LEGISLATIVE COUNCIL

Thursday 3 April 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:15 and read prayers.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18): I move:

Motion carried.

MURRAY RIVER

The Hon. SANDRA KANCK: Presented a petition signed by 567 residents of South Australia concerning the extraction of water from the River Murray. The petitioners pray that the council will do all in its power to promote the buy-back of water allocations by state and federal governments in order to improve environmental flows and support sustainable agriculture.

SUPERANNUATION

The Hon. M. PARNELL: Presented a petition signed by 354 residents of South Australia concerning ethical superannuation choices. The petitioners pray that the council will call on the government to—

- Instruct SuperSA to offer an ethical superannuation option for all its fund members;
- Instruct SuperSA to commission a review of its major investment portfolios to explore opportunities of investing in ways that exhibit greater social responsibility and that result in more positive outcomes for our environment, society and economy.

QUESTION TIME

GANG OF 49

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:20): I seek leave to make a brief explanation before asking the Minister for Police a question about the gang of 49.

Leave granted.

The Hon. D.W. RIDGWAY: Just after 4am this morning three men of Aboriginal appearance robbed one service station and attempted to break-in to at least two others. They threatened staff with a sword and stole the cash register. Soon after they forced their way into a locked service station on North East Road at Holden Hill and threatened staff with a pole, before leaving empty handed. This type of crime in Adelaide is not unusual under the current Labor government and, despite countless reports, recommendations and announcements, youth crime in particular and activities of the so-called gang of 49 are as rife as ever.

The PRESIDENT: Order! The honourable member will refrain from expressing opinion in his explanation.

The Hon. D.W. RIDGWAY: I accept your guidance, Mr President. I will now quickly summarise the chronology of some of the events. In June 2003, Operation Mandrake began, and there were reports that teenagers were being offered cigarettes and alcohol to act as decoys for organised crime perpetrators.

In September 2004, following reports that youths were still being enticed into crime, SAPOL relaunched Operation Mandrake for the third time in 18 months. In November 2004, the SAPOL annual report showed that 313 young offenders, including 38 under the age of 12, were charged with driving stolen cars during 2003 and 2004.

In July 2005, the state government pledged to adopt a number of recommendations contained in the report from the select committee on the youth justice system. In May 2006, a 17 year old who had been arrested 36 times since 2001 was released from detention to attend an 18th birthday party.

In January 2007, a crime spree left a man seriously injured in a smash with a stolen car, and Aboriginal youths were blamed for the attack. In January 2007, police expressed frustration as a 16 year old gang member was arrested while on bail. He and two others were charged with illegal

use of a motor vehicle, breaching bail and possessing housebreaking implements. Three hours later, three more men were arrested in possession of a stolen safe, and they were charged with aggravated serious criminal trespass.

In January 2007, the state government had still not acted on the 43 recommendations from the July 2005 report of the select committee on the youth justice system. Also in January 2007, two alleged gang members of the gang of 49 were arrested after a break-in and a high speed chase in Adelaide's west.'

In February 2007, Monsignor Cappo was asked by the government to provide a plan to address the issues, focusing on Aboriginal defendants targeted in Operation Mandrake. In April 2007, suspected gang of 49 members were involved in a robbery in which a taxi driver was forced off the road and threatened with a gun, and victims were targeted in eight separate incidents across eight suburbs. In June 2007—

The PRESIDENT: Order! I remind the honourable member that matters of interest was yesterday.

The Hon. D.W. RIDGWAY: Thank you, Mr President. In June 2007, a violent night of crime on Adelaide streets included robbery and assaults on shops, at the wheel of taxis, and in a phone box. Police believe that four of the six offences were linked, and the offences were investigated under Operation Mandrake.

The list goes on until the latest incident in March 2008. In a study carried out for the *Guardian for Children and Young People*, Pam Simmons found that nearly every South Australian youth offender re-offends within four years and two-thirds in the first six months. In April 2008, two hold-ups occurred, as I mentioned earlier. My question is: does the minister now acknowledge that his government's rhetoric on law and order, including promises he made during the 2006 election campaign, has failed, and will the minister provide real solutions to address the increasing problem with the gang of 49?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:24): No, I do not concede that at all. In fact, the evidence shows that, under this government, there has been a significant reduction in crime rates over the full six years we have been in government. One particular element of crime in relation to Operation Mandrake targets is that, incidentally, they are not all Aboriginal, as suggested by the honourable member. Certainly a large number of them are but by no means are the problems of young offenders exclusively an Aboriginal problem, and it would be totally wrong to suggest that that is the case. Youth crime has, of course, been with us ever since we have had youth, and there is nothing—

An honourable member: That's a profound statement.

The Hon. P. HOLLOWAY: Well, it probably needs to be stated. However, the whole point regarding youth crime is that, while police obviously have a key role in dealing with the consequences of youth crime, they are not the solution to the problem. Obviously, there are a number of far deeper, societal—

The Hon. D.W. Ridgway: We didn't have the gang of 49 when we were in office.

The Hon. P. HOLLOWAY: You had lots of gangs, but the previous government did not do anything about it; in terms of dealing with youth crime it is absolutely true that when the Liberals were in government they did nothing about it. Operation Mandrake was established and resourced as were other initiatives which the honourable member himself referred to, such as Monsignor Cappo's report: breaking the cycle. We are dealing with it.

I would like to refer to Monsignor Cappo's report entitled breaking the cycle. That report indicates that to deal with the problems of youth crime—particularly of many of the Aboriginal offenders—you need a whole-of-government response. Just catching them and locking them up may be necessary with certain groups (and that is what the police have successfully been doing; whether or not they have been successfully put away by the courts in all cases is another matter, and I will leave others to judge that); however, as far as the police are concerned I would defend their record and activities in terms of detecting and acting proactively in preventing these crimes.

We need to deal with the social causes of these crimes. We are dealing with some of the most disadvantaged people in our society, people who have been totally alienated from a very early age, and a lot of that can actually be traced back to some policies—particularly those of

previous federal governments—that have led to the neglect of young people. People do not just become hard-core offenders who have no respect for the community or for law and order; they do not just turn into hardened criminals overnight. There are obviously significant social causes, some of which relate to the accessibility of housing, for example, as well as other conditions of support for such families. Unless we deal with these social problems in a whole-of-government way we will not be successful.

Police will do what they can—and they have been very successful in apprehending some of the perpetrators of these crimes—but, as Monsignor Cappo has himself said, sometimes there will be no option but to lock up young people who continually commit serious crimes that put the public at risk, and this government will do everything it can to ensure that that happens. Ultimately, of course, the courts are responsible for sentencing, but this government will certainly do everything it can, and I am sure the police will continue to do everything they can to apprehend the perpetrators of violence.

If we are to prevent the activities of the so-called gang of 49 and other highly criminalised young people from spreading more widely into a broader section of the community, we need to deal with some of the underlying social issues that are the cause of these problems—and I suggest that this government has done far more than any other in terms of dealing with those problems. Indeed, with the 'To Break the Cycle' report we are doing a significant amount to ensure that we deal with the underlying social causes of these problems.

It is not just a police problem; it is a problem for society as a whole. Of course, Aboriginal communities themselves, as well as other sectors of the community (because, as I said, this is not just an Aboriginal problem by any means), have a role to play, and we need to assist them to strengthen their sense of community, if you like, so that they can more readily direct their young people into more effective tasks. One of the things we do need to do is to ensure that these young people have options in terms of jobs. This government has been successful in achieving the highest levels of employment.

Indeed, through my other portfolio, for example, mining, I am certainly doing everything I can, with the help of the mining industry, in some of the more remote areas from where some of these young people come. Many of these young people in the so-called gang of 49 come from the West Coast and the northern areas of the state. They gravitate to the city for a while and then return to their own communities. In relation to them, it is it is important that we provide them with the training and job opportunities, and this government has again been very pro-active in ensuring that happens.

BUSHFIRES

The Hon. J.M.A. LENSINK (14:30): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about bushfire clean-up on crown land.

Leave granted.

The Hon. J.M.A. LENSINK: The Liberal Party has been contacted by volunteers and fire prevention officers in relation to a number of crown land blocks located at Crystal Brook, Kalinga, Napperby, Lochiel, Port Augusta and Halbury, which have been issued with bushfire clean-up notices dating back to October 2007. I understand that, under schedule 12, notices require landholders to take action substantially to reduce fire hazard to protect the safety and property of neighbours. My questions are:

1. Is the minister aware that the Department for Environment and Heritage is in breach of a number of schedule 12 notices under the Fire and Emergency Services Act 2005?

2. Why is her department refusing to clean up these fire hazards?

3. Will she instruct them to do so post-haste, especially given that there were fires in some of these regions in the last season?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:31): The DEH does quite a remarkable job in terms of fire prevention and management of crown land. It is responsible for hundreds of hectares of land and teams of staff, including 26 extra seasonal firefighters who were engaged this financial year to assist. I do not have any information in relation to any alleged breaches relating to schedule 12. I am happy to investigate that, but I am not aware

of any alleged breaches at this time. All I can do is investigate the information that I have been given in the chamber today and bring back a response.

PRISONS

The Hon. S.G. WADE (14:33): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about prison overcrowding.

Leave granted.

The Hon. S.G. WADE: The Productivity Commission report on government services released at the end of January shows that the South Australian prison system is the most overcrowded in the nation. On 4 March, on Radio FIVEaa, the Chief Executive Officer of the Offenders Aid and Rehabilitation Service, Leigh Garrett, said:

> With the overcrowding we have in our prisons at the minute a lot of the things which we might think are ordinary and easy and sensible are just overlooked because the stresses and pressures of running a prison that's operating at 50 per cent above its designed capacity. In other words it's got 600 prisoners in it rather than 400, stretches every molecule of the resources both physical and human and it sometimes just gets too hard.

My questions are:

1. What is the design capacity of our prison system?

2. What is the current population of our prison system?

3. What is the maximum number of prisoners who can be housed in the prison system before security and safety are compromised?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:34): I thank the honourable member for his question in relation to comments essentially made by Mr Leigh Garrett, I understand, in relation to our prison system. Certainly, I try to keep abreast of whatever people do say in the media in relation to my responsibilities. I was absolutely astounded at the comments made by Mr Garrett in relation to correctional services and, indeed, so was the chief executive of the department. Basically, he was incorrect. Most of what he said was incorrect. I think they range from the fact that our prisons do not have air-conditioning to the fact that no educational opportunities or rehabilitation opportunities are available. As I said, the Chief Executive subsequently spoke to Mr Garrett, and, indeed, Mr Garrett did apologise in relation to his comments. He certainly said whatever he believed at the time, but subsequently he did apologise.

I have usually found the CE of OARS to be a very sensible and factual speaker in the past when representing OARS in the media, but after this interview he himself recognised that care with words is certainly very important. He apologised to the Chief Executive of Corrections for errors he made during that interview.

This government makes no apology for being tough on law and order. Obviously, we are very pleased that we announced several budgets ago that we would build a new prison complex at Mobilong near Murray Bridge. In the interim we have demonstrated that we can manage prison numbers. There has been an unprecedented rise in prison numbers, but we have demonstrated that we can actually manage those numbers.

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: We have already demonstrated that we know how to manage prison numbers. We have put a significant number of extra beds in the system in order to cope until the new prisons become available, and we have a strategy to do that.

YOUNG ACHIEVER OF THE YEAR AWARD

The Hon. R.P. WORTLEY (14:37): My question is to the Minister for Mineral Resources Development. Is the minister aware of the Young Achievers Award; and will he inform the chamber about any recent recipients?

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:37): Perhaps you should

listen. If you want to make fun of it, I think that is a very stupid thing to do. Perhaps you should listen to the answer before you make those stupid comments.

I am pleased to inform my colleague the Hon. Russell Wortley and members of the opposition (who seem less concerned) that the prestigious Premier's/Channel 9 Young Achiever of the Year Award was presented on Saturday night. I am equally pleased to inform him that the South Australian Young Achiever of the Year Award was presented to Dr Kate Selway, a young geologist based at the University of Adelaide. The standard of the young people competing for the award this year was exceptionally high, and it is gratifying to see a scientist win this honour. It is important for the future of this state.

Dr Selway is a post-doctoral research associate whose research work has focused on the use of an earth imaging geophysical technique called magnetotellurics. The 26-year-old PhD is working currently on a collaborative project between the University of Adelaide, BHP Billiton and Teck Cominco to determine the geological structure around the Olympic Dam area using three dimensional images of the subsurface. Dr Selway and the team at the centre actually apply technologies in a new way that is allowing geologists to see deep, often 30 kilometres, below the earth's crust. It was Dr Selway's previous work on Olympic Dam that opened the exploration industry's eyes to new ore body possibilities.

Dr Selway hopes that this research will not only develop Australia's potential but also help us to understand the earth's complex history. The technique developed by Dr Selway allows geologists to explore using naturally occurring electric and magnetic fields in the earth to find areas that are more electrically conductive. In much the same way as a doctor uses an x-ray to determine what is below the skin, this technique will allow people to see below the earth's surface to see the mineral deposits beneath. This is especially important to South Australia, where many of the vast mineral deposits are buried well below the earth's surface, making it more difficult to identify the location and size of the resource.

Unlocking these secrets through technologies developed by Dr Selway and the team at the Centre for Mineral Exploration Under Cover at the University of Adelaide will help the mining industry better determine the prospectivity of deposits within this state. The process will also be important in developing geothermal or hot rock technology by allowing geologists to identify areas in South Australia where this form of energy can best be harnessed.

While congratulating Dr Selway on her achievements, I am also delighted to add that the research centre where she is carrying out much of this groundbreaking research is funded through the PACE program. The Plan for Accelerating Exploration has provided finance to the Centre for Mineral Exploration Under Cover through its third theme funding stream—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: —which certainly was never in any previous government's scheme, contrary to the interjection of the Leader of the Opposition: it is an entirely new measure. As I have mentioned previously in this place, PACE has been a very successful initiative by this government. Mineral exploration in South Australia has never been so strong, but PACE has also been an important driver in the research that supports many of the technological breakthroughs driving the mineral resources sector in this state. Under the PACE program the state government will co-fund up to 50 per cent of approved drilling projects to enhance the level of mineral exploration in the state. Again, that is something that has not happened previously in this country or, indeed, in most other countries.

As well as encouraging exploration, PACE has had a very successful multiplier effect on investment dollars in South Australia, and PACE is leading the charge in attracting resource investment to our state. The recent announcements of a record investment in mineral exploration in this state (which is up from a paltry $30 million a year when the Rann Labor government took office and is now over $330 million), confirms we are doing the right thing.

PACE grants and other initiatives such as the provision of gravity geophysical surveys in under-explored areas of the state are designed to further stimulate new discoveries. Dr Selway's success in the South Australian Young Achiever Awards and the exploration supported by PACE funding are tangible examples of the Rann government's continued commitment to ensuring future minerals and energy discoveries in South Australia. But, perhaps most importantly, PACE is helping the training of world-class scientists in areas that will underpin the development of South Australia for years to come. So, I extend my hearty congratulations to Dr Selway and all of her colleagues at the Centre for Mineral Exploration Under Cover.

KANGAROO ISLAND

The Hon. A.L. EVANS (14:42): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the proposed amendments to the Kangaroo Island Development Plan.

Leave granted.

The Hon. A.L. EVANS: I was concerned to note proposed amendments to the Kangaroo Island Development Plan which came before a public hearing recently on 12 March. Under the proposed amendments, places of worship will be considered not compliant with the plan across the vast majority of Kangaroo Island, including, as some examples, the commercial zone, the conservation zone, the deferred urban zone, the district town centre zone, the industry zone and the primary production zone. The amendments greatly increase the number of zones where religious buildings will be considered 'generally inappropriate and not acceptable', and I am using the wording of the plan.

When Captain Robert Morgan first landed on Kangaroo Island in 1836, he is believed to have conducted the first service of Christian worship in South Australia, at Nepean Bay. I have written to the council advising of my belief that Kangaroo Island should not now take a lead in restricting the ability of South Australians to worship freely, and asking them to reconsider their plans to restrict the development of places of worship on the island. My questions to the minister are:

1. Is the minister aware of the Kangaroo Island proposal, and is he aware of any other council considering similar amendments?

2. Is the minister concerned that such a declaration of non-compliance may restrict freedom of worship on the island?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:44): I thank the honourable member for his question and, in answer to the first part of it, yes, I am aware there have been some concerns expressed, because I have received correspondence. The development plan amendment proposal, of course, is one that has been put by the Kangaroo Island council and it has developed that proposal. The advice I have is that public consultation on this development plan amendment finished on 3 March and a public hearing was held in relation to this matter on 12 March, and I am sure that a number of residents on Kangaroo Island who were concerned would have made their views felt.

The process from now on is that council will be required to consider all public and agency submissions received, as well as issues raised at that public meeting on 12 March, and the council will consider how it will respond to these issues.

The council may choose to amend its development plan amendment to address the submissions received or comments made—indeed, I hope it does. Council is then required to submit the development plan amendment to me for consideration. As with all submissions, I will carefully consider the development plan amendment, along with the submissions received and the concerns that the honourable member has expressed, before making a decision on the DPA.

In summary, the council has developed this development plan amendment and it is going through those statutory processes, and one expects that the council will give proper consideration to those issues that have been raised in that public consultation process. However, I can assure the honourable member that I will be looking very closely at the development plan amendment when it eventually comes across my desk to ensure that the concerns that have been expressed by the honourable member have been properly taken into consideration by the council.

STATE LIBRARY

The Hon. R.I. LUCAS (14:46): I seek leave to make an explanation before asking the Leader of the Government, representing the Minister for the Arts, a question about government waste.

Leave granted.

The Hon. R.I. LUCAS: I want to raise the issue of a public servant who said in a workplace 'bullshit' and then was suspended on full pay and sent home and, almost 2½ years later, is still waiting for a disciplinary inquiry to resolve the situation. I might say, Mr President, in your

former occupation, I suspect you might have heard language more colourful than that particular word. As we are well aware, even in this place—in this chamber, in these corridors and in the bar—language much more colourful has been complained about against members of the government and, I am sure, occasionally members of the opposition as well.

The details of this dispute go back to December 2005, when a worker in the State Library was undertaking some work on a computer. Her supervisor was not there. She asked a fellow worker what she should do, and she did that. The next day, the supervisor came back and criticised the worker for the work that had been undertaken. The worker, who has been disciplined or suspended, said, 'Well, that was what Peter told me to do.' The supervisor said, 'Oh, no, Peter wouldn't have shown you to do that.' The worker then said, 'Well, Peter did show me to do that.' The supervisor said, 'Oh, no, Peter wouldn't have shown you to do that,' to which the worker then said, 'Bullshit', left the work site distressed and went to the ladies toilet. We are talking about two women employees in the State Library. The worker then went back to the work site and asked for a meeting to try to resolve the issue. That request was refused and the worker then said words along the lines of, 'Oh, don't do anything difficult; you might ruin your gorgeous complexion.'

As a result of that, the worker in the State Library was suspended on full pay from December 2005. She was sent home pending a Public Service disciplinary inquiry for breaching the Public Service code of conduct on some charge along the lines of not having respect or courtesy for a co-worker. I am advised that no mediation, conciliation or any other similar sensible course of action to resolve the dispute has been attempted since December 2005. I am advised that now, almost 2½ years later, the issue is still unresolved. The worker is still home on full pay, and a disciplinary inquiry is scheduled for next week.

Advice from a lawyer and an experienced industrial advocate acting on the worker's behalf who has raised the issue with me indicates that it is their view and advice to the worker that, even if found guilty, the inquiry could really only justify a reprimand of the worker. In conclusion, before asking my questions, I point out that I agree with the views that have been put to me about this issue; that this is one of the worst cases of public sector mismanagement and incompetence—

The Hon. G.E. Gago interjecting:

The Hon. R.I. LUCAS: —no, I said I am agreeing with the view of someone else—that I have ever seen. Not only is it a massive waste of taxpayers' money but also it has caused great distress to the worker involved. My questions to the appropriate minister are:

1. Does the Premier accept that there is something wrong with his public sector work processes when a worker is sent home on full pay and suspended for almost 2½ years awaiting a disciplinary inquiry for saying 'bullshit' in the workplace?

2. Are all public servants now on notice that, if they say 'bullshit' in the workplace, they will similarly face a disciplinary inquiry and action under the Rann government?

3. What action will Mr Rann (or Mr Hill, if he is the appropriate minister) or the Commissioner for Public Employment take (because there is obviously a role for the Commissioner to play) to resolve this issue urgently?

4. Importantly, what action and changes will the government implement to try to ensure that such an appalling situation as this will never occur again?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:51): I have been around this parliament long enough to know that one should never accept versions of stories that come from the opposition without having them thoroughly checked, because we have found on so many occasions that those very colourful versions we hear raised in question time often turn out to contain large errors of omission. Obviously, it will be necessary to check them.

Towards the end of the honourable member's question, he indicated that this person he referred to was facing a disciplinary inquiry next week. How irresponsible is it for the member opposite to ask a question that he knows must totally prejudice the situation? Obviously, it was designed to get this story into the media. How is that person, or anybody involved in this case (if in fact it has happened), supposed to be helped by having it in the media?

It is totally irresponsible for the Hon. Rob Lucas to raise this matter. In fact, I suggest that it is probably against standing orders. Of course, he did not indicate that a hearing would take place until the end of his lengthy explanation. I think that it is totally irresponsible that this should happen. I know, from my experience in this place, that I have been here too long to accept at face value the

explanations provided by members opposite. I will refer the question on. However, I caution anyone against believing, on face value, the Hon. Rob Lucas's version of stories such as this.

Members interjecting:

The PRESIDENT: Order!

STATE LIBRARY

The Hon. SANDRA KANCK (14:53): I have a supplementary question. How many staff members of the State Library are currently on stress leave?

The PRESIDENT: I do not know what that has to do with the original question.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:53): I will refer that question on. The honourable member's supplementary question reminds me that the Hon. Rob Lucas's earlier question talked about 'the Rann government this and the Rann government that' in relation to such matters.

Under the Public Sector Management Act, staff issues are matters for the chief executives of organisations. That legislation goes back to the time of the mid-nineties, when the last major revision of the act covered some of these issues and when the previous government was in power. These sorts of questions relating to staff discipline and the like are under acts of parliament, for which everybody in this parliament is responsible, and they are the responsibility of chief executives.

YOUNG ACHIEVER OF THE YEAR AWARD

The Hon. B.V. FINNIGAN (14:54): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about the Channel 9 Young Achiever of the Year Award.

Leave granted.

Members interjecting:

The PRESIDENT: Order! We will continue when the Leader of the Opposition remains quiet.

The Hon. B.V. FINNIGAN: I was interested to hear from the Minister for Mineral Resources Development about the overall winner of the Young Achiever of the Year and the important work of the young South Australian geologist. At the same gala presentation I understand there was also recognition in the important area of road safety. Will the Minister for Road Safety provide some details of the award presented to 24-year-old Mr Joel Taggart?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:55): I thank the honourable member for his question about young people who are achieving in the state, even if members opposite are not interested. On Saturday night I had the pleasure of attending the 2008 Channel 9 Young Achiever of the Year awards gala presentation dinner. The dinner was held at the Adelaide Hilton, with more than 400 guests in attendance. In keeping with this government's commitment to seeing a reduction in our road toll, it was extremely heartening to see a young South Australian recognised for his important efforts in this area. There were eight category award winners and among them was Joel Taggart, who was presented with the RAA Driving Force Leadership Award.

Joel is an outstanding young South Australian who has been recognised for his fine leadership qualities for some years. These are the very qualities that saw Joel appointed as the chairperson of the state government Youth Safety Task Force. The task force has an important role to play. It gives young people a voice to provide this government with input into decisions we make about road safety initiatives. Joel was the 2003 Young Citizen of the Year for the City of Salisbury and graduated from the mayor's community leadership program in 2005. He holds a Bachelor of Urban and Regional Planning and is chairperson of the Salisbury community road safety group—a group he was instrumental in establishing. He was also the inaugural chairperson of the Salisbury Transport Advisory Group.

Adding to this already impressive list of achievements, he also attended the United Nations World Youth Assembly on Road Safety in Geneva in 2007 and had the honour of being appointed a United Nations youth ambassador for road safety. Joel's success should act as an example to

other young South Australians to be an active member of their community, to understand that they can make a difference and be heard. Joel's energy, enthusiasm and demonstrated imaginative solutions to long-standing problems have played an important role in road safety. I am sure members would agree that Joel Taggart is an outstanding young South Australian and, on behalf of the government, I personally congratulate him on his achievements.

WORKCOVER CORPORATION

The Hon. A. BRESSINGTON (14:58): I seek leave to make a brief explanation before asking the minister representing the Attorney-General and the minister responsible for WorkCover and industrial relations a question about WorkCover.

Leave granted.

The Hon. A. BRESSINGTON: I was contacted by a constituent who has been found to have received WorkCover payments by dishonest means. The conviction was secured by using unlawfully obtained evidence to discredit his claim for compensation and, in turn, secure the conviction. Specifically, the injured worker alleges that in 2005, when WorkCover commenced its prosecution case against him in the Magistrates Court, and at the same in the midst of a custody dispute, WorkCover knowingly and unlawfully used that information relating to his personal Family Law Court matter in litigation against him in order to fight his claim for compensation. This use of Family Law Court documents was clearly for a collateral purpose. Chief counsel (litigation) for the Australian Government Solicitor, Tom Howe, in his legal briefing for the Australian government agencies, states:

> In the course of litigation before courts and tribunals, government departments and other agencies and the lawyers acting for them may gain access to information recorded in documents made available by the other party or non-parties. If such access is obtained under compulsory court or tribunal process, it will automatically be subject to an implied undertaking prohibiting use or disclosure of the material, except for the purposes of the subject proceedings. My conclusion is that the commonwealth is bound, like any other third party, not to use information which is gained by one party from the other via the court proceedings under the court's compulsory processes for any purpose other than use in those proceedings. To seek to use the documents in deciding whether or not to prosecute, or whether or not to take enforcement action, is a 'collateral or ulterior' use, which requires the leave of the court.

It is evident from this that leave of the court or consent is required before documents are disclosed or used. WorkCover did not seek leave or permission to use the documents in this case, and Magistrate Ackland also made a finding that it was wrong for WorkCover investigators to have used those documents. Despite this finding against WorkCover, the evidence was accepted on the grounds that 'to remove the evidence now is like removing flour from a baked cake'. My questions are:

1. Will the Attorney-General take appropriate action in relation to this matter on the basis that it is against the public interest for there to be any interference with the freedom of a party or an individual to court proceedings to provide information freely to the courts without fear of the use of the document for some other purpose?

2. What efforts will be made to remedy what is clearly a breach of all laws and rules pertaining to the use of documents provided under compulsion in another court's jurisdiction?

3. Will the state Attorney-General refer the matter to the federal Attorney-General with the view of prosecuting WorkCover for contempt of the Family Court?

4. What safeguards will be put in place to ensure that the state government and all its agents will comply with commonwealth laws, rules and legal principles to stop the integrity of the court system being undermined?

5. Why does WorkCover not have to comply with the prosecutorial requirements observed by the DPP when prosecuting cases for alleged fraud?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:02): I will refer that question to the Attorney-General for his response.

OPEL BROADBAND NETWORK

The Hon. C.V. SCHAEFER (15:02): I seek leave to make a brief explanation before asking the Leader of the Government in this chamber a question about the cancellation of the Opel broadband network contract.

Leave granted.

The Hon. C.V. SCHAEFER: Yesterday, *Adelaide Now*, the online version of *The Advertiser,* ran a story under the headline 'Opel broadband network cancelled—and so are 500 South Australian jobs', stating:

> Hopes of creating 500 jobs in Adelaide by 2012 have been dashed after the Federal Government cancelled the $958m Opel broadband contract.

Opel is a joint venture of the companies of Optus and Elders. The statement goes on to say that they had expected their business to grow tenfold, and they are quoted as saying:

> In four or five years from now we'll have 400-500 people, the vast majority based in Adelaide.

The jobs would have mostly been in sales and technical support for a network aimed at providing broadband to over one million rural and regional customers. The stock exchange statement provided by the companies Futuris and Singapore Telecommunications stated:

> The Government also was concerned that networks would be duplicated as it has proposed its own fibre-to-the-node broadband plan, according to these statements...The cancelled plan would have delivered improved broadband services to 889,322 underserved premises in rural and regional Australia within two years at metro-comparable prices.

First of all, it appears to me that the federal government is setting up a monopoly by cancelling this contract. However, I am informed that its fibre-to-the-node broadband plan will provide services only to rural townships and a radius of approximately 10 kilometres around those rural townships, thereby again excluding the people who most need fast broadband services. My questions are:

1. Has the state government contacted its federal allies or been contacted by its federal colleagues with any explanation for the withdrawal of these proposed services to regional Australia?

2. What, if any, alternative is the state government proposing?

3. Is it correct that their alternative proposal, if it exists, will service fewer than half the proposed customer base?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:05): I am not aware of what communication has been made between the state and federal governments, but I am certainly aware of the issue of broadband access, because it was a significant issue in the run-up to the last federal election. The federal Labor Party went into that election with a very clear policy—in fact, and if I recall correctly, one of the first policies the Rudd government released at the start of the campaign was to improve broadband access to all Australians.

So, the federal government has a clear mandate to implement its policies in relation to broadband network and I do not think it needs the approval of the states for the implementation of that platform. However, if there is any more information that I can provide to the honourable member I will do so.

BIODIVERSITY CONSERVATION

The Hon. J.M. GAZZOLA (15:06): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about biodiversity conservation.

Leave granted.

The Hon. J.M. GAZZOLA: South Australia's ancient natural environment has evolved over millions of years and adapted to some of the harshest conditions in the world. Despite this natural hardiness, the state's outback environment still requires careful management. Can the minister inform the council about moves to better manage South Australia's arid lands?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:06): I thank the honourable member for his important question, and I am pleased to inform the council that the Department for Environment and Heritage has today released a draft South Australian Arid Lands Biodiversity Strategy for public comment.

Obviously, all South Australia's natural environment requires careful management—which is why this government has established a number of concrete targets in relation to the no-species-loss strategy and South Australia's strategic plan—but it is, perhaps, the arid regions that require some serious attention. That is the reason this draft management strategy was the first region-

specific strategy under no-species-loss, given that the affected areas make up huge tracts of the state—including the Gawler Ranges, the Far North, and the north-east of the Flinders Ranges.

Many plants breed only after rare heavy rain or after bushfires, and animals that call these areas home are just as dependent on that very fragile balance. We are already working to protect individual animals and plants such as the yellow-footed rock wallaby and the spidery wattle, and fish such as the purple-spotted gudgeon; however, under the strategy launched today, we can now better plan to protect the entire ecological communities they are part of, helping to prevent other species in the region from becoming threatened.

The strategy is also about responding to future threats. Of course, traditional threats to biodiversity such as loss of habitat, invasive pests and grazing are part of the strategy, but climate change is also now a factor in future conservation initiatives, and one example of this is our Nature Links program to establish biodiversity corridors to link fragmented habitats across the state. This holistic form of management is a practical way of dealing with large-scale threats such as climate change.

The South Australian Arid Lands Biodiversity Strategy has been prepared by DEH in partnership with the South Australian Arid Lands Natural Resources Management Board. To obtain a copy of the draft of the strategy one can simply telephone DEH, and public comments on the draft strategy need to be submitted by 30 June 2008. I look forward to receiving that public comment, and I am pleased that this government continues to forge ahead with conservation initiatives.

KANGAROOS

The Hon. SANDRA KANCK (15:09): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation questions about kangaroo culling in South Australia.

Leave granted.

The Hon. SANDRA KANCK: I am reliably informed that in New South Wales 70 per cent of the kangaroos being shot are female. The consequence of this is that, every time an adult female kangaroo is killed, the young in the pouch is also killed and the young at foot are left to die of starvation, dehydration or predation. According to Dr David Croft of Griffith University, 100 per cent of the young at foot die. My questions are:

1. What percentage of the kangaroos being killed in South Australia are females?

2. Is it the case in South Australia, as in New South Wales, that the young at foot are left to die of starvation, dehydration or predation?

3. Is the minister confident that, under the South Australian National Parks and Wildlife Act, humane methods are being used to kill kangaroos, as is a condition of commercial shooting?

4. Will the minister place an immediate ban on the killing of females with young and, if not, why not?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:10): Indeed, kangaroo culling is a vexed issue. I do not think there would be one person in this chamber who likes to see any animal, including one of Australia's icons, a native species, killed. It is something that we do with a great deal of care and consideration. The culling of kangaroos occurs as a means of humanity really. It occurs, as members know—and, in particular, I know that the Hon. Sandra Kanck is well aware—because the balance of our environment has very much changed over the years and, as land management practices have changed, so too has that influenced populations of our native animals.

Drought conditions at present, in particular, have put huge pressures on some of our native species—in this instance, kangaroos—in some areas. These animals are often left to survive in extremely poor condition, starving and sick and, as I said, in very inhumane conditions. We have a policy and practice of culling. We do a great deal to try to ensure that culling occurs only where and when required, and we monitor very carefully commercial culling as well. The DEH manages commercial harvests. That program is backed by very extensive scientific information and uses a conservative approach to quota setting to ensure that the harvest is sustainable and that healthy kangaroo populations remain as part of South Australia's landscape.

When they are culled, all kangaroos are killed humanely in accordance with the code of practice for the humane shooting of kangaroos. This national animal welfare standard is endorsed by the NRM Ministerial Council and kangaroo field processors (or shooters) are required to pass firearms accuracy training specific to kangaroos prior to harvesting. In particular, kangaroo commercial harvests allow for landholders to manage kangaroos as part of their grazing pressures and management of their properties. As I said, we proceed with these culls within a framework that is monitored and regulated very carefully in terms of humane practices. I am aware that, in relation to joeys in the pouch, if their mother is destroyed, then the joey is destroyed as well because it cannot survive without its mother and it would be inhumane to leave it.

In terms of young kangaroos at foot, I am not sure of the details of that policy but I am happy to find out that detail and bring it back to the council. In terms of the sex of the animals, again I will check the details (if they are available). My understanding is that population numbers are calculated or assessed in a number of ways. In some places it is through aerial shots and in other areas it is through local knowledge and counts on the ground. To the best of my knowledge, I understand that the numbers are adjusted according to the population numbers at hand. Humane culling is very carefully regulated and monitored. For those aspects of the question for which I do not have details, I am happy to bring back a response.

GLENSIDE HOSPITAL REDEVELOPMENT

The Hon. R.D. LAWSON (15:16): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about Glenside Hospital.

Leave granted.

The Hon. R.D. LAWSON: Members will recall that yesterday this council established a select committee for the important purpose of inquiring into and reporting upon the government's ill-advised proposal to sell a substantial part of the Glenside Hospital site. That proposal has met with serious concern by community members, staff of the hospital, mental health experts and advocates who are seriously concerned about the effect on mental health services in this state if the project proceeds—as the government appears keen to make it proceed.

If the government, before that important committee completes its deliberations and reports, were to make contractual or other arrangements, designed to negate any recommendations that the select committee would make, it would be a matter for very serious concern, probably a contempt of this parliament. Will the minister undertake that the government will not sell, encumber or enter into any contractual arrangements in relation to the Glenside Hospital site prior to the select committee presenting its report to the council?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:18): The straightforward answer is no; categorically no. This government has spent a great deal of time and energy investing in public consultation to put its reform agenda clearly out in the public arena. The Social Inclusion Board and Monsignor Cappo conducted an 18-month investigation into a blueprint for reform of South Australia's mental health system, which was left in a state of absolute disgrace by the former Liberal government, which did nothing in terms of improving or advancing mental health services. Members opposite should hang their heads in shame.

An honourable member interjecting:

The Hon. G.E. GAGO: I will come back to the six years. In terms of what we have been doing for the past six years, I am happy to do that. In relation to our reform agenda, there was 18 months consultation by the Social Inclusion Board. Consultation occurred with a wide range of key stakeholders and community groups, and a range of various committees were established. Some 18 months of consultation occurred. That blueprint outlined not only a redevelopment for the Glenside campus and the importance of that, but also the overall reform of our services.

In terms of the Glenside redevelopment, which is part of that reform agenda, again a great deal of public involvement has occurred and will continue to occur. The consultation will be ongoing. The government has a responsibility to ensure the upgrade and ongoing good quality of mental health services, and that is what it is doing. In the six years we have been in government we have already commenced that program. We have built the Margaret Tobin Centre, a specialist mental health centre, at the Repatriation General Hospital. We are well under way in terms of our mental health facility at the Lyell McEwin Hospital. We are building a community rehabilitation centre, which is a brand new service that has never been available in South Australia previously. It is state-of-the-art and focused on rehabilitation.

Members interjecting:

The Hon. G.E. GAGO: The community rehabilitation centre—the opposition obviously does not understand when I say it is the first of a new service—has never been available previously. It is based on a length of stay of between four and six months and focuses on rehabilitating and reintegrating into the community people who have suffered a mental illness. It is about re-engaging people into their local communities in terms of their previous relationships, employment, etc., and improving their self-confidence. These are the things we have been doing in the six years we have been in office. We have opened two out of three of those brand new services that have never been conducted here before.

Not only are we doing that, but also we have a plan to continue that reform agenda in terms of building a new hospital at Glenside, introducing intermediate care beds, increasing supervised 24-hour supported accommodation, and we have also secured ongoing recurrent funding for the NGO sector which provides psycho-support packages for people in their communities. So, as members can see, a vast range of services have already been put in place, and we have a plan for a complete overhaul of our mental health system.

In terms of our plans for the Glenside campus, we have been very open and transparent about our proposals for that site, and we have a responsibility to get on and build and reform mental health services—services that we can be proud of.

ANSWERS TO QUESTIONS

WATER SUPPLY

In reply to the **Hon. C.V. SCHAEFER** (14 November 2006).

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health): The Minister for Water Security has provided the following information:

About 65 per cent of water supplied by SA Water is for residential use with industry only accounting for approximately 9 per cent, therefore the key immediate focus is on households. However, SA Water is currently working with industry, conducting water audits on industrial sites and developing specific processes to ensure the sustainable management of their water.

Since 1 July 2007, the South Australian government requires industry to undertake water efficiency plans to implement water savings. Businesses are required to prepare a plan that identifies where they can make water savings in any area of their operations where water is used.

We are working on a 1 to 1 basis with the top 53 industry users to achieve significant savings through the implementation of these plans. These top users represent 58.7 per cent of total commercial and industrial water use.

CONTROLLED MEDICATION

In reply to the **Hon. J.M.A. LENSINK** (31 May 2007).

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health): I have been advised that:

1. The Nurses Board of South Australia determines what is in the ordinary course of duties for their profession. In some instances, what is thought to be an appropriate duty for an enrolled nurse to perform has changed, which has resulted in a small anomaly under the controlled substances legislation.

2. The reference to a lack of flexibility and delegation if the controlled substances legislation does not allow enrolled nurses to administer imprest stock is inaccurate. The control mechanism is through the issuing of a licence to the health service for possession under an imprest system of supply.

3. The proposals were referred to the December 2006 Controlled Substances Advisory Council meeting. The Council recommended that consultation with the acute health sector should commence with the view to proposing changes to the legislation in regard to the administration of drugs of dependence by enrolled nurses. This would cover enrolled nurses in all health services, both in acute and residential aged care settings.

4. Consultation with the acute health sector, as recommended by the Controlled Substances Advisory Council, has been completed. Additional information is being considered in relation to the impact of the proposed changes on the aged care industry. Appropriate legislative changes will be progressed once this information has been considered.

DESALINATION PLANTS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:23): I lay on the table a copy of a ministerial statement relating to the Adelaide desalination plant made earlier today in another place by my colleague the Treasurer.

STATUTES AMENDMENT (EVIDENCE AND PROCEDURE) BILL

Adjourned debate on second reading.

(Continued from 28 February 2008. Page 1957.)

The Hon. R.D. LAWSON (15:24): I rise to indicate that Liberal members support the second reading and the ultimate passage of this bill. The government, in the time in which it has been in office, has made a number of announcements about its intentions in connection with the law relating to rape and sexual assault, and it has taken the government an inordinate length of time to bring forward this measure.

I remind the council that the government commissioned an extensive report from Robyn Layton QC, as she then was, the so-called Layton report entitled A State Plan to Protect and Advance the Interests of Children. That massive report was delivered to the government in March 2003, and it made a number of recommendations, some of which are only now in this bill being brought forward by this government.

The record of the Rann Labor government in relation to the implementation of reforms of this kind is appalling. I remember that, in the middle of 2005, an anomaly in our law was revealed as a result of the celebrated Skaf rape case in Sydney, where a retrial had been ordered and the victim of the offence refused, on perfectly reasonable grounds, to attend court and go through once again the trauma of having to relive the vile experience that she had suffered. As a result, the trial could not proceed. However, the New South Wales government grabbed the bull by the horns and passed special legislation to enable the testimony presented by that witness to be presented in written form to a new trial.

I introduced a private member's bill to enable a similar situation to occur in South Australia if that precise set of circumstances occurred again. The Attorney-General, whilst not disputing the validity of the principle underlying my bill, said it was the government's intention to move quickly and to produce its own measure on this subject. Needless to say, it has taken almost three years for the government to do anything about that. It is only a matter of good fortune, so far as I am aware, that the Skaf situation has not been repeated in this state and we did not have to put a South Australian rape victim through the trauma of either abandoning the proceedings or testifying again.

Many of the recommendations come out of the discussion paper prepared by Ms Liesl Chapman which was put out for circulation in the middle of 2006. Once again, it has taken overly long for the government to either implement or not implement the recommendations of the Chapman report. As has been announced, and as is obvious, this legislation is complementary to the Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill that passed through this place earlier this week. However, one might as well say better late than never, because this legislation makes some attempt to address a number of the issues that have been concerning the legal profession and advocates for victims of sexual crime for quite some time.

The claim is that this legislation will reform the laws governing the way in which evidence is taken in sexual offence proceedings. It is perhaps not as comprehensive as that. Once again we see the government seeking to take credit for expansive reforms which may, in the way in which they operate, not be as expansive at all.

In the case of this legislation, we will see a number of provisions that were previously inserted into, for example, the Evidence Act, which were passed by this parliament with the best will in the world but which, for various reasons, have not been found to be operational in the criminal courts. I will come to some of those as I run through the legislation, although I think that a good example is section 34CA of the Evidence Act, which provides:

....where the alleged victim of a sexual offence is a young child, the court may, in its discretion, admit evidence of the nature and contents of the complaint—

that is, the complaint originally made by the child—from a witness to whom the child complained at the time. The court is given that discretionary power. It was obviously designed to relieve a child of the obligation to testify before the court, although the provision contains the important proviso that the evidence could not be admitted at the trial unless the alleged victim was called as a witness or available to be called as a witness. Of course, if the child was available to be called as a witness, the child could be questioned by the representative of the accused person.

That provision was passed by parliament but rarely used. In fact, I am personally not aware of any circumstance in which it has been used, and I ask the minister to indicate today whether or not the provision has ever been used. What we are now doing in this bill is replacing section 34CA with a more extensive provision dealing with the same subject matter.

I mention this to illustrate that very often, especially in this area of the law, the parliament (that is, the government of the day and members of parliament) passes legislation that it conscientiously believes is effective and will address the issue but, in fact, it proves not to be effective. Very often the courts simply do not use provisions because, for some reason or other, they are unworkable or the legal representatives of victims or the prosecution do not believe that it is in their interest to use them.

We are certainly in favour of any measure to make it easier for vulnerable witnesses, child witnesses and the victims of sexual assault to give evidence in the best possible way—a way that does not intimidate them, traumatise them or re-victimise them. It is incumbent upon us as members of parliament to ensure not only that the laws facilitate those objectives but also that the legal profession and the judiciary are sensitive to community concerns in this regard.

I note that it is suggested in the second reading explanation that the Attorney-General's Department and the judiciary are (or at least were in October 2007) working on a program of judicial education about children in court. I ask the minister to indicate to the council the progress of that program, that is, what is happening in relation to it and what funds the government has allocated to facilitate the delivery of the program of judicial education.

It is all very well to say that we are working on judicial education, but if resources are not devoted to the task it is unlikely the measures will be effective. This bill not only makes some reform to the way in which evidence is taken in sexual offence proceedings but also reforms the law about the so-called 'special arrangements' that may be made for witnesses giving evidence. Members are aware that the existing law provides that, in certain circumstances, the court has the power to make an order, for example, that a victim or witness in a sexual assault case can give evidence out of the direct line of sight of the accused person.

Countless reports, including the Layton report, have emphasised that for some victims the trauma of having to face their attacker in court is a revictimisation of a terrible offence. So, these provisions already exist and have existed for some time. Members would also be aware in the general sense that closed circuit television is used from time to time when taking evidence from witnesses. Whilst all these measures have been the subject of amendments in recent years, we are finding it necessary to refine those provisions to ensure that the intentions of the legislature are met and that any unnecessary impediments are removed.

The first provisions on which I wish to comment are amendments to the Evidence Act relating to these special arrangements. These provisions are in section 13 of the Evidence Act and are to be replaced by two very lengthy sections—section 13 and proposed section 13A. Section 13 will enable the court, if certain conditions are met, to make special arrangements for protecting witnesses from embarrassment and stress when giving evidence. This section appears to apply to both non-criminal and criminal cases, but the difficulty of section 13 is that it provides in subsection (1)(a) that one of the conditions for the use of these special arrangements is that there are, in the particular court, readily available facilities and, unfortunately in South Australia, whilst we have special facilities in a number of courts—certainly in Adelaide, Mount Gambier and Port Augusta—these facilities are not available in every court, notwithstanding the government's promise that they would be made available and assurances that they are being made available.

It is interesting that this section enables the court to make an order on its own initiative in relation to these particular special arrangements. The usual provisions in relation to matters of this kind are that one party or the other must make the application to the court, but in this particular case the court has the power, on its own initiative, to order that special arrangements be made for the taking of the evidence.

In this particular clause, there are provisions for the receiving of evidence from witnesses whose native language is not English, and where the witness is not reasonably fluent in English; evidence may be given about that. But I should interpose here that the services of translators in our courts are overstretched, certainly and especially in relation to translators of various Aboriginal languages, in particular, the Anangu language. This is a matter of ongoing difficulty and one the government has not satisfactorily resolved.

There are, unfortunately, all too many Aboriginal defendants in our court cases, and there are, unfortunately, all too many Aboriginal victims, especially victims of violent crimes and sexual crimes, who themselves need the support of translators. There is a balancing act, and there will always be debate about where the balance should be struck between the rights of victims and witnesses and the important right of an accused person to receive a trial that is fair. It is easy these days, I think, to jump on the bandwagon of victims and witnesses—we ourselves are guilty of it—but we should never lose sight of the fact that, as horrendous as many of these crimes are, it is a horrendous thing to convict wrongly of an offence a person who is not guilty of committing that offence.

An order cannot be made under section 13 if the effect of it is to relieve a witness of the obligation to give sworn evidence. We still do believe that it is important that witnesses whose evidence is presented to courts have verified and placed their own stamp upon the evidence and that we do not get to the situation where merely a written statement of police officers or anyone else can be handed up, unless, of course, there is no objection taken to that course.

An order cannot be made under this particular provision (section 13A) if it relieves the witness from the obligation to submit to cross-examination, or it has the effect of preventing the judge or the jury from observing the demeanour of (in other words, having within their direct sight) the witness. However, that sight may be direct or it may be by live transmission both of the voice and of the image of the person giving the evidence.

Section 13A is a rather more limited section relating to special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings; it applies only to criminal proceedings. In the case of vulnerable witnesses the court, on application, must make an order that special arrangements be made. Once again, facilities have to be readily available for the court to be able to make these orders.

The sorts of orders that can be made are not limited by this section but they include, and are not limited to, taped evidence, closed circuit television evidence, an audiovisual record, and evidence, for example, that the defendant be excluded from the place where the evidence is taken or prevented from otherwise seeing or hearing the vulnerable witness while giving that evidence. One element of this particular section is the provision that the court may, if it receives expert evidence on this point, determine the appropriate special arrangements. This was a recommendation made in the Layton report, and it is supported.

New section 12A of the bill will remove an existing section and replace it with a new provision relating to the warning that must be given regarding the uncorroborated evidence of a child in criminal proceedings. The common law position was that the judge had to warn a jury that it was unsafe to convict on the uncorroborated evidence of a child, and that was an invariable warning given. However, formulae of this kind, which are given in every circumstance, may or may not be appropriate to the particular circumstances of a particular child, and warnings of that kind are probably one of the reasons there are so few convictions in cases where the victims are children or where the evidence of children is crucial to the prosecution case.

The judges now, by new section 12A, are required to give such a warning only where the warning is actually warranted; not on the basis of some generalised notion of the unreliability of children's witness but where there are, in the particular case, reasons (apart from the fact that the witness is a child) to doubt the reliability of that child's evidence. Furthermore, a party to the proceedings (who would usually be counsel for the accused person) has to actually make a specific request that the warning be given. In those circumstances, of course, the person making that request will be asked by the judge to actually point out whatever cogent reasons there might be to doubt the reliability of a particular child's evidence.

We cannot and should not generalise but there will, of course, be cases where the children may be coached to give evidence in a particular way by one or other parent, or by a grandparent; we can never overlook the fact that experience (for example, in the Family Court) has clearly shown that to be the case. However, what is now being required is a warning in relation to children's evidence that is not simply based upon the preconceived perception that children's

evidence is inherently unreliable. There is, indeed, a specific provision in new section 12A that the judge is not to make any suggestion that the evidence of children is inherently less credible or reliable, or that it requires more careful scrutiny than the evidence of adults.

I turn now to section 13B which deals with cross-examination of victims of certain offences, these being serious offences against the person, offences of contravening or failing to comply with a domestic violence order, or failing to comply with a restraining order under the Summary Procedures Act. In a criminal trial, these provisions provide that the cross-examination must be conducted by counsel, and there are provisions in the section to facilitate obtaining of counsel. It is regarded as offensive, in many cases, for the accused person, who may have been a regular abuser of the victim, to be given the opportunity to terrorise the victim further by cross-examining or cross questioning the victim directly. There have been a number of cases where accused persons, especially those who have been in a violent and bullying relationship with a victim, have obviously relished the opportunity to harass the victim further by cross-examining very often in an offensive and aggressive way.

There are special provisions about the way in which an unrepresented person is dealt in civil proceedings. In these cases, where the unrepresented person does not have an entitlement to counsel, the person unrepresented must actually put the questions that he or she proposes to have asked of the witness to the judge in writing, and the judge (or the judge's delegate) actually asks those questions where the judge deems those questions are appropriate. I am not entirely sure where these particular provisions, which have been embraced in section 13B, have come from, and I do ask the minister to indicate whether these provisions are modelled on the provisions of any other jurisdiction.

The provisions of sections 13C and 13D are designed to overcome the issue that I addressed in opening these remarks; namely, the requirement that the court make an audiovisual record of evidence of vulnerable witnesses in criminal proceedings. This is for the purpose of enabling that evidence to be used in subsequent proceedings if, indeed, there are subsequent proceedings—perhaps a retrial after an appeal. We know that all too often these days there are retrials. Juries have to be discharged by reason of inappropriate publicity, illness, or other incapacity, and it is deeply disturbing for victims, especially of sexual crime, to have to come back and again repeat that evidence.

Currently, in section 25 of the Evidence Act there is a rather short provision relating to the disallowance of scandalous and insulting questions. It is a provision of about eight lines. This section has been repealed and it is now replaced by 40 lines of text which define what is an improper question and which empower the judge to determine that an improper question cannot be put. One of the improper questions is outlined in new section 25(1)(b); namely, a question 'based on a stereotype, including sexual, racial, ethnic or cultural stereotype or a stereotype based on age or physical or mental disability'.

Will the minister indicate whether there is any evidence that South Australian judges have allowed such cross-examination, that is, questions based on racial and ethnic stereotypes, and so on? Frankly, in my experience, questions of that kind would be ineffective and, so far as I and my colleagues who practise in the criminal courts know, questions of that type are not ordinarily put and it is not thought to be in the interests of those being represented to make assertions of the kind suggested. I ask the minister to indicate whether this provision is addressing an actual problem or a theoretical problem that might arise.

I turn now to the issue of directions which a judge must give. Regrettably, in cases relating to sexual offences there is a large number of directions. I think the New South Wales court has suggested that there are eight separate directions that a judge is required to give in a trial of a sexual offence. These may be required in certain circumstances. It has been described (as Liesl Chapman wrote in her report) as the judge being faced with a 'formidable task to sufficiently direct a jury in this category of case'. Two of those eight directions are known as the Longman direction and the Crofts direction, those names being based upon the cases which laid down these principles. The Longman direction is a direction to the jury that it would be unsafe or dangerous to convict on the uncorroborated evidence of a complainant alone, unless the jury scrutinising the evidence with great care is satisfied as to its truth and accuracy.

So this is a direction about the necessity for corroboration in a particular type of case. You do not have to give a direction as to corroborated evidence in murder, robbery or the rest of the calendar, but it was thought appropriate (and has been thought appropriate for a long time) that special directions of this kind be given in sexual cases.

Another is the so-called Crofts direction, and this is a direction to the jury that a delay in a complaint does not necessarily indicate that the allegation is false and that there may be good reasons why a victim of sexual assault may hesitate in making a complaint about it. The judge then would also inform the jury that the absence of the complaint or a delay in making the complaint may be taken into account in evaluating the evidence of the complainant.

It has long been the case, even before this particular provision came into operation, that juries were warned about the fact that a delay in a complaint of a sexual case tended to weaken the strength of that case. Once again, directions of this kind are based upon not particular circumstances but the male prejudice, perhaps, in relation to these matters or stereotyping victims of sexual crime. These issues are now dealt with specifically in sections 34L, M and N. Section 34L will now provide that in sexual cases:

> no question may be asked or evidence admitted—
>
> (a) as to the sexual reputation of the alleged victim of the offence;

That is an existing provision. The section continues:

> or
>
> (b) except with the permission of the judge—as to the alleged victim's sexual activities before or after the events of and surrounding the alleged offence (other than recent sexual activities with the accused).

The judge has the power to grant permission but, in considering whether to do so, the judge must give effect to the principle that alleged victims should not be subjected to unnecessary distress, humiliation or embarrassment through the asking of questions or admission of evidence concerning their prior sexual experience. The judge must be satisfied that evidence of this kind in the particular case is of substantial probative value or would, in the circumstances, be likely material to impair the confidence in the reliability of the evidence of the alleged victim so that the admission is required in the interests of justice. This provision is an improvement on the existing law.

The Crofts direction, to which I referred previously, is effectively abolished in section 34M, which provides that the common law relating to recent complaint in sexual cases is abolished, and goes on to provide that no suggestion or statement may be made to the jury that a failure to make or a delay in making a complaint of a sexual offence is of itself of probative value in relation to the alleged victim's credibility or consistency of conduct. This section gives recognition to the fact that it is now accepted that there are many and often good reasons why the victim of a sexual assault does not report the offence—indeed, in many cases, does not report the offence for many years. Those circumstances are now understood, and it is appropriate that juries not be prejudiced against complainants by being told that, as a blanket rule, their credibility is undermined by not making a complaint immediately after the offence.

Section 34N contains a provision that complements the amendments recently made to the substantive criminal law relating to consent in sexual offences. It reinforces what the substantive law is by providing that the judge shall direct the jury that the victim is not to be regarded as having consented to sexual activity merely because (a) the victim did not say or do anything to indicate that he or she did not freely and voluntarily consent to the sexual activity; (b) the person did not protest or physically resist the sexual activity; or (c) the person was not physically injured in the course of that activity, or one or more of the following circumstances: the person freely and voluntarily agreed to sexual activity of a different kind; the person freely and voluntarily agreed to sexual activity with the defendant on some other occasion; or the victim had on that particular occasion of the alleged offence or on some other occasion freely and voluntarily agreed to sexual activity with another person. Consent in relation to sexual activity is defined as having the same meaning as in the Criminal Law Consolidation Act as recently amended.

There have been cases where copies of material that is described as sensitive—very often photographs or reports in relation to private acts—have been obtained by an accused person in the course of a trial and misused. Accordingly, there are new and quite extensive provisions in division 10 of the Evidence Act dealing with access to so-called sensitive material and the procedures for giving access to that material, and also for preventing access to the material or improper dissemination of sensitive material, which we applaud.

The Magistrates Court Act is amended by a new provision 48B, which stipulates that trials of sexual offences involving children are to be given priority. There is a similar amendment to the Supreme Court Act. It is all very well to insert provisions of this kind—that the court must give priority to the trial of sexual offences where the alleged victim is a child—but the fact is notorious

that the delays in our criminal courts are entirely unacceptable. Under this government, the time between arrest, subsequent charging and the holding of the trial is excessive. We have heard the excuse that there are not enough judges or courts.

There is a stand-off because this government is not prepared to fund new courts. There have been a series of committees, task forces and working groups under various auspices designed to produce a reduction in the time taken for the resolution of criminal trials; however, to date nothing has happened.

From what the Attorney has said, we understand that a budget bid is being made, but the judges are being accused of seeking to have the government fund a new Taj Mahal, whereas all they are asking for are additional resources. So, we are very cynical about provisions of this kind, unless they are backed by resources. We certainly agree with the legislative intent, namely, that priority ought to be given to those cases involving children.

There are other provisions, but I hope that I have covered the major ones. As I have indicated, we will be supporting the provisions. I have posed a number of questions to the minister, and I ask that we receive a response to them either during the committee stage or subsequently, if that is not possible. I conclude my remarks by saying: too little too late but, ultimately, better late than never.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (16:12): I thank the Hon. Robert Lawson for his contribution to this debate, and I thank other members who have indicated their support for the bill.

The Hon. Robert Lawson raised a number of questions, which I will answer first, and then I will give some further explanation on matters raised in the debate on the bill in the other place. First, I turn to some of the questions asked by the Hon. Robert Lawson, and I clarify a point he raised: the court may make special arrangements on its own initiative under the current act, and that is covered in section 13(8). The bill repeals this provision in new section 13. It is for special arrangements for vulnerable witnesses in criminal trials that the application must be made. I refer the honourable member to proposed new section 13A(6).

The bill does not change the current procedure for witnesses who are not vulnerable in civil or criminal proceedings. No application is necessary under section 13, and there is no pre-trial deadline. The court is under no obligation to order special arrangements for these witnesses as it is for vulnerable witnesses.

Most orders made under proposed new section 13 will be in civil proceedings. Adjournments of civil proceedings do not cause the same disruption as they do in proceedings before juries. In addition, ordinary witnesses in civil and criminal proceedings are unlikely to need special arrangements.

The honourable member asked about section 34CA. I am advised that this section has been used, for example, in R v Corkin (1989) and R v Mill (2002). The honourable member asked about judicial education. I advised that the program of judicial education is still being worked on, but I am unable to say what funds have been allocated; however, we could refer that issue onto the Attorney-General for a response if the honourable member wishes.

The honourable member also asked a question about new section 13B. I am advised that there are similar provisions in other states, and I refer him to my second reading explanation, where I describe the Victorian legislation and refer to models in the United Kingdom and New Zealand.

I will give further explanation on matters raised in debate on the bill in another place. I will speak about the amendments to the Criminal Law (Legal Representation) Act 2001. The member for Heysen wondered whether proposed section 6(1a) of the Criminal Law (Legal Representation) Act 2001 would oblige the Legal Services Commission to grant legal aid to a millionaire so that he could cross-examine an alleged victim in a criminal trial under proposed section 13B of the Evidence Act 1929. The Attorney-General pointed out that the usual qualifications for legal aid would apply and went on to describe how the Criminal Law (Legal Representation) Act prevents people who do not qualify for legal aid successfully applying for stays of prosecution for want of representation. The member for Heysen then said:

> The short answer really is that ultimately they miss out on the ability to cross-examine.

The Attorney-General agreed. I would like to add that this is the combined effect of the amendments to the Criminal Law (Legal Representation) Act 2001 and proposed section 13B of the Evidence Act 1929 and note its limited scope. Proposed section 13B of the Evidence Act provides that an unrepresented defendant charged with a serious offence against the person or an offence of contravening or failing to comply with any kind of restraining order cannot cross-examine the alleged victim unless by counsel.

The judge must tell him this and give him the opportunity to arrange counsel privately or, if he cannot afford this, to arrange for legally-aided representation. That legally-aided representation is made available by the amendment to the Criminal Law (Legal Representation) Act 2001. If the defendant chooses not to take the opportunity to cross-examine by counsel, he must live with that decision. He cannot then appeal the verdict on the ground that he was denied the opportunity to cross-examine the victim or on the ground that this part of the trial was unfair for want of representation.

The member for Heysen also suggested that the amendment to section 10 of the Criminal Law (Legal Representation) Act would allow an unrepresented defendant to avoid paying the costs of an adjournment of the trial to obtain legal representation for cross-examination of the section 13B witness, even if the adjournment could have been avoided or may have been tactical or capricious. The Attorney-General said it was most unlikely that an unrepresented defendant would seek to adjourn the trial to arrange representation for a section 13B cross-examination, other than for genuine reasons, because there was nothing to be gained from it tactically and, besides, he may not be ready to make this decision until after the prosecution had led evidence from the alleged victim.

He explained that it would not be fair to penalise unrepresented people for seeking adjournments for section 13B representation. The member for Heysen then suggested that the section be amended to permit a court to order that a defendant who has applied to adjourn the trial to get legal aid to cross-examine a section 13B witness pay the costs of the adjournment if satisfied that the circumstances justify it. The Attorney-General did not take up her suggestion for the reasons he had already given, and also because the amendment as it stands is consistent with the scheme of both the Criminal Law (Legal Representation) Act 2001 and proposed section 13B of the Evidence Act.

The act sets up a scheme for providing legal representation for a whole trial, under which decisions about legal representation are made before trial of the first directions hearing. At that hearing the court will explain the consequences of deciding not to accept legal assistance and require a written assurance of his decision from a defendant who then chooses not to accept it. That is why a later call for an adjournment to obtain legal representation, should the defendant change his mind, incurs a cost penalty.

An application for the limited legal representation permitted for the cross-examination of one witness only in a trial for which no other legal representation is sought is not subject to these time requirements. That is because in some cases a defendant may not be in a position to decide whether to cross-examine the witness at all until the witness has given evidence. It is also true that interruptions are common in criminal trials where the defendant is unrepresented to enable the judge to clarify matters of evidence or procedure for him. As the Attorney-General has pointed out, it is fairer to grant the adjournment without a cost penalty.

The member for Heysen asked about the procedure for determining whether a witness was vulnerable, referring in particular to mental disability. The Attorney-General explained the procedure by reference to the relevant subsections to proposed section 13A. In asking the question, the member for Heysen said:

> I have no difficulty with the need to protect people with a mental disability as vulnerable witnesses, but I foresee the possibility that someone who should be subject to the full rigours of cross-examination could get a protection to which they are not entitled. They may be able to worm out of that cross-examination by asserting that they have vulnerable witness status.

With respect, this statement contains some mistaken assumptions about the entitlements and status of vulnerable witnesses and the meaning of 'special arrangements for the taking of evidence' under the current and proposed law.

Proposed section 13A does not offer vulnerable witnesses any opportunity to escape the full rigours of cross-examination. Indeed, proposed section 13A(4)(b) and the current and proposed section 13(4)(b) specifically prohibit a court from making an order for special arrangements for a

vulnerable witness or any witness if the effect of the order would be to relieve the witness from the obligation to submit to cross-examination.

There is a requirement in proposed section 13B for cross-examination to be by counsel for some offences in cases where the defendant is otherwise unrepresented. That requirement is not invoked by a witness being classed as vulnerable but invoked by the witness being the alleged victim of a serious offence or an offence of breaching a restraining order. There is no reference to vulnerable witnesses in proposed section 13B and the characteristics of witness vulnerability, including mental disability, are simply not relevant.

Proposed section 34CA of the bill also refers to cross-examination and requires the permission of the court before a protected witness can be cross-examined about the nature and contents of a statement he or she made outside the court. A protected witness is a young child or someone who suffers from a mental disability that harms her capacity to give a coherent account of her experiences or to respond rationally to questions.

Of course, a protected witness may also be a vulnerable witness and vice versa. A witness may be vulnerable because of a mental disability, but it is only if that disability is incapacitating in the way spelt out in proposed section 34CA that he or she can also be classified as a protected witness. If a witness is classified as a protected witness, proposed section 34CA will protect him or her from cross-examination about one topic (what he or she said to someone outside court) and only then if the judge thinks cross-examination is unlikely to elicit material of substantial probative value or material that would substantially reduce the credibility of the evidence given by the person to whom the protected witness spoke.

The only other amendment that might be thought to allow a vulnerable witness to avoid being cross-examined is proposed section 13D. It lets a court relieve a vulnerable witness of the obligation to testify in person in related later proceedings, or if he or she has given evidence in an earlier criminal proceeding and an official record of that evidence has been kept and admitted as evidence in the later proceedings. Although a vulnerable witness who has been relieved of the obligation to testify in person in later proceedings will not have to submit to cross-examination in those proceedings, he or she would already have given evidence and been cross-examined in the earlier trial.

If there are relevant matters before the later court that were not raised in the earlier trial and were not, therefore, open for cross-examination in that trial, it is most unlikely that the later court will relieve the vulnerable witness of the obligation to testify in person. If that relief is not granted, the vulnerable witness will be called upon to testify in the later proceedings using whatever special arrangements that are necessary. Hence, the status of 'vulnerable witness' will not allow its holder to escape cross-examination on any relevant matter in a trial. The bill does not allow a person to avoid cross-examination by asserting a 'vulnerable witness' status on the ground of mental disability.

The member for Heysen wondered why blackmail was included as a serious offence for the purpose of defining some victims as vulnerable witnesses. She asked whether the wording of paragraph (d) of the proposed definition of a vulnerable witness (witnesses who have been subject to threats of violence or retribution in connection with the proceedings) meant that any person who was in a proceeding for blackmail would by virtue of that be classified as a vulnerable witness. The Attorney-General answered that it would be rare for an alleged victim of blackmail not to have been subject to a threat of violence or retribution.

To the member for Heysen's next question, 'Is the Attorney saying that the expectation from these amendments is that, if there is a prosecution of an alleged blackmailer, the subject of it or any other person who was a relevant witness to the proceedings is likely to be classified as a vulnerable witness and thereby entitled to the protections given to the vulnerable witnesses?', the Attorney, answered yes.

The Attorney-General understood the question to refer to witnesses who were the alleged victims of blackmail proceedings. However, it may be that the question was about witnesses who were not themselves the alleged victims of blackmail but are witnesses to blackmail proceedings and have been subject to threats of violence or retribution in relation to those proceedings.

A witness in criminal proceedings for blackmail will be a vulnerable witnesses only if he or she is either the alleged victim of the blackmail offence (because blackmail is a serious offence and a victim of a serious offences is a vulnerable witness) or, if not the alleged victim, when he or she is a witness to the proceedings who has been subjected to threats of violence or retribution in connection with those proceedings or has reasonable grounds to fear such violence or retribution in

connection with those proceedings; or a witness to the proceedings who is under 16 years of age; or a witness to the proceedings who suffers from a mental disability. In other words, the bill will not treat all witnesses for prosecutions for blackmail as vulnerable witnesses.

Again, I thank the Hon. Robert Lawson for his contribution and other members for their indication of support for this bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.D. LAWSON: Can the minister indicate whether the government has formed any intention as to when it is proposed to proclaim the commencement of this act?

The Hon. P. HOLLOWAY: I am advised that the courts, the judiciary and the legal profession will obviously need some time to familiarise themselves with these provisions. So, the government is still considering that question as to how long those parties will need before we proclaim it.

Perhaps I can also say that, with the rape and sexual offences bill to which this is a companion bill, we are obviously keen to have this bill passed to enable the other bill to be simultaneously proclaimed.

Clause passed.

Remaining clauses (2 to 28) and title passed.

Bill reported without amendment.

Bill read a third time and passed.

CONTROLLED SUBSTANCES (DRUG DETECTION POWERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 April 2008. Page 2258.)

The Hon. D.G.E. HOOD (16:30): Family First commends the government on this worthwhile bill and notes the opposition's intention of support. Family First understands that illegal drugs are a significant concern for parents—and, as a parent myself, it is certainly a concern I have about my young daughter for the future.

Drugs are dangerous. They destroy lives, they destroy families, and they destroy communities. Family First believes that we, as legislators in this state, must send the strongest possible message to the community that illicit drugs are indeed very dangerous, that drug use will never be tolerated, and that laws must be enforced to the full extent. Whether this bill is belated or not (and there was some discussion about this in the chamber yesterday) it would regulate the use of drug detection dogs in people and vehicle screening operations, and it would enable police to establish and conduct drug detection screening operations on identified drug transit routes and in various public places. Finally, it will amend section 52 to expand police powers with the power of search and seizure of drugs where appropriate. The changes will result in additional police powers for the location and seizure of illicit drugs, and it will therefore come as no surprise that Family First will support this bill wholeheartedly.

Several locations are named as being areas in which police dogs can operate. At the moment the bill names licensed premises, entertainment venues and public transport locations—and that includes carriers and associated drop off and pick up points. We can assume from this general list that things like rave parties, Big Day Out-type events and other events, nightclubs, for example, will be targeted and that the surrounding areas will also be targeted—for instance, car parks and other facilities surrounding those types of venues where illicit drug deals can occur.

I believe one area that should be included in this bill which has not been specifically included (although it is arguable that powers exist anyway) are the areas surrounding non-treatment service providers. That is the other major area where illicit drug deals take place and, as I say, it is missing from this bill. I am not sure whether that is just an oversight or whether it has been specifically omitted.

Some members may recall that the Hon. Ann Bressington and myself responded to some constituents' concerns about the Hutt Street precinct last year. Drug dealing is rampant in that

area, as I discovered in my visit that day; dealers know that addicts will be in the vicinity so they seek to meet with them in or around those premises. The accompanying *Advertiser* article which appeared on 24 March last year stated:

> A taxpayer-funded program in Hutt Street in the city is putting the safety of nearby traders and residents at risk, two state MPs have claimed. Independent MP Ann Bressington and Family First MP Dennis Hood visited Hutt Street after receiving complaints from residents about the behaviour of drug users in the area. Ms Bressington said a program at the Hutt Street Centre was a 'honeypot' for addicts who regularly publicly injected drugs near the charity organisation.
>
> Both MPs have called for the program to be operated in more controlled environments such as hospitals where, they say, stricter controls and regulations could be implemented. They remained vehemently opposed to supervised injecting rooms...

The article goes on:

> 'At Hutt Street, people rock up at the drop-in centre to get their needle, hook up with their dealer outside and go down the alleyway and shoot up in the vacant lots', Ms Bressington said, after witnessing the activity.

It continues:

> Mr Hood said he was shocked at how easy it appeared to be to buy drugs in the area and was concerned about the prevalence of public drug use around Hutt Street.

I will not continue to read the article because I think members get the idea that these centres do serve as congregation points for illegal drug activity, and I believe there is a good case to specifically include them in this bill. If not specifically, then certainly Family First will need to be convinced that the powers to at least implicitly include them in the bill are adequate. It is these non-treatment service providers that we believe require investigation under this bill; as I said, they are an attractive place for illegal activity.

With those few words, again, I indicate Family First support for the bill—but with that one question mark over those particular providers, which we would like to explore in the committee stage.

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

WATER RESTRICTIONS

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (16:35): I lay on the table a copy of a ministerial statement relating to watering times made earlier today in another place by my colleague the Minister for Water Security.

STATUTES AMENDMENT (PUBLIC ORDER OFFENCES) BILL

Adjourned debate on second reading.

(Continued from 1 April 2008. Page 2180.)

The Hon. S.G. WADE (16:36): This is a companion bill to the Serious and Organised Crime (Control) Bill, and it introduces two new offences into the Criminal Law Consolidation Act and one new offence into the Summary Offences Act. I believe it is important that this council appreciates that this legislation, although presented and promoted in the context of the so-called 'bikies' legislation', has a more general effect. Anyone who engages in activities which are defined in these bills as riot, affray or violent disorder stands to be prosecuted for the offences.

We are advised that the bill has been stimulated by the experience of our law enforcement agencies against gangs. When gang members engage in acts of collective violence, for example, public fights with members of rival gangs or others, it is often difficult, we are told, to secure convictions against them because the gang members refuse to cooperate 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—for example, the gang members—or other witnesses, prosecutions for serious offences arising out of these incidents are rarely successful. Often the police are limited to charging an offender with a minor summary offence of disorderly or offensive conduct, or language, that carries a maximum penalty of three months imprisonment. These new provisions will enhance public safety by making more serious offences available to the police.

The first offence, riot, is the most serious. 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 the people (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 a common purpose is guilty of riot. In the other place, the Attorney-General advised that this legislation is based on New South Wales legislation, which, in turn, is based on United Kingdom legislation, which, in turn, is based on common law. He suggested that it probably goes back to the Riot Act of the United Kingdom.

The Attorney-General and the speaker in another place had a discussion as to whether the Riot Act was the Riot Act of 1713 or the Riot Act of 1714. I understand that the act was the Riot Act of 1714. The act was passed in 1714 and took effect in 1715. This is historically rooted in that Riot Act of 1714. The key elements are: that there be 12 or more persons together; that they use or threaten unlawful violence for the purpose of 'riot'; and that there be a common purpose, and that purpose can be inferred from conduct.

Clearly, that definition is broad and, once you have those elements together, if 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, the offence occurs. My reading is that there is no requirement that a person actually be present. The unlawful violence may be directed at property. There is a saying: 'When a tree falls in a lonely forest and no-one is there to hear it, does it still make a sound?' I am not clear whether, under this act, when you have a riot in a lonely place it is still a riot.

There is a requirement that, if a person of reasonable firmness were present at the scene, the behaviour is such that it would cause that person to fear for his or her personal safety. However, the bill makes it clear that that notional person does not actually need to be present. In terms of the implementation of this offence, I would appreciate clarification from the minister whether a person needs to be present or just the lack of a notional person.

The second offence is that of affray. It is similar to the offence of riot, except that affray only necessarily involves a person (rather than a group of persons) who uses or threatens unlawful violence. In this case, it can only be towards another person. The offence cannot be in relation to a piece of property. 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. On this matter, I ask the minister: where more than one person's conduct is being taken together to adduce the use or threat of violence, does the group then need to share a common purpose?

In the case of this offence, the definition of 'violence' is a narrower definition. In this case, it does not include 'violent conduct towards property'. Both a riot or a violent disorder, on the other hand, include violence towards property. The third offence is that of violent disorder, which is to be inserted in the Summary Offences Act by this bill. Violent disorder is a less serious summary offence. This offence would be 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.

Unlike the existing summary offence of disorderly conduct, the offence of 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.

The opposition supports this legislation. We appreciate the importance of the maintenance of public order for the common good and the freedom of individuals. We trust the police to use these powers carefully to ensure that the balance between the interests of the public in order does not overwhelm the interests of individuals in freedom.

The Hon. M. PARNELL (16:42): The types of criminal conduct described by the minister in the second reading explanation are deserving of our condemnation and they are deserving of the imposition of tough criminal sanctions. We would all agree that gang warfare has no place in either public or private spaces. I support laws that deal appropriately with the conduct of individuals who are directly involved in violent behaviour, whether or not they are members of the so-called outlaw motorcycle gangs or in the general community.

My main concern with this legislation is that I want to be assured that it does not stand in the way of peaceful democratic protest and, in particular, that the laws will not be used to stifle the democratic process and the right of people to conduct protest rallies. My concerns, which I would

say are at the status of questions at this stage, are similar to ones which I have raised previously in relation to public safety orders under the Serious and Organised (Crime) Control Bill. I would like the minister to respond to these concerns and, in particular, to a hypothetical case study which I will give because I think this points to a possible unintended consequence of the legislation.

Imagine a peaceful rally. Many of us have been involved in marches and rallies, whether it is for reconciliation by marching over the bridge or in support of workers' rights in front of Parliament House. All of us engage in peaceful democratic protest. However, let us say that we are involved in a peaceful rally and some idiot up the front throws a rock: not someone who was part of any organising committee or necessarily even affiliated with any of the people who were involved in the rally, but some idiot gets to the front of a rally and throws a rock.

If you were on the receiving end of that, whether or not it hit you, you would be fearful. You do not know which of the thousand people marching towards you might have been the one who threw the rock. We all would agree that the fear would be real. My concern is that people who had no part in that behaviour, who would abhor that behaviour, might find themselves at the wrong end of the criminal law with the refrain, 'You were with them, so you are guilty,' even though it might be one or two, or a small number of people, who were involved in the violent conduct.

If we take that hypothetical case study and apply it to the new offence of affray, we find that it would play out in a certain way. First, the offence of affray is defined as follows:

> (1) 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 is guilty of affray...
>
> (2) If two or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

It might be that there is a small minority of people, or it might be one or two who are actually engaged in violent conduct, with 1,000 other people marching behind them not engaged in that behaviour. Subsection (6) provides:

> (6) A person is guilty of affray only if the person intends to use or threaten violence or is aware that his or her conduct may be violent or threatened violence.

If you were in the second row of a rally and some idiot at the front throws a rock, and you see what is happening and you see that any reasonable person would be fearful, then you do have the knowledge that there is a fearful reaction. You know that you are part of it—'it' being the rally—even though you might abhor that behaviour and not be part of any rock throwing yourself.

It seems to me that this new offence of affray, which has parallels in the other two new offences which are created, could catch a person in that situation. A reasonable response to someone who finds themselves unwittingly in a situation where some idiot has been violent would be under great pressure to say, 'I'm out of here because this is not something I want to be a part of'.

The difficulty is that at many protest marches, especially those that achieve some level of publicity, a range of people turn up—overwhelmingly people who are peaceful and supportive—and occasionally there are disruptive elements. It seems to me that there is potential for these laws to undermine what in this country and this state has been a positive culture of peaceful protest.

I am not suggesting for one minute that the police would be intending to target peaceful people in demonstrations, but one has only to take my hypothetical case study and escalate it a couple of notches, so it may be 10 per cent of people in a protest situation who might be conducting themselves violently. The police may be inclined to think that everyone is involved at some level just by being there.

I support the creation of these offences. I support strong criminal sanctions to prevent the types of activities that have been described by the minister, but when we get to the committee stage I would ask for some assurances that there is no possibility of these laws standing in the way of our democratic right to protest.

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

CRIMINAL LAW CONSOLIDATION (DOUBLE JEOPARDY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 March 2006. Page 2006.)

The Hon. S.G. WADE (16:49): I indicate the opposition's support for this bill. The principle of double jeopardy is that a person cannot be tried a second time for a crime for which he or she has already been convicted or acquitted. In Green v United States, Black J. stated the rationale for the principle as follows:

> The underlying idea, one that is deeply ingrained in at least the Anglo-Saxon system of jurisprudence, is that the state with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offence, 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.

Another significant concern is the need to promote excellence and efficiency in our investigatory and prosecutorial services. These services will be encouraged to ensure that their judgment is sound and reliable if they know they will have only one opportunity to accuse the person. Black J. referred to the principle having deep roots in the Anglo-American system of jurisprudence, but it is not merely an Anglo-American legal idiosyncrasy.

Both the European Union Charter on Fundamental Rights 2000 and the International Covenant on Civil and Political Rights uphold the principle of double jeopardy. The principle of double jeopardy is fundamental, but even under the current law it is not absolute. For example, a person who successfully appeals against conviction will usually face a retrial for the same offence. This bill does not abolish the principle of double jeopardy but, rather, introduces some more exceptions to it.

The matter for judgment by this parliament is how far the exceptions should go. The exceptions to double jeopardy have been extended in a number of common law jurisdictions in recent times. Reforms allowing for a tainted acquittal exception were introduced in the United Kingdom by the Criminal Procedure and Investigations Act 1996, and reforms allowing for a new and compelling evidence exception were introduced more recently by the British Criminal Justice Act 2003.

In Australia, double jeopardy law reform has gained prominence in recent times owing to public disquiet over some controversial cases and, in particular, the High Court decision in R v Carroll. In that case the body of a baby (Deidre Kennedy) was found on the roof of a toilet block in Ipswich in April 1973. Carroll was originally charged with and found guilty of Deidre Kennedy's murder. He was convicted of murder in March 1985. However, later that year, on 27 November 1985, the Court of Criminal Appeal quashed that conviction on the basis that a properly instructed jury, properly considering the matter, could not be satisfied beyond reasonable doubt on the prosecution evidence that the accused was guilty.

In 2000, 15 years later, Mr Carroll was convicted of perjury based on his denial of the murder charge on oath at his initial trial. He was later acquitted of this charge by the court of appeal in Queensland. The appeal court's decision was upheld by the High Court holding that trying Carroll for perjury triggered the double jeopardy rule. The Carroll decision was not noteworthy in terms of its application of the law: it was a rational application of settled legal principles. But the case did serve to focus emerging issues, and subjected the basic principles underlying the double jeopardy rule to scrutiny. There was significant information available to the public to suggest that Carroll was guilty.

The case is an extraordinary one. From the murder to the final case, 26 years elapsed. The murder occurred in 1973, the original trial was held in 1985, the conviction was quashed in the same year and then the perjury trial was conducted in 1999. The prosecution for perjury inevitably involved attempting to controvert the earlier acquittal on the charge of murder. The matters to adduce and retry were the same matters relating to his guilt for the murder itself. The Carroll case in that sense is the leading authority on the issue of double jeopardy in Australia. As I said, it provided a focus and stimulus for reform in this country.

In this state the Liberal Party, as so often happens, has championed reform in this area. In May last year we announced a policy in relation to the reform of the law on double jeopardy. We welcome the government's belated action in this area. The Premier's press release was dated 7 August 2007. In referring to that release, I will mention in passing that I thought it was unhelpful in its terms. It talks about the state government preparing to overturn the ancient legal principle of double jeopardy.

Further on, Mr Rann says that the Council of Australian Governments meeting this year resolved to reform double jeopardy laws and only Victoria and the ACT reserved the right not to overturn it. I think that is a misstatement of what this bill offers, and it is certainly a misstatement of

what the Liberal Party was proposing. This bill (and our policy) was that the principle of double jeopardy would not be overturned but, rather, it would be reformed: that there would be exceptions included to the principle. This bill seeks not to overturn the law but to provide for a set of exceptions in exceptional circumstances in the context of more serious charges.

One particular driver for the exceptions to the principle of double jeopardy is the development of technology, particularly DNA evidence. Of course, we can overstate the significance of DNA. The development of DNA technology is not the first time that technological developments have had an impact on criminal investigations. I am sure the development of microscopes, for example, would have allowed evidence to be looked at through fresh eyes. It may have been new and compelling in terms of this legislation but excluded on other grounds. However, DNA is a particularly precise technology which provides particularly useful evidence—evidence as to the identity of people present at the crime, one of whom could have been the offender. Of course, fingerprint technology, in its turn, would have provided evidence as to identity but DNA technology in particular has caught the imagination of the public.

Whether alone or incremental to other technological developments, DNA technology has added to the gathering view in the public, in the academic community and in legislatures that we need to reassess our strict adherence to the principle of double jeopardy. However, in looking at risks and exceptions we need to act carefully, so that in adjusting the law we do not, in the end, end up with injustices. Hence, we have come to this position where, in the last year, both the government and the opposition have formed the view that this law needs to be addressed.

The Model Criminal Code Officers Committee and COAG have developed very similar recommendations for the reform of the law in relation to the principle of double jeopardy, and it has been agreed that the law be reformed so that a person acquitted of an offence would not be protected by the law against double jeopardy from: first, prosecution for an administration of justice offence where the offence is connected to the original trial (such as perjury or bribery of a juror); secondly, retrial of the original offence or prosecution for a similar offence, where it is fresh and compelling evidence, in cases of very serious offences, including murder, manslaughter and so on; and, thirdly, in the 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. This bill also proposes changes in the law on appeals from acquittals and appeals on matters of sentence. The bill proposes to implement the recommendations of the COAG working group.

Therefore, this bill proposes, as I said, three exceptions. First, fresh and compelling evidence: this evidence will allow for a retrial of an acquitted person or prosecution for a similar offence where there appears to be fresh and compelling evidence against the acquitted person. 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.

This provision seeks to avoid promoting poor investigation and prosecution. The most obvious situation again will be DNA evidence where the technology may not have been available at the time of an earlier trial but is now available. The Attorney, in his comments in the other place, explained that this is not a retrospective element of the law. It is not that people will be charged with offences in relation to behaviour which was not illegal at the time they committed it but, rather, they will be prosecuted on the basis of evidence which was not available at the time.

In relation to this exception, evidence is compelling if it is reliable, substantial and highly probative of the case against the acquitted person, that is, it has to be evidence that goes to the heart of the matter and would be likely to be convincing to a court. Evidence is not precluded from being fresh and compelling merely because it would have been inadmissible in the earlier proceedings against an acquitted person. This element of the bill (which I would like the minister to comment on) may have an element of retrospectivity. After all, the behaviour might be subject to criminal charges that existed at the time that the offence was committed but, if the prosecuting authorities can have another go at an offence on the basis of changes to the rules of evidence, that would seem to me to have an element of retrospectivity.

The government's bill is limited to charges dealing with a limited series of offences, such as murder, manslaughter, trafficking in or the manufacture of large commercial quantities of drugs, armed robbery and most aggravated forms of rape. The reason why the bill is limited is that it is in the public interest that we are not prosecuting again and again on less serious matters. In other words, there is a strong presumption in the public interest that prosecutions should not be entered into a second time, and it is only in more serious offences that we should entertain that possibility.

It is interesting that, even within the cooperative federalist approach of SCAG and COAG, various jurisdictions are taking different approaches to the scope of relevant offences. In the case of Queensland, for instance, I understand that at this stage it has restricted its exception to double jeopardy only to the offence of murder.

The opposition supports the bill with its broader scope. However, I think that it is incumbent on this legislature to monitor the operation of these laws and reform them if needed. The common law has been developing for hundreds of years—not, as the Premier seems to think, to allow mullet-headed lawyers to subvert justice but, rather, to promote justice. In the rule of double jeopardy, we see the common law seeking to foster professionalism and sound judgment amongst investigatory and prosecuting authorities and to protect the rights of individuals. In considering double jeopardy reform, we need to be humble enough to know that the justice to which we aspire in this life is not absolute: it is a matter of accepting the limitations of our knowledge, the fallibility of the participants and the efficient allocation of resources across the affairs of state.

The second proposed exception to the double jeopardy rule is in relation to tainted acquittals. This exception will allow for the retrial of an acquitted person where the acquittal is tainted. An acquittal is said to be tainted if the accused person or another person has been convicted of an administration of justice offence in connection with the proceedings in which the accused person was acquitted and 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 are not to be able to profit from it.

It is noteworthy that the scope of offences in which a retrial could be implemented is broader in the context of the administration of justice, and that reflects the public interest in ensuring that the administration of justice is not brought into disrepute.

The third exception is the administration of justice offences. This exception will allow for the prosecution of an administration of justice offence where the offence is connected to the original trial. The bill includes a series of 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, which would take place only on rare occasions. The bill includes a number of safeguards recommended in the various reports, including that the retrial must commence on application by the DPP to the Court of Criminal Appeal. Secondly, 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. And there are other safeguards in the bill.

In conclusion, I indicate again that the opposition supports the bill. It supports the principle of double jeopardy. It does not seek to overturn it, but it does support the introduction of limited exceptions to the rule, with the application of appropriate safeguards. We will monitor the operation of these laws and will support the passage of the bill through the council.

The Hon. A.L. EVANS (17:05): I rise to support the second reading of this bill. My comments will be fairly brief, but it may well be that my colleague the Hon. Dennis Hood will add some further thoughts on this important issue during the committee stage.

The submissions we have received on this bill remind me clearly of the submissions that I received after I introduced my bill in July 2002, namely, the Criminal Law Consolidation (Abolition of Time Limit for Prosecution of Certain Sexual Offences) Amendment Bill. By the way, I was disappointed that the Premier—when releasing the Mullighan report earlier this week—gave Family First no credit for the bill which removed the bar to prosecution for offences committed before 1 December 1982. Of course, it was my private member's bill that allowed those offences to be prosecuted and got the ball rolling on opening up the truth about the past and allowing people to come forward and speak about past sexual abuse.

In 2002, after I introduced the bill, I heard the same arguments as I hear now from lawyers and civil libertarians about how the law was well settled and we should not wind things back. I disagreed with those arguments then and I disagree with them now. Justice must prevail in a fair and just legal system. If we have fresh evidence we could not obtain or produce before, there should be no obstacle to re-trying criminals for their crimes.

We now have the technology (such as DNA technology) to enable us to prove things that we could not prove adequately in the courts before. I, for one, was pleased to hear that the South

Australian police are re-opening the so-called 'Family' murder files and DNA-testing suspects, and this bill may perhaps be an avenue to re-trying any acquittals.

Of course, there are other grounds for winding back double jeopardy, such as interference in judicial proceedings, but I will not go into that in any great detail here. I will, however, repeat a request which the Family First office put to the Attorney-General's office on 21 February and to which we have not yet had a reply, So I will put that request on the record now: can the Attorney-General, or indeed the Minister for Police, advise roughly how many closed or so-called 'cold' cases might be capable of being reopened once these reforms are passed?

I understand, for instance, that in the United Kingdom, when similar laws were passed in 2005, the National Crime Faculty there were able to identify 35 persons acquitted of murder who could potentially be reinvestigated and against whom new charges could be brought. I do not think that giving us such a statistic for South Australia will prejudice any investigations; in fact, it may well send a message to criminals, who think they have gotten away with their crimes, that their ill-gotten freedom might be short-lived.

Family First therefore supports this bill because we believe there is now sound reason for removing the double jeopardy provisions in the situations described in the bill.

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

FIREARMS (FIREARMS PROHIBITION ORDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 April 2008. Page 2254.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:09): I thank those members who have contributed to the debate on this bill. I do have some advice here on some of the issues raised, and if further information is requested we can deal with that when we debate the bill in the committee stage next week. There were a number of issues that required advice. First, concerns were expressed against the term 'medically invasive procedure' (section 6B(1)), and an explanation was requested. The provision of medically invasive procedures permits the invasive taking of blood, if needed, to determine whether a person is using drugs or is under the influence of alcohol. So, that is the purpose of that particular provision.

A request was made for the minister to confirm that the definition of 'fit and proper person' would remain the same. The interpretation of 'fit and proper' is expanded in the bill by inserting a provision that allows the Registrar to consider the 'reputation, honesty, integrity and associates of the person' when determining whether they are unfit. This is directed at people who engage in criminal behaviour.

Provision is also made for the inclusion of specific regulations to prescribe offences where a person would be deemed to be unfit. These regulations will be developed at the conclusion of debate on the bill and will require further consultation with stakeholders. For example, people who commit murder could be automatically deemed unfit. I also add that, as regulations, this chamber would have the opportunity to consider them further.

We were also asked for advice on whether people who committed offences under another act would be deemed unfit. People who commit offences under another act may be deemed unfit for the purposes of firearm prohibition orders if possession of a firearm, firearm part or ammunition would be likely to result in undue danger to life or property. They may also be deemed unfit if their actions demonstrate a disregard for the law and it is in the public interest to prohibit their access to firearms on safety grounds. This is subject to the circumstances of the situation.

Advice was requested on whether the definition of 'unfit' would be strictly adhered to. This question has been raised, as the firearms community are critical of the Registrar's application and interpretation of 'unfit'. As the administrative decision maker, the Registrar acts with goodwill to determine whether a person is unfit based on the facts in each matter. It is a discretionary administrative power.

I was asked why people may be detained for a period of two hours to serve an interim firearms prohibition order. This allows time for police to compile the order and deliver it to the person. If this power is not provided, the person would be able to leave and avoid the controls of the firearm prohibition order until they could be located by police. This could create an unreasonable risk to public safety.

I was also asked: why does the bill not apply to people under 18 years? My advice is that it applies to juveniles and adults. FPOs can be issued to people under 18 years of age if they meet the criteria provided. The bill places an obligation on the person subject to an FPO to inform adults with whom he or she resides of the fact of the FPO.

I was asked: is the owner of a house liable because they have rented a house to someone they did not know was subject to a firearms prohibition order? My advice is that landlords are not liable in this situation. There is no requirement for the landlord to ask or be told about a firearms prohibition order. I was also asked: is the landlord liable for any breach of this legislation if someone living in the rented house is subject to a firearms prohibition order? I am advised that the landlord is not liable just because someone with a firearms prohibition order lives in his or her property.

I was also asked: can firearm owners modify their firearms? This is addressed by section 25 of the Firearms Act. Firearm owners cannot modify their firearms if the alteration alters the class of firearm; if this occurs, the registered owner must give notice to the Registrar in the prescribed form. An inquiry was also made as to whether SAPOL would be prepared to provide an undertaking that it would use firearm prohibition orders only against people engaged in organised crime, bikie gang members, criminals and when they believe that a person is a threat to another person or property.

SAPOL is committed to managing the proposed legislation within the provisions of the law and in accordance with the aim to target the illegal firearms market, as opposed to legitimate firearm owners. This includes the enforcement of this legislation against people engaged in organised crime, gangs and criminal behaviour and if people are an undue risk to another person, themselves or property

I commend the bill to the council. As I have said, I would be happy to discuss these and other issues in more detail when we begin the committee stage next week.

Bill read a second time.

STATUTES AMENDMENT (POLICE SUPERANNUATION) BILL

Adjourned debate on second reading.

(Continued from 2 April 2008. Page 2259.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:22): I again thank honourable members for their contribution to this bill and for indications of support. On 1 April, during debate on the second reading, the Hon. Rob Lucas asked a series of questions. The answers to those questions are as follows. First, the honourable member asked how many police officers were in the Triple S Scheme. The answer is 2,117. The Hon. Rob Lucas then asked how many individuals were still in the Police Pension Scheme. I am advised that there are 1,846 police officers and 187 former police officers in the Police Pension Scheme. The former officers have a preserved benefit.

The Hon. Rob Lucas asked why the government has chosen to continue with the Police Superannuation Board. The government believes that there continues to be a role for the Police Superannuation Board whilst just over 2,000 members remain and 1,234 pensioners are in the Police Pension Scheme.

The Police Pension Scheme is quite different from the State Pension Scheme and, therefore, whilst it remains a scheme with a relatively large number of members, there is justification in continuing with a separate administrator. The Police Association supports this position. The need for a separate board can, however, be reviewed as the number of active members in the scheme continues to decline.

The Hon. Rob Lucas then asked how much individual board members are paid and how many board members are paid a fee. Three members of the board are paid a fee: the presiding officer receives a fee of $6,600 per annum, and an ordinary board member receives $1,650 per annum. Payment to the third member has commenced only recently due to the member's retirement from government employment.

The Hon. Rob Lucas then asked whether all existing police officers who are members of the Triple S Scheme will be provided with a new option of accessing their accrued Triple S benefit on termination of their service at age 50. I am advised that members of both the police pension and

police lump sum schemes have a special option to take a lump sum benefit on terminating service as a police officer between the ages of 50 and 55. This option is additional to the normal preservation option.

The lump sum option was introduced into both the police pension and lump sum schemes as part of the significant restructure of police superannuation in 1990. It was introduced as part of a strategy to reduce the high numbers of invalidity claims that prevailed in the 1980s. It was introduced as a special benefit option to meet the special needs of police work.

At the request of the Police Association, the age 50 to 55 access option is being maintained for members of the police lump sum scheme being transferred to Triple S. In addition, the option is being made available generally to all police officers in Triple S. It is being maintained as a means of enabling police officers between age 50 and 55 who feel they are burnt out but not sick enough to claim an invalidity benefit to leave the police force voluntarily and with grace.

Whilst taking the benefit at age 50 to 55 incurs a tax penalty, it provides the opportunity for a member to take the benefit and use it as a means of re-establishing oneself in alternate employment. The option still serves a purpose, as in the past financial year 13 members took the benefit and, so far in the current financial year, 11 members have elected to take their benefit between age 50 and 55.

The next question that the Hon. Rob Lucas asked was: what is the cost to the government in providing the age 50 to 55 benefit option? I am advised that there is no additional or new cost to the government in providing the age 50 to 55 access option to existing police officers in the Triple S Scheme. He then asked whether an indication could be given as to the benefit that would be available to a person under the existing provisions of section 4(6b) of the Police Superannuation Act and under the proposed legislation. I am advised that, using the actual example given by the Hon. Rob Lucas, there would be no difference in the entitlement under the current and proposed legislation. This is because the example given by the Hon. Rob Lucas assumes that there is no movement or change in salaries over 40 years' membership in the scheme.

This of course is an unrealistic situation. The problem with the existing wording of the act relates to the very issue of changes in salary over time. Using the scenario given of a police officer returning to SAPOL for the last 10 years before retirement, in a real life example the salary payable on returning to SAPOL after an absence of 10 years working for another police force or prescribed body would be higher than when the member left to work for that host body. The formula and wording in the act caters for the first 20 years of service with SAPOL being based on the highest salary paid by SAPOL or payable by SAPOL if the member was still actively working for SAPOL on the date of retirement.

The problem is, however, that the wording does not provide for the salary paid by the other police force or prescribed body to be maintained in real terms or adjusted according to the rate of inflation during the period of time the police officer has been returned to SAPOL. This means that in the example given by the Hon. Rob Lucas the salary of $140,000 paid by the association would remain as a fixed input to the weighted average salary to be determined in the formula in section 4(6b)(d) of the Police Superannuation Act.

The disadvantage for the member is that the real value of that salary would have been eroded by inflation over the 10 years since the member had left the host body. The government has recognised that this outcome is unintended and would be unfair, particularly since the fund would have been reaping the benefits of investment returns on the money the member and host body had contributed during the period the member had been working for the host body.

Using the Hon. Rob Lucas' example as a basis, but assuming that salaries moved at a consistent rate of 3 per cent per annum over the last 20 years of membership of the scheme, the expected SAPOL salary to be input into the average salary formula would be $126,427, and the association salary $188,148. This produces a salary of $141,857 in terms of the formula. In terms of the existing legislation, the association salary of $140,000 would not be adjusted, resulting in a salary of $129,820 from the application of the formula in section 4(6b)(d) of the act.

The Hon. Rob Lucas then asked whether Funds SA had any direct exposure to the problems as they relate to the sub-prime crisis. I refer the honourable member to an answer tabled by the Treasurer in another place on 14 November 2007 (and I have a copy here if he wishes to receive that). Finally, the Hon. Rob Lucas asked whether any criticism or concern had been expressed about margin lending strategies as they relate to the operation of Funds SA and Super SA and the funds that have been invested on behalf of South Australian public servants and police officers. I am advised that Funds SA does not employ margin lending within its portfolios and

is not associated with any margin lending strategies or operations. I thank members for their contributions and look forward to the resumption of debate on this bill next week.

Bill read a second time.

STATUTE LAW REVISION BILL

Adjourned debate on second reading.

(Continued from 2 April 2008. Page 2260.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:25): I thank the Hon. Robert Lawson for his contribution and indication of support for the Statute Law Revision Bill. I have also discussed this with the Independent members of this parliament, who have indicated that they do not wish to make a contribution to what is really a very technical and straightforward bill. So I am pleased with the indications of support for this bill, and I look forward to its speedy passage, as soon as the Hon. Robert Lawson returns to the chamber.

Bill read a second time and taken through its remaining stages.

At 17:29 the council adjourned until Tuesday 8 April 2008 at 14:15.