LEGISLATIVE COUNCIL

Tuesday 4 March 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:17 and read prayers.

PAPERS

The following papers were laid on the table:

By the President—

District Council of Orroroo/Carrieton—Report, 2006-07

By the Minister for Police (Hon. P. Holloway)—

South Australian Superannuation Scheme Actuarial Report as at 30 June 2007
Regulations under the following Act—
Freedom of Information Act 1991—Exempt Agency

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

Regulations under the following Acts—
Primary Industry Funding Schemes Act 1998—
Adelaide Hills Wine Industry Fund
Langhorne Creek Wine Industry Fund
Riverland Wine Industry Fund

By the Minister for Environment and Conservation (Hon. G.E. Gago)—

Local Government Grants Commission—Report, 2006-07
Regulations under the following Act—
Radiation Protection and Control Act 1982—
Cosmetic Tanning Units
Non-ionising Radiation

MITSUBISHI MOTORS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18): I lay on the table a copy of a ministerial statement relating to lending institutions and Mitsubishi workers made earlier today in another place by my colleague the Premier.

QUESTION TIME

OAKDEN NURSING HOME

The Hon. J.M.A. LENSINK (14:20): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about the Oakden nursing home.

Leave granted.

The Hon. J.M.A. LENSINK: I have received an email from a constituent which is a transcript of an interview undertaken with an independent investigator who, I understand, was appointed by the North West Adelaide Health Service to look into this complaint. In this interview there are a number of serious allegations of nepotism and inappropriate behaviour in front of residents and relatives, in particular, acts of simulated sex, and this dates from 2006. My questions are:

1. Is the minister aware of such allegations in relation to staff and former staff of the Oakden nursing home?

2. What has the minister done about it?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:21): I thank the honourable member for her question. The Oakden nursing home or, I should say, Makk and McLeay (part of the Oakden facility) has been under intense investigation for some time. I

remind members that it is an accredited facility. It was accredited last in October 2007, which is only a number of months ago. Since then, complaints have been pursued by the commonwealth government and a number of standards have been found to be in deficit, as I have reported at great length in this chamber before.

There are 44 accreditation standards and there were 26 areas found to be in deficit. All of those areas have been documented, and details about each and every one of them are available. In response to that, as I have reported here before, a great deal of work has been done to address the problems that were identified by the commonwealth. The management team was reviewed and a new management team was put in place which included a new and additional position of director of nursing, and also the additional position of nurse adviser.

A very intensive and exhaustive action plan has been put in place that is working through each and every one of those areas where a problem has been identified. A significant amount of work has been done, and the staff are certainly to be commended for their intense efforts. In relation to some of the areas identified as being noncompliant, some of them have been addressed in full and those risks completely mitigated. Work continues to be undertaken in respect of all others.

This staff team is under intense scrutiny. A full review of audits was undertaken by the Aged Care Standards and Accreditation Agency at the end of February (26 to 28 February 2008), and the audit assessed compliance against all standards. In terms of any problems, the only ones that I am aware of are those that have been dealt with in relation to compliance with those standards. Considerable improvements have been achieved since the site audit in December 2007, at which time the agency advised of the 26 areas of noncompliance. Evidence of sustainability is a key requirement to achieving compliance.

So, full compliance with all the standards can be proved only after some time has elapsed due to the sustainability test, which assessors apply. However, I understand that considerable improvements have been made. As a result of the full audit, I am advised that assessors recommend that a further 10 standards are now being complied with. As I said, I am pleased to report that a great deal of work has been done. I am also advised that the assessors report that a good foundation is being achieved against all the remaining standards, and I am further advised that, of the remaining standards, the main reason for noncompliance is that sustainability has still not been able to be proved, and it can only be proved with time.

As I have reported here, the required improvement plan is well underway. A great deal of work has been done with respect to those problems. I am advised that the Director of Mental Health Operations has no knowledge of or information on the allegations in relation to simulated sex acts at Oakden. I can certainly say that I have been advised that there is no knowledge of those allegations.

BUSHFIRES

The Hon. S.G. WADE (14:26): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about bushfire readiness.

Leave granted.

The Hon. S.G. WADE: In 2003, cabinet formally endorsed the recommendations of the Premier's Bushfire Summit. Several of the recommendations expressed the need for better management of native vegetation on public land, including the need for firebreaks and access tracks in national parks. These recommendations have not been implemented. In November 2005, following the Wangary fires, the Environment, Resources and Development Committee made comparable recommendations relating to the management of native vegetation on public land. My question is: given that it is five years since the Bushfire Summit, what action has the government taken to ensure that the government itself is bushfire ready in terms of bushfire risk on public land?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:27): I am sure that the reason that the Minister for Environment and Conservation and I tried to get up at the same time is that this issue affects both the DEH and me as the Minister for Emergency Services, and the Hon. Gail Gago and I work very closely together in relation to public lands. Of course, the DEH has its own crew, which is also part of the CFS. The honourable member refers to inquest findings. I can say that, following the findings of the Deputy Coroner—

The Hon. S.G. WADE: On a point of order, Mr President, the minister says that I referred to inquest findings: I did no such thing.

The Hon. Carmel Zollo: Yes, you did.

The PRESIDENT: The minister is answering the question. The minister will answer the question in the way she sees fit.

The Hon. CARMEL ZOLLO: Thank you, Mr President.

The Hon. S.G. Wade: She is obviously answering a different question because—

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

The Hon. CARMEL ZOLLO: You do not know what I have said yet. Calm down!

The PRESIDENT: The minister will answer the question as the minister sees fit.

Members interjecting:

The PRESIDENT: Order! The minister will cease to confuse the opposition.

The Hon. CARMEL ZOLLO: I am surprised that the honourable member opposite tried to stop me from speaking, given that I had hardly started. Clearly, the current Fire and Emergency Services Act provides for a number of exemptions under the regulations concerning clearing around dwellings and the creation of fuel breaks. In addition, there are exceptions for clearance work by CFS officers in emergency situations.

The honourable member may not be aware of it, but the Native Vegetation Council Subcommittee, which has representatives from the CFS, the DEH and the Local Government Association, was established to ensure timely approval of native vegetation management plans for fire management and other related issues, including, of course, a rapid response for urgent matters. It has a delegation from the Native Vegetation Council to progress applications and fire prevention plans. The honourable member may be aware that Andrew Lawson, the deputy of CFS, is on that committee, and it has already dealt with a number of applications, including for Port Lincoln.

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: I thought it would be useful for the honourable member to know exactly what we do and do not do. As I said, the Fire and Emergency Services Act provides powers for firefighters at the scene of a fire or other emergencies to undertake any action that appears necessary for the purposes of protecting life and property, despite the fact that the action may result in damage to any aspect of the environment.

I thought the honourable member spoke about the Wangary inquest, or mentioned something about it.

The Hon. S.G. Wade: I said, 'In November 2005, following the Wangary fire'. I didn't mention the word 'inquest'.

The Hon. CARMEL ZOLLO: Well, this is following the Wangary fires. The honourable member is very excitable. Following the findings of the Deputy Coroner—

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: I think he is trying to move up along that bench, Mr President. I can advise the chamber that, following the findings of the Deputy Coroner, a code of practice for the management of native vegetation and bushfire prevention is being developed according to the recommendations of the Deputy Coroner. The code is being developed through the Native Vegetation Council and will provide for an effective and consistent approach to the management of native vegetation and bushfire risk. It will also help to clarify private and public landholders' responsibility for the management of native vegetation.

There were a number of recommendations post Wangary in relation to the role of the DEH, and a number of subcommittees have been formed. As I have said on other occasions in this chamber, they are working together. We have a number of task groups that are working together and they will report back, I expect, towards the end of this month. Then we will be in a position to advise the community and the chamber in relation to the DEH.

As I have said before, the DEH clearly works very closely with the CFS for very obvious reasons. A great deal of our state is under public lands and, of course, we need to ensure that that is properly managed.

HALLETT COVE

The Hon. R.P. WORTLEY (14:32): Will the Minister for Urban Development and Planning please inform the council what the state government is doing to help encourage investment and jobs in the southern suburbs of Adelaide?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:33): This government is committed to working with communities in the south to create investment and employment opportunities. Only last week, I was delighted to be invited to take part in a groundbreaking ceremony to mark the beginning of the construction phase of the expanded shopping centre project at Hallett Cove.

The Makris Group is investing $50 million in the expansion and redevelopment that will triple the size of the current retail centre to about 18,600 square metres. The expanded shopping centre includes a new Woolworths supermarket, Big W discount store, refurbished Foodland supermarket, a new food court and about 70 specialty stores.

Once completed, the expansion will enhance the variety of shopping available in the south of Adelaide as well as foster the sort of competition between retailers that ensures shoppers enjoy the lowest available prices. Just as importantly, the Hallett Cove expansion means more jobs for the south of Adelaide: jobs during the construction phase and jobs once the various supermarkets, retail shops and food outlets open for business.

The importance of this development was demonstrated when Premier Mike Rann attended the ground breaking for the construction of a $13.5 million connector road that will provide residents of Sheidow Park and Trott Park improved access to this new shopping hub. This new road, partly funded by the Rann Labor government, is a critical component of this government's commitment to improving infrastructure for the South.

While I was pleased to take part with Con Makris and Marion City Mayor Felicity-Ann Lewis in the sod-turning ceremony, I was also encouraged to see local MPs Chloe Fox, Leon Bignell and Amanda Rishworth, as well as councillors from the Marion council, at this event. Also, might I add, Kym Richardson, the former federal member for Kingston, was also present in bipartisan acknowledgment of the support provided by the previous federal government for the connector road and the importance of the project to the economic future of Adelaide and the southern suburbs.

As Minister for Police, I am also pleased that the additional floor space created by the expanded centre will allow the government to fulfil its election commitment to open a shopfront police station at Hallett Cove. The lease for the new police station is being finalised, and work on the specific fit-out for police purposes can then begin, providing local patrols with a more visible presence in Hallett Cove.

The Hallett Cove Shopping Centre project in Adelaide's south is being built against a backdrop of a development boom in South Australia. This government's success in delivering the air warfare destroyer project to the Port Adelaide area will create many new jobs directly, with a huge range of spin-offs across the state. The emergence of new defence and mining projects across South Australia will spark important investment and economic development activity and help to achieve the targets of the State Strategic Plan.

While the announcement of the closure of the Mitsubishi plant at Tonsley Park was disappointing news for the workers and their families, the continued economic growth in this state provides the expectation that they will soon be able to find alternative employment. The closure of the Mitsubishi plants at Tonsley Park and Lonsdale will also provide strategic sites for new employment in the south, and my colleague the Minister for the Southern Suburbs will be coordinating activities in relation to that.

I congratulate the Makris Group for the excellent project at the Hallett Cove Shopping Centre and the increased opportunities it provides to the community in Adelaide's south. As I said before, this government is committed to delivering opportunities for the people of Adelaide and the people in the south of Adelaide.

BUSHFIRES

The Hon. SANDRA KANCK (14:37): I seek leave to make an explanation before asking the Minister for Emergency Services a question about extreme bushfires, or mega fires.

Leave granted.

The Hon. SANDRA KANCK: The recent fires on Kangaroo Island highlighted how difficult it is to control conventional bushfires. However, there are a number of indications that climate change could create mega fires, where a number of fronts join up to form a fire so intense that it is impossible to control. In 2003, there were devastating fires in California, Europe and Australia, in particular, the Canberra bushfires.

In 2007, Dr Kevin Hennessy of the CSIRO Climate Impact and Risk Group predicted there would be a 4 to 25 per cent increase in the risk of very high and extreme fire danger days by the year 2020 and a 15 to 70 per cent increase by the year 2050 in south-eastern Australia. It is not clear whether the state government has taken these risks into account in its bushfire management plans. For instance, the Bushfire Prevention and Mitigation Review Report released by the minister last year does not even mention climate change, drought or mega fires. My questions are:

1. How has climate change been taken into account in the government's bushfire management plans?

2. Are there any particular regions that are seen as especially vulnerable to mega fires, and have specific plans been put in place for such regions?

3. What discussions have taken place with the Victorian government about the control of mega fires in the south-eastern border region?

4. Has there been any discussion with the federal government about the potential for a national approach to mega fires?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:39): I thank the honourable member for her important question. Certainly, this state is very much aware of climate change and the repercussions of climate change in relation to so many areas of life in South Australia—and, of course, the way in which we manage bushfires is clearly one of them.

I am fairly certain that the expert to which the honourable member referred has addressed departmental and agency heads in South Australia on several occasions. Indeed, on one occasion, I remember introducing him; so, clearly, we are well connected. Also, the Chief Officer of the CFS is the current chair of the Australasian Fire Authorities Council, and part of its work is also to look at climate change. Of course, legislation dealing with climate change and the targets we want to set as a state has also been introduced into this parliament.

Yes, it has an effect on the way we manage bushfires in the state. We have seen a doubling of aerial resources in South Australia in terms of fighting fires. We have a strategic campaign to ensure that we keep the volunteers we already have, as well as increasing those numbers by a recognition package and by not only recognising firefighters themselves but also their employers in particular. We have also had changes in the way we manage planning, an area in which my colleague the Hon. Paul Holloway is also involved. We also have had improvements in the way we manage our national parks, concerning which I work in cooperation with my colleague the Hon. Gail Gago.

We now have a unit in DEH managing our parks, which is part of the CFS. We have had to respond differently in relation to how we ensure that we have water resources available: we have extra bulk water carriers, and we ensure that we have more teams responding to fires. We are a member of the Bushfire CRC and, as I have said, we are involved at every level to ensure that we can respond; indeed, we are very much aware of the situation. One of the most obvious things I can think of right now is that we have had to extend our contracts for aerial support. Clearly we are looking at temperatures well into the 30s for another week, and it is important we have that resource there. Our CFS volunteers are better trained, and we have good resources to ensure they can assist the community they serve, and do so willingly, for which we are incredibly grateful.

We have mutual aid agreements between all three services in South Australia. To give an example, on Kangaroo Island we had the CFS from all over the state responding, but we had the MFS being stationed in the towns to ensure those assets were kept under control. We have

cooperative agreements with the other states so that when we need help they provide it to us. A few months ago we had to provide help to Western Australia.

The Hon. Sandra Kanck interjecting:

The Hon. CARMEL ZOLLO: Across borders as well. We have those kinds of agreements right around Australia, not just with our resources but also with firefighters. We do that all the time. Perhaps we do not make such a big show of it, but we do it all the time, I assure the honourable member. We are very much aware of what needs to be done and have many measures in place to ensure we can respond. That research is also something we are very much aware of. Two years ago we had experts here to ensure that all our agencies—not just the CFS, but also the SES, DEH, planning and local government—are across the issues and are working well together.

BUSHFIRES

The Hon. SANDRA KANCK (14:43): By way of supplementary question, does the minister agree with comments made by people in the CFS that when these megafires eventuate in South Australia the service will not be able to fight some of them?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:43): The comment has been made that there are such fires now. We saw the situation in Kangaroo Island, where clearly in rough terrain we were not able to get to the fire. We have aerial resources, and our main concern is saving lives, then property. The CFS makes a decision and, if it is not safe, it will not send in firefighters. That is why we ask the community to be bushfire ready, to have a plan and to ensure they know what they will do when faced with a situation: whether they will stay and defend their property, which means they have to be bushfire ready. Their property has to be ready and they have to be ready psychologically. If they are not that type of person, they need to leave early.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:44): I seek leave to make an explanation before asking the Leader of the Government a question about the Greater Mount Gambier Master Plan.

Leave granted.

The Hon. R.I. LUCAS: Last Thursday the minister indicated in response to a question from the Hon. Mr Ridgway that there had been collaboration and consultation with the District Council of Grant and the City of Mount Gambier on this plan and went on to say, 'In particular, the master plan reflects the wishes of the councils'—plural. I have been provided with copies of letters to the minister and a press release from the Mayor of Mount Gambier dated 28 February, and it states:

> Council wishes to record its dismay with your decision to authorise the Greater Mount Gambier Master Plan but more particularly your ministerial intervention to remove this council's valid planning authority rights in respect of parts of Penola Road (Mt Gambier) by your Deferred Urban (Northern Gateway) DPA and your 'Interim operation as a holding measure' direction as of midnight Thursday 28th February 2008.
>
> I cannot overstate how utterly disappointed I am on your actions and lack of respect to council by your failure to at least talk to us to explain why you have taken the actions you have.
>
> You could have shown us some level of courtesy of advising why you saw fit to take the action you have, the rationale of such action and some explanation of the reasons and motivation to do this.
>
> Could you please advise why you have actioned the DPA process (Deferred Urban) and NOT as retail, as per your now adopted master plan and why you did not communicate your intentions to council.
>
> In your letter to me of 26 February 2008 you state:
>
> > 'I would like to take this opportunity to thank you and council staff for your ongoing involvement in this important process. I have been impressed by the spirit of collaboration and cooperation that participants have brought to the process.'
>
> I find this to be totally offensive and highly disrespectful.

There is more to the letter but I will not bore the council with all of the details. On the same day, the Mayor of Mount Gambier, Mr Steve Perryman, issued the following press release: 'council tries to remain positive about its planning future even though other influences wish to delay, complicate and frustrate its efforts.' In part, it states:

Mayor Perryman said today 'My letter to the minister makes it clear that council expects an explanation of why he has seen fit to usurp council's authority by forcing new zoning provisions over land situated in the council area without any consultation or reasons being provided.'

'The comments made to me by interested members of the community in recent days range from outright disgust to a suspicion that other external influences are directing the actions of the minister,' Mayor Perryman continued.

'I couldn't imagine the minister acting in any manner other than being impartial and without bias, but the perception within the wider community is however damning on the minister of the possibility of influences that are occurring on these matters that extend beyond the decision-making powers of this council,' Mayor Perryman said.

I think any fair commentator might find it hard to reconcile the minister's statements to the Legislative Council about the master plan being in full accord with the wishes of the Mount Gambier City Council and those particular quotes.

I am also informed that at a meeting of 14 December last year between the representatives of the District Council of Grant, Mount Gambier City Council and Planning SA where significant objections to the draft plan from the minister and the government were raised, the minister's representatives from Planning SA agreed that another meeting would be held prior to any final decision being made by the minister. I am also informed that on 23 January this year a letter was sent to the minister's representatives in Planning SA requesting that further meeting before any final decision was taken. My questions are:

1. Why did the minister mislead this council last Thursday when he said, 'In particular the master plan reflects the wishes of the councils'?

2. Why did the government's representative, Planning SA, give the Mount Gambier city council representatives a commitment on 14 December to hold another meeting and then break that promise, even though a letter was sent on 23 January requesting such a meeting before any final decision was taken by the minister?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:49): What the honourable member needs to understand is that there was the development of the Greater Mount Gambier Master Plan, which was an exercise involving the District Council of Grant as well as the Mount Gambier council, and that was to ensure that neither of those councils would go ahead in their individual planning in such a way that it would be to the detriment of the region as a whole.

The councils were reluctant to do that but it was something I insisted on at the time, and certainly I do not make any apology whatsoever for doing so. But I was pleased during most of 2007 with the cooperation and collaboration between those two councils in the development of that plan, because both councils had to make compromises.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I had a meeting with the mayors of both councils towards the end of last year in relation to the work that had been done. Certainly, at that stage they had—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No; at that stage they both indicated they were pleased with the development of the master plan. What the Mayor of Mount Gambier was writing about was the other announcement I made last week in relation to putting a hold on the Northern Gateway. Essentially, that is the objection.

Incidentally, I have spoken to the Mayor. I was on ABC Radio last Friday morning, and I did speak to the Mayor of Mount Gambier prior to that. I believe he is keen to work with the government in relation to this matter. I was able to explain to him that, so much effort having been put into the development of the master plan, any application lodged prior to the master plan coming into effect would be adjudicated or assessed under the existing development plan, not the combined plan.

Considerable concern was expressed to me by the Grant council which, if one reads the local media in Mount Gambier, is pleased with my decision. The reason it is pleased is that it reflects the agreed position. If we had not proceeded to put a hold—and I will explain in a moment exactly what it is—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I am not misleading the council. If we had not put a hold on that particular area, then the whole agreement could have unravelled. After having spent nearly 12 months in developing agreement on the master plan for the entire region—having spent nearly 12 months developing that plan—I was not prepared to jeopardise it. As I indicated last week, there is an application for a development on the Northern Gateway which, I am advised, does not reflect the intent of the master plan, but it will still go ahead and be assessed. I think that might have been part of the misunderstanding in relation to Mount Gambier council. It may not have realised that putting on the hold is not retrospective and does not affect that particular application.

However, the reason that I put an interim hold over the Northern Gateway was to ensure that there were no more applications under the existing development plan which could jeopardise the agreement in the master plan. Also, I was able to explain to representatives from Mount Gambier council the reason that it is 'deferred urban' is in order to hand back powers to the council itself. I put the hold on it; I put it up as 'deferred urban' and it will go to full consultation. Simultaneously, provided it is consistent with the new master plan, the council is able to put in its own development plan for the area which can run concurrently with the plan.

I was able to satisfy Mount Gambier council that my action was not to usurp its powers at all. In fact, it can go ahead with a new development plan for the Northern Gateway, but it will drive it. All I have done by the action is to ensure that there are no more applications under the old development plan to jeopardise the integrity of the agreement which was reached between the two councils and which was reflected in the master plan over the past 12 months.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:54): I have a supplementary question. Why was an additional meeting not held between the minister's representatives and the city council when it was promised on 14 December by his representatives and when it was requested by city council representatives by letter on 23 January, some five or six weeks prior to the final decision being announced by the minister?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:54): A development application was lodged, and that will still stand, because it was under the existing—

The Hon. R.I. Lucas: They asked for a meeting.

The Hon. P. HOLLOWAY: We could have had a meeting but, if we had not taken speedy action, there could have been other applications under the old development plan which would have undermined the intent of the new master plan. I was not prepared to let that happen.

I believe I acted entirely properly in preventing that from happening, and it is now up to the Mount Gambier council—concurrent with the process I have put in place, an interim holding—to incorporate a new development plan for that region which properly reflects, in the northern gateway to Mount Gambier, the intent of the agreed master plan. The council can, and I believe will, do that speedily. It would have been nice, had it been possible, to have met with the council, but the point is that it became clear to me that the whole integrity of the master plan would have been undermined.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes; I took the decision and I am quite happy to explain that decision, because I believe it is in the best interests of Mount Gambier as a whole. It will mean that the 12 months of work done by both councils can now be reflected within the new development plan, and I have given Mount Gambier council an undertaking that I will facilitate, as quickly as possible, the incorporation of a new development plan for the northern gateway which reflects the intent of the master plan.

EMERGENCY SERVICES VOLUNTEERS

The Hon. B.V. FINNIGAN (14:57): I seek leave to make a brief explanation before—

An honourable member interjecting:

The Hon. B.V. FINNIGAN: Well, now we know who you are backing for preselection. I seek leave to make a brief explanation before asking the Minister for Emergency Services a question regarding the recognition of emergency services volunteers and employers.

Leave granted.

The Hon. B.V. FINNIGAN: We are all aware that our emergency services are predominantly volunteer-based, particularly in rural and regional areas. What work has been done to increase recognition of the efforts of our volunteers and the support provided by their employers?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:58): I thank the honourable member for his important question. Last week, on Thursday 28 February, the South Australian Fire and Emergency Services Commission (SAFECOM) board met in Port Lincoln as part of its commitment to conduct its meetings in regional areas as well as here in the city.

This year will see an increased focus on acknowledging and recognising the contribution made by volunteers and the people who support them, whether that is by me as a minister or by the board or the chief officers. In conjunction with this meeting, a relatively informal evening saw the presentation of certificates to employers in recognition of the important part they play in supporting emergency services volunteers. The evening was attended by volunteers, retained firefighters, their employers, and their families as well as by representatives of the volunteer associations within that region. Around 100 people attended the evening.

These activities are part of SAFECOM's volunteer and employer recognition and support program. Last year I asked the SAFECOM advisory board to prepare a volunteer and employer recognition program as part of an overall volunteer and employer support framework. This is now known as the 4R program as it aims to give recognition, raise the profile, and help recruit and retain our volunteers. The program will bring new initiatives and current activities under one umbrella and provide a sector-wide approach to volunteering to keep our volunteer ranks vibrant, valued and committed into the future.

Last week the SAFECOM board meeting saw us take the opportunity to promote the employer recognition aspect, and an employer information induction package booklet is now also available to employers. Work is also well under way on a publication on the rights of volunteers, to be provided as part of the recruitment package. A campaign is also taking place to encourage the registration of employers and emergency services volunteers within the volunteer management branch so that further employer recognition work can be undertaken. A calendar of related events to recognise volunteers and their employers is also being developed, and this will be an ongoing activity. The future direction of the program includes focus groups with employers (once identified), the publication of information regarding legal protection for volunteers, and a guide for employers of emergency services volunteers.

The Port Lincoln function was the first of many to be held as a way of acknowledging the dedication and continued commitment of our emergency services in that region in the face of the media spotlight and the Deputy Coroner's scrutiny following the Wangary fires. While in Port Lincoln I also had the opportunity to visit the Port Lincoln SES unit and CFS station to again meet with volunteers and discuss matters of interest with them.

I was very pleased to present the National Medal (First Clasp) to SES Eyre Headquarters Unit member, Gwen Hartley, for 25 years of service to the SES. Gwen and her family have provided outstanding service to the Port Lincoln and Eyre Peninsula region, with Gwen, her husband Gordon and children David and Meagan all being SES members. This is an outstanding commitment to community safety by one family and one that I know is certainly appreciated by the people of Port Lincoln and Eyre Peninsula.

On Friday the 29th a presentation to local stakeholders by the SAFECOM board was also held. I believe this was very successful, with a question and answer session following that presentation.

EMERGENCY HOUSING

The Hon. D.G.E. HOOD (15:00): I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Families and Communities, a question about a situation which demonstrates the crisis in South Australia's emergency housing.

Leave granted.

The Hon. D.G.E. HOOD: Yesterday my office received a call from a lady named Sam. Sam is a single mum who suffers from epilepsy, and she has a five year old daughter. Sam has gone through hell in recent weeks. A little while ago she and her child were kicked out of the home

they were staying in and she has been living in her car for the past week or so with her little girl. Her daughter has not been attending school as a result of this. This situation came about not because she has been sitting on her hands but, in fact, she has called all of the usual phone numbers to try to arrange emergency accommodation. She tried the Emergency Accommodation Service and a number of other agencies, including the Housing Trust, without luck. There was apparently a delay of several months for accommodation, even despite her situation being regarded as a category 1 case.

She was given the option of a bond for a rental property and applied to countless rental properties (using her own words). However, given the scarcity of properties on the market, her circumstances and the fact that she has no references, she was unable to secure any rental accommodation. The bond offered, therefore, was of little use. The various emergency housing numbers referred her in a circle to other housing organisations, ending at Crisis Care which, for some reason, only opens at four in the afternoon.

After making all the usual calls for crisis accommodation, Family First ended up paying to put up Sam and her daughter in motel accommodation last night. I am not saying that to blow our own trumpet, because I understand that other members have done similar things on some occasions. However, the bottom line is that Sam and her daughter still do not have accommodation for tonight. My questions to the minister are:

1. What use is so-called emergency accommodation if it cannot help people like Sam, who have nowhere to stay at short notice?

2. Why does Crisis Care open so late in the day at 4pm, which only serves to lessen the chance of securing emergency accommodation for that night?

3. Most importantly, if I give the minister Sam's mobile number, will she ensure that Sam and her daughter have accommodation for tonight?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:03): I thank the honourable member for his important question in relation to a request for housing on behalf of a constituent whom he has assisted. He has made a number of allegations and I undertake to take those questions on board and refer them to the minister in the other place. I will approach the member later and obtain the mobile telephone number that he has mentioned and pass it on to the minister.

UPPER SOUTH-EAST DRAINAGE SCHEME

The Hon. C.V. SCHAEFER (15:03): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Upper South-East Drainage Scheme.

Leave granted.

The Hon. C.V. SCHAEFER: Over the past few weeks I have had occasion to meet with a number of people affected by the Upper South-East Drainage Scheme, both in public and private forums. It is fair to say that no-one is happy with the progress or outcomes of the Upper South-East Drainage Scheme as it is now being adapted by this government. The one constant these people have is that they all seek an independent environmental audit.

On numerous occasions these people have written to the minister seeking such an audit and seeking a halt to proceedings with the drains until such an audit is conducted. On some occasions they receive a reply but certainly not always. On some occasions they receive a reply which indicates that the 'best science' is being used and that the drain will not only proceed but proceed in its current dimensions and direction. My questions are as follows:

1. Will the minister tell us what science is being used, and will she make this information available to me and to the public?

2. When did she last visit the region to speak with stakeholders?

3. Will she commit to an independent environmental audit?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:05): I thank the honourable member for her question. Indeed, I have spoken on the USE scheme in this chamber on a number of occasions, so I am on the record in terms of a number of assessments,

scientific analyses and reports that have been done to provide the information and science we need to underpin the development of this drainage network.

Again, this should be put in context. We have had drains in the South-East for 80-odd years: they are not a new phenomenon. It is a very vexed issue. We changed the land management practices of that area, and those changes affected the watertable, which rose, and the salinity levels, which had a significant adverse environmental effect not just on productivity but also on environmental values in that area.

Drains are not a new thing, neither is the fact that they continue to be a contentious issue. There is not a 100 per cent agreement about support for these drains. Nevertheless, we have applied our best minds and our best science to this very difficult issue, and I am happy to supply the details, bring them back to the chamber and make them available. A number are already on record, but I am happy to do it again.

I have visited the region on a number of occasions, and I have also visited a wide range of different stakeholders, including landholders who are opposed to the drain and who have raised concerns about it, as well as those who are supportive of it.

The Hon. C.V. Schaefer: When was that?

The Hon. G.E. GAGO: I am just trying to recall the last time I visited; it would have been a number of months ago. Not only have I visited the region but I have also met with various stakeholders here in Adelaide. My door is always open and, whenever I possibly can, I meet with those people who ask to see me. It is not always possible, but whenever I can I attempt to meet with them, whether they be large organisations, individual landholders or simply individuals in their own right; if I cannot, either one of my officers or an agency member meets with them.

In terms of the latest progress on our Reflows project, I think that it is a very positive element to the drainage scheme. It is directly linked with improving environmental flows and, as Minister for the Environment, I think it is part of the project that has particular value. As we know, the USE program is a multicomponent management initiative involving drainage, salt land, agronomy, revegetation, and wetland management. In February 2006, the former Minister for Environment and Conservation endorsed the design principles for the Bald Hill drainage works, contingent on the partial restoration of historic fresh surface water flows from the Lower South-East to improve the health of stressed wetlands and watercourses in the Upper South-East (the Reflows project).

The project comprises the construction of two large interconnecting floodways between the Lower and Upper South-East to provide a vital link between internationally recognised Ramsar-listed Bool Lagoon and the Coorong wetlands.

I am pleased to report that the project feasibility stage is under way and includes the assessment of the environmental impacts. An important component of the environmental assessment is the evaluation of the impacts on Lake George. A final decision on proceeding with the project will be contingent on the outcomes of that feasibility study.

Today I happened to see in the *Naracoorte Herald* of 28 February an article titled 'Water reflow to lakes', talking about the chairman, Roger Wicks, who argued that the Reflows project was very commendable and one which deserved a fair hearing. This is what has been reported in *The Herald*:

> There is an opportunity to return historic water flows to the north and help restore and rehabilitate some of these important wetlands.

The project is proposed to improve historic waterways to deliver water.

An honourable member interjecting:

The Hon. G.E. GAGO: Given that there has been an interjection, I will read it. This is from the *Naracoorte Herald:*

> The Reflows project is proposed to improve historic waterways to deliver water from Mosquito Creek catchment to the Marcollat watercourse and Bakers Range catchment south of Drain M to the northern Bakers Range and West Avenue watercourses.

This is a quote from Roger Wicks:

> The Reflows project will target key wetland systems in the Marcollat watercourse, the southern and central and northern portions of the Bakers Range watercourse and the West Avenue watercourse. In very high flow

periods, the southern lagoon of the Coorong, a Ramsar-listed wetland of international importance, will also receive flows.

Professor Gary Jones, CEO of eWater CRC in Canberra—again, this is reported in *The Herald*—said that this was carried out by an independent review and believes it has 'a very significant scientific'—

An honourable member interjecting:

The Hon. G.E. GAGO: Well, we were asked for the scientific reports.

Members interjecting:

The Hon. G.E. GAGO: This is an independent scientific—

Members interjecting:

The Hon. G.E. GAGO: They ask for the science that goes in behind these decisions and, when I give them the information, they do not want to listen. I will just repeat that he is the CEO of eWater CRC in Canberra. He has carried out an independent review and he believes—and this is his quote—that it has:

...very significant scientific merit and is worth pursuing as a program with major national and international ecological benefits.

The authors of the background papers are Maunsell's Lissa van Camp and the South-East Water Conservation and Drainage Board's Michael Talanskas, and they again suggest that the Reflows project will have only positive effects on the Bool Lagoon and other sites of significance, and they go into details about those specifics.

I will conclude by saying that the drains have been there for many decades. It continues to be a contentious issue, and successive governments—including Liberal governments—have invested considerable amounts of money in this drainage system. I find it quite laudable that the Hon. Caroline Schaefer asks questions of this nature when the Liberal government invested considerable amounts of money in the development of this project. This drainage system has been developed over decades, and it continues to be contentious. We continue to try to deliver the best outcomes in terms of both productivity and also environmental values.

HENRY, THE SEA LION

The Hon. I.K. HUNTER (15:15): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the marine animal known to many as Henry.

Leave granted.

The Hon. I.K. HUNTER: I understand that the Department for Environment and Heritage has embarked on a research program to track the movements of Henry, a large sea lion that is well known to locals around Glenelg and surrounds. Henry can often be seen basking in the marina and near the restaurants. Will the minister update the council on the progress of this very important study?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:16): I am delighted to update the chamber. This is a topic very dear to my heart, and I thank the honourable member for his most important and insightful question. I am pleased to inform the council that already this month a long electronic tracking program is writing some interesting data on the habits of our much loved local sea lion.

The project began during the recent full veterinary check of Henry, when DH staff decided to attach a harmless radio tracking device that will transmit signals on Henry's whereabouts not only to give departmental staff a reliable map of Henry's movements but also to give a valuable insight to the local community of the sea life that inhabit what Henry calls home.

All data available on Henry's whereabouts has been posted online, and this information is available and accessible to anyone worldwide. It is quite an amazing website, and members who are interested—

Members interjecting:

The PRESIDENT: Order! For a while there I thought Henry was in here!

The Hon. G.E. GAGO: Obviously, members are very excited about Henry's progress, and I know they are all dying to log on to the website henrythesealion.com to learn more about this sea mammal.

The data gathered provides a tremendous insight into the travels of this sea lion, and the data indicates that he has already travelled well over 200 kilometres. Not only do we know where he is going but we also know how he is getting there. We are learning that he appears to be feeding on the sea floor mostly and that he is diving to depths of 13 metres on average and almost 30 metres on one occasion.

Sadly, though, this exercise has also been an attempt to gauge what human impacts Henry is having to live with. The main reason for attaching the transmitter to Henry in the first place was to gauge exactly where he is feeding and how far he is travelling due to the fact that DEH staff had noticed that Henry was losing weight and appeared to be most unwell. It was worrying when it was found that Henry was being handfed items that simply do not belong in a sea lion 's diet, including shark cutlets and cooked prawns. Even more worrying, it was found that Henry had eaten a plastic bag, no doubt discarded by a careless person and easily mistaken for squid or jelly fish.

It is findings like this which clearly give urgency to the government's plan to ban single use plastic bags. They are clearly a menace and contribute about 1,600 tonnes of plastic to our landfill and find their way into our rivers and oceans and can cause havoc, as we have seen with Henry.

DESALINATION PLANTS

The Hon. M. PARNELL (l15:19): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about consultation with relevant government agencies about the site of the Adelaide desalination plant.

Leave granted.

The Hon. M. PARNELL: When the Desalination Working Group was announced back in March last year, minister Maywald said that one of the areas the group would research would be 'environmental implications of constructing and operating a desalination plant'. When reporting progress on the working group in September, the Premier said:

> Building a desalination plant is an extremely complex and expensive undertaking. It is not as easy as writing a press release. Its final cost will depend on where it is located, how the brine that it will produce is dispersed, where the brine is dispersed, and from where the energy to power it is drawn.

In December, when announcing Port Stanvac as the location for a desalination plant servicing metropolitan Adelaide, the Minister for Water Security described attributes of the local marine environment as critical to the selection of Port Stanvac. She said:

> The desalination working group recommended Port Stanvac as the most suitable site for a reverse osmosis plant because of relatively deep seawater, marine dispersion characteristics, better access to water supply network, suitable land availability and lower construction costs.

So, it was with a great deal of surprise that, on my request under the Freedom of Information Act to the Department for Environment and Heritage and the Environment Protection Authority for any documents or correspondence concerning the impact on the marine environment of a seawater desalination plant servicing metropolitan Adelaide, I was told by the Department for Environment and Heritage that 'not one document was found'. The EPA had only two documents, one being an invitation for an issues identification workshop for the desalination plant for key stakeholders and the second a follow-up email cancelling the workshop due to the unavailability of key personnel.

I remind members that the Department for Environment and Heritage is the main government department concerned with the marine environment, and it is the repository of marine science expertise in South Australia, containing agencies such as the Coast Protection Board and the Coast and Marine Conservation Branch. The Environment Protection Authority is the agency charged with the responsibility of licensing any discharge by a desalination plant into the marine environment. I also remind members of another statement by the Premier in September, when he said:

> We do not intend to make a decision about such a massive investment lightly or without the best available information before us. We intend to do this properly, not in some slap-dash, haphazard, political quick-fix way, as proposed by the Liberal opposition. That would be negligent and irresponsible.

My questions of the minister are:

1. Why did the Desalination Working Group not consult with the Department for Environment and Heritage and the Environment Protection Authority on the impact on the marine

environment of a seawater desalination plant before Port Stanvac was chosen as the preferred site?

2. Whom did the Desalination Working Group consult, and on what information did it base its decision regarding the impact on the marine environment of a seawater desalination plant at Port Stanvac?

3. Is the government guilty of, in the words of the Premier, 'some slap-dash, haphazard, political quick fix' by choosing Port Stanvac as the preferred site without even a cursory discussion with those parts of government with marine and coastal expertise?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:23): I thank the honourable member for his question and ongoing interest in these important policy areas. The desalination plant is a key component of the government's strategy that involves the securing of our drinking water supply to the future. The building of a desalination plant is an extremely complex and expensive undertaking, to which this government has committed.

In December 2007 the government announced Port Stanvac as the preferred site for the $1.1 billion plant to supply the 50 gigalitres of water for Adelaide. I have been informed that this decision was based on the extensive work of the desalination working group established in March 2007 and that the working group examined the impact of the drought on water supply, the feasibility of desalination, the preferred size and location and integration into the existing supply network and cost implications. I am happy to take on notice exactly with whom it consulted and the way that advice was integrated. I do not have that information with me today, but I will bring back a response.

The temporary pilot is planned to be installed at Port Stanvac by the end of July, and this very small plant will help determine the key design criteria and processes that will allow seawater to be pre-treated to a sufficient quality and at a feasible cost for desalination in the gulf.

A $3 million environmental baseline study for the Gulf St Vincent is continuing, and it will be followed by a full environmental assessment. The baseline water quality monitoring program has been initiated to provide a basis for future marine monitoring, to assess and measure the environmental performance of the desalination plant, and to assess pre-treatment and reverse osmosis process requirements.

Sampling commenced in December 2007. A marine ecological characterisation study has been commissioned to characterise and classify the distribution, abundance and condition of marine habitats, species and communities in the region of the proposed intake and outfall zones; and to identify habitats, species or communities that may be impacted upon by the various elements of the desalination plant. The study involves marine surveys, both video and diver, that are conducted seasonally over a 12-month period. A hydrodynamic modelling study into the hypersaline discharge of a full-scale plant has commenced and will also help provide very important information.

So, members can see that a great deal of preliminary investigations have been undertaken in relation to the commissioning of this desalination plant that will provide drinking water that is clearly needed, to ensure the environmental impacts are monitored carefully and environmental values are upheld throughout the project. In regard to the details of other information, as I said, I am happy to take that on notice and bring back a response.

ANSWERS TO QUESTIONS

ABORIGINAL INTERPRETERS

In reply to the **Hon. R.D. LAWSON** (25 September 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Attorney-General has provided the following information:

There are currently eight active interpreters of Aboriginal languages employed casually by the Interpreting and Translating Centre.

In the period 1 July to 30 September 2007, the Interpreting and Translating Centre received requests for 161 assignments in Aboriginal languages.

On a 12-month projection there is an interpreter for every 81 assignments. This is a most favourable ratio when compared with other languages.

For example, in the period May 2006 to April 2007, the Interpreting and Translating Centre received 5827 requests for assignments in Vietnamese. Twenty-two interpreters were employed to deliver these assignments; a ratio of 1:265. The ratio for Italian was 1:201 and for Greek was 1:162.

From these figures it appears that there are enough interpreters. However, there may be occasions when interpreters are not available.

The Courts Administration Authority, Multicultural SA and the Aboriginal Affairs and Reconciliation Division are working to determine the best approach to ensure that interpreters are available when required by the Courts.

AUDITOR-GENERAL'S REPORT

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (20 November 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): In 2005-06 the Commissioner of Police received remuneration in the band width $370,000-$379,999. This included an annual leave payout of $74,000 (plus on-costs) that was over and above base salaries, superannuation and motor vehicle payments.

The one employee within the $300,000-$309,999 remuneration band in 2006-07 was the Commissioner of Police with that remuneration representing base salaries, superannuation and motor vehicle payments only.

MANOCK, DR C.

In reply to the **Hon. A. BRESSINGTON** (20 November 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Attorney-General has provided the following information:

Dr Colin Manock was a Fellow of the Royal College of Pathologists of Australasia. He was admitted in 1971 after assessment by the College. Dr Manock was also a registered practitioner with the Medical Board of South Australia. He was therefore appropriately qualified and registered to practise as a forensic pathologist in this state.

The Government will not be establishing a panel of international experts to examine cases handled by Dr Manock.

CONTROLLED SUBSTANCES (DRUG DETECTION POWERS) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:27): Obtained leave and introduced a bill for an act to amend the Controlled Substances Act 1984; and to make a related amendment to the Summary Offences Act 1953. Read a first time.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:28): I move:

That this bill be now read a second time.

The Controlled Substances Act 1984 (the act) sets out provisions dealing with the powers of authorised officers to conduct drug related investigations. This bill amends the act to:

- regulate the use of drug detection dogs in people and vehicle screening operations;
- enable police to establish and conduct drug detection screening operations on identified drug transit routes; and
- amend section 52 dealing with the power of search and seizure.

As part of its strategy to deal with drug related crime, SAPOL has purchased and trained three passive alert drug detection dogs (drug detection dogs). These dogs are specifically trained to detect odours from such drugs as heroin, amphetamines, cannabis and cocaine (and their derivatives). On detecting an odour, the dogs will sit passively next to the source.

Some ambiguity exists as to the extent to which police can carry out people screening operations using drug detection dogs. Legal authority suggests that the use of drug detection dogs for such operations does not constitute a search. Nevertheless, SAPOL has recommended that the act be amended to clarify this matter and ensure that there is a sound legal basis for using the dogs for drug detection purposes. The Government agrees that it would be prudent to amend the legislation.

Advances in technology have also provided law enforcement agencies with electronic drug detection systems that enhance their ability to detect the presence of drugs on people and property. An example includes the use of both odour detecting and swabbing equipment on luggage at airports. Although these systems are not widely in use in South Australia, the opportunity is being taken to amend the act to authorise and regulate the use of such systems for general drug detection.

In addition, the bill will provide legislative support to allow police to conduct vehicle stopping operations solely for the purpose of drug detection on drug transit routes.

Amendments will also be made to section 52 of the act to reduce the level of suspicion required for a search under the act from a reasonable belief to a reasonable suspicion. This is consistent with the level required for searches under the Summary Offences Act 1953.

The amendments in the bill are consistent with South Australia's Strategic Plan Objective 2, Improving Wellbeing, Target 2.8 Reducing Victim Reported Crime and the aim of the South Australian Drug Strategy 2005-2010, which is to 'improve the health and well being of all South Australians by preventing the use of illicit drugs and the misuse of licit drugs'. A key area of the strategy is to reduce the supply of drugs—

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! Will members take their conversations outside the chamber.

The Hon. P. HOLLOWAY: —through strategies that will reduce the availability and supply of illegal drugs.

SAPOL's drug-detection dogs are already being used routinely to assist with drug detection at bus depots, transport companies and Adelaide Airport, during the execution of drug warrants and at major events such as the exterior of the Big Day Out. They have had success in detecting various quantities of cannabis, heroin, cocaine, ecstasy and pseudoephedrine.

With the success of the dogs and proposals for the continuing and wider use of them, SAPOL has suggested that legislation be enacted to clarify the police powers in using dogs for drug detection. SAPOL is not seeking open-ended legislation but, rather, wants the legislation to give authority to conduct operations in places such as licensed premises and at public events, public transport hubs and other places where drug detection may increase public safety.

Both New South Wales and Queensland have enacted legislation to authorise the use of drug detection dogs for people screening. Those laws have been used as a guide in formulating the South Australian legislation.

The bill will allow police to carry out general drug detection on a person who is in, or is attempting to enter or leave, licensed premises or car parks used by the patrons of licensed premises, public venues or car parks used by the patrons of a public venue and public passenger carriers or any place the carrier may take up or set down passengers. Any property in the possession of such a person or located in these areas will also be subject to general drug detection.

The bill also allows a police officer of or above the rank of inspector to authorise the exercise of these powers in other public places. The authorisation must be granted in accordance with guidelines issued by the Commissioner of Police. This will enable police to target public places that from time to time pose a risk to public safety through drug activity. The authorisation can be varied or revoked by the officer at any time but in any case cannot exceed a period of 14 days unless renewed by the senior police officer for a further 14 days.

General drug detection involves the walking or placement of a drug detection dog in the vicinity of a person or property or the use of an electronic drug detection system for the purpose of detecting drugs. It does not involve the search of the person or property.

A drug detection dog must complete a course of training approved by the Commissioner for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant. An electronic drug detection system is an electronic device or system approved by the Commissioner and must be used in a manner prescribed by regulation. The regulations will limit the use of an electronic drug detection system so that the general drug detection power cannot be used to, in effect, conduct a search of a person or property.

To avoid doubt, an indication by a drug detection dog or an electronic drug detection system of the presence of a controlled drug, controlled precursor or controlled plant will constitute a reasonable suspicion that such an item is present. This would allow a police officer to use the indication to form the basis of the suspicion to conduct a formal search under section 52 of the act.

Over several years SAPOL has identified that large quantities of prohibited drugs are trafficked between states. Intelligence indicates that New South Wales is a receiver of large quantities of cannabis from South Australia and, in return, supplies quantities of heroin, amphetamines, ecstasy and cocaine. There is trafficking of prohibited drugs between South Australia and other mainland states.

Under the current law, SAPOL has no specific power to stop vehicles at random on known drug transport routes to check for the presence of drugs. The Controlled Substances Act 1984 provides police with the power to stop, search and detain vehicles that are reasonably suspected of containing a substance that would afford evidence of an offence against the Act.

Similarly, Section 68 of the Summary Offences Act 1953 permits a police officer to stop, search and detain a vehicle if there is a reasonable suspicion that it contains stolen goods or objects, possession of which constitutes an offence or evidence of the commission of an indictable offence. Both sections require the police officer to form a suspicion about a vehicle before the authority can be used. Unless specific information is known of a vehicle transporting drugs, police are unable to use these powers to detect a vehicle and so disrupt drug trafficking between states or within this state.

On occasion, SAPOL has participated in combined vehicle-stopping operations with other Government agencies, such as Primary Industries and Resources SA and the Department for Transport, Energy and Infrastructure. This has allowed them to use drug detection dogs to screen for drugs in vehicles. However, the Government agrees with SAPOL that the lack of any specific power to stop vehicles on known drug transit routes is an unnecessary impediment to SAPOL's fight against the transportation of drugs interstate and in country areas.

In preparing the legislation the government has drawn on the experience from the trials conducted in New South Wales. The bill will allow police to conduct drug transit route operations in areas that a senior police officer reasonably suspects is being, or is likely to be, used for the transport of controlled drugs, controlled precursors or controlled plants. The authorisation may only be granted in accordance with guidelines issued by the Commissioner of Police and must define the area to which it relates and the conditions of operation. The authorisation can be varied or revoked by the officer at any time, but in any case cannot exceed a period of 14 days unless renewed by the senior police officer for a further 14 days.

As the aim of the legislation is to interfere with interstate and intrastate drug transit routes, the government does not propose that the power be used to allow the random stopping of vehicles within the metropolitan area. Rather, the bill provides that a search area must be more than 30 kilometres from the General Post Office. This will provide consistency for police and ensure that major routes, such as the Princes Highway, will be included. This approach targets the transport of drugs between states and within state regional areas but limits the disruption to road users in the metropolitan area.

Upon authorisation police may establish drug detection points where the driver of a vehicle may be required to stop. This does not prevent police from stopping vehicles at other locations within the search area. Police may then carry out general drug detection using drug detection dogs or electronic drug detection systems. To assist this process police may direct a person to open any part of the vehicle and allow the dog to enter any part of the vehicle which is not designed to carry passengers. It does not permit the police to conduct a search of the vehicle or person, unless permitted by legislation.

The Commissioner will be required to report to the Attorney-General each year the number of authorisations granted for both general drug detection operations and drug transit route operations, the public places to which they applied and the period for which each authorisation applied and the number of occasions on which a drug detection dog or electronic drug detection

system indicated the detection of the presence of a controlled drug, controlled precursor or controlled plant. This will be reported to the parliament.

In any proceedings relating to the use of the new powers, the Commissioner of Police may produce certificates that a public place was subject to an authorisation that was properly granted by a senior police officer, or that a certain area (relating to a drug transit route operation) was subject to an authorisation that was properly granted by a senior police officer, or that a dog used to carry out any drug detection work was, in fact, a drug detection dog, or that a device or system used to carry out general drug detection was an electronic drug detection system. The production of such certificates will constitute proof, in the absence of proof to the contrary, of the matters certified.

The current level of suspicion required for a member of the police to search a person for a drug offence is not in line with the suspicion required in other South Australian acts or interstate jurisdictions. Although the most appropriate authority to be used for the purpose of drug offences is section 52(6) of the Controlled Substances Act 1984, there is nothing preventing officers from using section 68 of the Summary Offences Act 1953 to search a person for drug related offences.

This creates an inconsistency, as section 52(6) of the Controlled Substances Act requires a reasonable belief while section 68 of the Summary Offences Act 1953 requires a reasonable suspicion. There is nothing in *Hansard* to suggest that it was the intent of parliament to afford persons suspected of drug related offences a greater protection than persons having committed non-drug related offences. In fact, the preceding act (being the Narcotics and Psychotropic Drugs Act 1974) required only a 'reasonable suspicion' be formed as to whether a person was in possession of a drug.

The bill amends section 52(6) so that police need only reasonably suspect that a person is in possession of a controlled drug, controlled precursor or controlled plant. Similarly, subsections (7) and (8) have been amended by removing the necessity for police to take a suspected person before a justice of the peace to search if the suspected person requests.

The bill also amends section 52(9) to allow for a search to be conducted where equipment could afford evidence of an offence. This is consistent with the recently enacted Controlled Substances (Prescribed Equipment) Amendment Bill 2007, which creates the offence of possession of prescribed equipment without reasonable excuse. This equipment, which includes hydroponics and clandestine laboratory equipment, is regularly transported in vehicles, vessels and aircraft.

The bill also makes consequential amendments to the Summary Offences Act 1953 to make it clear that drug detection dogs or electronic drug detection systems can be used in exercising powers under Part 15. I commend the bill to members and seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

Clauses 1, 2 and 3 are formal.

Part 2—Amendment of Controlled Substances Act 1984

4—Amendment of section 4—Interpretation

This clause inserts definitions required for the measure. In particular—

drug detection dog means a dog that has completed training of a kind approved by the Commissioner of Police for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant;

electronic drug detection system means—

(a) an electronic device of a kind approved by the Commissioner of Police; or

(b) a system, of a kind approved by the Commissioner of Police, that involves the use of an electronic device,

for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant;

general drug detection means—

(a) walking or otherwise placing a drug detection dog in the vicinity of a person or property; or

(b) using an electronic drug detection system in relation to a person or property in a manner prescribed by regulation,

for the purpose of determining whether the dog or system (as the case may be) detects the presence of a controlled drug, controlled precursor or controlled plant (but does not include any other conduct by a person that would constitute a search).

5—Amendment of section 52—Power to search, seize etc

Clause 5 inserts a new subsection into section 52. This subsection provides that a member of the police force may, in exercising powers pursuant to a warrant issued under subsection (4) or any other powers under section 52, use a drug detection dog or an electronic drug detection system.

6—Insertion of sections 52A, 52B, 52C and 52D

This clause inserts new provisions as follows:

52A—General drug detection powers

This proposed section provides that a member of the police force may carry out general drug detection in relation to—

(a) any property in an area to which the section applies; and

(b) any person who is in, or is apparently attempting to enter or to leave, an area to which the section applies; and

(c) any property in the possession of such a person.

The provision applies to the following areas:

(a) licensed premises or a carparking area specifically provided for the use of patrons of any licensed premises;

(b) a public venue or a carparking area specifically provided for the use of patrons of any public venue;

(c) a public passenger carrier or any place at which public passenger carriers may take up, or set down, passengers;

(d) a public place in relation to which the exercise of powers under this section is authorised by a senior police officer.

52B—Special powers relating to drug transit routes

This proposed section provides that a senior police officer may, if he or she reasonably suspects that an area is being, or is likely to be, used for the transport of controlled drugs, controlled precursors or controlled plants in contravention of the Act, authorise the exercise of powers under this section in relation to the area. The proposed powers are that a member of the police force may—

(a) require the driver of a vehicle within the area to stop the vehicle (whether at a drug detection point or at any other location); and

(b) detain the vehicle and carry out general drug detection in relation to the vehicle and any persons or property in or on the vehicle; and

(c) allow a drug detection dog to enter any part of the vehicle not designed for the purpose of carrying passengers while the vehicle is moving; and

(d) direct a person to open any part of the vehicle and give such other directions as are reasonably necessary for, or incidental to, the effective exercise of powers under this section.

52C—Report to Minister on issue of authorisations

This proposed section provides that the Commissioner of Police must, on or before 30 September in each year, provide a report to the Attorney-General specifying the following information in relation to the financial year ending on the preceding 30 June:

(a) the number of authorisations granted by senior police officers under proposed sections 52A and 52B during that financial year;

(b) the public places or areas in relation to which those authorisations were granted;

(c) the periods during which the authorisations applied;

(d) the number of occasions on which a dog or a drug detection system indicated detection of a controlled drug, precursor or plant in the course of the exercise of powers in a public place or area in accordance with the authorisations.

52D—General provisions relating to exercise of powers

Proposed new section 52D contains provisions relating to the exercise of powers by police officers and other authorised officers and evidentiary matters.

7—Redesignation of section 52A

Clause 7 is a drafting amendment.

8—Amendment of section 63—Regulations

Clause 8 is a consequential amendment.

Schedule 1—Related amendment to Summary Offences Act 1953

1—Insertion of section 74BAAB

The Schedule makes a related amendment to the Summary Offences Act 1953 to allow a police officer to use a drug detection dog or electronic drug detection system when exercising powers under Part 15 of that Act.

Debate adjourned on motion of Hon. S.G. Wade.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY: I move:

That the council insist on its amendments No. 1 and Nos 13 to 16 but that it not insist on its amendments Nos 2 to 12 and No. 17 indicated in the schedule.

Amendment No. 1, when it was before this place, received the support of opposition members, as it would permit the Law Society to apply the guarantee fund in exercising subrogated rights of action under clause 322. This amendment was added because it was unclear whether the fund could be so applied in the absence of an express reference. The committee should insist on this amendment.

Amendments Nos 13 to 15 inclusive made provision for the amount of a levy on the legal profession to be fixed by the society but imposed only with the approval of the Attorney-General. Again, members opposite supported that amendment, and the committee should insist on it. Amendment No. 16 provided for the Supreme Court to be able to assign functions or powers by Rules of Court but subject to an appeal to the court from a decision of the assignee. Again, members opposite supported that amendment in this place, and it is appropriate that the committee insist on it.

The other 12 amendments in the schedule (that is, Nos 2 to 12 inclusive, and 17) have to do with the opposition's plan to use this bill as a vehicle for dealing with the Magarey Farlam claims which are presently covered by the Legal Practitioners Act 1981. These amendments would make the fund a first resort for claimants, even where those claimants have a remedy against the wrongdoer.

They would increase the statutory cap on claims in all cases to 30 per cent of the fund for each claim. That is, they would permit the fund to be exhausted by four large claims to the detriment of the other consumer protection purposes to which the fund is now applied. The government has not changed its position on the amendments moved by the Hon. Mr Lawson concerning the guarantee fund, and it is the government's position that the committee ought not insist on them.

I should indicate that, when the message went back to the House of Assembly, the Attorney decided that, given that there was a package of amendments, the government would oppose them all here and return the bill. If it is still the wish of the committee to insist on the amendments of the Hon. Robert Lawson, we should perhaps takes this matter to a conference. I do not propose to take up any more time. As I said, I have formally moved that we should insist on those amendments I proposed on behalf of the government when the bill was here but not insist on the amendments to those other clauses, the amendments moved by the Hon. Robert Lawson.

As I say, if the committee insists on the amendments of the Hon. Robert Lawson, the bill will be returned to the house and the government will propose a course of action on how it might ultimately be resolved.

The Hon. R.D. LAWSON: In urging the committee to adhere to the amendments which I proposed and which were accepted by a majority of the committee, I place on record some comments published in *The Australian* last week by noted commentator, Chris Merritt, entitled 'Fix this affront now.' Mr Merritt writes:

If anyone is looking for an example of a failed system of regulating lawyers, visit beautiful South Australia.

The system there is so dysfunctional and publicly discredited that Parliament wants nothing to do with it until the Government agrees to major changes.

I interpose that Mr Merritt should have said that the upper house of parliament wants nothing to do with these changes proposed by the government. Mr Merritt continues:

> It is so bad that part of it could even amount to misleading and deceptive conduct. It has the effect of conning consumers of legal services into believing that a guarantee fund will protect them when they deal with solicitors.
>
> In other states, these guarantee funds do what they are supposed to do: they protect consumers and compensate them when they lose money to dodgy solicitors.
>
> But in South Australia, the only thing that is guaranteed by this fund is that consumers will be taken to the cleaners—first by the Government and then by the legal profession.

Later on in his piece, Mr Merritt continues, as follows:

> The reformers in the Upper House are on the side of the angels and should stick to their guns. And the profession now has a perfect opportunity to make up for past mistakes and join them.
>
> The case for reform is sound. The guarantee fund consists largely of the interest earned on clients' money while it is held on deposit in solicitors' trust accounts. Morally, if not legally, it belongs to those individuals who leave their money with solicitors.
>
> But on this issue, the profession and the Government lost their moral compass years ago.

I will not read all the article, but I will read one last paragraph, as follows:

> For lawyers, the Magarey Farlam affair is an opportunity to do better. It has stripped away the PR spin and exposed the reality of the guarantee fund. It shows that until now, South Australia's solicitors have permitted a system to take root that places the interests of the legal profession and the Government above the interests of the profession's clients.

With material of this kind being circulated throughout the commonwealth, it is not surprising that the opposition has received a number of comments urging continued support for the amendments. A moment ago, the minister sought to suggest that, when the message relating to this bill went to the House of Assembly last week, the Attorney in another place deliberately decided not to insist upon any amendments at all, including those that were made by the government. A better and I think more accurate explanation is that the Attorney did not know what he was doing, because he sought to have disallowed in another place the amendments that the government itself moved. I agree with the minister that this matter will have to be resolved in conference, and the sooner we get it into conference the better.

I was not aware, however, that the minister was going to move the motion in the manner in which he has. I believe that the clauses he mentioned in the first part of his motion are the clauses moved by the government and accepted by the opposition and by all members of the chamber and which were uncontentious. On that basis, I have no objection to those amendments being retained. I gather that the committee intends to move to the motion regarding insistence upon the remaining amendments. I certainly urge members to support that motion, which I believe is to be put after the minister's first motion.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): I inform the committee that I will be putting the motion in two parts. In both cases, of course, I will put the question in the positive form. The first question is: that the council insist on its amendments Nos 1, 13, 14, 15 and 16.

Motion carried.

The ACTING CHAIRMAN: I now put the question: that the council insist on its amendments Nos 2 to 12 and 17.

Motion carried.

CRIMINAL LAW (SENTENCING) (VICTIMS OF CRIME) AMENDMENT BILL

In committee.

Clauses 1 to 5 passed.

Clause 6.

The Hon. S.G. WADE: My first question relates to new subsection (3). Does the government's bill anticipate that the representative needs to be authorised? There is a series of people who are able to be appropriate representatives, but I am just wondering how they get to be identified as an 'appropriate representative'.

The Hon. P. HOLLOWAY: Is that subsection (5)?

The Hon. S.G. WADE: The term 'appropriate representative' appears in new subsection (3)(a).

The Hon. P. Holloway interjecting:

The Hon. S.G. WADE: Yes, that's right. New subsection (3)(a) is the first reference to them, so it does link to subsection (5).

The Hon. P. HOLLOWAY: My advice is that, under the current law, a victim can read his or her victim impact statement, or the court can cause someone else to read that statement. What is being sought to achieve here is that the person who would read out that statement, in the event that the victim did not wish to do it, would be acceptable or appropriate to both the court and to the victim.

The Hon. S.G. WADE: The opposition fully supports that intent. We are wondering how that would be achieved, and we are particularly interested in considering what would happen in the event of a disagreement.

The Hon. P. HOLLOWAY: Ultimately, the power would inevitably lie with the court. However, before that, there would obviously be a process of consultation with the victim. The victim presumably would have an absolute right to read their own statement, but clearly there needs to be some proviso that someone inappropriate would not be chosen by the victim to undertake that task, but one would hope that, in the event that the victim did not want to read their own victim impact statement, they would come up with somebody appropriate as far as the court was concerned. One would hope that the chances of dispute would be low, but ultimately the court has to be in control of what happens in the court.

The Hon. S.G. WADE: I agree with the minister that the occurrence of disagreement might not be large in number, but I am concerned that it may be nonetheless significant. I am particularly thinking of people with a disability. We are talking of people who have experienced significant harm. Victims of crime can often suffer acquired brain injury and the like, which may impair their cognitive and communication skills, and it may be difficult for them to indicate their views to an appropriate representative. In that context I am concerned to make sure that the will of the victim is heard in the court and not the will of other interested parties.

To use an example, the section refers to an appropriate representative, including a relative of the person. If the victim has been involved in an activity which the relative did not approve of, they may well give voice to views in the court that may not be shared by the victim. I have a concern about the lack of actual authorisation within the appropriate representative provisions. In that context, I ask the minister whether a general or standing authority, such as a medical power of attorney, would suffice to ensure that the person nominated by the victim for those purposes would be accepted by the court as an appropriate representative.

The Hon. P. HOLLOWAY: My advice is that section 10 indicates the constraints on what may be discussed in a victim impact statement, so clearly anyone chosen to stand up in court must comply with those requirements in terms of what is discussed before the court case. The purpose is not that this should be used to advance some broader agenda but, rather, it is to be confined to how the victim has been impacted on by the alleged crime. That is really where any constraint on that would be. Clearly, the victim can make their own statement, but this is not meant to be used as a forum for running what you might describe as political agendas. Rather, it is for a person to inform the court of how the victim has been impacted upon. The clause provides:

> appropriate representative, in relation to a person, means any of the following:
>
> (a) an officer of the court;
>
> (b) the Commissioner for Victims' Rights or a person acting on behalf of the Commissioner for Victims' Rights;
>
> (c) an officer or employee of an organisation whose functions consist of, or include, the provision of support or services to victims of crime;
>
> (d) a relative of the person;
>
> (e) another person who, in the opinion of the Commissioner for Victims' Rights, would be suitable to act as an appropriate representative.

So there is a fairly wide range of people to whom this clause would apply. As I said, the victim can read their own statement or choose one of those people but, ultimately, if someone was following

some other broader agenda, the court would have the capacity to veto (I suppose that is the word), the court being used in that way.

The Hon. S.G. WADE: We would not characterise it as a veto. We think it is appropriate that officers of the court manage the court. The minister referred to section 10. If he is referring to section 10 of the act, that does not relate to victim impact statements. Can he clarify where the content of the victim impact statement is constrained?

The Hon. P. HOLLOWAY: I am referring to the Criminal Law (Sentencing) Act 1988, Division 2—General sentencing powers, clause 10—Matters to be considered by sentencing court. It provides:

> (1) A court, in determining sentence...should have regard to such of the following matters as are relevant and known to the court.

Paragraphs (a) to (o) define those various matters that the court should have regard to. New section 7C provides:

> (1) A statement to be furnished to a court under section 7A or 7B must comply with and be furnished in accordance with rules of court.

So, if we are looking at the sentencing bill, new section 7C provides the statements to be provided in accordance with the rules, but the rules are as contained in the Criminal Law (Sentencing) Act. So, in effect, the two complement one another.

The Hon. S.G. WADE: Is the minister suggesting that under section 10 the matters which a court can consider in determining a sentence are delineated and therefore a victim would be breaking the rules of court if he or she made a victim impact statement that went beyond those matters? Or, is the minister suggesting that under new section 7C the rules of court are referenced and the rules of court separately provide that the victim impact statement is limited? I cannot see anything in section 10 which says that the victim impact statements are to be limited, and I cannot see anything in new section 7C that refers us to section 10.

The Hon. P. HOLLOWAY: Section 10 provides:

> (1) A court, in determining sentence for an offence, should have regard to such of the following matters as are relevant and known to the court;...
>
> (d) the personal circumstances of any victim of the offence;
>
> (e) any injury, loss or damage resulting from the offence;

The key part is 'matters as are relevant and known to the court'. I think that is where the victim impact statement comes in and, obviously, it draws the court's attention to the personal circumstances of the victim and any injury, loss or damage resulting from the offence. Where they are relevant, the court in determining sentence is required to have regard to those matters. It is probably that phrase 'as are relevant' that is the key phrase in section 10.

The Hon. S.G. WADE: Our primary concern focuses on the identification of an appropriate person. Considering the minister's last comment, I would not think that section 10(1)(d) limits in any way a victim's right to make an irrelevant statement. It just gives the judge the authority to ignore them.

The Hon. P. HOLLOWAY: That is correct, but I do not think any of us would want the court's time to be wasted, either. It is difficult enough getting cases before the court. Clearly, it is important that victims should have their issues heard but, at the same time, it is important that court proceedings also be relevant and effective, as well. I guess that is all the government is seeking to achieve with its amendment to the bill in requiring 'appropriate persons'.

The Hon. S.G. WADE: That might have been a slight diversion but I return to where the road forked, as I understand it. The minister was responding to my concern that an appropriate representative might well present views to the court which are not the views of the victim. The minister was suggesting that if an appropriate representative was making broader comments—and he characterised them as political; I am not using that in a pejorative sense but, if you like, beyond the context of the immediate offence—that would be inappropriate; and that is where we started talking about the limits of a victim impact statement. I ask the minister to consider the possibility that the matters might be directly relevant to the offence and not of a general nature at all.

Let us say that a victim has acquired a brain injury as a result of hoon-driving behaviour. The victim might still have a strong bond with the accused and might not want to condemn his or her behaviour in the court. A relative might have a very strong view about the behaviour of the

driver, quite contrary to that of the victim. I am particularly concerned that the rights of victims who have communication or cognitive impairment are not ignored in the application of this bill.

The Hon. P. HOLLOWAY: I am not sure how their rights would necessarily be impaired. If that person can indicate who they require to give a victim impact statement, providing that complies with the bill—and the Commissioner for Victims' Rights would determine it—that should not be an issue in the case the honourable member is raising. Obviously, if a person has brain damage it will be more difficult to determine their wishes than in most other circumstances which might come before a court.

The Hon. S.G. WADE: It may be a matter the government will want to consider in the future. Section 7A refers to the mode of communication of the victim impact statement to the court. I understand that it specifically refers to audio or audiovisual records, and I seek advice regarding whether that statement includes other forms of communication devices used by people with a disability, such as a synthesised voice or sign language.

The Hon. P. HOLLOWAY: My advice is that a person in such a case would not be impeded in informing the court using such methods.

The Hon. S.G. WADE: In section 7A(5) we go to the range of people and officers who could be an appropriate representative. In subsection (5)(c) it refers to 'an organisation whose functions consist of, or include, the provision of support for services to victims of crime.' Is there a commonly used register or list of such organisations?

The Hon. P. HOLLOWAY: I am advised that there is a list of services included in a booklet given to victims of crime, by police, when they report it.

The Hon. S.G. WADE: Do the organisations referred to by the minister include those such as the Public Advocate, the Public Trustee or the Guardianship Board?

The Hon. P. HOLLOWAY: My advice is that the booklet only contains those peak organisations that were identified through the ministerial advisory committee and those in consultation with victims of crime. We do not believe the three organisations read out by the honourable member would be included because they are not the peak organisations.

The Hon. S.G. WADE: So, would the minister's understanding of the impact of the bill mean that such organisations would not be within paragraph (c) but might well come under paragraph (e) where the Commissioner can identify them as being appropriate?

The Hon. P. HOLLOWAY: Yes, that is the case.

The Hon. S.G. WADE: Moving on to paragraph (d), regarding the relative of a person, is a relative of a person who receives the direct consequences of crime regarded as a victim in their own right?

The Hon. P. HOLLOWAY: My advice is that that could be the case.

The Hon. S.G. WADE: Again, in passing I would like to mention that we need to be careful, particularly in relation to a victim, that someone is not speaking for them without their authority. I know that paragraph (5)(d) of the act refers simply to a relative of the person, but the second reading explanation referred to the relative as a close relative, so I would like to clarify what is intended by paragraph (5)(d). What does 'close' mean? Is it a legally defined term, or the like? I seek your advice on that.

The Hon. P. HOLLOWAY: It is incorporated into the act really to manage the situation of someone who has an extra large family. It is just a matter of trying to put some reasonable interpretation on it, but I am advised that 'close' is not legally defined.

The Hon. S.G. WADE: Is it possible, under these provisions, for there to be more than one appropriate representative and more than one victim impact statement offered?

The Hon. P. HOLLOWAY: Yes.

The Hon. S.G. WADE: My reading of the definition of 'prescribed summary offence' is that it is the act that is prescribed and not the offence.

The Hon. P. HOLLOWAY: I think it would be more correct to say that it is a consequence of the offence.

The Hon. S.G. WADE: In terms of the definition of 'total incapacity', what is meant by the term 'independent function'? Where does the term come from and who will assess independent function?

The Hon. P. HOLLOWAY: My advice is that it was taken from the Criminal Law Consolidation Act, so that is sufficient information.

The Hon. S.G. WADE: Thank you, minister.

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

Page 4, lines 24 to 28—

Clause 6(7), inserted subsection (5)—Delete the definitions of prescribed summary offence and total incapacity and substitute:

prescribed summary offence means a summary offence that has caused the death of or serious harm to a person;

serious harm means—

(a) harm that endangers, or is likely to endanger, a person's life; or

(b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or

(c) harm that consists of, or is likely to result in, serious disfigurement.

The difference between the amendment and the clause proposed by the government is that it provides a wider definition of a prescribed summary offence. Whereas both definitions provide for cases where death has occurred, the government's definition of 'total incapacity' is much narrower than that given to 'serious harm'.

This narrow definition could potentially lead to terrible injustice for victims and, in cases where death has not occurred, limiting the clause to victims who are permanently physically or mentally incapable of independent function simply does not go far enough. I ask the question: what does independent function mean? For example, you could be a quadriplegic and still be capable of independent function. You could suffer from a withered arm and take pain medication, or even have amputated limbs and still be capable of independent function.

Somebody may have suffered enormous trauma which resulted in mental impairment or serious disfigurement as a result of an industrial accident, or perhaps even fallen into a coma for a prolonged period of time which seriously endangered their life or left them with a physical impairment. These cases would not be caught by the government's definition of a prescribed summary offence, unless the victim was permanently incapable of independent function. In these cases the victim may not end up permanently physically or mentally incapable of independent function but they have, nevertheless, suffered serious injury which warrants some sense of restitution.

Members may recall that, in May 2006, former MLC the Hon. Nick Xenophon proposed similar provisions be incorporated into the Criminal Law (Sentencing) Act. The case that prompted the Hon. Nick Xenophon to introduce that bill involved the death of Lee Charles McIntyre. Mr McIntyre died as the result of a motor vehicle accident in November 2004. In that case, the man in question was charged with the offence of driving without due care, and the police and prosecution service did not decide to proceed with the more serious offence of driving in a manner dangerous.

I might add that, as recently as yesterday, a similar event occurred in the Murray Bridge court. The defendant in the McIntyre case (Benjamin Staveley) was not required to attend any court hearings, and he pleaded through his lawyer. The family of Mr McIntyre were not afforded the opportunity of facing the defendant or reading their victim impact statements in court.

While the government indicated at the time that it would be introducing reforms of its own, other members of the Legislative Council supported the provisions introduced by former MLC the Hon. Nick Xenophon, and the bill passed this place. I would urge honourable members to support this amendment. Even where there is no prospect of a custodial sentence, it is important in terms of giving some sense of restitution to the victims and their families.

The Hon. P. HOLLOWAY: The government bill extends all general rights to make a victim impact statement that exists now only for indictable offences to what the bill calls 'prescribed summary offences'. In the government bill these will be confined to any summary offence that results in the death of the victim or that causes total incapacity. Total incapacity is defined as

'permanently physically or mentally incapable of independent function'. This is then a limited exception to the indictable rule.

It is limited because the superior courts may have the luxury of time to allow these extended rights, but summary courts do not. The practical exigencies of the business of the Magistrates Court and the need to deal with the list in an expedient manner mean that business cannot be interrupted or delayed, except with great disruption to the summary dispensation of justice. This is what summary courts are for—to be summary.

The practical reason for the election policy, which the bill proposes to fulfil, is that sometimes the defendant will plead down to a summary offence where there has been an outstanding charge of causing death by dangerous driving or something similar. There are not many of these, and the exception can be justified on balance to the harm caused and the practical delivery of speedy justice.

The Hon. Mr Darley proposes to amend the exception to all cases where the victim has suffered serious injury or what used to be called in the old language 'grievous bodily harm'. The result of this will be that the full panoply of the victim impact statement process will be applicable in any case where the offence has resulted in (a) harm that endangers or is likely to endanger a person's life; (b) harm that consists of, or is likely to result in, loss of or serious and protracted impairment to a part of the body or a physical or mental function; or (c) harm that consists of, or is likely to result in, serious disfigurement.

This amendment should be opposed. It does not respect the balance between, on the one hand, extreme danger to a victim who happens to have turned up in the Magistrates Court and, on the other hand, the necessity for the delivery of summary justice in a summary court. There will be many of these cases. The Office of Crime Statistics has provided a table. There will be between 100 and 200 such cases per year. I seek leave to have the document incorporated into *Hansard*. It is a table of the summary convictions.

Leave granted.

Defendant Convictions

	Assault GBH	Major Assault Other	
2003	58	43	101
2004	40	39	79
2005	58	40	98
2006	67	68	135
2007	38	167	205
	261	357	618

The Hon. P. HOLLOWAY: I should explain that, on 14 May 2006, section 23 of the Criminal Law Consolidation Act, 'inflict grievous bodily harm on a person' was replaced by the new law CLC24(1) 'intentionally cause harm to another'. The old law is reported under the offence of 'assault GBH', the new law under 'major assault other'.

The new law will also include some offences which would have been charged under the old, less serious law of 'commit assault occasioning actual bodily harm' which also ceased to exist on 14 May 2006. In addition, there will be plenty of scope for the agreed victim of any bar fight to argue that his case falls within the scope of this when the prosecutor thinks not. Indeed, one can well see that it would not be uncommon for both sides of a bar brawl or a domestic flight to argue that this applied to them both. This kind of complicating scenario may be multiplied many times over, and it is not workable, particularly when the court system is under stress and under pressure to deal with delays in case loads.

The Hon. S.G. WADE: The opposition is attracted to Mr Darley's amendment. We think that there are a lot of people who suffer serious impacts of crime, who should be heard and who are not covered by the current scope of the government's bill. The congestion in the courts is not the consequence of Mr Darley's amendment: it is the consequence of the government's proposing to take it down to the summary courts.

The Hon. P. HOLLOWAY: I indicate that, under section 7 of the Criminal Law (Sentencing) Act, victims have a right to furnish the court with a victim impact statement. What is being sought here is to extend it to an absolute right. There are two types of victim impact

statement. Under section 7 of the current act, there is a global right for a victim impact statement, and it is at the discretion of the court whether that statement is read out. However, under new section 7A that the government proposes to enact, the victim of an indictable offence has an absolute right to read out the statement.

So, there is an absolute global right for victims to provide a victim impact statement, but it is at the discretion of the court whether it is read out. However, for victims of indictable offences, and the prescribed offences as proposed, we are giving them an absolute right to have the victim impact statement read to the court.

The Hon. S.G. WADE: Therefore, would it not be the case that the government is not able to tell us whether it would clog up the courts because we have no idea of the propensity of victims in less serious matters and in summary courts to take up the option? Obviously, for an indictable offence in a superior court, the victim is much more likely to take it up. One should not assume that the rates of the discretion being exercised in a superior court are reflected in the lesser courts.

The Hon. P. HOLLOWAY: It is difficult to predict what the outcome of any legislation will be until it is actually tried. Nevertheless, my advice is that victim impact statements occur in about 80 per cent of files in superior courts. I am advised that it is less than 5 per cent in the Magistrates Court. If we can use those as rough figures (80 per cent in the superior court and less than 5 per cent in the Magistrates Court), clearly, if one makes it an absolute right in the Magistrates Court, I think that, based on those figures, there is a very real chance that it will clog up the system.

The Hon. M. PARNELL: I indicate that the Greens will support the amendment. My experience is that floodgate arguments, whenever raised, usually called the corridors of power rather than the corridors of the courts. I am not convinced that this will unduly delay the work of the courts.

The Hon. D.G.E. HOOD: Family First supports the amendment. We have a strong commitment to advocating for victims' rights. In this case, why should they not have the opportunity to outline to the court the harm that has been done to them?

The Hon. P. HOLLOWAY: People do have the right to outline how they are victims. What we are talking about here is whether they should have the absolute right to have it read out and to take up the time of the court. As I indicated earlier, there has to be some compromise in summary justice in a court. Obviously, for those serious cases, this parliament has quite properly indicated that there should be that absolute right which, as we have just heard, is taken up about 80 per cent of the time. However, if we do this for all cases, it has to be borne in mind that people have the right to provide a victim impact statement, and the court will consider it. But as to its being read out in court, we have to make the judgment, given that to provide justice we need our court system to operate effectively, and we do know that it is under enormous strain at the moment.

The Hon. S.G. WADE: I want to clarify a statement the minister has made a number of times—that the victim has a right to make a victim impact statement. As I understand it, that assertion is made in relation to section 7. However, my reading of section 7 is that it is a duty on the prosecutor to make sure that the court is informed of the consequences of the injury. The victim might have a totally different statement to make. Is there in fact a right at the moment to make a victim impact statement rather than a prosecutor's understanding of the impact?

The Hon. P. HOLLOWAY: Section 7 provides that the prosecutor furnishes the particulars of the victim's injury. Obviously, the prosecutor has to get that information from the victim or from the relatives of the victim, as the case may be. One needs to read section 7A in conjunction with section 7. I am advised that section 7(1) is what was introduced to provide for the victim impact statement back in 1988, so that is the section of the Criminal Law Sentencing Act that provides for victim impact statements. So, that is all there is in the law. Basically, it is all there and has been since 1988 to provide for victim impact statements, until 1998 when section 7A came in.

The Hon. S.G. WADE: I thank the minister for those responses, but those responses would confirm the opposition's commitment to support the Hon. Mr Darley's amendment, because it means that the prosecutor's statement of injury—which could be merely technical—is replaced in cases of serious harm with the opportunity for the victim's voice to be heard, including, if you like, the non-technical aspects of the subjective, personal impacts of crime. Therefore we feel doubly encouraged to support the Hon. Mr Darley's amendment.

The Hon. P. HOLLOWAY: That is exactly why we are adding the amendment to section 7, which provides:

If the offence is not an offence in relation to which a victim impact statement may be furnished in accordance with section 7A, the court may nevertheless allow particulars furnished under this section to include a victim impact statement if the court determines that it will be appropriate in the circumstances of the case, and the other provisions of the division relating to victim impact statements apply to such a statement as if it were furnished under section 7A.

Clause 5—which we have just passed—extends the discretion to the prosecutor to furnish particulars of the victim's injury, and that is really a major extension of the victim impact statement.

The committee divided on the amendment:

AYES (13)

Bressington, A.	Darley, J.A. (teller)	Dawkins, J.S.L.
Evans, A.L.	Hood, D.G.E.	Kanck, S.M.
Lawson, R.D.	Lensink, J.M.A.	Lucas, R.I.
Parnell, M.	Schaefer, C.V.	Stephens, T.J.
Wade, S.G.		

NOES (6)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Wortley, R.P.	Zollo, C.

PAIRS (2)

Ridgway, D.W.	Hunter, I.K.

Majority of 7 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 7.

The Hon. S.G. WADE: In relation to community impact statements, as referred to in new subsection (2)(b), I wonder whether particular sections of the community would include non-local organisations, such as a church or an ethnic club.

The Hon. P. HOLLOWAY: My advice is that in new section 7B(2)(a) we talk about a neighbourhood impact statement. In such a case, as one example, suppose a church was burnt down or somehow or other was vandalised as a result of a crime. It could be a situation where hundreds of the attendees at that church would obviously be impacted by that act and they would want to make a statement. In that case, that is where the neighbourhood impact statement would come into effect.

The Hon. S.G. WADE: I was presuming that a body such as a church or an ethnic group would not come under section 7B(2)(a) because they would not be people living or working in the location in which the offence was committed. Particularly in the modern era, churches often draw their members from wide catchment areas, and that is certainly true of ethnic clubs. Therefore, I assume that they would not fit the definition of 'people living or working in the location' and that such a statement would need to be made under section 7B(2)(b). That is my interpretation.

However, whether it is under (a) or (b), can the minister confirm, in relation to the large number of people in such a group, that he was not suggesting that members of churches or ethnic clubs would not be entitled to make the court aware of the impact on them?

The Hon. P. HOLLOWAY: They could make individual statements, of course; they are entitled to do so. However, what we are doing here is giving them the opportunity to make a collective statement. So, rather than individual statements, you can have a collective statement on behalf of those people about how serious it is, and any statement, I guess, would obviously reflect the number of people who were affected by it, which the court would take into account.

Clause passed.

New clause 7A.

The Hon. J.A. DARLEY: I move my amendment in an amended form:

After clause 7 insert:

7A—Insertion of section 44A

Before section 45 insert:

44A—Assistance to victims, etc.

(1) If—

(a) a court intends to—

(i) impose a sentence of community service on a person in respect of an offence; or

(ii) include a condition requiring the performance of community service in a bond imposed on a person in respect of an offence; and

(b) the court is advised by a victim of the offence, or by the prosecution on behalf of a victim of the offence, that the victim would like the defendant to be required to perform community service in accordance with this section,

the court may order that the community service, or a specified number of hours of the community service, consist of projects or tasks—

(c) for the benefit of the victim; or

(d) of a kind requested by the victim.

(2) If a court refuses to make an order under this section, the court should state the reasons for that refusal.

(3) If a court makes an order under this section in relation to a person, the community corrections officer to whom the person is assigned must consult with the victim before issuing any directions requiring the person to perform projects or tasks.

(4) This section does not apply in relation to the performance of community service by a youth.[1]

[1] See Young Offenders Act 1993, section 51(1), which provides that work selected for the performance of community service under that act must be for the benefit of specified persons and bodies, including the victim of the offence.

This clause amends section 44 of the Criminal Law (Sentencing) Act 1998. It provides that, if a court intends to impose a sentence of community service on a person in respect of an offence or include a condition requiring the performance or community service in a bond imposed on a person in respect of an offence and a court is advised by a victim or the prosecution on behalf of the victim of the offence that the victim would like the defendant to be required to perform community service in accordance with this clause, the court may—and I emphasise 'may'—order that the community service, or a specified number of hours of the community service, consist of projects or tasks for the benefit of the victim or other victims of crime.

An example of this would be where a victim of an offence thinks it is appropriate for the defendant to actively participate in road safety education courses conducted by schools by speaking to schools about the potential ramifications of their actions. Another example would be where a victim suffers some physical impairment as a result of the offence committed by the defendant and cannot maintain his gardens or perform general maintenance around their home. The victim can advise the court of their request that the defendant be required to spend a specified number of hours of the community service performing these projects or tasks and the court, if it thinks it appropriate, can make an order to this effect.

The court still has the ultimate say in whether such an order is to be made, but this amendment would at least allow the request of the victim to be considered by the court. Where the court makes an order, the community corrections officer to whom the person is assigned must consult with the victim before issuing any directions requiring the person to perform projects or tasks. If a court refuses to make an order, the court should state the reasons for the refusal. Similar provisions apply in section 51 of the Young Offenders Act 1993 which provides that work selected for the performance of community service or other work pursuant to an order or undertaking under this act must be for the benefit of specified persons and bodies, including the victim of the offence. This amendment does not apply in relation to the performance of community service by youth. I ask honourable members to support the amendment.

The Hon. P. HOLLOWAY: The effect of this amendment is that, if any court is intending to impose a sentence that involves community service in any form, and the court is informed that the victim wants the community service to be performed for the benefit of the victim or of a kind requested by the victim, the court should do it or give reasons why not. Further, if such an order is made, community corrections has to consult with the victim before issuing any directions requiring the person to perform projects or tasks. Interpreted literally (and there seems no other way of doing it), it seems that the community corrections officer would have to consult the victim before directing

the offender whether to pick up that kind of litter, paint that colour or whatever detail might arise on the spot.

This amendment should be opposed, but not only for that reason. First, in essence it seeks to make the victim the community corrections officer (as noted above, quite literally) or at least give power of veto. Victim dictated sanctions are a bad idea. While restorative justice has its place, particularly in the Young Offenders Act, the imposition of it in this one-off, stand-alone amendment is inadvisable. If we are to have adult restorative justice, it should be done properly. For example, proper restorative justice gives the offender a say as well. How much of a say should be worked out properly.

Secondly, the system is unworkable. The imposition of community service as a sanction depends in the first place on the consent of the offender. If the offender is not prepared to do it, it will not work. I repeat the comment about the need to involve the offender in restorative justice.

Thirdly, the system is unworkable in another sense as well. This is most likely to arise in the Magistrates Court. The court will be running through its cases. It will form an intention to impose community service only as it hears submissions. What if the victim is not there? Does the court adjourn the matter while the victim is found and consulted? What are the obligations of police prosecutors to divine the possibilities in advance, to take the opinion of all victims just in case?

Fourthly, all this may well mean that the use of community service as a sanction will decline in favour of other penalties. That is highly undesirable: we should be encouraging the use of community service as a sanction and not making it harder to do or putting obstacles in its way.

Fifthly, I doubt whether correctional services has been consulted about the implications from its viewpoint. I suspect that it will have industrial concerns about victims giving directions to its officers, insurance problems about variable places of community service, practical problems about not putting offenders into designated programs, and resource issues because supervision will be scattered over a whole lot of individual programs rather than concentrated on joint programs.

Thousands of hours of community service are ordered each year. If the department is required to consult with victims in circumstances suggested in the proposal, it would be time consuming and create delays in work being completed. It may well be unworkable. Resource implications for the department, should this proposal proceed, may well be significant. For that reason the government cannot accept the amendment.

The Hon. S.G. WADE: The opposition feels that the government has deliberately overstated the honourable member's amendment. Our understanding (and the member moving the amendment may clarify in his subsequent comments if we are mistaken) is that the court 'may' order the community service or a specified number, and so on. We saw the 'may' as a discretion by the court and in that context we are willing to support it.

I am disappointed that the minister suggests that there might be problems in the administration by the Department for Correctional Services, but the government has not seen fit to give us further details on that, and it sounds as though it is expecting the member to consult the department rather than it taking the opportunity to inform the council. The opposition has some concerns about clause 3, but in terms of the totality of the section we would not want to lose the reform for the sake of that point without further information from the government.

The Hon. CARMEL ZOLLO: As the Minister for Correctional Services I concur in the comments made by the Hon. Paul Holloway in taking through this legislation. Certainly, the government has consulted in relation to how it would affect the Department for Correctional Services, and I reiterate that thousands of hours of community service are ordered each year. If the department was required to consult with victims in circumstances suggested in the proposal, it would be time consuming and create delays in the work being completed.

I place on record that it may well be unworkable. The resource implications for the Department for Correctional Services are significant. To remain a cost effective alternative to prison, community service must be able to be performed by a reasonable number of offenders under the supervision of an officer. At present, most community service details would consist of between six and eight offenders to each community service officer, and many community service projects require groups of just that size. For the offender to be directly and properly supervised, any work carried out for the benefit of an individual victim or of a kind requested by a victim could, by inference, require one-to-one supervision.

So, for all the reasons that have already been outlined, the government believes this particular suggestion is not workable because, clearly, any community service projects require a number of people working together to actually perform that task. That task in itself is, of course, restorative justice. That is exactly what it is about. I hope the honourable member will accept the government's position.

The Hon. M. PARNELL: I agree with two of the things that both the ministers have said so far, but it does not lead me to the conclusion that this amendment is not still workable. I accept that victim-dictated sanctions are not appropriate—I have said that in this place previously. I do not see this as victim-dictated sanctions: I see this as victim-suggested sanctions. There is a big difference. Also, I accept that restorative justice should involve the victims and I see this as one way of that involvement occurring. Minister Holloway referred to directions. I do not see that this is providing a direction; it is a suggestion that a court in its absolute discretion may or may not take up.

The way that I see this amendment working is that the first trigger is that the victim needs to notify the court that they believe a community service order, for example, should occur in a certain way. The court then has to decide whether or not they think that is appropriate. Some judges may well have a blanket position that they do not believe it is ever appropriate for the victim to tell the court how it should exercise its discretion. I can imagine some judges not having any truck with this at all.

Other judges might want to take it to the next step, and it is only then that some of the practical difficulties that the ministers have pointed out in terms of community corrections officers needing to liaise with victims arise. I do not see that that will necessarily bog down the system. It is a balancing act. We are balancing the rights of victims to engage in the process. We are also looking at not overly fettering our judiciary and not overly fettering our community corrections officers. So, on the whole, I think this amendment can work, and the Greens support it.

The Hon. SANDRA KANCK: I welcome this provision. I first came across this concept when I was a teenager and, as teenage girls are wont to do, they cut things out of magazines and stick them in a scrap book. I came across this idea, I think, in *Time* magazine in the 1960s when it was being trialled—I have forgotten where—and the sort of creative solutions that came out of it I thought were quite impressive. For instance, an example given was of an Afro-American woman (at that stage they were called Negros, if people remember) who had been subject to racial discrimination. In setting the punishment, it was agreed that the white man who had abused this woman racially was required to attend the Sunday church service that this woman regularly went to and also participate in some other extracurricular activities of the church such as repairing somebody's fences or doing some gardening for someone who was not well.

I thought at the time I read it that this is the sort of system we should be moving towards because, if you look at that particular example, that man was going to be forced, at least once a week and obviously a bit more often than that, to mix with these people that he had denigrated. It would become very difficult over time for a person in that situation to continue that denigration as he came to know the people in that church as human beings. This may not be the sort of solution that a court would come up with, but it is perfectly possible that it could be entertained within a community service order. I think there is a real place for a victim, in the setting of these sorts of conditions, to exercise forgiveness, and I think that has a lot to offer in terms of the person who has committed the offence learning about give and take. That process of forgiveness I think would go a long way towards stopping some future criminal activity, so I think this is a great idea.

The Hon. CARMEL ZOLLO: Again I place on the record, because I think it has been lost, that community service in itself is a reparation penalty for minor offending, and the focus is on offenders paying back to the community. I think it is important that we put that on the record. South Australia actually has the toughest community service orders in Australia, with clear guidelines in place for compliance management.

It is a valuable reparation initiative, requiring offenders to undertake any number of community service hours—up to 320 hours. Each year community service offenders contribute around 3 million hours, I am told, to the community, undertaking work that might not otherwise be done. So, community service in itself provides meaningful work for offenders. We hope also that in some cases the offenders acquire skills and experience that will assist them to obtain employment.

A few weeks ago I cited a very good example of just that sort of case. I went to Point Pearce, and the offenders in the community, with other work undertaken at the Elizabeth community corrections, had constructed some crosses which were then placed on unmarked graves, and they worked with the Aboriginal elders.

Clearly, those offenders were undertaking some meaningful work, as well as acquiring some skills. The department itself with its specialised staff does need to have the ability to actually identify the types of community work that are appropriate and, indeed, that the community needs, so that those people after they have offended walk away not only having acquired some skills but also having given something back to the community. I believe this clause by inference does require one-to-one supervision. I stress that the resource implications for the department would be significant.

The committee divided on the new clause:

AYES (12)

Darley, J.A. (teller)	Dawkins, J.S.L.	Evans, A.L.
Hood, D.G.E.	Kanck, S.M.	Lawson, R.D.
Lensink, J.M.A.	Lucas, R.I.	Parnell, M.
Schaefer, C.V.	Stephens, T.J.	Wade, S.G.

NOES (7)

Bressington, A.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hunter, I.K.	Wortley, R.P.
Zollo, C.		

PAIRS (2)

Ridgway, D.W.	Finnigan, B.V.

Majority of 5 for the ayes.

New clause thus inserted.

Clause 8 and title passed.

Bill reported with amendments.

Bill read a third time and passed.

ENVIRONMENT PROTECTION (BOARD OF AUTHORITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 February 2008. Page 1682.)

The Hon. M. PARNELL (17:15): I rise to support this legislation and, in doing so, would like to make a few brief remarks about the Environment Protection Authority and its independence. Of course, the first thing to note is that the Environment Protection Authority is our state's primary pollution watchdog; it is the agency that we have entrusted with the job of identifying pollution, prosecuting offenders, setting appropriate standards for pollution, and other similar activities.

The EPA is a government agency, but it is independent of government in two very important areas: the first area in relation to licensing, or the issuing of environment authorisations or exemptions; and the second in the area of enforcement. In both these areas it is important that the EPA is at arm's length from government. We had a debate last week in relation to animal welfare laws and in the committee stage we discussed, in some detail, the importance of keeping regulatory authorities at arm's length from government, because the alternative is a recipe for corruption.

If we take the EPA and its licensing role, for example, we cannot have a situation where the minister says to the EPA, 'Don't give that person a licence', or, 'Do give that person a licence; they are a mate of mine', irrespective of the merits of whether or not a person is deserving of a licence, given a situation. It is similar with enforcement. We cannot have a situation where a minister can direct the EPA whether or not to prosecute a particular offence. That is a recipe for corruption.

The question is: what does it mean for the EPA to be truly independent? A good starting point is this bill, in that it provides that the chair of the board of the Environment Protection Authority is to be independent. In some ways what we are doing is going back to the situation that existed before Dr Paul Vogel assumed the chair of the authority. The previous chair was Mr Stephen Walsh QC, a prominent barrister practising in the area of environmental law as well as in other areas. He was the chair, and clearly he was independent (he was not a public servant), but

he was only part-time in the position—which is another issue not particularly relevant to this bill, but which does raise questions about the amount of work involved in chairing an independent authority and whether or not it is possible to do it on a very part-time basis.

When Paul Vogel was the chair he was also the CEO of the agency and, whilst there are no particular examples I can think of that show a conflict of interest manifested by poor decision-making, I think it was a poor structure to have the chair of the authority also responsible for all the 200 or so staff of the agency. So, I think this bill does go towards improving the situation by insisting that the chair is now independent.

However, the real test of the independence of a body such as the Environment Protection Authority is not so much the legislation—although that is important. The real problem area in terms of independence is the attitude of government and, in particular, the tendency of government to interfere in the operations and decision-making of the EPA. As members would be aware, because I have raised it on a number of occasions in this place, the worst example we have seen in terms of the current government in interfering with the independence and judgment of the EPA was the Whyalla steelworks legislation.

That was a situation where the EPA had drafted a licence. It had consulted with the company and issued the licence to the company. It was a licence that required OneSteel in Whyalla to reduce its pollution over time, yet we saw the company go crying to the Premier saying, 'Get the EPA off our backs and protect us from the pollution watchdog. Protect us from the EPA.' As a result, the government introduced a bill into this place which tore up the licence that the independent EPA had written and replaced it with a licence that was more acceptable to the company. That is the sort of challenge to the independence of the EPA that is not remedied in this bill and, in fact, it is very difficult to remedy that type of interference with legislation at all because the government used legislation, used this parliament, to do its work for it in overriding the decision that had been reached by the independent EPA.

The other area where the government can attack the independence of the EPA is simply by sidelining it, by not asking it for its input in important areas. I raised one of those in question time today: the fact that on the record, as disclosed in the freedom of information documents, it appears that the EPA was not consulted about the location of a desalination plant. They are the ones who will have to license a brine discharge. They are the ones who are closest to our marine experts employed in the Public Service in this state, yet when I ask them whether they can provide documentation, they have nothing that they can show us. So, that is another way that the independence of the EPA can be undermined, simply by being sidelined and by the government refusing it its proper role in decision-making processes.

It is easier to legislate against that type of interference; however, it is not something that is appropriate to include in the bill before us. The bill before us relates to the board of the Environment Protection Authority and, in particular, the independence of its chair. I will be happy to support this bill. Those other areas where the independence of the authority is under threat I will raise on other occasions through different legislation but, for now, I support the second reading of this bill.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 February 2008. Page 1761.)

The Hon. R.P. WORTLEY (17:23): I stand today to speak in support of this bill. As my colleague the Minister for Police has indicated, the objective of the bill, complemented by parts of the Statutes Amendment (Evidence and Procedure) Bill, is twofold. First, it is intended to reduce sexual violence; and, secondly, it is intended to encourage the reporting of these crimes. The amendments aim to fulfil these intentions through a number of provisions which more clearly delineate the parameters between what is lawful and unlawful sexual behaviour.

They aim to fulfil these intentions by expanding the meaning of 'reckless indifference' in order to reflect contemporary standards of acceptable behaviour in sexual matters. This expanded meaning will be applied to all relevant sexual offences, not only rape, in division 11 of the act. The amendments aim to fulfil these intentions by making sure that the courts direct juries in a manner that does not support obsolete views about responses to sexual violence and its circumstances.

They aim to fulfil these intentions by making an exception to the rules of joinder and severance of counts in sexual offences cases. I unequivocally support these objectives.

Every person present in this place knows, either directly or indirectly, the many impacts of crimes of sexual violence on victims and their families. I will not attempt to describe these today. However, I will refer briefly to a recent report which will be of some value to members in considering the bill. The Australian Bureau of Statistics released its 'Australian Social Trends' article on interpersonal violence in August 2007. It applies to the 12 months prior to 2006. It reads, in part, as follows:

> ...46,700 (or 0.6 per cent) of men and 126,100 (or 1.6 per cent) of women had experienced sexual violence. Most of these men and women were sexually assaulted (0.6 per cent of all men and 1.3 per cent of all women). Women were most likely to be sexually assaulted by someone known to them (89 per cent), with 29 per cent of...victims...reporting that the perpetrator was a current or previous partner, and 39 per cent a family member or friend...65 per cent of men physically assaulted by a male perpetrator said that the incident was not reported to the police (by them or anyone else). A similar proportion of women (64 per cent) said that the police were not told. In contrast, significantly more women (81 per cent) said that their sexual assault was not reported to the police.

The research I have discussed simply reinforces, in my view, anecdotal and personal evidence of which we are all aware—that is, the victims of sexual violence are less likely to report it. It is on the issue of reportage that I wish to focus in finalising my remarks today.

Sexual violence is inflicted on women, men and children to secure power and control. It is an attack on the integrity of the victim's body and on the victim's self-determination and autonomy. It is little wonder then that victims are reluctant to report. They may feel that they will not be believed by family and friends or by the police. They may be under threat of violence if they disclose; they may often be ashamed or feel at fault for the assault and, in some cases, may even risk punishment or rejection by their families. They may feel reluctant to submit to the various physical and psychological examinations and cross-examinations that follow a crime of this nature (sometimes for years) should the matter go to court.

In publishing their findings, the ABS and similar agencies can only work with reported matters. It is abundantly clear that there are many more victims of sexual violence whose voices, for multiple and complex reasons, have not been heard. I believe that any improvements to legislation that we, as members of the council, can bring about to assist victims must be seriously considered and action taken accordingly.

The government has listened to those who have suffered sexual violence and has drafted legislation that aims to further protect their interests. I commend the bill.

Debate adjourned on motion of Hon. T.J. Stephens.

SERIOUS AND ORGANISED CRIME (CONTROL) BILL

Adjourned debate on second reading.

(Continued from 26 February 2008. Page 1783.)

The Hon. M. PARNELL (17:28): The problem of organised crime is a serious issue for all Australian communities, and it takes many forms. These can include corporate and/or white collar conspiracies in areas such as price fixing or insider trading of shares, or it can consist of crimes of violence, intimidation, murder, drug manufacturing and other illegal activities.

As I understand it, this bill is born out of the government's desire to tackle one part of organised crime; namely, that associated with so-called outlaw motorcycle gangs. At the heart of this bill is a presumption that, if you can stop people involved with these gangs from associating with each other and with other members of the public, you stand a better chance of curtailing their illegal activities. At one level it is aimed at crime prevention rather than the detection and punishment of crime, although the two are linked, particularly given the code of silence that apparently prevents even rival gang members from giving evidence against each other. Breaking the associations between individuals might open some chinks in the wall of silence that can be used by law-enforcement agencies to then detect and prosecute criminals.

Primarily, I think this bill is about crime prevention. The way that it seeks to achieve this is through a number of mechanisms such as the declaration of certain organisations. We do not know which ones but we have been told that outlaw motorcycle gangs are the most likely targets. Also, the bill provides for the imposition of control orders on members of those declared organisations. There are also restrictions in the bill that relate to other members of the public in their dealings with those persons who are the subject of control orders.

As I understand it, the bill is born out of a frustration with existing police powers, particularly in the area of consorting and the ability to restrict the activities and movements of suspected criminals. Generally speaking, whenever coercive action is taken to prevent individuals or groups from committing crimes, you do end up infringing civil liberties. In the case of this bill, the infringement is primarily against the right of freedom of association and freedom of movement. However, these rights are not absolute. Sometimes these rights will need to be curtailed; however, the Greens believe that we must do so only in exceptional circumstances and subject to the most stringent checks and balances against the abuse of power.

In my view, it is at this hurdle that the bill falls, and without substantial amendment I will not be able to support it. I appreciate that taking this stance opens one up to the cheap shot that any position other than complete support for the government's law and order agenda means that one is soft on crime. That, unfortunately, is one of the problems with this whole debate. There is no room for anything other than black and white or right and wrong; there is no room for grey in this debate. However, the rights and wrongs of this legislation are by no means clear.

In debating this bill, as legislators we are not doing our job properly if we do not scrutinise the legislation and test it against a range of important legal, democratic and human rights principles. We could also query whether the bill is well targeted in relation to organised crime. The approach in other jurisdictions has been to tackle issues such as police corruption, organised crime generically, and then outlaw motorcycle gangs. This bill appears to focus first on the gangs and not on those other areas that have been shown to be problems in other states.

We could also query how effective the legislation will be. We have seen the anti-fortification laws in existence for some time, yet they have not been hugely successful. As I understand it, only two fortifications have been removed in the past six years. In legislation such as this we always have the problem that the smart people will find ways to get around it, but the rest of society is nevertheless affected by these laws.

As I understand it from government briefings, only 10 per cent of arrests under Operation Avatar were for serious criminal activity, and most were for things such as traffic infringements, which begs the question about whether in this legislation we are properly targeting the root cause of organised crime in South Australia.

I would briefly like to go through some of the specific areas where I believe this bill fails, where I think more work needs to be done, and where reforms should be made. If we are going to go to the very basic principles, I think that the title of this legislation could warrant reform. At one level, we could call it the 'freedom of association abolition bill', because, primarily, that is what it does: it abolishes freedom of association in many instances. Another alternative title might be the 'trust us, we're the government bill', because we see in this bill a great deal of discretion which is not open to review through normal judicial channels.

The first area I want to deal with is that of declared organisations. This is where we have been told that outlaw motorcycle gangs will effectively be dealt with. The definition in clause 10 of the bill provides that members of these organisations are those who 'associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity'. This definition raises many more questions than it answers.

Does it need to be the primary purpose of an organisation that it allows members to associate for these purposes? Does it need there to be a majority of members involved in those criminal activities? What if only a handful of people in a very large organisation is involved in getting together and planning criminal actions? Is that covered by the definition?

In responding to this point, the minister will no doubt direct me to section 10(4). My reading of that provision is that it does not matter that it is not everyone who is involved or that the organisation also does other things. It seems to me that the power exists for the minister to declare an organisation provided at least two members associate together for criminal purposes.

However, there are plenty of examples other than outlaw motorcycle gangs where people have got together for criminal purposes. I referred before to white collar crime. There are a number of prominent social clubs in Adelaide, such as the Adelaide Club; maybe there are people in that organisation (I am not a member, and I do not know who is a member), such as business leaders, who have colluded together to fix prices and to break corporations laws. I do not know.

The Qantas Club is another good example. One of the police officers in their briefing said, 'If you want to find members of the Rebels and the Finks, you go to the Qantas Club because they are all members. They all fly business class. That is where you find them.' Do we outlaw the

Qantas Club because of the risk it places on those of us who might rub shoulders with bikies? I should declare that I am not a member of the Qantas Club, although I have been in as a guest once or twice.

Without naming any particular political party, recently in the news we have seen all sorts of allegations of wrongdoing in New South Wales. I have mentioned business organisations. There was a problem in Western Australia not that long ago with members of AFL football clubs admitting that they were involved in drugs. Does that apply to every member of our football clubs? Of course it does not, but it seems to me that the definition is so broad that any two people who use an association or a club for the purpose of getting together to plan crime is enough for the organisation itself to be declared.

If we want to take this to its most logical conclusion, we have to look at South Australia Police. We all know that our police force in South Australia is a very professional body, and it is most likely largely free of corruption. I am not aware of any particular corruption, but every police force everywhere has at some stage been infiltrated by rotten apples. I am sure that South Australia Police is not an exception to that rule. Certainly, in other states, corruption in the police force has been endemic. Again, if we look at this definition, as long as there are two people who use the organisation to get together for criminal activity, it opens up the whole of the organisation to be declared.

People might say that this is a ridiculous line of inquiry because no-one has any intention of the Qantas Club, the police or a political party being a declared organisation. My point is: I do not think that it is good enough in legislation for us to say it is not our intention to use it in that way; therefore, the legislation is sound. If the legislation can be used in that way, unless we have sufficient checks and balances, the legislation is flawed.

There are also problems with definitions in relation to serious criminal activity, because the detail is largely left up to regulations. We even have an the ability for minor summary offences to be brought within the ambit of the definition of 'serious criminal activity'. The bill provides that summary offences of a prescribed kind can be regarded as serious criminal activity. I would like to know whether it is the intention of the government to prescribe white collar crimes as the type of crimes caught by this legislation, or are we only talking about crimes of violence and serious drug crimes?

On this topic of declared organisations, it is important to make the point that not all bikies are criminals. No one has suggested that they are, but we have had examples of where people involved in the motorcycle world have found themselves caught up in over-vigilant policing. One example that members have perhaps heard before was the Long Riders—apparently some members were here in parliament a while ago—a Christian motorcycle group. One of those members says that he was tailed by the police for seven weeks just because he went to the club rooms of another organisation, the Finks motorcycle club.

Also, in the motorcycle family we have got: Vietnam veterans, Bikers Against Child Abuse and the Hog Club, most of which, to my knowledge, are not involved in criminal activities. I would hope that it is not the government's intention to declare any of those to be outlaw motorcycle clubs. We also had a brilliant example in the media within this past week of where some of these people are actually taking on the role of law enforcers themselves.

Members might have seen television footage or read in the Sydney *Daily Telegraph* or seen on the *Adelaide Now* website the case of a couple of would-be criminals who tried to rob a bowling club in New South Wales. Apparently, wearing balaclavas and armed with a samurai sword and a machete, these would-be thieves jumped the bar of the Regents Park Bowling and Recreation Club, demanding money from the safe. Unbeknownst to them, there was a meeting being held just around the corner of the Southern Cross Cruiser Club—a motorcycle club—and the 40 members of that club promptly came to the aid of the bar staff and chased the would-be offenders, one of whom was so desperate to get away that apparently he smashed through a plate glass door and fell 4 metres.

According to the president of the Southern Cross Cruiser's Club, he said he crash-tackled the sword-wielding offender. He says, 'He tried to jump over the fence but I crash-tackled him again and then a couple of boys arrived and grabbed him, held him down...then we hog tied him until police arrived.' So, there is an example of a motorcycle club that is performing good community service work.

I now want to move briefly onto the subject of control orders. If a person is a member of a declared organisation, then the court has no discretion; the court must issue the order as

requested. If a person is a past member of one of these outlaw motorcycle clubs which has been declared, then the court does have some discretion. That raises a very interesting question. If we are going to treat current members of these organisations the same way as we treat past members, then how is it that we allow people to rehabilitate themselves and how do we allow them to move on?

There are many examples of people who have been associated with crime and with criminal gangs who have sought to turn their life around. A very timely example was in the *Sunday Mail* just last week. I would imagine most members would have seen it, with the heading, 'How a young girl saved me, by bikie boss'. This is the story of a Mr Awad, who was apparently the president, or the chief, of the Rebels outlaw motorcycle gang, a gang that I imagine is in the government's sights through this legislation. The story in the *Sunday Mail* basically is the story of his road to Damascus—I think quite literally—and how he has turned his life around; yet, under this legislation, he would be caught. I will read a couple of sentences from this article. It begins:

> Moments after one of South Australia's most infamous bikie assassinations, Karem Awad stood in a blood-spattered shirt glaring at police.
>
> Today, the former chief of the Rebels outlaw motorcycle gang says he is a changed man—a churchgoer with a job earning an honest living helping others battle their demons.

Apparently, he works for the Aboriginal Sobriety Group in his employment.

This case study raises some really interesting issues in this legislation and points us to some areas where it can be reformed, because what the story of Mr Awad tells us is that his progression out of the outlaw motorcycle gang was a gradual one, yet he still maintains some contact with those people. He now apparently spends more time going to church than he does going to motorcycle club meetings; yet, under this legislation, he would still be caught and it is likely that restrictions would be put in the way of his particular mission, which might be to turn around some of his former colleagues. I will come back to Mr Awad later, because his story has something useful to tell us about the provisions of this bill relating to criminal associations.

It is interesting also to note some of the remarks of the Youth Affairs Council of South Australia in relation to the law and order debate. That organisation has found it incredibly unhelpful when we stigmatise people for their past criminal behaviour. In fact, if we look at Monsignor Cappo's *To Break the Cycle* report into the so-called Gang of 49, he recommends destigmatising people with criminal convictions. Yet, what we are doing in this legislation is saying, 'We will give you no room to move on. If you have been a part of one of these organisations in the past, you can have control orders placed on you, whatever your motives might be for maintaining friendships with these people, whether it is criminal or otherwise. We insist on being able to continue to control your life.'

I now wish to move on to public safety orders. This is an area of the utmost concern for me because, notwithstanding protections that appear to be written into this legislation to protect legitimate protest, I do not believe those protections are effective. Basically, what the legislation says in relation to the issuing of public safety orders is that they should not be issued if advocacy, protest, dissent or industrial action is the likely reason for the person, or members of the class of persons, being present at the relevant premises or event, or within the relevant area. The public interest in maintaining freedom to participate in such activities is one of the factors to be taken into account under new section 23(2)(c).

People would say that there are protections in this legislation that they cannot issue these public safety orders to shut down legitimate protest and that these rights are only worth anything if there are checks and balances on the exercise of those powers, and that is where I say this legislation falls down. If you do not have the right to appeal against such an order and if senior police officers have the right to declare these orders urgently on the spur of the moment with no way of challenging them, then even if our law enforcement officers get it terribly wrong, there is nothing that can be done about it.

A situation that would worry me would be a situation where a peaceful protest is planned by an agent provocateur. People hell-bent on disturbing it could well ring the police and say 'We are going to be causing violence; we are going to be causing havoc at this demonstration,' and the police could then use that as a reason to try to stop the protest going ahead. They could say that it is in the public's interest that this not go ahead. Unless there is capacity in people to challenge that finding and unless there is an ability to go to court on a judicial review, then effectively you end up with a situation where, after the event, after the protest has been stymied by police action or had to

be called off, even if it is found that the police action was inappropriate, it is too late to do anything about it.

There was an example in New South Wales where similar legislation was used to lock down a suburb of Sydney—that is, to set up roadblocks—because of a fear that young men of Middle Eastern appearance gathered in cars were about to cause mayhem somewhere in Cronulla. It turned out that they were all just heading home. The police got it wrong. They set up roadblocks; the roadblocks did not catch anyone. They were not even heading in that direction. You can make mistakes. An unnecessary roadblock might not seem to be a terribly serious situation, but let us say that an important public protest was stymied by inappropriate police action. That is a tragedy for our democracy. I think that we need to take a serious look at whether the police powers to impose these public safety orders are too broad.

I next move onto the topic of criminal associations. This is an area which reforms old-fashioned laws of consorting which, when you read them, are clearly in need of reform. It talks about 'reputed thieves' and 'prostitutes' and really bears very little resemblance to the type of criminal associations of which we now think and with which this legislation is trying to deal. There are a number of problems with the criminal associations provision, not the least of which is that a provision in clause 35 talks about people being reckless in not knowing whether or not a person with whom they are dealing is a member of an outlaw motorcycle gang, a declared organisation, or has a control order against them. Clause 35 provides:

> (1) A person who associates, on not less than six occasions during a period of 12 months, with a person who is—
>
> (a) a member of a declared organisation; or
>
> (b) the subject of a control order
>
> is guilty of an offence.
>
> Maximum penalty: imprisonment for five years.

You can go to gaol for five years for having six contacts in 12 months with a member of an outlaw motorcycle gang. Clause 35 then goes on to provide a defence and states:

> (2) A person does not commit an offence against subsection (1) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other was—
>
> (a) a member of a declared organisation; or
>
> (b) a person subject to a control order,
>
> or was reckless as to that fact.

Those words are most important. How can you be reckless as to your knowledge of whether or not a person is a member of an outlaw motorcycle gang, or is the subject of a control order?

It seems to me that the answer to that question is: you are under an obligation to ask them. That means, if you go into a hotel and strike up a conversation with a person with facial hair and of solid build, then maybe after the formalities—

The Hon. A. Bressington interjecting:

The Hon. M. PARNELL: The honourable member says, 'It could be me.' It seems that part of social conversation must now be, 'By the way, are you a member of a declared organisation and are you the subject of a control order? Because, if you are, I'd better not talk to you anymore because I'm setting myself up for a five year penalty under this criminal association provision.'

I think this section is very poorly drafted. I understand that it is trying to provide a defence where someone says, 'I didn't know they were an outlaw bikie gang member,' or, 'I didn't know they had a control order on them,' but I think this business about being reckless as to the fact is changing the way in which social intercourse will happen in Australia if we are now under this obligation to ask people questions about their status.

Another example of where these criminal association laws can get us into strife is the example I gave before concerning Mr Awad. In raising this example, I am interested in preserving the reputation and liberty of at least one honourable member of this chamber, the Hon. Andrew Evans, who I understand has had in the past (and may still have) association with the Paradise Assemblies of God Church. That is the church of which Mr Awad is apparently a member. I will read again from the *Sunday Mail* the article quoting Mr Awad, as follows:

'I just found myself walking by myself into the Paradise Church,' Mr Awad said. 'I wasn't really sure what I was doing there. I just wanted to go in there because I figured it was some kind of a church and maybe my prayer would be heard. My prayer was basically: just: forgive me for the wrongs that I had done and help me. That's the main reason why I went there, and I did feel a little bit of peace come to my spirit, you know.'

The article goes on:

For two years Mr Awad continued his dealings with the Rebels but always visited church on Sundays.

I am very concerned that we do not risk the liberty of the Hon. Andrew Evans, who may well come into contact with Mr Awad. If Mr Awad, as a past member, found himself the subject of a control order, effectively what we are saying to people like this is, 'You're out in the cold. We do not want anyone to associate with you, whether you are trying to help them or they are trying to help you.' It just seems to me to be a most draconian provision.

Another example might be people involved in sporting clubs. For example, if you take your child to a regular sports game on a Saturday and there is someone there who is wearing motorcycle colours, perhaps of an outlaw motorcycle gang, it seems to me that halfway through the season you have clocked up enough contacts to be risking this five-year criminal conviction.

Another example might be the toy run. Again, it is not just the Hon. Andrew Evans I am seeking to protect: it is the Hon. Rory McEwen and Martin Hamilton-Smith, two members in another place who have been involved with the toy run. You also have these members of outlaw motorcycle gangs involved in the toy runs. It seems that, by being part of that activity and associating with these people, you can risk coming a cropper in relation to these new laws.

We also have in this act some exceptions to allow criminal associations where there are close family members. It is defined in the legislation as including brothers and sisters and mums and dads, yet it is a fairly narrow definition and one that I think is deserving of expansion; for example, cousins, uncles, aunts, girlfriends and boyfriends—the type of influences in people's life that can actually help to turn them around. All of us would have come across examples where it has been an uncle, rather than a father, who has been a guiding influence on a young man.

You have the cases of girlfriends and boyfriends and, in fact, Mr Awad's case was reported in the paper. His involvement with a young girl who had special needs apparently came through his girlfriend whose sister had had this baby at age 14. She had difficulty looking after the little girl, and so Mr Awad became involved.

The leader of the Rebels became involved in child care through his association with the girlfriend and the girlfriend's family. Yet in this legislation, when we look at the exceptions to the rule, you cannot associate with these people and we do not find that level of association covered. That will have particular implications, I believe, for Aboriginal families where ties of kinship and blood are more complicated than those in non-Aboriginal communities.

Aboriginal people were the hardest hit in the 1960s under our consorting laws, and they are likely to be hit with these laws as well. We also have problems in some of our country towns with these new consorting laws in places like Whyalla and Port Pirie where, if you enjoy a drink, there are a limited number of places that you can go, and they are the sorts of places where you are likely to run into members of outlaw motorcycle gangs.

I think that these consorting laws do require reform. They are a radical change from the way we have looked at criminality and criminal behaviour before. One other reform which I think is required in this legislation is the sunset clause. We currently have a 10-year sunset clause; I say that that should be much shorter. If this bill comes in, let us give our police two years to see whether these laws work or not and let us abandon them if they do not work.

There are a number of places in the bill where protections are put in place to prevent people challenging executive decisions, especially decisions of the Attorney-General and the Commissioner of Police or senior police officers. There is a protection from proceedings provision in clause 41. Basically, that prevents people from going to a court and checking whether or not proper processes have been followed. In the absence of an ability to challenge a decision, decision-makers can get away with bad decisions. It does not matter that it says in the legislation, 'You are not allowed to use these laws to prevent peaceful protest.'

It does not matter that it says that; if you have no recourse to any judicial authority to overturn such a decision, they will get away with it. Someone might get a slap on the wrist after the event and be told, 'You really overstepped the mark there.' There are no consequences that flow from that. I am not suggesting that we should have criminal consequences for overzealous policing.

What I think we should have is the ability for people to challenge the exercise of these discretions and to challenge them in a timely manner before they have come into effect.

There are provisions in this legislation that enable evidence to be kept secret. Even where it allows someone to challenge a decision, what you will find is that the courts will have heard only one side of the story. When you are trying to put the other side, you will not have access to the information that everyone else in the room has: the prosecution will have it, the judge will have it, but you will not. It is impossible to defend yourself or to present a proper case if you do not have access to all the information.

It may well be that the information that has been presented to the court is a load of rubbish. In the absence of being able to know what that evidence is, you cannot challenge it and it will hold. There is one other area which is not addressed in the bill, and I think it does need some more work. That relates to the wealth of information that will be collected under this legislation. Our authorities, in particular the police, will have very detailed records of not just people who had been convicted of crimes but people who are members of these declared organisations and everyone who they have dealt with.

Records will be kept on people who have committed no crime yet who may be implicated through these criminal association laws with some people who have. What happens to all that information? Who is allowed to access it; how is it stored; what protections are there for people when incorrect information about them is kept on the record? It might be information that adversely affects all manner of subsequent career or life choices. It is effectively having a police record without having a police record. You need have done nothing wrong, yet there will be a wealth of information about you on the record.

We know that, whilst we want to give our police every opportunity to collect good records and keep good evidence, sometimes they just get it wrong. A parallel might be the information kept on us by credit reporting agencies. Sometimes they get that information wrong and as a result people's credit reputations are ruined. That is why we have an ability in those laws for people to correct the record. Under this regime you will never know what sort of dossier or file the police have on you.

They are some of the reasons why this legislation has not struck the correct balance between protecting society from organised crime and the civil liberties of citizens to go about their lawful business, to associate with whom they choose to associate with, and to live their lives. Unless these issues are resolved (and I will have a number of amendments), I will not support the legislation.

Debate adjourned on motion of Hon. I.K. Hunter.

STATUTES AMENDMENT (PUBLIC ORDER OFFENCES) BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:08): I move:

That this bill be now read a second time.

I seek leave to have the detailed explanation of the bill inserted in *Hansard* without my reading it.

Leave granted.

The Bill is part of the first phase of the Government's response to offending by Outlaw Motorcycle Gangs (OMCGs) and other criminal groups.

It amends the Summary Offences Act 1953 and the Criminal Law Consolidation Act 1935 to create new statutory offences of riot, affray and violent disorder.

Although these offences will be used against OMCG members who engage in public acts of serious violence, they will also have more general application.

In cases where OMCG members engage in acts of collective violence, for example, public fights with members of rival gangs or others, it is often difficult to secure convictions against those involved because the gang members refuse to co operate with police in any investigation and witnesses are reluctant to give evidence for fear of retribution. Without evidence from either the victims of the violence (gang members) or witnesses, prosecutions for serious offences arising out of these incidents are rarely successful. Often the police are limited to charging an offender with the minor summary offence of disorderly or offensive conduct or language that carries a maximum penalty of three months imprisonment.

As well as placing members of the public at risk of injury and property at risk of damage, these incidents create public fear and enhance the reputations for violence of OMCGs, reputations that are central to their effectiveness as criminal organisations.

The Bill contains three offences that deal with this type of criminal behaviour: riot, affray and violent disorder.

The offence of riot is committed when 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. In such a case, each of the persons using unlawful violence for the common purpose is guilty of riot.

The offence of affray is committed by a person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety.

Riot and affray are serious offences. The Government proposes that the maximum penalty for riot be seven years for the basic offence and 10 years for an aggravated offence. For affray, the maximum penalty for the basic offence is three years and for the aggravated offence, five years. The legislation confers discretion on the prosecution in cases of affray to prosecute a basic offence as a summary offence.

The third offence is violent disorder. Violent disorder is a less serious summary offence. This offence is committed where three or more persons, who are present together, use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. In such a case, each of the persons using or threatening unlawful violence is guilty of the offence.

Unlike the existing summary offence of disorderly conduct, the offence violent disorder requires that the defendants use or threaten unlawful violence. There is also the requirement that a person of reasonable firmness present at the scene would have feared for his or her personal safety. As such, the maximum penalty for violent disorder will be two years imprisonment. By contrast, the maximum penalty for the existing offence of disorderly conduct is three months imprisonment.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law Consolidation Act 1935

4—Amendment of section 5AA—Aggravated offences

This amendment is consequential to the insertion of Part 3A. It has the effect that an offence against Part 3A won't be aggravated by the fact that the offender committed the offence in the company of others. This is because the offences in Part 3A, by their nature, will often involve more than 1 person.

5—Insertion of Part 3A

This clause inserts a new Part 3A.

Part 3A—Offences relating to public order

83A—Interpretation

This clause sets out the meaning of violence for the purposes of this Part. It is a very broad definition and covers any violent conduct towards both persons and property (except in the case of affray) and may include conduct not intended to cause injury or damage (for example throwing a missile).

83B—Riot

This clause creates the offence of riot. Where 12 or more persons together use or threaten violence for a common purpose, such that a person of reasonable firmness present at the scene would fear for his or her personal safety, each person using unlawful violence for the common purpose is guilty of riot. The person must intend to use violence or be aware that his or her conduct may be violent. There is a maximum penalty of 7 years imprisonment for a basic offence and 10 years imprisonment for an aggravated offence. The 12 or more persons need not use or threaten unlawful violence simultaneously, and the common purpose may be inferred from conduct. For the purposes of the offence, a person of reasonable firmness need not actually be present at the scene, which may be a public or private place. If a jury is not satisfied that an accused person is guilty of the offence of riot, but is satisfied that the accused is guilty of the offence of violent disorder under section 6A of the Summary Offences Act 1953, the jury may bring in a verdict that the accused is guilty of that offence.

83C—Affray

This clause creates the offence of affray. A person who uses or threatens unlawful violence towards another, such that a person of reasonable firmness present at the scene would fear for his or her personal safety, is guilty of affray. This offence differs from riot in that there may only be 1 person using or threatening unlawful violence and there need be no common purpose. If there is more than 1 person using or threatening unlawful violence, then the conduct of them taken together is relevant. As with riot, there need not actually be a person of reasonable firmness present at the scene, which may be a public or private place. For the purposes of this offence, a threat cannot be made by words alone. To be guilty of affray, the person must have intended to use or threaten violence or be aware that his or her conduct may be violent or threaten violence. There is a maximum penalty of 3 years imprisonment for a basic offence and 5 years for an aggravated offence. The prosecution may also choose to prosecute this offence as a summary offence in the Magistrates Court.

Part 3—Amendment of Summary Offences Act 1953

6—Insertion of section 6A

This clause inserts a new clause in the following terms:

6A—Violent disorder

This clause provides for a new offence of violent disorder. Thus, if 3 or more persons present together use or threaten unlawful violence and their conduct taken together is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence will be guilty of an offence. The person must have intended to use or threaten violence or be aware that his or her conduct may be violent or threaten violence. There is a maximum penalty of $10,000 or 2 years imprisonment. To make out this offence, it is not necessary for 3 or more persons to use or threaten unlawful violence simultaneously. Nor is it necessary for a person of reasonable firmness to actually be present at the scene. This offence may be committed in private or public places.

For the purposes of this clause, violence has a very broad definition and covers any violent conduct towards both persons and property and may include conduct not intended to cause injury or damage (for example throwing a missile).

Debate adjourned on motion of Hon. J.M.A. Lensink.

SENIOR SECONDARY ASSESSMENT BOARD OF SOUTH AUSTRALIA (REVIEW) AMENDMENT BILL

The House of Assembly agreed to amendments Nos 3, 4, 6 and 8 without any amendment and disagreed to amendments Nos 1, 2, 5, 7 and 9 to 13.

HEALTH CARE BILL

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

CRIMINAL LAW CONSOLIDATION (DOUBLE JEOPARDY) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:09): 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.

Double-jeopardy law reform has gained recent prominence owing to public disquiet about a few controversial cases, and, in particular, the High Court decision in Carroll. Carroll was convicted of the murder of Deidre Kennedy in a Queensland court in 1985, but was later acquitted on appeal on the basis that there was no evidence on which he could properly be convicted: Carroll (1985) 19 A Crim R 410. In 2000 he was convicted of perjury based on his denial of the murder charge on oath at his initial trial, but later was acquitted of this charge by the Court of Appeal: R v Carroll [2001] QCA 394. The High Court upheld this decision, holding that trying Carroll for perjury triggered the double-jeopardy rule: The Queen v Raymond John Carroll (2002) 213 CLR 635. The Carroll decision was uncontroversial in a legal sense, being a mere rationalisation of previous authority. However, along with a handful of other cases, it has subjected the basic principles underlying the double-jeopardy rule to vigorous scrutiny.

The Carroll decision prompted a call for review of the law of double-jeopardy from various sources, legal, journalistic and governmental. By the end of 2003, the Governments of NSW and Queensland had backed reform, as had the Prime Minister. Although the Standing Committee of Attorneys-General was unable to reach a consensus on the subject, the issues were the subject of very similar recommendations by the Model Criminal Code Officers Committee and a Senior Officials Working Group of the Council of Australian Governments (COAG).

The COAG Working Group Report was placed before COAG at its meeting on 13 April, 2007. COAG agreed that jurisdictions will carry out the recommendations of the Double Jeopardy Law Reform COAG Working Group on double-jeopardy law reform, prosecution appeals against acquittals, and prosecution appeals against

sentence, noting that the scope of reforms will vary amongst jurisdictions reflecting differences in the particular structure of each jurisdiction's criminal law. Victoria and the Australian Capital Territory reserved their positions on the recommendations.

In general, the proposal is that the law be reformed so that a person acquitted of an offence would not be protected by the rule against double-jeopardy from:

- prosecution for an administration-of-justice offence where that offence is connected to the original trial (such as perjury or bribery of a juror);
- retrial of the original offence or prosecution for a similar offence where there is fresh and compelling evidence in cases of very serious offences, including murder, manslaughter, serious drug offences (where life imprisonment applies), and the most aggravated forms of rape and armed robbery; or
- retrial of the original offence or prosecution for a similar offence where the acquittal is tainted in cases of offences punishable by imprisonment for at least 15 years.

The Bill also proposes changes in the law on appeals from acquittals and appeal on matters of sentence. This Bill proposes the implementation, without change, of the recommendations of the COAG Working Group Report.

General Principles of Double Jeopardy

A general proposition of the double-jeopardy principle, often quoted, is that stated by Black J. in Green v United States 355 US 184 at 187 & 188 (1957):

The underlying idea, one that is deeply ingrained in at least the Anglo American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

The separate policies that lie behind these general propositions appear to be:

- the various interests in securing finality of decisions;
- the protection of citizens from harassment by the State;
- the promotion of efficient investigation;
- the sanctity of a jury verdict; and
- the prevention of wrongful conviction.

These interests overlap to some extent.

The principle against double-jeopardy has international recognition. Article 14(7) of the International Covenant on Civil and Political Rights says:

No one shall be liable to be tried and punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

It may be noted, however, that this command leaves a great deal to interpretation. In particular, the insertion of the word 'finally' means that the principle cannot be taken to prohibit, for example, prosecution appeals against acquittals - for to enact such a law would simply mean that the acquittal was not final. The same holds true for double-jeopardy reform - for all that does, it can be argued, is redefine 'finally'. As will be seen from the discussion below, that is precisely the course that has been espoused, officially, in the United Kingdom.

It is quite clear that the double-jeopardy principle is not absolute. For example, a person who successfully appeals against conviction will usually face a retrial for the same offence. The only real question is how far the exceptions should go.

Other Jurisdictions

Reforms allowing for a tainted acquittal exception were introduced in the United Kingdom by the Criminal Procedure and Investigations Act 1996. Reforms allowing for a 'new and compelling evidence' exception were introduced more recently by the Criminal Justice Act 2003. The new and compelling evidence exception was recommended in the Law Commission's 2001 report, Double Jeopardy and Prosecution Appeals. General support was expressed for the Commission's proposals, and further recommendations were made, by Lord Justice Auld in his 2001 report, Review of the Criminal Courts of England and Wales, which, in turn, was built on in the United Kingdom Government's 2002 White Paper, Justice for All.

On 19 September, 2006, the Premier of New South Wales, the Hon. Morris Iemma MP, introduced his government's double-jeopardy law reform proposal into the New South Wales Parliament, in the form of the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006. The bill was passed on 17 October, 2006 and received assent on 19 October, 2006. The New South Wales Act is largely in line with the MCCOC recommendations, although it differs in some respects. The key differences are:

- while the New South Wales Act provides for fresh and compelling evidence and tainted acquittal exceptions to the rule against double-jeopardy, it does not provide for an exception to allow prosecution for an administration-of-justice offence connected to the original trial; and

- the fresh and compelling evidence exception applies to a more limited class of offences (for example, manslaughter is not included) than that recommended by MCCOC.

Double-jeopardy reforms providing for both new and compelling evidence and tainted acquittal exceptions are contained in the Criminal Procedure Bill, introduced in 2004 and currently still before the New Zealand Parliament. On 19 April, 2007, Mr Peter Wellington MP. introduced the Criminal Code (Double Jeopardy) Amendment Bill 2007 as a Private Member's Bill into the Queensland Parliament. The Bill provides two exceptions to double jeopardy principles - a fresh and compelling evidence exception, which is to apply only to a retrial for murder, and a tainted acquittal exception, which is to apply to offences attracting a maximum penalty of imprisonment of 25 years or more. Neither of the reforms will operate retrospectively. The Queensland Government supported the Bill and it passed in October 2007.

This Bill proposes three exceptions to the general rule against double-jeopardy.

Proposed Exception 1—Fresh and Compelling Evidence

This exception will allow for retrial of an acquitted person (or prosecution for a similar offence) where there appears to be fresh and compelling evidence against the acquitted person. This exception will apply to acquittals for only the most serious categories of offences, including murder, manslaughter, the trafficking or manufacture of large commercial quantities of drugs, and the most aggravated forms of rape and armed robbery. The reason for the restriction is that the public interest in not prosecuting again is strong and not lightly displaced, but where there are very serious offences involved, the public interest cries out for re-charging. The full resources of the State should not be expended again and the acquitted put at risk of conviction again by challenging the acquittal of a person for, say, theft, criminal damage or forgery offences.

- Evidence is 'fresh' if it was not adduced in the proceedings in which the person was acquitted and it could not have been adduced in those proceedings with the exercise of reasonable diligence.
- Evidence is 'compelling' if it is reliable, substantial, and highly probative of the case against the acquitted person (in the context of the issues in dispute in the original proceedings).
- Evidence is not precluded from being fresh and compelling merely because it would have been inadmissible in the earlier proceedings against an acquitted person.

Proposed Exception 2—Tainted Acquittals

This exception will allow for retrial of an acquitted person (or prosecution for a similar offence) where the acquittal is tainted. An acquittal is 'tainted' if (a) the accused person or another person has been convicted (in this jurisdiction or elsewhere) of an administration of justice offence in connection with the proceedings in which the accused person was acquitted; and (b) it is more likely than not that, but for the commission of the administration of justice offence, the accused person would have been convicted of the substantive offence. This exception will apply to acquittals for serious offences, being major indictable offences punishable by 15 years or more. Interference in a trial brings the administration of justice into disrepute and offenders must not be able to profit from it. It is therefore appropriate that this exception applies to a broader range of offences than the 'fresh and compelling evidence' exception. Administration-of-justice offences include perjury, bribing or interfering with a juror, witness or judicial officer, and perversion of (or conspiracy or attempt to pervert) the course of justice.

The tainted acquittal exception will apply whether the administration-of-justice offence was committed by the acquitted person or by another person. This is in line with the MCCOC recommendations, the New South Wales Act and United Kingdom law. This will operate as a disincentive to associates of an accused contemplating the commission of an administration of justice offence (for example, situations of organised crime or the family or friends of an accused interfering with a trial).

Proposed Exception 3—Administration-of-Justice Offences

This exception will allow for prosecution for an administration of justice offence where that offence is connected to the original trial. It will apply if there is fresh evidence of the commission of an administration-of-justice offence by an acquitted person in connection with the proceedings in which the person was acquitted. An administration-of-justice offence includes: (a) bribery of, or interference with, a juror, witness or judicial officer; and (b) perversion of (or conspiracy to pervert) the course of justice; and (c) perjury. In circumstances which would allow a prosecution for an administration-of-justice offence (where double jeopardy would otherwise have been an impediment to prosecution) or an application for retrial under these laws, the prosecution would only be able to bring one of those two proceedings. This exception will apply to acquittals for all indictable offences.

An acquitted person can in almost all circumstances already be prosecuted under current laws for an administration-of-justice offence. In some situations where the Carroll principle would apply, the acquitted person could be subject to an application for retrial of the primary offence on the fresh and compelling evidence exception, if the offence threshold was met. This threshold is intended to limit the fresh-and-compelling-evidence exception to double jeopardy to the most serious cases; it could undermine this policy to allow an administration-of-justice offence to be charged as an alternative.

There must be fresh evidence of the administration-of-justice offence. This prevents the prosecution from merely re-litigating the original trial under a different charge, as fresh evidence must have come to light since the original trial. 'Fresh' is defined in the same way as for the fresh and compelling evidence exception: this reinforces the need for diligence and care in prosecutions.

MCCOC argued and COAG agreed that it was appropriate to address directly the Carroll principle by the introduction of an administration-of-justice offence exception. Although implementation of this exception would not

overturn the decision in Carroll itself (there was no fresh evidence), it would in future allow for an acquitted person to be tried for perjury in the Carroll situation.

Safeguards on Retrials

Two of the three proposed exceptions contemplate the retrial of the accused on the original charge for which he or she was acquitted. This is clearly an exceptional procedure that would only take place on rare occasions. The Bill includes a number of safeguards recommended in the various reports.

1. The retrial must commence on application by the DPP to the Court of Criminal Appeal. The court may order a retrial only if it is satisfied that in all the circumstances it is in the interests of justice for the order to be made. An order for a retrial is not in the interests of justice unless the court is satisfied that a fair retrial is likely in the circumstances. In determining whether it is in the interests of justice for an order for a retrial to be made, the court must have regard in particular to the length of time since the acquitted person allegedly committed the offence; and whether any police officer or prosecutor has failed to act with reasonable diligence or expedition in connection with the application for a retrial of the acquitted person.

2. A police officer is not to carry out or authorise a police reinvestigation of an acquitted person unless the DPP has advised that in his opinion the acquittal would not be a bar to the trial of the acquitted person in this jurisdiction for an offence, and given his written consent to the investigation. In this context, 'police reinvestigation' means any investigation of the commission of an offence by an acquitted person in connection with the possible retrial of the person for the offence, that involves any arrest, questioning or search of the acquitted person (or the issue of a warrant for the arrest of the person), or any forensic procedure carried out on the person or any search or seizure of premises or property of or occupied by the person whether with or without the consent of the acquitted person.

3. The DPP must not give consent to a police reinvestigation unless satisfied that there is, or there is likely as a result of the investigation to be, sufficient fresh evidence to warrant the conduct of the investigation, and it is in the public interest for the investigation to proceed.

4. There is an urgency exception to the requirement for DPP authorisation of police reinvestigation, to allow a police officer to take investigative action without DPP consent if the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced, and it is not reasonably practical to obtain DPP consent before taking the action. In addition, the DPP must be advised as soon as practicable of any investigative action taken on the basis of urgency, and the DPP's consent is required for the continuation of a reinvestigation commenced under the urgency exception.

5. The court may prohibit publication of any matter, if it appears to the court that the publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial.

6. An application for a retrial is to be made not later than 28 days after the acquitted person is charged with the offence or a warrant has been issued for the person's arrest in connection with such an offence. The court may extend this period with good cause. An indictment for the retrial of a person that has been ordered by the court cannot, without the leave of the court, be presented after the end of the period of two months after the order was made. The court must not give leave unless it is satisfied that the prosecutor has acted with reasonable expedition, and there is good and sufficient cause for the retrial despite the lapse of time since the order was made.

7. For the avoidance of obvious prejudice, at the retrial of the accused person, the prosecution is not entitled to refer to the court's finding that (as the case may be) there appears to be fresh and compelling evidence against an acquitted person, or more likely than not, the accused person would have been convicted originally but for the commission of the administration-of-justice offence.

The exceptions to the rule against double-jeopardy will apply to acquittals in other jurisdictions.

The exceptions will apply retrospectively. This is an issue of high controversy. The Queensland Act has taken a different course. The approach in the Bill is based on the arguments that (a) the whole idea of the reform entails revisiting what has gone before and (b) the reform does not entail changing the law of liability - merely exposure to it. In addition, the safeguards include a requirement for the court to consider 'the length of time since the acquitted person allegedly committed the offence' in determining whether a retrial would be in the interests of justice. This safeguard strikes an appropriate balance between ensuring that retrials for past crimes can proceed (the public interest in bringing guilty parties to justice) and potential cases where an alleged crime occurred so far in the past that a fair trial would not be possible and a retrial would not be in the interests of justice.

Prosecution Appeals Against Acquittals—Current Law

The prosecution can appeal (with leave) on any ground against any acquittal on a charge of an indictable offence brought about by decision of a Judge after trial by Judge alone (s. 352(1)(ab), Criminal Law Consolidation Act).

The prosecution may also appeal against a court's decision on an issue antecedent to trial that is adverse to the prosecution, on a question of law (as of right) or on any other ground (with leave) (s. 352(1)(b), Criminal Law Consolidation Act). 'Issue antecedent to trial' is defined as a 'question (whether arising before or at trial) as to whether proceedings on an information or a count of an information should be stayed on the ground that the proceedings are an abuse of process of the court.'

A court may also reserve a question of law for consideration and determination of the Full Court. Following an acquittal, the court must, on application of the prosecution, reserve a question antecedent to the trial, or arising in the course of the trial, for consideration and determination by the Full Court – however, the Full Court's determination cannot overturn an acquittal (ss. 350, 351A Criminal Law Consolidation Act).

Prosecution Appeals Against Acquittals—The Proposal

MCCOC recommended that the right of prosecution appeal against acquittal be extended to cases in which there in an acquittal by a jury at the direction of the trial Judge. The New South Wales Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006 has carried out the MCCOC recommendation. The New South Wales reforms are not retrospective and provide that an appeal against an acquittal must be made within 28 days after an acquittal (or after that period with the leave of the Court). In determining an appeal, the court may affirm or quash the acquittal: if the acquittal is quashed, the court may order a new trial, but cannot proceed to convict or sentence the accused person, nor direct the court conducting the new trial to do so. These elements of the New South Wales reforms are consistent with the MCCOC recommendations. I propose to mirror them here.

Prosecution Appeals Against Sentence—Current Law

The current law on Crown appeals against sentence is well settled. The operating general principle is stated in the decision of the High Court in Everett v The Queen and Phillips v The Queen (1994) 181 CLR 295 in which the joint judgment of Brennan, Deane, Dawson and Gaudron JJ referred to the:

…strong reasons why the jurisdiction to grant leave to the Attorney General to appeal against sentence should be exercised only in the rare and exceptional case. An appeal by the Crown against sentence has long been accepted in this country as cutting across the time honoured concepts of criminal administration by putting in jeopardy for the second time the freedom beyond the sentence imposed.

That principle has other effects though. A recent example of a common effect can be found in DPP v Dinsley [2007] VSCA 31. It should be emphasised that this is but an example of the operation of a principle common to all jurisdictions in Australia. The Court in that case held that the sentence imposed by the sentencing judge in that case was inadequate. The judgment concluded:

19 In my opinion therefore, the learned sentencing judge erred in principle by failing to differentiate between the culpability associated with the aggravated burglary and theft of the credit card, which involved invasion of the room which was the victim's home, the opportunistic acts of sexual violence which the respondent committed after he got into the victim's room and the other acts of violence to which the victim was subjected. Recognition of the need to cumulate the sentences imposed for these different groups of offences would have produced a higher total effective sentence.

20 In considering whether to allow the appeal and to exercise its re-sentencing discretion, the Court is required to take account of the respondent's exposure to a form of double-jeopardy. As Kirby P explained in R v Hayes, [(1987) 29 A Crim R 452] the principle which applies in the context of Crown appeals against sentence is not a true example of double-jeopardy but is equivalent to it because

"the prisoner's liberty, pocket and reputation are put in jeopardy both before the sentencing judge and before the appellate court. In addition, the prisoner suffers the anxiety and stress caused by the situation of uncertainty arising from the delay in resolving his or her position."

21 But for that principle I would have allowed the appeal and re-sentenced the respondent to a longer term of imprisonment. In the circumstances, however, I would dismiss the appeal against sentence. (emphasis added)

It is not surprising that concerns have been raised by the Directors of Public Prosecution in several jurisdictions that sentences that have been shown and accepted by appeal courts to be below the acceptable range remain largely uncorrected, owing to increasing use of the court's discretion to refuse to intervene when determining prosecution appeals against sentence; and the court's discretion, if re-sentencing occurs, to discount the substituted sentence to something less than that which the appeal court otherwise would have imposed.

Prosecution Appeals Against Sentence—Proposed Reform

The COAG Working Party concluded that although the courts have used the term 'double jeopardy' to describe the situation that a convicted person faces as a result of a prosecution appeal against sentence, the situation is different from the double-jeopardy faced by an acquitted person who again faces trial. An acquitted person who endures a retrial faces, for the second time, the prospect of being found guilty, whereas a convicted person enduring a prosecution appeal against sentence faces the less severe prospect that their sentence may be varied.

It is intolerable that prosecution appeals against sentence fail although the court is of the opinion that the sentence is inadequate. Although there can be no question of a court's micro adjusting sentences on appeal, equally, courts of appeal should not be affirming inadequate or erroneous sentences. The Bill therefore provides that, when a court is considering a prosecution appeal against sentence, no principle of sentencing double jeopardy should be taken into consideration by the court when determining whether to exercise its discretion to impose a different sentence, or in determining what sentence to impose.

This correction will not affect underlying principles that say:

- that prosecution appeals against sentence should be rare;
- that an appeal court will only intervene where error is shown; and
- that the court has a discretion to refuse to intervene even if error is established or to substitute a discounted sentence where re-sentencing does occur.

These are major and important reforms of substance.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law Consolidation Act 1935

4—Amendment of section 5—Interpretation

This amendment proposes to insert a definition of Full Court into the main interpretation provision. That definition currently appears in Part 11 of the principal Act but is also required for new Part 10 and so is to become a definition for the general purposes of the principal Act.

5—Insertion of Part 10

Part 10—Limitations on rules relating to double jeopardy

Division 1—Preliminary

331—Interpretation

This new section contains definitions of words and phrases for the purposes of new Part 10. In particular, an administration of justice offence is defined to include offences such as perjury or subornation of perjury, or bribery of a judicial officer, for example. Other definitions, such as a Category A offence and relevant offence are also included.

332—Meaning of fresh and compelling evidence

New section 332 sets out, for the purposes of new Part 10, the meanings of fresh evidence and compelling evidence in relation to an offence of which a person has been acquitted.

333—Meaning of tainted acquittal

This new section sets out what makes an acquittal of an offence tainted for the purposes of new Part 10.

334—Application of Part

New section 334 provides that new Part 10 applies whether the offence of which a person is acquitted is alleged to have occurred before or after the commencement of that Part. However, the section goes on to provide that new Part 10 does not apply if a person is acquitted of the offence with which the person is charged but is convicted of a lesser offence arising out of the same set of circumstances that gave rise to the charge except in circumstances where the acquittal was tainted.

Division 2—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

335—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

This new section provides that, other than in urgent circumstances, a police officer may only carry out an investigation to which this section applies, or authorise the carrying out of such an investigation, with the written authorisation of the Director of Public Prosecutions (DPP). The DPP may only authorise such an investigation if—

- the DPP is satisfied that, as a result of the investigation, the person under investigation is, or is likely to be, charged with an offence of which the person has previously been acquitted or a related administration of justice offence, and it is in the public interest to proceed with the investigation; and
- in the DPP's opinion, the previous acquittal would not be a bar to the trial of the person for an offence that may be charged as a result of the investigation.

The sorts of investigation to which this new section applies, includes—

- the questioning, search or arrest of a person;
- the issue of a warrant for the arrest of a person;
- a forensic procedure carried out on a person;
- the search or seizure of property or premises owned or occupied by a person,

where the investigation is in respect of the person's conduct in relation to an offence of which the person has previously been acquitted or any other included offence.

Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy

336—Retrial of relevant offence of which person previously acquitted where acquittal tainted

This provision enables the DPP to apply to the Full Court for an order that a person who has been acquitted of a relevant offence (that is, a Category A offence or any other offence for which the prescribed penalty is

imprisonment for at least 15 years) be retried for the relevant offence. The Full Court must not make any such order unless the Court is satisfied that the acquittal was tainted and, in the circumstances, it is likely that the new trial would be fair.

New section 336 also provides for procedural matters relating to such applications.

337—Retrial of Category A offence of which person previously acquitted where there is fresh and compelling evidence

This provision enables the DPP to apply to the Full Court for an order that a person who has been acquitted of a Category A offence be retried for the offence. The Full Court must not make any such order unless the Court is satisfied that there is fresh and compelling evidence against the person in relation to the offence and, in the circumstances, it is likely that the new trial would be fair.

New section 337 also provides for procedural matters relating to such applications.

338—Circumstances in which person may be charged with administration of justice offence relating to previous acquittal

This provision enables the DPP to apply to the Full Court for an order that a person who has been acquitted of an indictable offence be tried for an administration of justice offence that is related to the offence of which the person has been acquitted. The Full Court must not make any such order unless the Court is satisfied that there is fresh evidence against the person in relation to the offence and, in the circumstances, it is likely that the trial of the administration of justice offence would be fair.

New section 338 also provides for procedural matters relating to such applications.

Division 4—Prohibition on making certain references in retrial

339—Prohibition on making certain references in retrial

New section 339 provides that at the retrial of a person for an offence of which the person had previously been acquitted by order of the Full Court under Division 3, the prosecution must not refer to the fact that, before making the order for the retrial of the offence, the Court had to be satisfied that—

- the acquittal was tainted; or
- there is fresh and compelling evidence against the acquitted person in relation to the offence,

as the case requires.

Division 5—Court may impose more severe sentence on appeal by prosecution

340—Court may impose more severe sentence on appeal by prosecution

New section 340 provides that, despite any other rule of law, if, on an appeal against sentence brought by the prosecution, the court is satisfied that the sentence should be quashed and a more severe sentence substituted, the court may substitute a more severe sentence even if, in so doing, the court may be exposing the convicted person to a form of double jeopardy.

6—Amendment of section 348—Interpretation

This amendment is consequential on the amendment to section 5 of the principal Act (see clause 4).

7—Amendment of section 352—Right of appeal in criminal cases

Section 352 makes provision for appeals to the Full Court. The amendment to this section proposes to allow the DPP, with the permission of the Full Court, to appeal against an acquittal on any ground, not only from a trial by judge alone, but also from a trial by jury where the judge directed the jury to acquit.

8—Amendment of section 353—Determination of appeals in ordinary cases

The proposed amendments clarify the position where the Full Court orders a new trial under subsection (2a)(b).

At 18:10 the council adjourned until Wednesday 5 March 2008 at 14:15.