regard to the dignity of the deceased. It empowers the Minister for Health to override any objections to a post-mortem examination, if it is in the interests of the public health that a post-mortem examination be carried out. The bill also seeks to bring South Australia into line with the national code of ethical autopsy practice which was endorsed nationally at the Australian Health Ministers Conference in April 2002. I have noted that two honourable members have some issues that they wish to raise and they have also put some questions on notice. I indicate that we can deal with that in the committee stage. Again, I thank honourable members for their contributions.

Bill read a second time.

STATUTES AMENDMENT (CRIMINAL PROCEDURES) BILL

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

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

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Criminal trial reform is not usually either newsworthy or controversial. It excites only the aficionado. But this Bill is controversial and it is exciting. It proposes major reforms to the way in which the criminal justice system can deal with the trial of serious offences tried on information. These are the most important changes proposed to the criminal justice system since the major changes to the courts structure passed by the Parliament in 1992. But if the Bill is controversial for some, I cannot emphasise too much that it has had a long genesis and has powerful authority behind it. It proposes the enactment of reforms recommended by the Standing Committee of Attorneys-General, its Deliberative Forum, the Martin Committee, the Duggan Committee and the Kapunda Road Royal Commissioner as well as, in a wider spread, the New South Wales Law Reform Commission, and the Roskill and Auld Inquiries in the United Kingdom. These proposals have a sound and healthy pedigree indeed.

This is not only about efficient and effectiveness in the criminal justice system, it is also about fairness in the criminal-justice system. As the McGee prosecution demonstrated and as the Kapunda Royal Commissioner found, there can be exploitation of loopholes in the trial process with expert evidence. In addition, as we shall see, the decision of the Full Court in *Dorizzi* requires attention and the Kapunda Road Royal Commissioner wanted a small amendment to the *Criminal Law (Forensic Procedures) Act) 1998* to make its scope clear in relation to the *Road Traffic Act 1961*.

This Government is committed to the same principles that motivated the Auld Inquiry. They are:

"to ensure just processes and just and effective outcomes;
to deal with cases throughout the criminal justice process with appropriate speed;
to meet the needs of victims, witnesses and jurors within the system;
to respect the rights of defendants and to treat them fairly;
to promote confidence in the criminal justice system.

On the other hand, the Government is opposed to trial by ambush. It is of the opinion that the time has come for the system to progress to some new realities that have been explored and recommended by the highest of authorities, with increasing vehemence, for the last 20 years.

General Background

The genesis of significant law reform in the area of criminal-trial procedure for serious offences was the alleged inability of the English court system to deal with the complicated fraud trials of the 1980s, the consequent Roskill Inquiry and the establishment of the U.K. Serious Fraud Office under its own specially-designed legislation (*Criminal Justice Act, 1987* (UK)). There is also an Australian beginning to this story in the 1980s. Like many stories of criminal law reform, it began with scandals. One well known example became known as the "Greek Social Security Conspiracy" case. The committal proceedings for the recent bodies-in-the-barrels case may have seemed drawn out, but the social-security fraud preliminary hearing (not the trial) referred to ran for two and a half years, with 354 sitting days, more than 350 witnesses called by the prosecution alone, 13 000 exhibits and 30 000 pages of transcript. The result was no trial. The other commonly cited example is the *Grimwade* trial in Victoria, which prompted the Victorian Court of Criminal Appeal to say:

"Let it be understood henceforth, without qualification, that part of the responsibility of all counsel, in any trial, criminal or civil, is to co-operate with the court and each other so far as is necessary to ensure that the system of justice is not betrayed; if the present adversary system of litigation is to survive, it demands no less. … Counsel in future faced with a long and complex trial, criminal or civil, will co-operate with their utmost exertion to avoid a mockery of the system of justice. If not, they must expect to receive, with the sanction of this court, appropriate regimentation by the judge—perhaps of a kind not hitherto experienced—designed to avoid the unhappy result that befell this trial." *Wilson and Grimwade* [1995] 1 VR 163 at 180, 185.

This sort of thing led to a strong campaign for criminal-justice process reform. It was originally confined to complicated fraud trials, but quickly spread to serious criminal trials generally. This process was special in that it attracted a heavy contribution from the judiciary, who have not been noted as an institution for becoming involved in public-policy debates, and for very good reason.

Australian Movements

There was strong pressure from prosecuting authorities and some judges for Attorneys General to act. Accordingly, there was a special meeting of the Standing Committee of Attorneys General (SCAG) in 1992 on the subject, at which policy positions were adopted, but the only wholesale outcome from this push was the enactment of the Victorian *Crimes (Criminal Trials) Act, 1993*. This was modelled on the U.K. serious complex fraud legislation and, like its U.K. ancestor, was soon declared to have failed in its aims. It was replaced by the *Crimes (Criminal Trials) Act, 1999.* Reports suggest that this effort may have been more successful, at least from some points of view.

Matters did not rest there. The Directors of Legal Aid and the Directors of Public Prosecutions came together in 1998 and produced a "Best Practice Model for the Determination of Indictable Charges" and, when that was referred to SCAG, the Attorneys-General established a committee, chaired by Brian Martin Q.C., subsequently Martin J. of the South Australian Supreme Court, to examine the matter again and make recommendations. They did so in what may be called the Martin Report.

This project was taken up with enthusiasm by the Commonwealth, with the result that the Australian Institute for Judicial Administration, with the support of SCAG, staged a two-day conference on the subject in 2000 followed, on the third day, by a meeting of judges, lawyers and policy people nominated by Attorneys General. This last meeting was called the "Deliberative Forum". The Forum then went through the Martin recommendations and the results of the conference and produced a report with many recommendations, some of which did not reflect the Martin recommendations. This report was circulated by the Commonwealth to all Deliberative Forum members, revised in light of comments, and sent out again. It contains 68 recommendations.

SCAG then endorsed the Report and the recommendations. The latter run the gamut from requiring legislative change, to administrative change, to changes in the culture of legal practice. The recommendations are addressed to all players in the system, from judges, to administrators, to lawyers (prosecution and defence) and legal aid.

In late 2001, the then Attorney-General received a letter from the Chief Justice indicating that a committee chaired by Martin J. had reported to him and that he was proposing to carry out some of the changes recommended by that committee that were within his power to do. In late 2003, the Attorney-General appointed a working group to advise him on a selection of recommendations for criminal-trial reform that arose from the Deliberative Forum on Criminal Trial Reform.

The members of the working group (The Duggan Committee) were:

Justice Kevin Duggan

Justice John Sulan

Judge Paul Rice

Wendy Abraham Q.C., Acting Director of Public Prosecutions (later replaced by Peter Brebner Q.C.)

Gordon Barrett Q.C. (now Judge Gordon Barrett)

Matthew Goode, Managing Solicitor, Policy and Legislation, Attorney-General's Department.

The Committee met regularly. It resolved in 2004 to deal with all issues except the controversial one of defence disclosure (upon which it was divided, and which it expected to create further division in the profession and abroad) and, upon that, to await the findings of a large empirical study on defence disclosure being carried out in Canada. That study was promised for a long time but was not forthcoming. (It is now available as Ives, *Defence Disclosure in the Commonwealth: Still More Theoretical Than Real? A Review of the Research.*) With the advent of the Kapunda Road Royal Commission, with its tight deadline, it was clear that the Committee no longer had the luxury of waiting for it. The Committee therefore finalised its report and sent it to the Attorney General on 6 June, 2005.

The Duggan Committee limited its recommendations to those matters raised in the SCAG papers that had not been carried out and which required legislative change. The Report makes two kinds of recommendations that fall within that description. The first group are recommendations that the Committee regards as obvious and uncontroversial. The second group are recommendations about defence disclosure for indictable trials. The Committee regarded these recommendations as having the potential for being most controversial and productive of much opposition. It therefore devoted more space and argument to these recommendations than the former. I will let the Duggan Report speak for itself, interpolating only where required.

The Recommendations

The Minor Recommendations

Only one set of these requires legislation. The Duggan Report says:

> "Recommendation 41: "Immediately after the prosecution opening, in a prescribed form of words the trial judge should invite the defence to respond to the Crown opening and to identify the issues in dispute.
>
> Recommendation 42: "No explanation or remarks should be addressed by the judge or the prosecutor to the jury concerning a failure by the defence to respond to the Crown opening.
>
> We support these recommendations. In recent times the practice of inviting the defence to give a short opening address immediately after the prosecution opening has been followed by some judges in this State and elsewhere. The benefit lies in identifying for the jury or the judge in a trial by judge alone the issues which will be of most relevance in the trial. The earlier the judge and jury are apprised of this knowledge the better. However, as in the case of a prosecution opening, the occasion should not be used to put forward arguments in support of a case. The defence address should be restricted to identifying the issues in the case and the matters to be raised by the defence.
>
> We agree with the proposal in Recommendation 42 that no comment should be made by the judge concerning the failure of the defence to respond to the prosecution opening. We consider it appropriate that the invitation to the defence should be made in the absence of the jury. We are not in favour of requiring the judge to use a prescribed form of words when inviting the defence to respond.
>
> We recommend that these proposals be made the subject of legislation.
>
> Recommendation 43: "Where the defence has provided a response as envisaged in Recommendation 41, the trial judge, immediately following this response should be required to address the jury for the purpose of summarising the primary issues in the trial that are likely to arise for its consideration.
>
> We disagree with the proposal that the trial judge should be required to comment at this stage of the trial. It may be appropriate for the judge to comment further on the issues in dispute in the trial, but that should be left to the discretion of the trial judge. Assistance to the jury in matters such as this is clearly within the province of the trial judge's function and legislation to authorise the practice is unnecessary.

The Bill therefore proposes to fulfil recommendations 41 and 42 and not to fulfil recommendation 43.

Mandated Police Disclosure

The D.P.P. has a duty, by statute, common law and its own guidelines, to make comprehensive disclosure to the accused. This is in the interests of fast, effective and efficient prosecution. For example, it is well known that full disclosure encourages early guilty pleas. Prosecutions can be derailed, delayed or lost if there is not full disclosure or prosecution disclosure is delayed. R v *Ulman-Naruniec* (2003) 143 A. Crim. R. 531 provides a recent South Australian example of how things can go wrong. The Court of Criminal Appeal, in trying to deal with a very complicated case, found that there was an inexcusable failure by the A.F.P. and the Commonwealth D.P.P. to disclose significant and relevant information to the defence. Section 104(2) of the *Summary Procedure Act 1921* and the common law require continuing prosecution disclosure to the defence of material available to the prosecution that is material to the case for the prosecution and that of the defence. There is no legislative provision in South Australia that imposes a duty on police officers to disclose information to the D.P.P. The Duggan Committee recommended that this be remedied.

> "We recommend the enactment of a provision along the lines of s 15A of the *Director of Public Prosecutions Act 1986* (NSW) which states:
>
> > "(1) Police officers investigating alleged indictable offences have a duty to disclose to the Director [D.P.P.] all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person.
> >
> > (2) The duty of disclosure continues until one of the following happens:

(a) the Director decides that the accused person will not be prosecuted for the alleged offence,

(b) the prosecution is terminated,

(c) the accused person is convicted or acquitted.

(3) Police officers investigating alleged indictable offences also have a duty to retain any such documents or other things for so long as the duty to disclose them continues under this section. This subsection does not affect any other legal obligation with respect to the possession of the documents or other things.

(4) The regulations may make provision for or with respect to the duties of police officers under this section, including for or with respect to:

(a) the recording of any such information, documents or other things, and

(b) verification of compliance with any such duty.

(5) The duty imposed by this section is in addition to any other duties of police officers in connection with the investigation and prosecution of offences.

The Committee also draw attention to recommendations made in a memorandum prepared by Mr Kourakis Q.C., Solicitor-General, dated 1 May, 2003. The Solicitor-General proposed that all documents collected and created in the course of a police investigation be verified by a certificate produced at committal by the prosecution. The certificate would have to be cleared by the prosecution to ensure that any form of claimed privilege is not breached. Put another way, claims for privilege, public interest immunity or other exemption from disclosure should be decided by the D.P.P. and not the police. The certificate would include an undertaking to advise the prosecuting authority of any documents subsequently collected as soon as is reasonably practicable. The Committee took the view that it was not within its terms of reference to comment on this proposal but thought it might well be considered if pre-trial disclosure legislation is contemplated. Existing legislation authorises courts to make rules generally about this certificate or list. Most of the detail should be left to rules to enable appropriate flexibility.

The Bill proposes the enactment of Mr Kourakis's recommendations.

Prosecution Disclosure

Although currently extensive, prosecution disclosure could be improved by enactment of formal obligations. In the Committee's words:

"In addition to fulfilling the requirements of the *Summary Procedure Act 1921* s 104, we understand that it is customary for the prosecution to provide the defence with certain other documents such as a copy of the information and details of the accused's previous convictions. We think it is appropriate to provide for such matters by way of statutory requirements similar to those which are contained in the New South Wales and Western Australian legislation. To this end we recommend that the prosecution be required to provide the defence with the following:

(a) a copy of the information,

(b) an outline of the prosecution case,

(c) a copy of any information in the possession of the prosecutor that is relevant to the reliability or credibility of a prosecution witness,

(d) a copy of any information, document or other thing provided by police officers to the prosecutor, or otherwise in the possession of the prosecutor, that may be relevant to the case of the prosecutor or the accused person, and that has not otherwise been disclosed to the accused person,

(e) a copy of the criminal history of the accused,

(f) any other document prescribed by rules of court.

The outline of the prosecution case would set out the acts, facts, matters and circumstances relied upon by the prosecution but would not be treated as formal particulars of the charge or charges.

The copy of the information should be provided prior to the first arraignment. The other information should be provided no later than the first directions hearing.

In addition:

"We also recommend that the court be given power to direct the prosecution to serve a notice to admit facts on the defence requesting the defence to respond to that notice prior to the commencement of trial. In some cases there are informal discussions between the prosecution and the defence as to matters which are not in dispute. We consider there is an advantage in formalising this procedure in order to provide an impetus for the parties to direct their attention to these matters before trial. We recommend that the order to serve the notice be made at the first directions hearing and that no order be made unless the accused is represented at the time.

The Bill proposes the enactment of these proposals. It has been necessary to add a little detail, fleshing out the rights and obligations of the defendant in the circumstances referred to.

Defence Disclosure

There has been a significant growth in statutory provisions requiring defence disclosure in Australian jurisdictions in recent years, as well as in England and, to a lesser extent, Canada. In Australia, there are major statutory defence disclosure regimes in place in New South Wales, Victoria and Western Australia. The English defence disclosure scheme is comprehensive. The merits or otherwise of requirements of defence disclosure have been rehearsed time and again over the past decade. The matter is put as succinctly as possible by the Duggan Report:

Some of the arguments for and against such disclosure are summarised in the Second Report of the New South Wales Parliamentary Standing Committee on Law and Justice in respect of the Criminal Procedure Amendment Act (Pre-Trial Disclosure) Act 2001 (NSW) ("the New South Wales Report") at [2.11] and [2.12] as follows:

"Arguments in support

"the reforms would draw together, formalise and clarify the combination of laws, rules, regulations and guidelines that previously regulated pre-trial disclosure.

pre-trial disclosure allows improved preparation of the prosecution case and improved fairness in the trial process as the prosecution will have the opportunity to consider and test all the evidence.

the defendant would be in a better position to make an informed decision about whether to plead guilty based on the strength of the disclosed prosecution case.

defence pre-trial disclosure addresses the problem of defendants 'ambushing' the prosecution at trial with defences the prosecution could not anticipate.

adjournments in response to unexpected developments in the course of a trial would be minimised.

parties would be able to focus on issues that are in contention, rather than having to prepare evidence in relation to issues that are not in dispute.

a better and fairer outcome can be reached as pre-trial disclosure by both parties ensures the court would be aware of all the relevant information.

pre-trial disclosure in general increases efficiency in the criminal justice system leading to a reduction in court delays and the costs associated with such trials and also reducing the impact on victims and witnesses.

Arguments against

the reforms would have a negative impact on defendants in complex criminal trials because they undermine the right to silence, the presumption of innocence and the burden of proof.

the prosecution would be able to tailor its case in light of the disclosed defence case.

compulsory pre-trial disclosure would place a resource burden on legal services to defendants.

there may be acceptable reasons for the defence to depart from the disclosed defence at trial and the ability to do this under a pre-trial disclosure order is limited.

orders for compulsory pre-trial disclosure may not have the effect of reducing court delays as asserted.

the use of sanctions for breaches of disclosure orders is inappropriate.

the use of sentencing discounts for compliance with pre-trial disclosure requirements is inappropriate.

The arguments are dealt with in considerable detail in Griffith, "Pre-Trial Defence Disclosure Background to the Criminal Procedure Amendment (Pre-Trial Disclosure Bill 2000 (NSW)), December 2000.

This is not an issue—or group of issues—on which it can be said that one point of view is conclusively right or conclusively wrong. It is a matter of considering the matter on balance. The Duggan Committee has advised the Government that:

"We are of the view that the developments in the criminal justice system referred to above favour the case for the

introduction of defined disclosure requirements by the defence in certain circumstances and that the arguments in favour of such reform outweigh the arguments against it. … we accept the argument that the right to silence which is based on the rule against self-incrimination is not diminished by a requirement to indicate certain specific defences which might be raised, what challenges are to be made to the prosecution evidence or what expert evidence might be adduced in support of the defence case. We do not agree that requirements to disclose such information could in any sense affect the burden of proof. The presumption of innocence which provides the rationale for the burden of proof would be similarly unaffected.

The Bill proposes the enactment of provisions giving effect to that advice.

The result is a series of recommendations based in part on the existing New South Wales statutory scheme. That is in large part owing to the scheme's reflecting the SCAG recommendations. The first general set of recommendations is:

"Accordingly, we would favour a procedure whereby the court was given power to make orders requiring pre-trial disclosure by the defence in those cases in which the court considered that such an order was appropriate. The prosecution could make application to the court for an order or the court could act on its own motion. We think it unnecessary to confine the exercise of the discretion to a statutory formula as is required by the New South Wales legislation.

We recommend that the order for disclosure may provide for any one or more of the following:

(a) Notice as to whether the accused person proposes to adduce evidence at the trial of any of the following contentions:

(i) mental incompetence,
(ii) self-defence,
(iii) provocation,
(iv) accident,
(v) duress,
(vi) claim of right,
(vii) automatism,
(viii) intoxication;

(cf. *Criminal Procedure Act 1986* (NSW) s 139(1)).

(b) Notice by the defence as to whether it is necessary for the prosecution to call all witnesses in respect of surveillance evidence and records of interview and, if not, which witnesses are required.

(c) Notice by the defence as to whether any issue is taken with respect to the continuity of custody of exhibits to be tendered by the prosecutor.

(d) Notice by the defence as to whether there is any dispute in relation to the accuracy or admissibility of documentary evidence, charts, diagrams or schedules to be tendered by the prosecution.

The Committee continued to make a recommendation about a more specific area of defence disclosure. It is well known that the defence must disclose the intention to rely on the defence of alibi and the reasons for that are equally well known. In South Australia, that requirement is to be found in s 285C of the *Criminal Law Consolidation Act*. The provision is very detailed:

285C—Notice of certain evidence to be given

(1) Subject to subsection (2), if a defendant proposes to introduce evidence of alibi at the trial of an indictable offence in the Supreme Court or the District Court, prior notice of the proposed evidence must be given.

(2) Notice of proposed evidence of alibi is not required under subsection (1) if the same evidence, or evidence to substantially the same effect, was received at the preliminary examination at which the defendant was committed for trial.

(3) The notice—

(a) must be in writing;

(b) must contain—

(i) a summary setting out with reasonable particularity the facts sought to be established by the evidence; and

(ii) the name and address of the witness by whom the evidence is to be given; and

(iii) any other particulars that may be required by the rules;

(c) must be given within seven days after the defendant is committed for trial;

(d) must be given by lodging the notice at the office of the Director of Public Prosecutions or by serving the notice by post on the Director of Public Prosecutions.

(4) Non-compliance with this section does not render evidence inadmissible but the non-compliance may be made the subject of comment to the jury.

(5) Except by leave of the court, evidence in rebuttal of an alibi shall not be adduced after the close of the case for the prosecution.

(6) Leave shall be granted under subsection (5) where the defendant gives or adduces evidence of alibi in respect of which—

(a) no notice was given under this section; or

(b) notice was given but not with sufficient particularity, (but this section does not limit the discretion of the court to grant such leave in any other case).

(7) In any legal proceedings, a certificate apparently signed by the Director of Public Prosecutions certifying receipt or non-receipt of a notice under this section, or any matters relevant to the question of the sufficiency of a notice given by a defendant under this section, shall be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

(8) In this section—

evidence of alibi means evidence given or adduced, or to be given or adduced, by a defendant tending to show that he was in a particular place or within a particular area at a particular time and thus tending to rebut an allegation made against him either in the charge on which he is to be tried or in evidence adduced in support of the charge at the preliminary examination at which he was committed for trial.

(Note also s 107(5) of the *Summary Procedure Act 1921*.)

The Committee has recommended that a similar regime apply in relation to the intention to call any expert evidence, at trial or on the voir dire. Unlike the previous general recommendation for disclosure, the requirement would not be discretionary—it would apply in all cases. However, the court should be given the authority to dispense with the requirement if, on an application by the defence, the court was satisfied that there was good reason for dispensing with compliance and no miscarriage of justice would result if the dispensation were granted (cf *Crimes Act* (WA) s 611C(3)). The precise terms of the recommendation are:

"We recommend legislation to require the defence to file and serve a statement in relation to any expert evidence it proposes to call. The statement should be filed and served at least fourteen days before trial and contain the name and address of the witness, the qualifications of the witness to give evidence as an expert and the substance of the evidence it is proposed to adduce from the witness as an expert, including the opinion of the witness and the acts, facts, matters and circumstances on which the opinion is formed. This requirement follows along the lines of s 9 of the *Crimes (Criminal Trials) Act 1999* (Vic). … The time for disclosure should be specified in the legislation.

There is an alternative position, however, that was considered by the Committee. Section 139 of the *Criminal Procedure Act 1986* (NSW) and s 611C of the *Crimes Act* (WA) require disclosure of the actual copies of any reports prepared by expert witnesses proposed to be called by the accused. Some members of the working group expressed concern about the application of the New South Wales and Western Australian provisions to reports from psychiatrists and psychologists which might contain reference to the accused's instructions about his or her case. The Committee therefore did not take this position. The Kapunda Road Royal Commissioner has recommended that the report of the Committee be adopted. Therefore, the Bill is drafted on the basis of the Committee's recommendation.

The Kapunda Road Royal Commissioner had an additional recommendation in this area. He said:

"That in cases where expert psychiatric evidence about an accused is proposed the court should have power to require the accused to submit to an examination by an independent expert retained by the other side".

The Royal Commissioner did not propose any sanction for failure to fully comply. The sanction should be inability to lead the evidence.

Sanctions

Sanctions that are available to the court to deal with prosecution failure to comply with its obligations are well established and

litigated. That is not so for the defence. The Committee agreed with these recommendations in the Report of the SCAG working group:

"32 If the prosecution fails to comply with its obligations or seeks leave to adduce the additional evidence:

(i) The Court should be empowered to award adjournment and incidental costs;

(ii) The Court should more readily be prepared to grant a voir dire examination in connection with the additional evidence.

(iii) The prosecution should only be entitled to lead the evidence if a reasonable explanation for its late production is provided or the interests of justice otherwise require that the prosecution be permitted to lead the evidence.

33 If a defendant fully cooperates and is convicted, the defendant should be entitled to a discount of sentence to be determined within the discretion of the trial judge, but to be specifically identified by the trial judge.

34 If a defendant fails to cooperate by declining to identify a specific defence relied upon at trial, the defendant should only be permitted to lead the evidence if a reasonable explanation for the failure to identify the defence during the pre-trial process is given or the interests of justice otherwise require that the defendant be permitted to lead the evidence.

35 If a defence has failed to co-operate by failing to identify a specific defence, subject to the overriding consideration of the interests of justice, the trial judge should be empowered to impose restrictions upon cross-examination of Crown witnesses.

36 If a defendant fails to co-operate in a meaningful way or only partially co-operates and is convicted, the sentencing judge should be entitled to adjust the discount.

37 A defendant committed for trial must be fully informed by counsel and the committing magistrate that a failure to co operate may result in the loss of any sentencing discount that would otherwise be applicable.

38 Counsel should be obliged to inform the judge at the first directions hearing that the advice referred to in recommendation 37 has been given.

39 39 The obligation to give the advice mentioned in recommendation 37 should be included in the rules of professional conduct.

The Committee commented that it might also be considered appropriate to include in the rules of professional conduct an obligation on legal practitioners to assist in ensuring that orders for pre-trial disclosure are carried out.

These recommendations have been altered in the Bill. Some alterations are significant and some are minor.

· It has been decided not to deal with routine adjournments and orders for costs in the Bill. These are well handled by current law in relation to both prosecution and defence and there is no evidence that the rules are unsatisfactory. The current rules remain applicable. The exception is a failure to comply with a requirement to give notice of an intention to call expert evidence. The Bill deals with this situation to make it clear that the prosecutor will be the judge of what is the time necessary to consider the effect of that evidence and whether to get alternative evidence to rebut it.

· The current law about giving a sentence discount of sentence for co-operation by the defence is assumed to continue without being further spelled out.

· The recommended sanctions for any defence failure to comply with a requirement to identify a defence were thought to be too complex and open-ended. Instead, it is proposed that the flexible sanction of adverse comment by judge or prosecution is preferable.

· The obligation to inform the defendant of key obligations under the new rules proposed here is incorporated into the notices and will be the subject of prescribed wording rather than being left at large to the oral advice of practitioners or the court. It is thought that this is a surer and more fair way to convey the required information.

Other Amendments

Criminal Law (Forensic Procedures) Act 1998

The Kapunda Road Royal Commissioner found that there was ambiguity in the relationship between the *Criminal Law (Forensic Procedures) Act 1998* and the *Road Traffic Act 1961*. The Commissioner recommended that the relationship be clarified. This Bill amends s 5 of the *Criminal Law (Forensic Procedures) Act 1998* to remove the ambiguity. The Act, as amended, will say that the Act does not apply to alcohol or drug testing procedures under the *Road Traffic Act 1961*. In other words, there are two codes at work. They are mutually exclusive. If police are investigating a summary offence under the *Road Traffic Act 1961* (such as driving while impaired, or driving with a blood alcohol over the limit), they must use that Act. If police are investigating a serious offence against another Act (albeit committed in connection with driving a motor vehicle) such as causing death or serious injury by dangerous driving or reckless endangerment, they can use the *Criminal Law (Forensic Procedures) Act 1998*. That is the way it was always intended to be.

Magistrates Court Act 1991

The appeal provisions of the Magistrates Court are set out in section 42 of the *Magistrates Court Act 1991.*

The decision of the Full Court in *Police v Dorizzi* (2002) 84 SASR 416 illustrates a problem with section 42. In *Dorizzi*, the Full Court held that section 42 does not enable a party to a criminal proceeding (in this case the prosecution) to appeal a ruling on the admissibility of evidence by a magistrate. *Dorizzi* was the prosecution night club security guards for assault. The key prosecution evidence was tapes from various video-surveillance cameras purporting to show the offence taking place. The magistrate hearing the matter ruled the video tapes inadmissible. As a result, the prosecution case collapsed. The magistrate ruled there was no case to answer and ordered the case be dismissed.

The prosecution appealed the magistrate's decision to a single judge of the Supreme Court under section 42. On appeal, the Judge ruled the video tape was incorrectly ruled inadmissible, set aside the magistrate's orders, and ordered a retrial. On further appeal, however, the Full Court held that the prosecution could not have succeeded in its appeal as section 42 did not authorise an appeal against the magistrate's ruling on the admissibility of the video tapes.

The Bill amends sections 42 to provide, in effect, a right of appeal against a decision by the Magistrates Court on an interlocutory judgment. That will be permitted when:

· a question as to whether proceedings on a complaint or information or a charge contained in a complaint or information should be stayed; or

· the judgment in effect destroys the case for the prosecution; or

· the Court or the appellate court is satisfied that there are special reasons for allowing the interlocutory appeal to proceed (given the often enunciated judicial expressions of the public interest against splitting the course of criminal proceedings).

· This proposal broadly conforms to the recommendations of the Model Criminal Code Officers Committee in its Discussion Paper and Report on Double Jeopardy and is broadly in accord with similar provisions in New South Wales.

Conclusion

This Bill is a major step forward in criminal trial reform. It has been preceded by decades of debate and consultation among judges, prosecutors, directors of legal aid and defence counsel across Australia. Although some will cling to outdated procedures and formalities, there has been widespread agreement in many reports at the highest and most expert level across Australia and the United Kingdom that change in the old ways is necessary. Now we, too, move forward.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Insertion of sections 285BA, 285BB and 285BC

This clause inserts new sections in Part 9 of the *Criminal Law Consolidation Act 1935* as follows:

285BA—Power to serve notice to admit facts

This provision allows the DPP to apply to the court (where it is dealing with an offence that is to be tried on information) for authorisation to serve on the defence a notice to admit specified facts. Such a notice may specify a time (fixed by the court) within which it is required to be complied

with and must contain a warning advising the defendant of the possible consequences of an unreasonable failure to make an admission in response to the notice.

Such an order may only be made at a directions hearing at which the defendant is represented by a legal practitioner unless the court is satisfied that the defendant has voluntarily chosen to be unrepresented or is unrepresented for reasons attributable to the defendant's own fault.

The provision does not abrogate the privilege against self-incrimination but if a defendant unreasonably fails to make an admission in response to a notice and is convicted, the failure should be taken into account in fixing sentence.

285BB—Power to require notice of intention to adduce certain kinds of evidence

This provision would allow a court before which a defendant is to be tried on information to require the defence to give the DPP written notice of an intention to introduce certain types of evidence listed in the provision (such as evidence tending to establish that the defendant was mentally incompetent to commit the alleged offence or is mentally unfit to stand trial, evidence of self defence and evidence of provocation amongst other things). The court may only allow the prosecution to make such a requirement if satisfied that the prosecution has fulfilled its obligations of disclosure to the defence. Non-compliance with a requirement under the provision does not make the evidence inadmissible but the prosecutor and judge may comment on the non-compliance to the jury.

In addition, a court before which a defendant is to be tried on information may require the defence to notify the DPP in writing whether it consents to dispensing with the calling of prosecution witnesses proposed to be called to establish the admissibility of specified intended evidence of a kind listed in the provision (such as evidence of surveillance or interview and exhibits). If the defence fails to comply with this type of notice, the defendant's consent to the tender of the relevant evidence for purposes specified in the notice will be conclusively presumed.

285BC—Expert evidence

This provision provides that, if expert evidence is to be introduced for a defendant being tried on information, written notice of the intention to introduce the evidence (setting out the name and qualifications of the expert, a description of the general nature of the evidence and what it tends to establish) must be given to the DPP on or before the date of the first directions hearing or as soon as practicable after it becomes available to the defence, unless an exemption is granted by the court.

In addition, if the defence proposes to introduce expert psychiatric or medical evidence, the court may, on application by the prosecutor, require the defendant to submit to an examination by an independent expert approved by the court.

If a defendant fails to comply with a requirement of the provision, the evidence will not be admitted without the court's permission (but the court cannot allow the admission of evidence if the defendant fails to submit to an examination by an independent expert) and the prosecutor and the judge may comment on the defendant's non-compliance to the jury.

If the DPP receives notice of an intention to introduce expert evidence less than 28 days before the trial commences, the court must, on application by the prosecutor, adjourn the case to allow the prosecution a period determined by the prosecutor to be necessary to obtain expert advice on the proposed evidence.

In addition, if it appears to the judge that a non-compliance has occurred on the advice or with the agreement of a legal practitioner, the giving of the advice or agreement is deemed to constitute unprofessional conduct and the judge must report the legal practitioner to the appropriate authority to be dealt with for that conduct.

5—Substitution of section 288A

This clause substitutes new provisions as follows:

288A—Defence to be invited to outline issues in dispute at conclusion of opening address for the prosecution

This provision requires the judge in a trial of an offence on information, to invite the defendant, at the conclusion of the prosecutor's opening address, to address the court to outline the issues in contention between the prosecution and the defence.

288AB—Right to call or give evidence

This provision replicates the current section 288A but with a minor change (new subsection (4)) that is consequential to new section 288A.

Part 3—Amendment of *Criminal Law (Forensic Procedures) Act 1998*

6—Amendment of section 3—Interpretation

This clause inserts a definition of ***alcohol or drug testing procedure*** for the purposes of the measure.

7—Substitution of section 5

This clause substitutes new provisions as follows:

5—Application of this Act to alcohol or drug testing procedures

This provision clarifies the position with respect to alcohol or drug testing procedures. The provision makes it clear that such procedures can be carried out either under the *Criminal Law (Forensic Procedures) Act 1998* or under some other law but if the procedure is carried out under some other law (such as the *Road Traffic Act 1961*), the *Criminal Law (Forensic Procedures) Act 1998* does not apply to it.

5A—Body searches

This provision provides that a search of the person is not to be regarded as a forensic procedure (currently specified in section 5 of the *Criminal Law (Forensic Procedures) Act 1998*).

8—Repeal of heading to Part 2 Division 1

This clause repeals a heading that is now unnecessary.

9—Substitution of section 6

This clause substitutes a new section 6 as follows:

6—Part to apply to all forensic procedures other than alcohol or drug testing procedures conducted under other laws

This clause provides that Part 2 of the principal Act applies to forensic procedures (including alcohol or drug testing procedures) carried out under the *Criminal Law (Forensic Procedures) Act 1998* and to forensic procedures carried out under other laws, with the exception of alcohol or drug testing procedures.

10—Repeal of heading to Part 2 Division 3

This clause repeals a heading that is now unnecessary.

Part 4—Amendment of *Director of Public Prosecutions Act 1991*

11—Insertion of section 10A

This clause inserts new section 10A as follows:

10A—Disclosure of information to Director

This provision provides that a police officer in charge of the investigation of an indictable offence (the ***chief investigator***) has a duty to disclose to the DPP all documentary material collected or created in the course of the investigation that might reasonably be expected to assist the case for the prosecution or the case for the defence. This duty extends to material that may be exempt from production in court, and continues until—

- the Director decides that the person suspected of having committed the alleged offence not be prosecuted for the offence; or
- the prosecution is terminated; or
- the accused person is convicted or acquitted, and all rights of appeal have expired or been exhausted.

The chief investigator must—

- ensure that, when the DPP requires it, the DPP is provided with a list of the documentary material liable to disclosure under the provision and copies of material referred to in the list; and
- ensure that material liable to disclosure is retained for the required period; and
- at the request of the Director, provide him or her with copies of specified documentary material that is not otherwise liable to disclosure.

Part 5—Amendment of *Magistrates Court Act 1991*

12—Amendment of section 42—Appeals

This clause substitutes new subsection (1a) into section 42 of the *Magistrates Court Act 1991*. The new subsection provides that an appeal does not lie against an interlocutory judgment unless—

(a) the judgment stays proceedings; or

(b) the judgment destroys or substantially weakens the basis of the prosecution case and, if correct, is likely to lead to abandonment of the prosecution; or

(c) the Court or the appellate court is satisfied that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial and grants its permission for an appeal.

Part 6—Amendment of *Summary Procedure Act 1921*

13—Amendment of section 104—Preliminary examination of charges of indictable offences

This clause amends section 104 of the *Summary Procedure Act 1921*.

Subclause (1) substitutes a new subparagraph (iv) into section 104(1)(a), amending the list of things the prosecutor must file in the court in accordance with that subsection to include all other material relevant to the charge (whether relevant to the case for the prosecution or the case for the defence) that is available to the prosecution except material exempt from production because of privilege or for some other reason.

Subclause (2) substitutes new paragraph (b) into the same subsection, setting out the material that must be provided to the defendant or their legal representative.

Subclauses (3) and (4) make related amendments to section 104.

14—Amendment of section 107—Evaluation of evidence at preliminary examination

This clause substitutes new subsection (5) and inserts new subsection (6) into section 107 of the *Summary Procedure Act 1921*.

Subsection (5) requires the court that commits a defendant for trial to provide the defendant with a written statement setting out his or her procedural obligations in regard to the trial, and explaining that non-compliance with those obligations may have serious consequences. The proposed subsection also requires the court to give the defendant such further explanations of the trial procedure and his or her obligations as the Court considers appropriate.

Subsection (6) provides an evidentiary provision stating that if, in any legal proceedings, the question arises whether a defendant has been provided with the statement and explanations required by section 107(5), it will be presumed, in the absence of proof to the contrary, that the defendant has been provided with the statement and explanations.

The Hon. R.I. LUCAS secured the adjournment of the debate.

CONTROLLED SUBSTANCES (SERIOUS DRUG OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 November. Page 2924.)

The Hon. SANDRA KANCK: This bill sets out severe penalties for trafficking in a range of controlled drugs. It provides for maximum sentences of 10 years for trafficking in a controlled drug, 25 years for trafficking in a commercial quantity of a controlled drug and life for trafficking in a large commercial quantity of a controlled drug. Large fines can also be levied against offenders as well as the imprisonment. Further, the general trafficking offences are supplemented by a similarly tiered structure of offences on manufacturers so that we have manufacturing, manufacturing a commercial quantity, and manufacturing a large commercial quantity. On cultivation of controlled plants, similarly, we have cultivation, cultivation of a commercial quantity, and cultivation of a large commercial quantity.

The bill neatly encapsulates the profound flaws in the prohibitionist stance on the use of illegal drugs in our society. Had imposition of harsh criminal penalties for drug trafficking worked, the tide of recreational drugs in our society would have ebbed long ago, yet it continues to flow almost uninterrupted despite people being hanged, executed and imprisoned. If draconian laws were effective, we would not have a petition circulating in this parliament calling on the Singaporean government to spare the life of Van Tuong Nguyen for trafficking. We would not have the so-called Bali Nine awaiting trial in Indonesia. Prisons around the world would not bulge with convicted drug felons.

Despite the failure of law and order solutions to drug use in our society, we have this bill further increasing penalties. We are making a false promise to our community. We are pretending that this bill will be effective in suppressing the drug trade when it will not. The drug trade will continue as long as massive profits are to be made, and that will be as long as we have substantial domestic demand. The whole community pays the price for our current law and order policies. Police corruption and organised crime flourish in the fertile soil of drug money; our prisons are stacked with people who are there for drug offences, and petty crime funds addictions.

This bill takes us no closer to a solution. Indeed—and I think this is really concerning—if the Hon. Robert Lawson has his way in the committee stage, it may take us even further away from a solution. As the shadow attorney-general indicates, he is considering 'seriously examining an amendment to ensure that the minister is not given powers which are at odds with national recommendations which are against allowing the analysis of drugs at rave parties for so-called research purposes'. The fact is that the minister has that power now under the Controlled Substances Act.

Unfortunately, my attempts to persuade the previous health minister Lea Stevens to use the power granted by that act to allow pill testing failed. International research demonstrates that, where testing takes place, people consume fewer drugs, doing themselves less harm and reducing the profits of drug dealers. I say to the Hon. Robert Lawson, 'Don't destroy one of the few effective tools we currently have for reducing drug consumption.' Allowing a comprehensive drug testing regime to be established will be far more effective than this bill has any hope of creating. This is yet another bill related to drug laws that will not work, and it will not work because it concentrates on limiting supply rather than limiting demand.

I give an example of the reduction in tobacco use in the past three decades. We did not reduce it by passing legislation to ban tobacco; we caused that reduction by reducing the demand for tobacco. That is what we should be doing with the illicit drugs. Because it is stupid to pass laws that are not going to work, I indicate that the South Australian Democrats will not be supporting this legislation.

The Hon. A.L. EVANS: I support the second reading and passage of this bill. The law in South Australia regarding the possession, use and trafficking in illegal drugs is contained in the Controlled Substances Act 1984. As I understand it, the impetus for much of the content of this bill originates from two sources: first, a report on serious drug offences prepared by the Model Criminal Code Officers Committee in October 1998; and, secondly, an agreement reached by the Council of Australian Governments on 5 April 2002 to modernise the criminal law in relation to serious drug offences.

My constituents are supportive of a tough stance on illegal drugs. Over the years, I have personally witnessed in many situations the damage that is wrought by the use of illegal drugs. I have seen first-hand the mental and physical harm caused to users of such drugs. I have also witnessed the

indirect effects that such use has on members of the same household and other loved ones. I concur with the statements made by others, and my experience lends support for the motion, that many mental health issues arise out of illegal substance abuse. It is not a matter that can be taken lightly, nor is it a matter that can be dealt with lightly.

I believe that it is time that this government truly got tough on the drug problem in South Australia and ceased dancing around the issue for political purposes. The bill undertakes an overhaul of the offences related to the possession, use and trafficking of illegal drugs. In my view, it has done a decent job of creating a new scheme of offences and penalties in this area of law with only a few exceptions. The bill also contains sundry amendments to the Controlled Substances Act, some of which my constituents would support, some of which I am currently considering in more detail.

At first instance, I am supportive of the extension of powers for authorised officers to inspect a broader range of commercial premises without having to obtain a warrant. I am also supportive of the proposed power to be granted to the minister to use mass media warnings in situations where substandard substances that pose risks to public health have been discovered. The inclusion of a person with legal expertise and qualifications on the Controlled Substances Advisory Council is, in my view, also prudent.

I have some doubts regarding the provisions in the bill which prevent a person under the age of 18 from being guilty of selling drugs to a child. Whilst I understand the likely policy reasons for this provision, I am not convinced that such an exemption, which is not included in similar legislation in other states, will create the necessary deterrents required in this important area of law. I am inclined to support any amendment put forward which will reverse the reduction of the fine and imprisonment term for those found guilty of supplying drugs to children in certain circumstances. To send the right message to those persons involved in the supply of illegal drugs, the government ought to be increasing the penalties, not reducing them. I am not sure of the government's rationale in this regard.

There are other measures that the government has not included in this bill which I believe should be incorporated if it truly wants to take a tough stance on drugs in South Australia. For example, as the Hon. Mr Lawson has highlighted, the bill does not alter the penalties that apply to smaller quantities of illicit drugs nor does it make it an offence to sell equipment used to smoke illicit drugs. I call on the government to further amend the bill as required to make a truly tough stance on drugs in South Australia. In light of the above, whilst I have yet to consider the potential amendments to the bill, I am at this stage supportive of its second reading.

The Hon. CARMEL ZOLLO (Minister for Mental Health and Substance Abuse): I thank all honourable members for their contribution in relation to this piece of legislation, the Controlled Substances (Serious Drug Offences) Amendment Bill. It is an important piece of legislation in the fight against drugs. I have heard that we will hear some spirited debate in the committee stage, and we look forward to that. Again, I thank all honourable members for their contributions.

Bill read a second time.

ADJOURNMENT

At 5.51 p.m the council adjourned until Monday 28 November at 2.15 p.m.