LEGISLATIVE COUNCIL

Wednesday 7 May 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:02 and read prayers.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:03): I seek leave to move a motion without notice concerning the conference on the bill.

Leave granted.

The Hon. P. HOLLOWAY: I move:

That standing orders be so far suspended as to enable the sitting of the council to be continued during the conference with the House of Assembly on the bill.

Motion carried.

SERIOUS AND ORGANISED CRIME (CONTROL) BILL

In committee.

(Continued from 6 May 2008. Page 2702.)

Clause 22.

The Hon. M. PARNELL: I am happy to speak now, unless the minister has any information from last night that raises other questions.

The Hon. P. HOLLOWAY: I am not aware of anything.

The Hon. M. PARNELL: There was one jurisdictional question about a bikie member.

The Hon. P. HOLLOWAY: I think that we are considering recommitting that clause. We will move an amendment to clarify it, and that will be circulated.

The Hon. M. PARNELL: I move:

Page 12, line 23—Delete 'or was reckless as to that fact'

This amendment is replicated in a number of places through the bill. I advise the committee that I will not be dividing on this amendment, but I will be doing so on a later amendment in a similar vein. The issue, the subject of my amendments Nos 12, 32, 33 and 34, is the concept of recklessness as a condition that results in a person committing a criminal offence.

In the context of clause 22, this clause provides that it is a criminal offence to contravene or fail to comply with a control order. A clause such as this is necessary: if you are to have control orders, it needs to be a criminal offence not to comply with them. So, the clause provides that a person who contravenes or fails to comply with a control order is guilty of an offence, with a maximum penalty of imprisonment for five years. But then there is a defence built into this clause, which provides:

A person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the order or was reckless as to that fact.

To take that apart, it says that it is basically a defence that you did not know that what you were doing was contravening a control order—and that goes to the heart of the criminal law, where you have to have both a guilty act and a guilty mind (the idea of actus reus and mens rea). But there is in the criminal law occasionally an exception, and that is the exception of recklessness. The most common example which is taught in law schools is a murder trial where someone did not set out to shoot the person who died; they walked into a room firing wildly, not caring whether or not they hit anyone. If someone dies, that is still murder, and it is regarded as recklessness. You were recklessly indifferent as to the outcome of your conduct. It is not manslaughter; it is murder in that situation.

To take that concept of recklessness and apply it to a failure to comply with a control order is an entirely different situation. What I need the government to explain to me is the circumstances in which recklessness might arise, effectively, as a defence. It seems to me that there are two situations: first, the person did not know that there was a control order against them; and, secondly,

they knew there was a control order but they did not know what was in it and therefore cannot be regarded as culpable for failing to comply with it. So, I need the minister to explain whether it is either or both of those circumstances that trigger this concept of recklessness.

In terms of a person not knowing whether or not a control order existed against them, the bill sets out with a degree of precision the requirements for service. In other words, if a control order is issued, then it needs to be served on the person to whom it applies. But the bill goes on to say, 'Well, there are some circumstances where you can't actually find them.' And we can all imagine that people are not necessarily willingly going to bring themselves to the attention of a police officer who has a control order in their hand and volunteer to take it from them. You can imagine situations where people will make themselves scarce and try to avoid having a control order placed on them if they suspect that one might have been issued.

So, the bill provides for what I guess is the Luther situation. You can nail it to the door of the church—or, in this case, perhaps, the door of the motorcycle clubhouse, if we are talking about outlaw motorcycle gangs. If nailing a control order to the door of a building where a police officer believes the person is inside (whether or not they are) is considered to be sufficient service, the person might genuinely not know that a control order exists against them. A consequence of that is that they do not know what is in it, yet we have this situation of recklessness. So I would like the minister to address recklessness and the standard to which the government believes people must go to try to inform themselves of the possibility of the existence of a control order.

The Hon. P. HOLLOWAY: I thank the Hon. Mr Parnell for his comments. The amendment is the first in a series that amends the offence provisions 'contravening or failing to comply with a control order', 'contravening or failing to comply with a public safety order', and 'criminal association' to remove recklessness, thereby requiring the prosecution to prove knowledge. I suggest this be treated as a test amendment for the series of amendments.

The effect of these amendments will be to amend the offence provision so that: in the case of the offence of contravening or failing to comply with a control order, the prosecution must prove that the defendant knew that the act or omission constituted a contravention of or failure to comply with the order; in the case of the offence of contravening or failing to comply with a public safety order, the prosecution must prove that the defendant knew that the act or omission constituted a contravention of or failure to comply with the order; and, in the case of the offence of criminal association, the prosecution must prove that the defendant knew that the other person was a member of a declared organisation, was subject to a control order, or had a conviction of a relevant prescribed kind.

The government opposes these amendments. Limiting the mental element of the offences under the legislation to actual knowledge will unduly inhibit enforcement of control orders, public safety orders and the offence of criminal association. In his second reading contribution, the Hon. Mr Parnell questioned how a person can be reckless as to whether another person is a member of an outlaw motorcycle gang or is subject to a control order. This question, and the answer to it, illustrate the need for the offence provisions to incorporate recklessness and the problems in terms of prosecution and enforcement which will be created if recklessness is deleted from the offence provisions.

The recklessness test that the government would expect the courts to apply to the offence provisions in this legislation would be that the defendant is aware of a substantial risk of a relevant fact (that, for example, a person with whom he has been associating is a member of a declared criminal motorcycle gang) and that, having regard to the facts that are known to the defendant (for example, that the person regularly associates with known members of the gang and that the relevant association took place at the clubrooms of the gang, at an event or events organised by the gang), it was unjustifiable for the defendant to have taken the risk—in this case, that the particular person with whom they were found to be associating was a member of a declared organisation. This may be so where the prosecution is unable to establish that the defendant actually knew that the other person was a member of a declared organisation.

The government believes that to delete the recklessness component of the offences (as the Hon. Mr Parnell suggests) will compromise enforcement of the legislation and may allow criminals to avoid prosecution for offences under the legislation because of the high evidentiary burden imposed on the Crown under a strict knowledge test.

The Hon. S.G. WADE: The opposition is persuaded by the government's answer, but I thought I also might comment on comments that the Hon. Mr Parnell made, because I think he was

also addressing the issue of knowledge of the defendant in relation to the existence and the content of a control order.

My understanding of clause 16 is that a control order must be served on the defendant personally and that in fact a control order is not binding on a defendant unless it has been served on the defendant in accordance with this section. It is not foreseeable that a defendant would not be aware of the existence of a control order and, if they were reckless with regard to their compliance with it, the opposition believes they should not be able to avail themselves of the defence in clause 22(2).

The Hon. M. PARNELL: In response to what the Hon. Stephen Wade is saying, I agree with him up to that point, until we get to the situation where it is possible for a control order to be deemed to have been served on someone without them actually knowing it. This is where clause 16 is important, because it provides that, if the person serving a control order has reasonable cause to believe that the defendant is present at any premises—let us say the police officer suspects the person is at the clubrooms and they turn up at the clubrooms—but is unable to gain access to the defendant at the premises for the purpose of effecting personal service of the order on the defendant—in other words, they turn up at the clubhouse, they think the person is in there, but the door is locked and they cannot get in—then the service is regarded as effective if the police officer leaves it for the defendant at the premises with someone apparently over the age of 16 years.

So, if an adult answers the door, you can leave the control order with them and it is regarded as effective service. However, the clause goes on to provide that, if the person serving the order is unable to gain access to such a person at the premises—in other words, no-one answers the door when you knock—then the police officer can affect service by affixing it to the premises at a prominent place at or near to the entrance of the premises. This is a Luther clause: this is nailing the control order to the door of the church, and that is regarded as effective service.

The problems with that are that, first, even though the police officer might have had reasonable cause to believe they were there, they could be wrong. The reasonable cause might have been one of dad's army we were talking about the other day. The police volunteers with their binoculars undertaking surveillance work may have rung up and said that they saw this person of interest go into these premises, but they may have been wrong. I would have thought that that sort of intelligence might lead a police officer to have reasonable cause to believe that the person was there.

So, the situation can conceivably arise where the intelligence was wrong; the police officer, whilst he or she might have had reasonable cause, turned out to be wrong; the person was not at the premises; knocking on the door resulted in no reply; therefore, the control order was nailed to the door of the premises. The subject of the control order might have been hundreds of kilometres away and might never attend those premises again, yet the control order under this regime is regarded as having been effectively served. If it has been effectively served, the implication that flows from that is that the person has knowledge of the control order and of its contents, when clearly on that scenario they do not know it is there.

I appreciate the minister's prepared statement, but this is where I want to know where recklessness kicks in. Is it reckless for a person not to regularly check the door for notices nailed? Is that what recklessness means? I need to know. I accept that these people will not go out of their way to discover the existence of a control order against them, but I want to ensure we tighten this right up, because five years gaol is at stake. It is conceivable under this legislation that you go to gaol for five years for disobeying an order that you did not know existed and did not know the content of if a court believes you were reckless. I need to know what are the indicators of recklessness in this control order situation.

The Hon. P. HOLLOWAY: The police regularly face situations where, if they are serving a warrant an or anti-fortification order on an outlaw motorcycle gang, they simply will not come to the door or will slam the door in their face and refuse to accept it. There has to be some provision to deal with that sort of behaviour, and clause 16 deals with service of the order and clause 22 deals with the offence of a contravention or failure to comply, and that goes to whether the act or omission constituted a contravention or failure to comply with the order or is reckless as to that fact. We are dealing with a known loophole that is regularly exploited by bikies to avoid the service of notices. These people have got used to our legal system over many years. They have hired the best legal advice to get around it and we need to have methods to thwart their behaviour.

The Hon. M. PARNELL: When I commenced my remarks, I said that this concept of recklessness occurs at a number of locations through the legislation and that I was not proposing to divide on this one but would at a later stage. The minister has invited me to speak now to all of the occurrences of the issue of recklessness, so I will do that and, if necessary, will divide on this clause but not on the others, as I want to test the concept once.

Recklessness occurs in relation to control orders but also in relation to public safety orders. The arguments are very similar in that it is a criminal offence not to comply with one of these orders, and that makes sense. There is no point having orders if there are no consequences for not complying with them. Clause 32 provides that a person who fails to comply with a public safety order is guilty of an offence, and five years gaol is the penalty, and the defence is that a person does not commit an offence against this section in respect of an act or omission unless the person knew that the act or omission constituted a contravention of or failure to comply with the order, or was reckless as to that fact.

The particular circumstances of the public safety orders that are different from the control orders are that we can have public safety orders being issued verbally by police in a heat of the moment type situation (on a fairly urgent basis) and, if someone disobeys that order, it is important that we be properly satisfied that they knew there was a public safety order and that they were contravening it. That gives us the two criminal elements: their guilty acts; and their guilty mind (the actus reus and the mens rea).

But, in a situation where you have public safety orders being issued on the spot, as it were, and you have this concept of recklessness, that seems to me to imply that someone who does not hear the order—they do not hear what the police officer is saying to them—and then disregards it might somehow be guilty of an offence, even though they had no actual knowledge. What I would like the minister to explain is how the concept of recklessness would work in those on-the-spot public safety order situations.

The Hon. P. HOLLOWAY: First, whether or not the notice is served is a question of fact. It is simply not possible to state categorically and in advance that a person will be reckless in doing this or not doing that; it always depends on particular facts and circumstances. It is possible to speculate on what a fact finder might find in a specific factual situation one way or another, but that is not a particularly profitable activity in terms of the general principle. The general principle says that you cannot be reckless unless you actually advert to a substantial risk that the relevant incriminating fact exists. And this is vital: it is less than actual knowledge but much more than mere ignorance.

The Hon. S.G. WADE: The opposition's view is that the Hon. Mark Parnell's concerns seem to relate mainly to the service process and that he is trying to alleviate his concerns in relation to the servicing of the notice process by increasing the latitude accorded to people on whom an order has been served. We would prefer that, if he has concerns about the service process, he improved the service process.

For our part, we are willing to allow the government to have the service process as provided for in the bill. We will be watchful, in relation to the operation of the bill as a whole, to make sure that it does not unduly impose on the freedoms of individuals who are law abiding and who should not be subject to a bill relating to serious and organised crime.

For our part, we see the risk of mischief from legitimate subjects of this bill trying to avoid accountability for breaching an order through reckless behaviour or recklessness as to the fact of whether an act or omission has been committed against the order—trying to escape their obligations—as a greater concern than an indirect amelioration of problems in relation to the service process about which the Hon. Mark Parnell is concerned.

The Hon. A. BRESSINGTON: Minister, am I right in thinking that anyone who is going to be served with a control order has already received five previous warnings that they are on the list, that is, that they have previously been observed five times associating with people they should not be associating with?

The Hon. P. HOLLOWAY: I think the honourable member is talking about the offence of criminal association. The control orders would be issued to members of the outlaw organisation or those who are ex-members if it is provisional. They are the ones who receive the control orders. I think the honourable member is talking about the offence of criminal association. If they have had more than six associations with the person subject to the control order, that is when that would come in.

The Hon. A. BRESSINGTON: My point is that they would pretty much know they are on the list and that serving them with a control order if they continue to associate is not going to be of great surprise to them. In that case, they are being reckless to the fact that they are almost due to have a control order served on them, anyway. If they are prepared to be caught six times by association and ignore that, they have been reckless to that fact, anyway.

Also, in relation to the Hon. Mark Parnell's point about how these control orders are being served, one of the favourite mechanisms these guys have is to duck and weave. If they know they are being observed at a certain premises and intelligence is building up on them, it is nothing for them to move across town at the drop of a hat and relocate in order to avoid being served with warrants and everything else. This is what they do. So, if they have already had five warnings that they are on the hit list for a control order and they continue to ignore that, they are demonstrating recklessness in regard to the control orders, in the first place.

The Hon. P. HOLLOWAY: I point out to the honourable member that, if we are talking about control orders, these are people about whom the Commissioner will apply to the courts to issue a control order. I think the honourable member is talking about criminal association, where people have been associating with someone subject to a control order more than six times.

The Hon. A. Bressington: But they still know, don't they?

The Hon. P. HOLLOWAY: Well, for any one subject the criminal association would. However, if we are talking about people subject to a control order, in most cases the police will do everything they can to find them, but some of them will deliberately go missing; that is their history. I think there is an example with one particular fortification where members of the group will clearly do everything they can to avoid being served with an order. It probably used to happen with a lot of people in the civil jurisdiction as well.

Unless you have this fallback application police effort will be tied up in hours and hours of hunting down someone to give them a piece of paper. Is that how you want resources to be used? Obviously, there has to be a reasonable endeavour on behalf of police officers to serve the notice, but if there is deliberate avoidance there has to be some way of serving warrants. I am sure it is true in general legislation, that there is some provision if people are deliberately avoiding it. I am advised that, under the serving part, the officer actually has to believe that they are on the premises. So, there has to be a belief that they are actually in there.

The Hon. A. BRESSINGTON: I do not want to indicate that I will support this amendment, because I will not. I am trying to get clarity on the fact that people are well enough aware that they are under suspicion, that they are sailing close to the wind, so that being served with a control order would not be a surprise out of the blue for anyone. They would have been well aware that it was on the cards, and, as I said, could quite easily move premises for three, four or five days or weeks, or whatever, to avoid being served.

The Hon. M. PARNELL: The Hon. Ann Bressington has moved us into this question of criminal associations, and I would like to deal with that now because, as I said initially, for me that was the clause that was the deal breaker. The provision of 'recklessness', as it applies to control orders (and I accept what the Hon. Ann Bressington is saying), is unlikely to be a surprise to many people; still, there is the possibility that someone could genuinely not know. In relation to public safety orders, as I said, my concern was around the urgent orders issued by police on the spot; you just might not know that that has happened.

However, the worst provision of all in relation to 'recklessness' is under the heading of criminal associations. This is where we need to tease out what the Hon. Ann Bressington was saying, because I think there are some presumptions there that I do not read into the legislation. Clause 35 provides:

> A person who associates, on not less than 6 occasions during a period of 12 months, with a person who is—
>
> (a) a member of a declared organisation; or
>
> (b) the subject of a control order,
>
> is guilty of an offence.

Let us fully understand that provision. It is not the person with the control order, it is not the person who is a member of a bikie gang, who is risking criminal offence; it is the person who associates with them more than six times a year. So, our starting point is an innocent person—and we can explore how innocent they are, but the starting point is an innocent person—and then they have

more than six contacts with a member of an outlaw organisation, or with a person who is the subject of a control order, and they are guilty of an offence. It is as clear as that.

The Hon. Ann Bressington said that, if it were a 'six strikes and you're out' situation, surely you would know, because you would have had five warnings. However, a person might not find out that they have infringed this provision until they are arrested after having the sixth contact. There is no obligation in here to warn the person; the police do not have to go up to the person and say, 'Excuse me, that's one strike for you because you've been talking to a person who is a member of an outlaw motorcycle gang', and then do the same again after two or three contacts. The person may not know that they have committed a criminal offence until after the sixth occasion and they are arrested.

So this is a very serious provision, and we have to make absolutely certain that the people who will be subjected to this criminal penalty are convicted only if there is some guilt (for want of a better word) on their part. They have to have done these things, associated with this person, knowingly—knowing that they are a member of an outlaw motorcycle organisation or knowing that they have a control order. That is actually in this legislation. Clause 35(2) provides:

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

Now, if that was the end of it that would be a reasonable provision. In other words, you cannot go to gaol for five years for having six contacts with a person unless you knew that you should not have been contacting them, unless you knew they were a member of an outlaw organisation, a declared organisation, or you knew that they had a control order against them.

However, the clause does not stop there. It goes on to say, 'or was reckless as to that fact.' That is a remarkable provision to put in a clause that has a five year gaol term; that you can go to gaol for having six contacts, even though you did not know that the person was a member of an outlaw motorcycle club, for example, or that they had a control order against them, but because you were reckless.

'Recklessness' in this context means the creation of an entire new standard of social discourse in South Australia. It sounds like I am overstating it, but I am not. You risk five years' gaol unless, when you meet people, you ask them whether they are a member of an outlaw motorcycle club or whether they have a control order against them—because failure to ask could be regarded as recklessness. People might say, 'That's outrageous. If you meet a little old man, a little old woman, a young person (or whomever), you can't be expected to ask them whether they are a member of an outlaw organisation. You can't be expected to ask them whether they have a control order. There must be something else.' What is that something else?

Is any person wearing a leather jacket potentially on your radar as someone that you should be finding out a bit more about before you talk to them? Is that the new social discourse in South Australia: that anyone wearing a leather jacket should be asked? 'It looks like you ride a motorbike, so I have to ask you. I can't talk to you any further, I can't write to you, I can't email you, I can't have any contact with you if I find out that you are a member of an outlaw motorcycle club. I need to know this.'

Is that the test? Is the test a person wearing a leather jacket? Is the test higher than that? Is it a person wearing a leather jacket with a patch or a badge on the back with the name Hell's Angels, the Rebels, or whatever it might be? Is that the standard? If you fail to ask this person to turn around so that you can look at their back, is that recklessness? Is that what is going to trigger your committing this potential criminal offence?

In discussions on this clause with people it was described to me as the 'speed dating clause'. Speed dating is not something that I have ever engaged in but those who have tell me that it is an arrangement where people meet, they sit in couples at a table, they ask each other questions for a period of time and then, apparently, a bell rings and they move to the next table. It is a way of very quickly meeting a large number of people, sort of a bit like a dating service—well, it is; it is a speed dating service.

The reason that people are starting to call this the speed dating clause is that, rather than, 'Do you come here often?' or, 'Isn't the weather nice?' or whatever other lines people might have in this situation, maybe one of the compulsory questions now is: 'Are you a member of a declared

organisation or do you have a control order against you? Because if the answer to that is yes then whatever chemistry might be between us, I am not going to see you again.'

I do not think I am overstating the case here. I mean, the government might say, 'Well, recklessness involves something that is very clear.' You have to see them hop off a motorcycle; you have to see the back of their jacket; or you maybe have to read *The Advertiser* every day and find out if there are news reports on people who might have control orders against them, or which motorcycle clubs—if we are told they are the target of this legislation—are declared organisations.

We are putting on the citizens of South Australia an incredible onus to find out about the people that we communicate with before we get up to the six communications, or they are at risk of going to gaol for five years if we get it wrong. The assurance that I want from the minister is that I am wrong in relation to what 'recklessness' means in the context of criminal associations. What does it mean to be reckless as to the fact of whether the person you are talking to is a member of a declared organisation or the subject of a control order? How can you be reckless unless you have failed to ask them directly the question?

The Hon. P. HOLLOWAY: There are many things I could say in relation to this. First, the onus of proof is on the prosecution. You do not have to prove your innocence. The onus is on the prosecution to prove the fact. It may be very difficult for someone who is associating with a bikie to actually prove that that person was a member of a bikie organisation. I do not think they publish their membership lists on the internet. So, there is a problem.

However, if someone is going to a bikie headquarters or the person is wearing regalia, then it comes back to what we were saying yesterday. Essentially, the prosecution would have to prove that someone is quacking like a duck and has feathers like a duck, etc. before the courts would accept it. It would have to be established in court that there were some facts known to the defendant about the identity of the person they were mixing with before the recklessness test would come in—and I think that is the important point to make.

Apart from that, I will repeat what I said earlier. In the recklessness test the government would expect the courts to apply the offence provision of this legislation, that is that the defendant is aware of a substantial risk—for example, that a person with whom he has been associating with is a member of a declared criminal motorcycle gang; and, having regard to the facts that are known to the defendant—for example, if the person regularly associates with known members of a gang and that the relevant associations took place at the clubrooms of a gang or at an event or events organised by the gang—that it was unjustifiable for the defendant to have taken the risk that (in this case) the particular person with whom they were found to be associating was a member of a declared organisation.

In other words, the prosecution would have to establish that this person—and they may not be able to prove it—actually knew that the person was a member of a gang. It would have to be proved that he knew that this person regularly goes to clubrooms and associates with members, that he had seen him wearing the regalia and all that sort of thing. Those are the sorts of facts that would have to be established for the recklessness test to apply.

The Hon. R.I. LUCAS: Believe it or not this question was put to me by a person who works in and around Parliament House, and having listened to the debate I want to put it to the minister just to clarify it. The question was asked about a person whose son or daughter's partner is a member of an outlaw motorcycle gang and the son or daughter, with partner, comes more than half a dozen times a year for babysitting purposes and/or staying overnight—so it is a family arrangement.

On the basis of what the minister and the Hon. Mr Parnell are saying, the person wanted to know, in essence, whether the mother-in-law or father-in-law of the outlaw motorcycle gang person is, under this definition, an associate and therefore committing the offence that the Hon. Mr Parnell has been talking about, because the person does know that the son or daughter's partner is a member of an outlaw motorcycle gang but in terms of the family arrangements intends to continue to babysit and to have family dinners more than half a dozen times a year.

Is the import of what the Hon. Mr Parnell is saying and what the minister is saying that this particular person, who works in and around Parliament House, an associate under the legislation and, therefore, committing an offence or will be committing an offence?

The Hon. P. HOLLOWAY: Perhaps it is time we did move on to that clause. Clause 35 specifically relates to relationships and, as you can see from the amendment I have circulated now,

it recognises spouses, former spouses or close personal relationships, including parents, grandparents, brothers and sisters or guardians and carers and others, so there is specific—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: An amendment to clause 35(6) and (11) covers this. There are already exemptions and we are just further clarifying them.

An honourable member interjecting:

The Hon. P. HOLLOWAY: No.

The CHAIRMAN: I remind members that this amendment has been going for over half an hour.

The Hon. A. BRESSINGTON: It is a pretty important amendment.

The CHAIRMAN: It has been 40 minutes.

The Hon. A. BRESSINGTON: When we went to the police briefing, we were told that if people were associating (the six rule thing) the police would be notifying them on the night, when they were seen. The police would have you-beaut new computers in their cars and they would be able to put data in and type in 'Joe Blow' and it would come up on a screen about how many times that person had been warned about associating with criminals or people from declared organisations.

These people would be tapped on the shoulder and told, 'The guy that you've just been speaking to is a member of the Hell's Angels (or the Finks or whatever). It's a declared organisation, and it is not in your best interests to continue to associate with them.' I would like to clarify with the minister whether that sort of thing is in place or will be in place. Are there going to be warnings for people who are associating because, otherwise, I might have been a bit hasty in saying that I would not be supporting this.

As the Hon. Mark Parnell said, you may not know that they are a member. We have to understand that bikies (or people associated with motorcycle gangs) do not walk around all the time in leathers. I am sure that the accountant that the Hon. Sandra Kanck knows does not show up for work every day in his leathers.

There is another issue: if this person is running an accountancy business and he is doing tax returns and looking after the financial affairs of people who are not involved in motorcycle gangs, does that mean that everybody who is accessing his business or his services can then be charged with criminal association?

The Hon. Sandra Kanck: It will be put down on an account: one association and then two.

The Hon. A. BRESSINGTON: Yes, but if he is an accountant who is associating with or belongs to a motorcycle gang and he has 500 clients and 498 of them who are accessing his services are involved in criminal activities, but one or two of them are not, does that mean that those two people are guilty by association, as well?

The Hon. P. HOLLOWAY: As a general rule, the police would always warn people; why would you not ? If you want to avoid the debate we have just had about recklessness then, at least by being warned, people cannot say they did not know. It just makes sense for the police, as a general rule, to warn people. There could be cases where, if the police were involved in an investigation which might lead to a tip-off or something like that, they would probably be unlikely to issue an order because of the ongoing investigation. However, it makes sense and it is logical for the police to issue warnings, because then you cannot argue that you were not aware of it.

The Hon. SANDRA KANCK: I am sorry that the chair himself thinks that we spent too long on this. However, when we are talking about five years' imprisonment I think we have to get to the truth of it. As part of this, I have to remind members, as I have done on a number of occasions, that this bill does not mention bikies. When we go back to the objects of the act, we have a very weak, lily-livered section that provides, 'without derogating to subsection (1) it is not the intention of the parliament that the powers in this act be used in a manner that would diminish the freedom of persons in this state to participate in advocacy, protest, dissent or industrial action'.

One of the things that I have noticed is that, of course, it does not mention political parties. I am starting to get a little bit worried about the intent of this legislation, particularly in relation to control orders. I was a little young to remember it, but I know from history of the moves that were

made in the early 1950s in this country to outlaw the Communist Party. It could well be that, somewhere down the track, because there are just are not the protections in this legislation, a particular political party could be declared, and the members of it could be subject to these control orders. So, perhaps, the throwaway line that the Hon. Mark Parnell made about having to ask little old ladies about their backgrounds and what organisations they belong to, is not as far-fetched as it appears to be.

I want to pursue what the Hon. Ann Bressington has been saying. She says that these people who are subject to control orders will know, but there is no provision—

The Hon. A. Bressington: But will they know?

The Hon. SANDRA KANCK: She is asking: will they know? There is no provision in this act—no system of demerit points—that requires anyone who has had one, two, three, four or five associations to be advised of the fact that, effectively, they are about to lose their licence to continue these associations. There is nothing in the act.

Does the minister intend, for instance, that there be something in the regulations that advises these people who are on the brink that they are about to cross the line? It really is a very important fact to be considered in relation to this amendment. Given that there is nothing in this legislation that requires that to occur, I believe that the Hon. Mark Parnell's amendment is a very important one to support.

The Hon. P. HOLLOWAY: We are really going back over old ground here. The Attorney-General makes the declaration about the organisation. The notice of declaration is covered in clause 11 and it is published in the *Gazette* and the newspaper. So, for her to try to suggest that political parties can somehow or other fit under the terms that we have already considered in clause 10, or that somehow people will not know about it, is just being mischievous. Not only that, we have already debated those clauses. We are just going around in circles.

The Hon. SANDRA KANCK: I ask the minister to please advise how somebody who has had an association with people who have control orders will know that they are on the verge of breaching this legislation. How will they know, how will they find out, if they are not aware?

The Hon. P. HOLLOWAY: Clause 35. I will be happy to answer that there. But we are trying to debate the whole bill in one clause, and no doubt we will go through it all over again. We have been on just one clause for nearly an hour.

The Hon. M. PARNELL: For the benefit of the committee, I agree with the minister. I was trying to assist the committee by discussing all my recklessness provisions together. I will go back to my original position. I have moved amendment No. 12, but I will not divide on that. The committee has made its position clear in relation to control orders, and I will not divide on recklessness in relation to public safety orders. However, when we get to clause 35, we will need to explore a little further the questions that the Hon. Sandra Kanck has raised.

Amendment negatived; clause passed.

Clause 23.

The Hon. M. PARNELL: I move:

Page 13, line 37—After 'Subject to' insert:

Subsection (6a) and

I advise the committee that this is a test on the topic of public safety orders and a test for my amendment Nos 17, 18, 24, 27, 29, 30 and 31. The main purpose for moving these amendments is to better protect the rights of citizens to engage in lawful protest and to stop these laws being used—or, rather, abused—in order to close down legitimate protest actions and rallies by requiring that more notice should be given of public safety orders, and to improve the rights of appeal against public safety orders.

The regime as it currently exists is that it is only longer term public safety orders that have any real measure of accountability. I think it is 72 hours, from memory. Any control order of less than that time does not go through any great accountability. The danger in that, of course, is that a protest rally or a march, or something like that, may not be planned that far in advance, and there is no obligation on the police to issue a public safety order even if they know that it is coming up. In fact, they can wait until the day before, issue a public safety order, and there will be no way for people to be able to challenge that.

I am not suggesting that it is the intention of the government or the police to deliberately interfere with our democratic rights or to stop protests; nevertheless, whilst the door to abuse remains open, I think we have imperfect legislation. It is conceivable that the situation will arise where the police will expect some difficulties in a protest situation. In the past, we have seen that issues in relation to race, for example, can be volatile.

It may well be that the police, in balancing their role to protect society, will come down on the side of public safety orders and shut down a protest rather than risk possible violence or disquiet in the community. When the police are making their call, they are only judging the situation against their brief, which is law and order. Their brief is to protect the community and try to keep it safe. As we have said before, in parliament our brief is wider. Sure, it is part of our brief to give the police appropriate powers to deal with crime, but is also our brief to safeguard civil liberties and the right of citizens to collectively engage in protest activity.

So, that is the thrust of my amendments. I will make a few other brief comments, but I would like a response from the government and the opposition in relation to this raft of amendments that seek to put more rigour into the public safety order process.

The Hon. P. HOLLOWAY: First, clause 23(5) provides:

> Despite any other provision of this section, a senior police officer must not make a public safety order that would prohibit a person or class of persons from being present at any premises or event, or within an area, if—
>
> (a) those persons are members of an organisation formed for, or whose primary purpose is, non-violent advocacy, protest, dissent or industrial action...

This amendment is the first in a series of amendments placed on file by the Hon. Mr Parnell that will create a general right of objection to a public safety order. Currently, clause 26 of the bill provides that a right of objection by way of a notice filed and heard in the Magistrates Court applies only where the public safety order, either as made or varied, will operate for more than seven days.

In addition to creating a general right of objection, Mr Parnell's amendments will amend clause 30 of the bill so that, once made, a public safety order does not become binding for 72 hours from the time it is served (presumably, this is to give a person who is subject to a public safety order an opportunity to object), and it will delete clause 31, which provides that, in urgent circumstances, a public safety order must be served verbally, although a written copy of the order must be made available to the person, and the person must be advised about this.

As this amendment is the first in a series, I suggest again that we treat it as a test amendment (although every amendment seems to be a test amendment). The combined effect of these amendments will be to rule out the use of public safety orders in urgent cases or, indeed, in any case where the risk to public safety or property is expected to arise within 72 hours.

SAPOL's advice is that these are likely to be the majority of cases where public safety orders will be used, that is, where this risk is expected to arise within three days. Furthermore, the government would expect that members of declared organisations and other criminals, the targets of these provisions, will lodge notices of objection in most, if not all, cases, thus further delaying the operation of the order.

As I have said, these criminals are well funded and have access to top legal advice and representation. They are not beyond using the legal system to its maximum extent to advance their criminal objectives. Although there has been a deal of hysteria about these provisions, the power conferred on senior police officers under part 4 of the bill, the public safety order provisions, is in fact quite limited and subject to a number of safeguards.

The public safety order operates only to prohibit the relevant person or class of persons entering or being on specified premises, attending a specified event, or entering or being within a specified area. A senior police officer may issue only an order that operates for up to 72 hours or the duration of an event; any longer and the officer must seek authorisation from the court. A public safety order may only be issued when the officer believes that the presence of the person or members of the class of person poses a serious risk to public safety or security and that the making of the order is appropriate in the circumstances.

Serious risk is defined in clause 23(8) to mean a serious risk that the presence of the person or persons might result in the death of or serious physical harm to a person or serious damage to property. When determining whether to make an order, the officer will be required to have regard to:

- whether the person or members of the class of persons had previously behaved in a way that posed a serious risk to public safety or security or have a history of engaging in serious criminal activity;
- whether the person or member of the class is or has been a member of declared organisations or subject to control orders;
- the public interest in maintaining freedom to participate in advocacy, protest, dissent or industrial action;
- whether the degree of risk justifies the order, having regard in particular to any legitimate reason the person or persons may have for being present at or in the relevant premises, event or area;
- the extent to which the order will mitigate the risk; and
- the extent to which the order is necessary, having regard to other measures reasonably available to mitigate the risk.

A police officer may not make a public safety order that would prohibit a person or class of persons from being present at any premises or event or within an area if those persons are members of an organisation formed for or whose primary purpose is non-violent advocacy, protest, dissent or industrial action and the officer believes that advocacy, protest, dissent or industrial action is the likely reason for those persons to be present at the premises, event or within the area.

As with all powers under the legislation, the exercise by senior police officers of the public safety order powers is subject to the objects provision, which clearly sets out parliament's intention about how and against whom the powers are to be used and which will be subject to an annual review by a retired Supreme or District Court judge. As I have previously advised honourable members, the judge's report must be tabled in both houses of parliament.

So, the Hon. Mr Parnell's amendments are unnecessary and will so compromise the responsiveness of that provision as to render the public safety order regime ineffective. Finally, an example is where you know that a war has been going on between two outlaw motorcycle gangs and that they are hell-bent on retribution and the police become aware that a particular group will square off with another group at some particular event or occasion.

Ironically, in that case, you could argue that you are actually protecting some of the criminals, and some people may say, 'Let them go at it,' but I do not believe that that is a responsible attitude. Police have an obligation to protect the safety of all individuals and, if that information is received, they have to respond quickly. That is an example of where, if you remove this provision, they will simply square off somewhere else.

The Hon. SANDRA KANCK: I indicate support for this amendment. The minister has read from the bill as to what clause 23(3) puts in place in terms of the prohibition on a person or persons to whom a public safety order is applied. Of course, to me, that makes it only more important that I support this amendment. I think we need to look at it in terms of the earlier part of clause 23(1), which provides:

> A senior police officer may make an order (a public safety order) in respect of a person or a class of persons if satisfied that—

and then it has two things that the police officer has to be satisfied about. One of the things I have had difficulty with in this legislation is that the opposition is supporting the legislation and it seems to think that the police do not get it wrong, yet there are many instances of the police getting it wrong—and we have the potential here again for the police to get it wrong.

Clause 23(1) effectively allows the police to make a decision based on a belief that does not even have to be substantiated to anyone in the normal course of events, and it is a belief that someone might do something wrong in the future. The accountability is very limited and, again, in terms of what the minister himself read out, he more or less proved that that accountability is limited. Clause 25 allows certain variation orders to be authorised by the court, but that is only if the public safety order is intended to extend beyond 72 hours. So, if it is less than 72 hours there is absolutely no point of accountability. There is no-one to check to see whether the police officer has got it wrong.

The other point that gives a very small degree of satisfaction is in clause 26, the right of objection, so that if someone is going to be subject to a public safety order for more than seven days they can lodge an objection with the court. But, again, if it is six days, five days, four days or

three days, there is just no other accountability in terms of the person who is the subject of that order. When you have so little accountability and so little opportunity for redress, as set out in clauses 25 and 26, I think that is an argument for support of the Hon. Mark Parnell's amendment, because mistakes can been made. In fact, mistakes can be made very deliberately, as the Hon. Mark Parnell has pointed out. A public safety order could be issued surrounding a particular event within a very short period of time before that event occurs which would stop anything happening because of that lack of accountability and the lack of a right to object. So, in terms of these public interest activities, it becomes very important that this amendment is supported.

The Hon. S.G. WADE: The Hon. Sandra Kanck has, for the second time in two days, sought to summarise the position of other members and, as the Hon. Ann Bressington had cause to say yesterday, I also feel that the honourable member has put words in my mouth that misrepresent the position of the opposition. She suggested that our position should be summarised that the police do not get it wrong. I do not know where she got that from. We have never said that in the debate, and that is not our view.

We are greatly indebted to the police of South Australia for the work they do in what is clearly a very difficult area of law enforcement. Our view, if I could state it on our own behalf, is that the problem of the control of serious and organised crime is so serious that firm measures, even unprecedented measures, need to be taken against criminal elements. But, in doing so, we remain concerned that the establishment of such a regime does not unnecessarily impact on the freedoms of law-abiding citizens.

So, we do not suggest that the Hon. Mark Parnell's concerns are without foundation. What we do say is that we are willing to maintain a watching brief and to support an early view of the legislation, but we support the legislation substantially as presented by the government, so we do not support this amendment.

The Hon. M. PARNELL: I will not keep the committee long, but I want to put a few more things on the record. There is general agreement, I think, in terms of this legislation that there is the ability for the police to act urgently, and, in fact, the minister's criticism of my amendment was that it would take away from the ability of the police to act in a timely manner. I accept what the minister says, that there are some protections built into the public safety order provision that are around legitimate protest, and the minister drew our attention to clause 23(2)(c), which provides that, if advocacy, protest, dissent or industrial action is the likely reason for the person or members of the class of persons being present at the relevant event, the public interest in maintaining freedom to participate in such activities should be a consideration taken into account. The clause further goes on to provide that not only must the police consider rights of protest, for example, but they also have to weigh up whether the degree of risk involved justifies the imposition of the prohibitions.

What those clauses together say to me is that here is a formula, or a recipe, for divisive groups in our community to shut down legitimate protest. If you knew a protest was coming up—let us say it was the May Day rally, to mention a recent one—and you were determined to stop that going ahead, you could have a group of people who, one after the other, ring the police and say, 'We are going to get those unionists. We are going to be there with baseball bats and guns.' And, once the police get a couple of these calls (an orchestrated campaign), they are going to be very worried. They would not want to disregard that information and they will be put in the position of thinking, 'We are not supposed to issue these public safety orders to shut down democratic rights and protests or industrial issues, but, potentially, lives are at risk here. We have had threats against this rally and we have to take that very seriously. We have to weigh up,' as it says in paragraph (d), 'whether the degree of risk involved justifies the imposition of the prohibitions.'

The police are put in a very difficult situation. It would be difficult to criticise them if they genuinely thought that this intelligence was that there would be blood on the streets of Adelaide. It would be difficult to criticise them for shutting down a rally. Who is to say where the threshold will be for the police to fall over the line and say that the protest will not go ahead? You only need to look at the news every July from Northern Ireland, where they have these sectarian rallies, the orange men and rival groups, and the police go to great efforts to keep them apart. They try to stop them marching down certain streets. At the end of the day the reason it is on our TV news every year in July is that the balance is struck in favour of allowing those democratic rights, even though there is a very clear danger.

It seems that the difference between that situation and here is that we can have these orders being made at very short notice—there is the seven day and three day rule—with no right for anyone to go to any umpire and challenge these orders. I will not put words into the Hon. Steve Wade's mouth, but he appreciates the issues are legitimate but that a balance needs to be struck,

and most members of the committee have been striking the balance in favour of giving the police these powers. We do so at our peril and we could find ourselves in a situation where subversive and anti-democratic elements in society seek to use the police via these types of powers to shut down democratic protest, and that is why I will insist on this amendment and the others that are consequential.

The Hon. P. HOLLOWAY: The police already have extensive powers under the Summary Offences Act and can exclude people from dangerous situations. They can do it now under the act, and they do so if there is a danger to people. I do not think there has been any suggestion that the police have misused their extensive powers in relation to that. If you read clause 23(5), a police officer would be in violation of the law if they made an order that 'prohibited a person or class of persons from being present at any premises or event...if the persons are members of an organisation formed for or whose primary purpose is', and so on.

If the honourable member's amendment gets up, effectively it will mean that they will not be used. If you get two rival bikie gangs and it becomes known that one bikie gang wants to assassinate a couple of leaders from another gang, that they will attend an event organised by the other gang, that is where the police can issue an order. Also, under clause 23, in considering whether or not to make a public safety order, the senior police officer must have regard to whether the person or class of persons have previously behaved in a way that posed a serious risk to public safety or security or have a history of engaging in serious criminal activity. Clearly, it is designed for those sort of situations. The police could within the three days intervene to prevent or stop that other group where intelligence might indicate they are about to go and assassinate a couple of members of another gang. Some might think that is not such a bad thing, but the police have an obligation to protect even those people who pose a threat.

The ACTING CHAIRMAN (Hon. R.P. Wortley): Mr Parnell, have you moved both amendments?

The Hon. M. PARNELL: I have moved amendment No.17 and have said that it is a test for the remainder of the amendments that deal with the public safety order provisions.

The committee divided on the amendment:

AYES (2)

Kanck, S.M.	Parnell, M. (teller)

NOES (17)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.K.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Schaefer, C.V.	Stephens, T.J.
Wade, S.G.	Wortley, R.P.	

Majority of 15 for the noes.

Amendment thus negatived; clause passed.

Clauses 24 to 28 passed.

Clause 29.

The Hon. SANDRA KANCK: I move:

Page 17—

Lines 2 to 13 [clause 29(1) and (2)]—Delete subclauses (1) and (2)

Line 17 [clause 29(3)]—

After 'person' first occurring insert 'or Committee'

This amendment seeks to delete subclauses (1) and (2). Clause 29 is about the disclosure of the reasons and criminal intelligence. So that anyone reading the *Hansard* can work out what it is I am doing I will read into the record subclauses (1) and (2), as follows:

(1) Subject to section 30, if a senior police officer decides to make, vary or revoke a public safety order, the officer is not required to provide any grounds or reasons for the decision to a person

> affected by the decision (but is required to provide such grounds or reasons to a person conducting a review under part 6 if that person so requests)—

that perhaps might answer some of the questions the Hon. Ann Bressington was asking earlier on about public safety orders and people knowing or not knowing—

> (2) Information forming the basis for the making, variation or revocation of a public safety order must not be disclosed to any person (except to the Attorney-General, a person conducting a review under part 6, a court or a person to whom the commissioner authorises its disclosure) if, at the time at which the question or disclosure is to be determined, the information is properly classified by the commissioner as criminal intelligence (whether or not the information was so classified at the time at which the public safety order was made, varied or revoked).

That seems to me to be a bit retrospective. I see clause 29(1) as being over the top and flawed. A police officer can make a decision based on whatever he likes, and the only person he has to explain it to is a retired judge doing a review—so, it is very much after the event—and even then he has to disclose it only if the retired judge actually asks for an explanation. That is so wide open.

It is something that is going to happen after the event. In fact, if the retired judge has asked for an explanation, particularly if it was flawed, we might not hear about it in the parliament until almost two years after the decision was made. It does not even require, in this particular instance, that the reasons have to be based on criminal intelligence. So, there is a huge degree of unaccountability in this, and I do not think it is appropriate to be granting police this sort of power. If we are to have this sort of power it ought to reside with the courts.

I also mentioned that I intend, via my amendment No. 38, to delete clause 41 so as to allow for judicial review. So, although the deletion of clause 29(1) is not consequential on the deletion of clause 41, it makes sense, in the context of judicial review, to allow people to know the reasons for the decision. Clause 29(2), which I have already read out, provides that police must not disclose criminal intelligence. That is already part of their job description, and it seems to me to be very foolish to put this into the legislation. There would have to be corruption in our police force if officers of the rank of superintendent or above were disclosing criminal intelligence. So, I am removing this subclause because it is simply unnecessary.

The Hon. S.G. WADE: The Hon. Sandra Kanck's amendment asks the council to consider how the police would exercise their powers and document their decisions. Considering that under clause 37 a review is annual (as I understand it), that may be quite some time after a particular police decision has been made. I ask the minister if it is intended that police prepare grounds and reasons for their decisions at the time of making them, or would they be expected to recall what motivated them up to, perhaps, two years later?

The Hon. P. HOLLOWAY: I am sure the police would not issue a public safety order lightly, and in any event it would have to be done in accordance with the act. As I indicated earlier, police have significant powers now under the Summary Offences Act, and if there is a risk to public safety they can exclude all people. The benefit of the public safety orders is that you can exclude people who are a threat rather than necessarily excluding everyone else as well. Suppose a group of bikie gangs was planning to disrupt an event such as the Clipsal race. If you were aware of that, under public safety orders you could prevent those groups from doing it; under the Summary Offences Act the police would basically have to exclude everyone.

I think it needs to be understood that police have significant powers and obligations now in relation to protecting public safety when they become aware that there is a threat. In a sense, these public safety orders provide an additional level of definition whereby you can simply target the people you know are a threat—providing, of course, that they fit the bill, that they are members of these organised crime bodies that fit the definition. Providing they do that, you could exclude them from events rather than having to close down a whole event in the interests of public safety—which may be the case under the current legislation. I throw that into the debate to broaden the understanding of it.

In relation to the specific question, my advice is that police will document at the time—as one would expect. If it were subsequently to be subject to some scrutiny, that is obviously what you would expect. However, if you have a public event from which, for some reason, people are excluded it is not something that will be kept under a hat. Public comment will be made in relation to that. Where the police exclude members of the public now—which they regularly do in certain situations; there may be a petrol tanker and some risk of explosion, or a bush fire, when police regularly exclude people from their homes—it is always subject to public discussion. There have been arguments about police excluding people; one was raised recently regarding people on

Kangaroo Island and whether they should be able to go back to protect their properties when police, in the interests of public safety, had excluded people from entering that area.

There are a lot of occasions when that happens, and it is always subject to public debate—and appropriately so, if these sorts of powers are used. I expect it would be no different in relation to public safety orders.

The Hon. S.G. WADE: I do not want to delay the committee. I want to clarify that I was not addressing the issue of whether the police were being given too much power in relation to public safety orders, I was specifically reflecting on, if you like, what is a pseudo judicial review under clause 37. I welcome the minister's assurance that the police will be documenting their decisions at the time they make them because, in the context of judicial review and whether or not the privative clause is appropriate, one of the advantages of these orders, as opposed to similar police powers under the Summary Offences Act, is that police will be more likely to document and therefore be more reflective in their use of the powers. In that respect, I welcome the assurance of the minister. Whilst the opposition still will be pursuing its amendment to clause 41, that aspect, at least, is welcomed.

Amendment negatived; clause passed.

Clauses 30 to 34 passed.

Clause 35.

The Hon. M. PARNELL: I move:

Page 20, line 27 [clause 35(2)]—Delete 'or was reckless as to that fact'.

Now we are back on the issue of criminal associations, the clause provides:

A person who associates, on not less than six occasions during a period of 12 months, with a person who is—

(a) a member of a declared organisation; or

(b) the subject of a control order,

is guilty of an offence.

My amendment seeks to delete from subclause (2), which is the defence clause, if you like, the words 'or was reckless as to that fact.' I do not propose that we have the whole of the debate that we had earlier, but the last substantial contribution from the minister raised a number of issues that I would like to tease out briefly.

The first was that the minister pointed out that the burden of proof is on the prosecution to prove that a person is guilty of criminal association; the burden is not on the defendant to prove that they are innocent. I can accept that as far as it goes, but I still think that we have a problem with this. I seek not to put defendants in the position of having to defend themselves against a charge of criminal association where they did not know that the person that they were dealing with was a member of an outlaw organisation (a declared organisation) or was the subject of a control order. I do not think it is good enough to just say, 'Well, if the police can't prove it, then the charges won't be found and the person won't be found guilty.' I do not want to put them in that position. I think the test is adequate without the recklessness element. In other words, a person does not commit an offence if they did not know. That should be sufficient.

The minister talked about some of the indicators that might lead to a finding of recklessness, and regalia came up again. This raises a very interesting question as to whether clothing is to become a feature of our criminal law. Anyone who has studied social trends over time will know that the best way to give something popularity is to ban it, whether it is a book or music or whatever. For some people it would be a badge of honour to have some regalia. Anyone who has been to South-East Asia will know that their cities are full of tailor shops that specialise in copying whatever it is you bring them. Go to Vietnam and people there say, 'Bring us a photo and we'll make it.' I reckon it would not be too hard to get yourself a Hell's Angels jacket or something made up.

The Hon. A. Bressington: You would get killed if you wore a Hell's Angels jacket.

The Hon. M. PARNELL: If you wore it in the streets of Hanoi you might be okay, but perhaps not in the streets of Elizabeth. My point is that, once we start getting into discussions around regalia and what people are wearing rather than focusing on behaviour, then I think we are in a bit of strife. However, that is a side issue.

The real issues here are: how do innocent people know whether they are putting themselves at risk in those who they deal with; how do they know which persons are subject to control orders; and how do they know which organisations are declared? I pose that as a direct question to the minister. I know that the *Government Gazette* will contain some information, but that is not of great assistance to the average member of the public who does not subscribe to it or religiously read it online, as we might here. I ask the minister: will the government be publishing lists of declared organisations and lists of persons who have control orders against them, in a way that is accessible to people?

The Hon. P. HOLLOWAY: Again, we have already covered that. The declaration was covered in clause 11, notice of declaration:

> As soon as practicable after making a declaration under this part, the Attorney must publish a notice of the declaration in the *Gazette* and in a newspaper circulating throughout the state.

That is the declaration part, which is covered, but in respect of control orders, no; this law just replaces the consorting law where there is no obligation, as such, to publish it.

The Hon. M. PARNELL: That goes to the heart of it. I accept the minister's answer in relation to controlled organisations—and there will not be that many of them, we have been told. The names of some of these motorcycle groups have been bandied around, and that is a bit easier, because you might know of that group. Whether you know that an individual who you are dealing with is a member of that group if they are not wearing their uniform is an entirely different question. That is very difficult to know. I would be horrified if the test was beards and tummies or something like that, because a few of us might find ourselves socially ostracised.

When it comes to the control orders, if there is no list anywhere; if there is no independent way outside of direct communication with the person to know whether they have a control order against them, then members of our society are running a very great risk of infringing the criminal association provision if they do not know that the person has a control order. I think that the fact that they do not know should be enough to protect them.

If a person can convince a court that they did not know that this person had a control order against them and that, therefore, they should not be guilty of any offence just because they talked to them six times, that should be enough. But having this recklessness element in the bill suggests that the innocent person did not want to know and therefore did not ask. So, all of a sudden we get back to where we were before. There is a new norm of social discourse or social intercourse where it becomes one of those must ask questions if you are to protect yourself from criminal law.

This is a very important amendment to me. I do not think that it undermines the criminal association provision. The minister says that this is just a reincarnation of consorting. I guess when it was consorting, it was consorting with known criminals, and you could say, well, what was the test? Did you know they were a criminal? Just because everyone else knew they were a criminal, it does not mean that you did. It is fraught with danger.

So, let us make it crystal clear that the only people in our community who can be found guilty of this offence of criminal association are those who knew that they were dealing with a member of a declared organisation, who knew that they were interacting with a person who had a control order. Outside of those two circumstances, I do not think we should be putting innocent South Australians at risk of a five-year gaol term.

The Hon. A. BRESSINGTON: I can appreciate what the Hon. Mark Parnell says about innocent people getting caught up in this net. He almost had me until I heard him talk about people who might want to wear a Hell's Angels jacket or the garb that they wear. It is just so obvious to me that Mr Parnell has no idea of how these guys operate. Also, these young kids who are getting recruited into these youth gangs by bikie organisations strive to be able to get those colours, to be able to be identified as a member of that motorcycle gang.

I know that this is a bit off the point, but anyone who wears that stuff without being authorised or sanctioned to do so does so at his own peril. So, in that context, I note that these guys can be slippery-slidey, and I know that if we leave one loophole in this legislation, they will work it, and work it well. If a person is asked in court, 'So, he's never actually told you verbally that he's a member of a motorcycle gang' and they answer 'No'—there you go; you did not know.

As the minister said earlier, when one goes to a clubhouse, to a party, or rides around with them on their bike on the weekend, or associates with them fixing cars or doing whatever they do, and the topic never comes up that they are a member of a motorcycle gang, you would have to be pretty hard pressed not to know.

The only thing that I am concerned about is the point raised earlier by the Hon. Sandra Kanck about Ned, an accountant, who runs a business. On the outside, it is a legitimate business. Three-quarters of his clientele are average, reasonable citizens, but a group of them are not. Could those average, reasonable citizens get caught up in this net of 'or reckless to that'? I find it a long bow to draw that they could, because they would have to have some knowledge, but what is the protection mechanism for them? I am pretty sure that the rest of them would know what they are dealing with.

The Hon. P. HOLLOWAY: The first thing is that there is a defence of reasonable excuse, obviously, if a person is just going there six times a year because he is an accountant. I do not know how often you visit your accountant; I do not visit my accountant that often, but I am sure that he is not a member of a motorcycle gang either.

The Hon. M. Parnell: Did you ask him?

The Hon. P. HOLLOWAY: No—and I am not aware of it. As I said, there would have to be recklessness. Of course, if I had to visit my accountant at a bikie clubroom or somewhere like that, I might have a reasonable suspicion.

This is an example of the sort of warning the police give now under the current consorting laws. 'Person X is a member of', and the organisation is named, 'and the organisation is a declared organisation. It is an offence to associate with a member of a declared association on six or more occasions in 12 months. If you continue to associate with person X or other members of the organisation, you may be guilty of an offence. Do you understand this?'

This is the sort of warning that is given. It obviously makes sense for police to let people know that they are associating with someone who is subject to these orders, as it would then be very hard for them to say that they were not aware.

I stress that there could be cases where, if an investigation is ongoing, the police may not wish to issue such a notice. However, in the vast majority of cases, you would expect that that would be the sort of warning police would give.

The Hon. SANDRA KANCK: I indicate Democrat support for this amendment. I think that I put my reasons on record fairly well when we dealt with a previous amendment of the Hon. Mark Parnell, particularly in regard to the words 'or was reckless as to the fact'. The answers the minister has been able to give to date do not give me any confidence in the wording as it stands.

The Hon. A. BRESSINGTON: I am quite torn over this amendment. In the example of the accountant, if they have 450 legitimate clients and 50 whom the police know are involved in laundering money and doing what they do, the 450 legitimate clients have protection. As police investigations draw to an end, will they receive any sort of notification that the accountant they are visiting is a known member of an organisation? How can it be proved that they are not being reckless in their association with that accountant? He may just be a damn good accountant and nothing illegal is going on.

The Hon. P. HOLLOWAY: I think that it is inevitable that some professionals who are closely involved with these organisations are involved in some sort of behaviour. You only have to look at what happened with Al Capone in the 1920s: he and his associates had lawyers, accountants and other people who were on the take. In fact, in the end, the only reason they put Al Capone behind bars was tax avoidance. Perhaps he needed better accountants, but that sort of situation may occur.

If a person is, for all intents and purposes, operating some legitimate business and, as I say, if people did not know that he was a member (before any offence of criminal association would be committed, apart from having the association), the prosecution would have to present a whole lot of other evidence that they were aware that they were associated with the group. As I said, that would involve other sorts of associations. It can really only be judged on the facts, and it is pretty hard to talk about a hypothetical example.

All I can say is that, if those professional people who do tend to get involved with these gangs are not involved with criminal activity before they start, invariably they must become aware of criminal activity. So, what do you do about a lawyer or accountant who is representing these groups? They must become aware of money laundering and other activities of the principal business, and therefore they would have obligations, one would suspect, to report back. I bet they don't. So I would not be too worried about any purportedly legitimate accountants, lawyers or other people who represent these people having their business damaged as a result of close association with a bikie gang.

In addition, to cover this, clause 35(6) provides:

The following forms of association will be disregarded for the purposes of this section unless the prosecution proves that the association was not reasonable in the circumstances—

and then you have associations between close family members and associations occurring in the course of a lawful occupation, business or profession.

So, perhaps the example of an accountant is drawing a long bow, but what if someone happens to be a mechanic, or something like that, whom you are just hiring in the course of their occupation? I am sure all of us might do that, and we do not know who might come as a tradesperson, but that obviously is excluded under clause 35(6).

The protection in here is that before someone can be charged with this there has to be that level of knowledge that has to be established for the benefit of the court. It may not be actual proof of membership, because that would be very hard to get, but there would have to be strong facts that would underpin the fact that the person who was being considered to be charged would have some knowledge that the person was a member of one of these organisations.

The committee divided on the amendment:

AYES (2)

Kanck, S.M.	Parnell, M. (teller)

NOES (18)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.K.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Schaefer, C.V.	Stephens, T.J.
Wade, S.G.	Wortley, R.P.	Zollo, C.

Majority of 16 for the noes.

Amendment thus negatived.

Progress reported; committee to sit again.

[Sitting suspended from13:05 to 14:15]

PAPERS

The following paper was laid on the table:

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

Murray-Darling Basin Agreement 1992—Schedule G—Effect of the Snowy Scheme

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:17): I bring up the 19th report of the committee.

Report received.

MEMBER'S REMARKS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: In question time yesterday, the Hon. Terry Stephens MLC made allegations that the police plane was not available for one week out of every four. He stated that the reduction in the service was due to a cost-saving measure. Furthermore, in a supplementary question to me last week, the Hon. Terry Stephens asked whether it was true that officers who relieve on the APY lands are not provided with bush uniforms and must buy their own, even if they are going for a one-week stint. In both cases, the Hon. Terry Stephens is wrong.

Prior to the 2007 enterprise bargaining agreement being ratified on 17 January 2008, South Australia Police rotated staff by aircraft in and out of the APY lands on a weekly basis. The EB 2007 has provided additional shift loadings to personnel deployed to the APY lands and for the use of the police aircraft, where available, on a monthly basis for respite purposes.

I am happy to remind members that the state government's pay offer (which was accepted by 97.2 per cent of the Police Association membership) comprised of an average wage increase of 16 per cent during the three-year life of the enterprise agreement, backdated to 1 July 2007. It also provided incentives to attract police officers to hard to fill country positions in remote parts of South Australia, such as the APY lands.

I am advised by the Commissioner of Police that the increased EB 2007 incentive has enabled SAPOL to fill vacancies; so there is no longer a need to rotate personnel on a weekly basis. SAPOL aircraft flying hours continue to be based on operational requirements and emergency response.

In relation to the supplementary question asked last week, I am advised by South Australia Police that no police officer is asked to—or, in fact, is able to—purchase police khaki uniforms. All officers who are flown to work on the APY lands, even if it is for a period of one week, are provided with police khaki uniforms, which are purchased by the Northern Operation Service. My suggestion to the Hon. Terry Stephens MLC is that he should check his facts before making any further unsubstantiated allegations.

QUESTION TIME

DESALINATION PLANTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:20): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the proposed Port Stanvac desalination plant.

Leave granted.

The Hon. D.W. RIDGWAY: Last week during question time, and in response to a question from the often tongue-tied Hon. Mr Wortley, the minister spoke about a number of facts in relation to the $1.1 billion desalination plant—and, in fact, the considerable investment of up to $2.5 billion in water infrastructure to secure South Australia's water supply, which includes doubling the storage capacity in the Mount Lofty Ranges at the Mount Bold reservoir. I then asked a supplementary question regarding where the water would come from to fill Mount Bold, and at that point the minister indicated that it would come from the local catchment, the very stressed Onkaparinga (which I doubt), and from the River Murray, the other most stressed river in the nation. He said it would also come from the desalination plant, because that is where you would need to store it. Does the minister still stand by his statement that the government will be desalinating water and storing it in the Mount Bold reservoir?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:21): As I indicated in my answer last week, I am not the Minister for Water Security. The honourable member asked where water would come from to fill a reservoir, and I said that there were three possible sources—and those are the three possible sources. I am not the minister responsible for how the desalination plant will operate, but I know from discussions that there is certainly a need for greater pipe connections throughout the Adelaide network. As I understand it, the way Adelaide is organised in terms of water resources is that there are a number of independent systems and, for security, these do need some interconnection.

Obviously, one needs to store the desalinated water somewhere, and reservoirs such as Happy Valley, which are fed from Mount Bold, are the distribution points for the southern parts of Adelaide. Water is distributed to other areas from the Little Para reservoir and others. However, how it operates is really a matter for the Minister for Water Security in another place. My responsibilities relate to planning approval for this proposal. It has now been granted major development status, so we are at a stage where all those issues can be examined.

DESALINATION PLANTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): Is the minister saying that, as part of the cabinet of this government, he has signed off on a $2.5 billion expenditure yet he has no idea where the water is to be stored?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:24): The reason the government is seriously considering extra storage—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: As I said, I am not the minister responsible but, as the Leader of the Government in this place, I will provide an answer. At present I think we have a maximum of eight months (the Hon. Gail Gago probably knows more about this), or less than a year in our reservoir system. In other parts of Australia such as Victoria, where they have closed catchments, I think it is in the order of two years. If we are to have greater water security to enable us to get over periods of prolonged water shortage, which we may face in the future, and to weather those droughts, we obviously need more storage capacity.

The Hon. D.W. Ridgway: Where does the water come from?

The Hon. P. HOLLOWAY: From where it does in other catchments. Enough water falls on Adelaide—200 gigalitres of rain falls on Adelaide every year. Of course, we have had two years of the lowest flows in recorded history in the River Murray, but there will be years—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, it is a matter of debate whether it is a one in one hundred year or a one in one thousand year drought.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, it is, but there is also the issue as to what extent global warming and so on is affecting it. For the purposes of this question, the point is that, like other cities in Australia, this city needs more water capacity. If the River Murray becomes less reliable—and it has become less reliable—then clearly we need a longer term water supply within our catchments, and one of the ways to do that is to increase the size.

When that water is available, whether you have high rainfall events within the catchment or whether the River Murray is flowing as it normally would, you can make sure that the reservoir is full so that you can endure those years when you have low rainfall, and that is exactly why it is being considered. As was indicated by, I think, the Hon. Mark Parnell in a supplementary question, obviously there are a whole lot of environmental issues in relation to that and a whole lot of further work needs to be done.

That is why the government is studying the process, because we do not have the capacity within our reservoirs as other cities do; it is less than a year. If we had something like two years then it would give us much greater security in the event that we have the sorts of conditions that we have faced in the past two years.

HERITAGE PRESERVATION

The Hon. J.M.A. LENSINK (14:26): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question on the subject of historic cottages at Dunstan Grove and Linde Reserve.

Leave granted.

The Hon. J.M.A. LENSINK: Honourable members may be aware that the City of Norwood, Payneham and St Peters has a draft master plan which involves Dunstan Grove and Linde Reserve. Part of that proposal is to sell a heritage listed cottage and demolish three others.

There has been a concerted effort by community members in opposition to this particular proposal but, unfortunately, on Monday night the council decided that it is going to proceed with demolishing at least two of those cottages. My question for the minister is: will she consider providing interim listing in the interests of making sure that the conservation values of those particular cottages are properly explored?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:28): As my colleague has demonstrated, if the council has already made a decision then it would be too late. I am actually not aware of this particular issue in terms of these cottages. I find it disappointing that a decision has been made, although I am not in a position to make an assessment of their historic value. Obviously, there is some public concern over it, but my understanding is that if the

council has already made a decision then that usurps the capacity to intervene at this stage, but I will look into the matter.

APY LANDS INQUIRY

The Hon. S.G. WADE (14:28): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question in relation to the Mullighan inquiry.

Leave granted.

The Hon. S.G. WADE: In September 2005, a feasibility study was completed into the development of a low-level security correctional facility on the Anangu Pitjantjatjara Yankunytjatjara lands as an alternative to imprisonment for some categories of Aboriginal offenders on the lands. The Mullighan inquiry, which was released yesterday, notes:

> In view of dysfunctioning communities on the lands, violence, drug and alcohol abuse and issues of retribution and payback, it is difficult to see how any corrections facility could be of low level security. Prisoners would have to be kept secure for the protection of the community as well as their own protection.

Later in the report the commissioner states:

> The inquiry was informed that it would be financially cheaper for the Department of Corrections to have a contractual relationship with the provider of aircraft services to transport the prisoners to and from the correctional facility at Port Augusta than to keep them for substantial periods in a facility on the lands.

Considering it is approaching three years since the feasibility study was completed, I ask the minister the following questions:

1. Has a decision been made as to whether a correctional facility will be established on the APY lands and, if not, when will it be made?

2. Has a decision been made as to whether the facility will be managed by the Department for Correctional Services or another agency of government?

3. Considering the adverse reflection by commissioner Mullighan on the feasibility of a low-level security facility, will the government review the security level of the possible facility?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:30): I thank the honourable member for his question. I am fairly certain that the Hon. Robert Lawson might have asked that question previously and I advised the chamber that the Department for Correctional Services had completed a feasibility study for a low-security correctional facility that was to be based on the APY lands. The then Social Development Committee agreed on an exploratory business case to be undertaken and, when that occurred, it was noted by cabinet but then referred to the minister for Aboriginal Affairs and Reconciliation for consideration in the context of broader government initiatives for the APY lands. The report was provided to the APY lands executive at the time. Clearly, it would have posed many other concerns and issues as well, ranging from where it could be placed and, indeed, who would be running it.

The recommendation of commissioner Mullighan is referring to a facility for remand prisoners, as I read it, which would have different requirements from those of a low-level security facility. The government will be considering all the recommendations, as well as the one made in recommendation 46.

I do want to place on record that over the next couple of months and in the next financial year the government will be building 10 beds for traditional Aboriginal men at Port Augusta. In relation to the comment read out by the honourable member, as to whether it is cheaper for the department to have a contractual relationship with a provider of aircraft services, I can say that at the moment the department is investigating its options in relation to taking prisoners who have been remanded to Port Augusta. Essentially, that is the position: we are considering our options.

HERITAGE PRESERVATION

The Hon. I.K. HUNTER (14:32): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the preservation of heritage places.

Leave granted.

The Hon. I.K. HUNTER: Our state's heritage is multifaceted: comprising the natural environment, the ancient culture of the traditional owners of the land, and also our more recently built and cultural heritage of European settlement. It is the government's responsibility, of course,

to protect this heritage but it is also the government's responsibility to educate South Australians on our cultural heritage, why it is important and the reasons for its conservation. Will the minister inform the council of moves to better educate South Australians on the significance of our natural, cultural and built heritage?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:33): I thank the honourable member for his most important question and his interest in these areas. In fact, it does go to the very issue that the Hon. Michelle Lensink asked in a question previously; that is, if we are able to educate particularly our young people in the broader community on the importance of the history and heritage values of our local assets, then we can be in a much better place to make sure our local councils ensure that these places are heritage listed. In fact, the sorts of values that the honourable member was talking about previously are local heritage values rather than state values.

I have been very lucky to see first-hand many of the state's fantastic heritage sites, and it is really important that education is an ongoing part of its preservation. For this reason, schools and students around South Australia are being encouraged to embrace their local heritage through the annual Schools Heritage Competition. The Schools Heritage Competition is an annual event open to all reception to year 12 students across the state, providing opportunities for classes to learn about and spread the word on local heritage places. South Australia's rich-built natural heritage is truly unique, and this competition has served for many years to give students a sense of pride in local heritage places in their local communities.

The 2008 theme, Interpreting Heritage Places, encourages students to think about the variety of ways in which the stories and messages of heritage places can be shared with others. This year's competition builds on the success of previous years and offers three different categories, each focusing on a distinctive style of interpretation.

The On-site Interpretation category is an exciting new challenge for students to contribute to the protection and promotion of heritage places through the development of an interpretive product. The winning product will be the one that is judged to best enhance visitor experiences by raising awareness of the stories and significance of the heritage site. It offers this year's major prize—funding up to $5,000—and the opportunity to work with industry professionals in developing that resource.

The other two categories (Electronic Interpretation and Interpretation through Television) invite students to develop PowerPoint presentations, websites, movies or *Postcards*-type TV shows or presentations that showcase heritage places while embracing modern communication technologies.

As in previous years, a package of materials outlining the competition rationale, criteria, prizes and time lines, as well as offering suggestions for interpreting the 2008, theme has been forwarded to all schools. Registrations of interest are due by Friday 30 May, with completed entries to be submitted by Friday 3 October 2008.

The Schools Heritage Competition is a wonderful initiative. The next generation of South Australian leaders in our schools today may even be taking part in the competition and will no doubt benefit enormously from what they learn. That is because some of our most fascinating history often sits right under our nose. By focusing on how we can communicate the significance of local heritage places to others, we really gain an insight into our history and the things that make us South Australians. I look forward to seeing the many fantastic entries and wish all the schools taking part the very best of luck.

AMATA DRUG REHABILITATION CENTRE

The Hon. A.L. EVANS (14:37): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question regarding the Amata Drug Rehabilitation Centre on the APY lands.

Leave granted.

The Hon. A.L. EVANS: The 2007-08 state budget includes a commitment to the South Australian public for the Department of Health to establish a substance misuse facility at Amata as well as staff and community accommodation. The facility would handle petrol sniffing as well as other substance abuse problems, including cannabis. The facility, of course, has Family First support.

Keith Evans of DASSA—whilst acknowledging cannabis would be a major focus of the substance abuse facility—told the ABC on 23 February 2007:

> We're expecting the building to start...any time now and to be completed by around November of this year. So we are hopeful to have a physical building to receive people by at least late 2007.

The Premier's media release of 15 January 2008 apparently confirmed that the facility was now built. He said:

> We've also built a substance abuse facility near Amata so people can be treated and recover in the community and around family. Homemaker programs in family centres are helping parents provide a safe and healthy home environment for their families.

Furthermore, in his ministerial statement yesterday when tabling the second Mullighan report, the Premier said:

> We have established a substance misuse rehabilitation facility in Amata and outreach services that provide counselling and communities across the lands.

On page 169 of the second Mullighan report, just before the commissioner makes recommendation 17 concerning the centre, it is noted:

> After some delays, the drug rehabilitation centre has been built.

The report also states:

> The second stage, which comprises camping and ablution facilities for families, was to be completed early this year.

The information on the record is therefore that the Amata substance abuse facility has now been built. In fact, it has been sitting there for approximately four months, but it still has not been opened, and our independent information confirms that. A medical team is in place and operational, but it is still waiting to use the new facility.

Family First has received information that the government has again rescheduled the official opening date for the facility, which has apparently been pushed back on about five separate occasions. We have been advised by one constituent on the lands that the facility will not be opened until the government can get a politician up there with an appropriate media contingent to cut the ribbon. While we wait, the new facility remains unused. My question is: if the facility has been built and established (according to the Premier), how much longer do we have to wait until it is opened?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:41): I thank the honourable member for his most important question. This is a very important facility, and a considerable amount of work and participation by the local community has gone into it. Of course, this often involves very challenging negotiations and requires quite lengthy discussion. Nevertheless, the facility will provide a range of treatment and rehabilitation services for the people of the APY lands who are experiencing problems caused by substance misuse.

The services aim to help people not only combat their dependence but also assist them to integrate into their local community. The model is based on both formal research and on what has worked in other drug and alcohol programs, particularly those involving Aboriginal populations.

Two rounds of consultation were undertaken, in May 2005 through to May 2006, with community and Anangu organisations on the service model and location of the facility. The APY executive board nominated a Malpa as an indigenous guide to assist DASSA in a second round of consultation. As I said, these were indeed very protracted and lengthy discussions and required the cooperation and willingness of local communities. They were not able to agree for some time on even the location of the facility for a range of quite complex but important reasons.

Nevertheless, it was important that we did not go in and just build it wherever we wanted. It was important that we engaged with the local community and listened to what they had to say. They took a considerable amount of time to decide on where they wanted the facility located. The residential and outreach services will complement existing state-funded community petrol sniffing and youth programs there, and they will be an important link.

Consultations regarding the location of the facility resulted in the APY executive's agreeing to the facility finally being located in Amata. The lease agreement for the facility has been signed with the APY executive. The Murray River North construction company was the successful tenderer for the APY facility, and construction is well underway. The tender for the construction of staff

housing was won by Chapman Building Industries, and a manager of the facility has been appointed, in addition to two experienced nurses and four Anangu staff.

So, services are being provided, albeit on more of an outreach-type arrangement. The mobile outreach service continues to receive referrals from a variety of sources and, as I said, they are well underway. I am advised that stage 1 of the misuse facility was completed in November 2007, and the Department for Transport, Energy and Infrastructure has reported that stage 2 of this facility, which is comprised of camping and ablution facilities for the families, will be completed early this year, and both staff houses have also been completed. I am advised—

Members interjecting:

The Hon. G.E. GAGO: I am glad there is so much interest in this. I am advised that not all the infrastructure is in place. The builder has some modifications to do, and water connection is still to be finalised: however, there is a mobile team working on that. As I said, there are currently 100 clients already engaged, so it is not as if no services are being provided. Considerable services are being provided while the final infrastructure and modifications occur.

Not only are there significant challenges in relation to liaising and consulting with local communities in terms of the development of the service model and the facilities themselves—that can be quite challenging and lengthy—but, obviously, any infrastructure development in these very isolated places also is faced with many challenges in terms of distance and also being able to provide adequate service support. So, I am very pleased to be able to say that services are currently being provided there—

The Hon. R.D. Lawson: They are not being provided.

The Hon. G.E. GAGO: They are. There are 100 clients receiving drug and alcohol services on an outreach basis, so there are considerable services in that community. The misuse facility is very near completion and will be opened as soon as possible.

AMATA DRUG REHABILITATION CENTRE

The Hon. D.G.E. HOOD (14:47): I have a supplementary question. In light of the high priority placed on the project as outlined in the minister's answer, can the minister outline why the opening of the facility has been delayed four times?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:47): I have answered that question. I talked about the considerable challenges in terms of each stage of the process. They are incredibly complex processes. It was really important that we engage with the APY executive and the local community at each stage of the development. The facility, as I said, is near completion. It has not been opened because it is not completed yet. I have already said that.

I am advised that not all the infrastructure is in place and the builder has some modifications yet to do; and apparently water connections still have to be finalised as well. I have already said that. Once the facility and all its support infrastructure is completed, I will be very pleased and delighted to go up there at the earliest possible convenience to open the facility formally.

PLANNING REGULATIONS

The Hon. R.D. LAWSON (14:48): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about planning regulations.

Leave granted.

The Hon. R.D. LAWSON: A constituent recently purchased a 12 hectare block of land within the general farming zone of a country council. The land abuts a residential zone and the constituent proposed to apply for approval to divide the land into six two-hectare rural living allotments. Preliminary inquiries at the council indicated that there were no planning or regulatory objections to this proposal, and an independent planning expert provided similar advice. When the application was made, however, it was rejected on the ground that it was located 350 metres from a local quarry. It is well out of the line of sight of that quarry, which is over a hill.

If the quarry is mined for another 50 years its face will come within 30 metres of part of the land proposed to be divided. There is no record on any development plan or other document which accords special status to the quarry or which suggests that development on adjoining land is sterilised by reason of the existence of that quarry.

The Department of Primary Industries and Resources objected to the development on the ground that the quarry might, hypothetically, if it is worked for another 50 years, come within 30 metres of the land. My questions to the minister are:

1. Is he aware of the fact that developments can be sterilised by reason of the proximity of quarrying or mining operations?

2. Is the government prepared to consider requiring that these issues be noted on development plans and be available to not only local councils but also proposed developers?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:51): I am not aware of the particular case as the honourable member did not give an area where it was, but these issues come up all the time. I understand that under the Mining Act a 300-metre buffer is required, and as mining minister I believe it should be rigorously adhered to.

We have had issues with some quarries, for example, Lynwood quarry in the Brighton Seacliff area. I have vigorously resisted any attempts at development, but unfortunately housing is already too close on one side of it. If I am aware of any quarry or extractive industry zone, I believe it is important that we have a significant buffer barrier because, if we do not, inevitably, when residents move in they will complain when the quarry operations are extended and move to close down the quarry.

One of the reasons we have some of the cheapest housing in this country is that we are fortunate in having quarry materials, which are essential for cement and foundation forming and so on, so close to our city. In New South Wales I am told that the quarry material now has to come by train from the southern tablelands some 180 kilometres from Sydney, so one can imagine the cost of getting quarry material that may be $30 a tonne or so to extract when it has that sort of transport cost. That is why housing is so much more expensive in those locations.

To come to the honourable member's second question, which is a reasonable one, it is important that the quarry resources we have be clearly identified so that these buffer areas can be maintained. If we were today to try to duplicate some of our quarry resources in the Adelaide region one can imagine how difficult it would be. It would be virtually impossible to establish any quarry within the hills face zone or the regions close to Adelaide, and that is why it is imperative with operating quarries that we ensure that those operations are not compromised by allowing residences to move too close. In any case why would we want the conflict between extractive and residential industries?

The gist of the honourable member's question, as I understand it, is that there should be certainty and people should be aware of where these quarrying activities are, and that is a very reasonable point. I have discussed with my department how we can make that better known because it is important that we protect the quarry areas. It would be difficult to establish new quarries, so where we have resources we need to preserve them.

It is important that we have the quarry zone. I could give, not so much as Minister for Urban Development and Planning but as Minister for Mineral Resources Development, a number of examples of where there are significant issues around the interaction of quarries or other extractive industries with residential areas.

So, the sooner we can zone our extractive resources and build that into the development plan the better it will be so that there is absolute clarity for anyone living near them that we do require the buffer. Certainly, for the reasons I have outlined, I make no apology at all for having a 300-metre buffer between the limits of extractive industries and residential areas.

PLANNING REGULATIONS

The Hon. R.D. LAWSON (14:55): I have a supplementary question. Given that the minister considers it imperative that we continue with 300-metre exclusion zones, what steps will the minister actually take to ensure that these zones are marked on the development plans so that the community is aware of them and can act appropriately?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:56): As I have said, first of all we have to identify the existing quarries, because many of them are operated as private mines (in some cases, they pre-date the current operations under the Extractive Industries Rehabilitation Scheme) and some of them are operated by local governments. So, it is not just a simple issue of dealing with the major quarries that come under the Extractive Industries Rehabilitation Fund.

In principle, I certainly agree with the honourable member that it is desirable that we should identify these zones. As I have said, I have asked for some work to be done, but it is quite a complex issue to identify all of those quarries and then have them built into development plans. Historically, it is a matter that has been covered under the Mining Act. Unfortunately, in some areas—for example, parts of Linwood and also the Golden Grove extractive industry zone—the buffer on some boundaries is probably less than 300 metres.

An example of one of the decisions I did take was when we recently extended the urban growth boundary in the vicinity of what was the waste fill area at the Medlow dump, which is a similar sort of issue, when I ensured that, although it had been rezoned, a limitation was put on that area for residential use until that activity had been exhausted. By analogy, it should be the same with quarries; that is, where we have those quarries, we should put in place restrictions until such time as that activity is completed.

ROAD SAFETY

The Hon. R.P. WORTLEY (14:58): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about the state government's latest road safety advertising initiative at AAMI Stadium.

Leave granted.

The Hon. R.P. WORTLEY: Finding innovative ways to advertise road safety messages is a challenge for the government and the Motor Accident Commission. Will the Minister for Road Safety describe how the government is tackling this issue while South Australians sit back and enjoy the football?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:58): I thank the honourable member for his important question. Most South Australians would be aware, through government advertising campaigns, of the 'fatal five', namely, speeding, drink/drug driving, not wearing seatbelts, inattention, and vulnerable road users. These messages are drummed home through various campaigns and the government, through the Motor Accident Commission, endeavours to make the campaigns as attention grabbing and thought provoking as possible.

For its latest campaign, MAC is targeting football fans at AAMI Stadium. The road safety measures that are being featured on the stadium's super screen remind spectators to remember the dangers of drink driving, speeding and not wearing a seatbelt. Importantly, the super screen is also beamed into homes and pubs across the country, and the messages have the potential to reach 1 million viewers. Those members in the chamber who have been to some of the football matches this season would be aware that the messages are:

- 'Bodies don't bounce—Wear a seatbelt'. Research has shown that South Australians believe they will injure themselves only if they choose not to wear a seatbelt. The fact is that seatbelts protect everyone in the car.
- 'Drink and Drive. Catch you after the game.' While most people enjoy a drink or two while watching the football, the stark reality is that drink driving kills. From 2002 to 2006 almost 700 drivers and motorcycle riders killed or seriously injured were above the legal blood alcohol limit. Road users aged 16 to 39 are more likely to drink drive, and getting caught is one of their most feared consequences.
- 'The faster you go the harder you hit. Don't speed.' The excitement of winning a game can be exhilarating but getting behind the wheel, once the siren has sounded, is not the time to let adrenalin take over. Research indicates that about one-third of drivers believe driving 5 kilometres per hour over the limit is acceptable; in fact, driving even a small amount over the limit can be the difference between a pedestrian having a bruise or a brain injury.

Football spectators, and all South Australians, have to sit up and take notice of these messages. Losing a football game may be disappointing (and I understand that both teams won last weekend), but having to deal with a lifelong serious injury or the death of a family member or friend is a tragedy. Serious road crashes have a devastating impact on the community, and driving on the road is not a game. These messages need to hit home.

FLEURIEU PENINSULA SWAMPS

The Hon. SANDRA KANCK (15:01): I seek leave to make an explanation before asking the Minister for Environment and Conservation a question about processes surrounding a report on the Fleurieu Peninsula swamps.

Leave granted.

The Hon. SANDRA KANCK: In 2006 a three-person steering group was set up to commission a report by a hydrologist and an ecologist about buffer zones for pine forests in relation to the Fleurieu Peninsula swamps. The members of the steering committee were Michael Deering of DWLBC, Roger Hartley of PIRSA and, very surprisingly, a private forester, Mr Peter Bulman, the executive officer of Mount Lofty Ranges Private Forestry.

Documents I have obtained under freedom of information have revealed that $25,000 of taxpayer funding was allocated to the process, with half to be from DWLBC funds and half from PIRSA funds. At a meeting held between the three steering committee members in June 2006 it was decided that 'an independent eco-hydrologist be selected from a list of suitable candidates to undertake this work, reporting in the first instance to Peter Bulman'—who was, I remind the minister, a private forester. Further research reveals that at least one of the two consultants was ultimately paid by cheque from Mount Lofty Ranges Private Forestry. I assume that this company would, in turn, have sought a refund of that amount from the department. My questions are:

1. Why was a private forester put in charge of the steering committee which commissioned this report?

2. Was the minister advised of this particular administrative arrangement? If so, did it meet with her approval?

3. At what point was approval given, and by whom, for the spending of $12,500 of departmental funds on this report?

4. Can the minister provide other examples within her portfolio where a private company has been responsible for disbursement of taxpayer funds?

5. Has Mount Lofty Private Forestry sought a refund for payments made for this report? If so, when did this occur and how is the payment documented in the departmental financial records?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:03): I thank the honourable member for her questions. I am aware that this committee was functioning at one time, but I do not have the level of detail about which the member has inquired. However, I am happy to take those questions on notice and bring back a response.

FLEURIEU PENINSULA SWAMPS

The Hon. SANDRA KANCK (15:04): I have a supplementary question. If the minister was aware of this committee, was she aware that it was being chaired or coordinated by a private forester, and did she approve?

The PRESIDENT: The honourable minister made it known that she was aware.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:05): I do not have those details.

REGIONAL DEVELOPMENT BOARDS AND BUSINESS ENTERPRISE CENTRES

The Hon. J.S.L. DAWKINS (15:05): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation, representing the Minister for Regional Development and Small Business, a question in regard to regional development boards and business enterprise centres.

Leave granted.

The Hon. J.S.L. DAWKINS: Members would be well aware of the excellent work performed by the regional development boards and business enterprise centres in this state. Indeed, my experience is that all of these organisations are very cost effective in the manner in which they operate with government funding, whether it be from local, state or federal jurisdictions.

The date of 30 June 2008 will mark the end of the current state government funding agreements for both sectors. Approximately half of the regional development boards are coming to the end of a five-year resource agreement, while the remainder are about to complete a one-year rollover designed to bring them into alignment with the other boards. In the case of the business enterprise centres, the current three-year agreements will cease at the end of June.

It is easy to understand the eagerness of staff and board members to see a resolution of the delays which have resulted in this situation. First, BECs went through a similar situation twice in 12 months earlier this decade, receiving one-year's funding confirmation only in late May 2004 and then three-year agreements in the following March.

Secondly, the regional development boards were promised early determination of new resource agreements by the minister in the estimates process last July. Only late last year did the RDBs receive draft agreements, but with no indication of funding levels. This is particularly crucial, as the regional development boards have not received a funding increase for 10 years.

In addition, along with the BECs, RDBs find that the $65,000 provided to employee business advisers to meet the necessary oncosts is significantly inadequate. During the long waiting period, the minister and her officers in DTED and the Office of Regional Affairs have said that there is no doubt about ongoing funding, but the silence in relation to the actual levels of funding has been deafening.

At long last this week the RDBs have received financial details of the new agreements. I understand that the agreements include only a miniscule increase in funding, and now have to go to local government bodies before the final sign-off by the minister, resulting in more delays and uncertainty. In relation to the BECs, which have won five of the six national BEC awards in the last three years, they may be given their funding details later this week. However, there is no indication if there will be any increase in funding. My questions are:

1. As the member of cabinet responsible for both sectors, will the minister finalise the funding agreements for both RDBs and BECs as a matter of urgency?

2. Will she concede that the ability of the boards and BECs to give staff employment security and to let contracts has been severely impeded by the delays in finalising these funding agreements?

3. What action will the minister take to ensure this situation never arises again?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:08): I thank the honourable member for his important questions. I will be happy to pass those questions on to the relevant member in another place and bring back a response.

INVESTMENT, HONG KONG

The Hon. J.M. GAZZOLA (15:08): My question is to the Minister for Mineral Resources Development. Is the minister aware of any recent advances in raising the profile of South Australia in the important investment community in Hong Kong?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:09): I thank the honourable member for his question. I am delighted to inform members that I recently travelled to the special administrative region of Hong Kong. It is now more than a decade since the handover of this former British territory to Chinese rule, and the economy, long regarded as a bastion of free trade within Asia, continues to grow.

Hong Kong has long been an important port and key entry point for Australian exports to Asia, and it is also a significant bridge between Australia and mainland China. In addition, we also have a thriving expatriate community in Hong Kong, and many Australians now work there for multinational and home grown companies. Similarly, many Hong Kong Chinese have made their home in Australia and sent their children to study in our schools and universities.

The important links between South Australia and Hong Kong took a significant step forward last month. On my recent visit to Hong Kong I was delighted to attend a signing ceremony that marked the forging of a partnership between Lingnan University and the University of Adelaide. The two universities have agreed that they will provide an MBA program that combines the best of east and west business practices. Lingnan University enjoys a strong reputation in economics and business and has excellent relations with the business community in Hong Kong and China.

Lingnan University is the youngest tertiary institution in Hong Kong, but its history dates back to 1888 when its forerunner, the prestigious Lingnan University, was founded in Guangzhou on mainland China. It is one of eight government-funded universities but the only liberal arts college in Hong Kong offering bachelor programs in arts, business administration, social sciences and postgraduate studies to more than 2,000 students.

The University of Adelaide is confident this reputation will ensure that graduates from the program will be highly regarded in the region. The 18-month MBA program will begin in July 2008 and will be taught through intensive lecture sessions by University of Adelaide academics as well as qualified specialists from around the globe. The university's MBA program carries a five-star rating within Hong Kong and is ranked by Singapore's Edupoll Education Guide as the best value Australian MBA.

The partnership between the University of Adelaide and Lingnan University is an exciting development and yet another example of the importance that this state places on the international education sector. More than 2,300 Hong Kong citizens are currently being educated at South Australian tertiary institutions in both onshore and offshore programs, including 356 students at the University of Adelaide.

The Hong Kong-based Cheung Kong Group, which employs more than 180,000 people worldwide, is also a joint partner with the federal government in offering student exchange scholarships for up to 200 undergraduates and 20 postgraduate students each year in Australia and Asia. South Australia, and the University of Adelaide in particular, has been the leader in winning the Endeavour Australia Cheung Kong Student Exchange awards.

While South Australia is well-known for its exports of mineral resources, wines and seafood, it should also be emphasised that education is now the state's fourth largest export, valued at close to $650 million a year. Adelaide has become an internationally recognised education centre and has rightfully gained a reputation as Australia's learning city. I think this relationship between the University of Adelaide and Lingnan University is another positive step in Adelaide maintaining that reputation.

CARBON NEUTRAL ECONOMY

The Hon. M. PARNELL (15:13): I seek leave to make a brief explanation before asking the Minister for Police, representing the Treasurer, a question about creating a carbon neutral economy.

Leave granted.

The Hon. M. PARNELL: Members may recall that, a couple of months ago, the Treasurer was in the news, after having addressed a Committee for Economic Development of Australia lunch. He was most reported in that address for his comment about South Australians being 'a bunch of bloody whingers'. However, in that speech he did make another comment which I find quite intriguing. He said, 'We want to have a green economy; a carbon neutral economy.' My questions are:

1. What is a carbon neutral economy?

2. What is the time frame for achieving a carbon neutral economy, given the target that we have set in legislation of reducing our greenhouse gas emissions by 60 per cent by the year 2050?

3. How does the Treasurer propose that South Australia will achieve a carbon neutral economy, given the large range of carbon intensive projects that are currently on the drawing board in this state?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:14): I will see whether the Treasurer can forward a copy of his speech to the honourable member so that the honourable member can be enlightened. I am interested in reading it myself.

VOLUNTEER MARINE RESCUE

The Hon. C.V. SCHAEFER (15:14): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about volunteer marine rescue.

Leave granted.

The Hon. C.V. SCHAEFER: There are 12 units of the SES who are accredited to provide volunteer marine rescue services in South Australia. They are: Barmera, Blanchetown, Berri, Loxton, Renmark, Meningie, Murray Bridge, Yankalilla, Ceduna, Port Lincoln, Port Pirie and Tumby Bay. Collectively, approximately 515 members of the Volunteer Marine Rescue Association volunteer their time and are trained to work in darkness and often in dangerous situations. In addition, they provide in excess of 1,500 associate members to their associations.

Can the minister explain why the only SES volunteer on the Volunteer Marine Rescue Council of South Australia has been removed and replaced by a paid staff member who has no marine rescue qualifications?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:16): Clearly, the honourable member has received correspondence from the same person as I have. Whilst I was travelling in country South Australia the week before last, I had the opportunity to catch up with him and have a coffee and explain to him why the chief officer of the SES had made the decision that he had.

We have volunteer representation on the council of the members of various squadrons. The council is chaired by the Volunteer Marine Rescue Manager and, as I said, it comprises representation from the various squadrons, at the commodore or presiding officer level, for each of the six independently incorporated VMR associations. We also have a representative from the SES, the SAPOL Water Operations Unit and the VMR Association of South Australia on that council.

The Hon. J.M.A. Lensink: They're all paid.

The Hon. CARMEL ZOLLO: No; they are not all paid. Certainly, the VMR Manager (the chair) is paid, but his role is wider than VMR itself. The representatives of the commodores are volunteers, of which there are six. From the SES, the chief officer decided that there would be a paid officer for the reason that he has responsibility for most of the state. For that reason, that decision was made purely at an administrative level. The SAPOL Water Operations Unit is represented and, of course, the VMR Association of South Australia is a volunteer organisation so, clearly, its members are not all paid.

I am aware that the person in question is dissatisfied with the decision that was made. As I said, I sat down and had a chat with him. I know that he has since written another piece of correspondence. I can say to this council that the person in question is highly valued. There was no other reason for making that decision other than that the person who is the SES representative has, as his responsibility, the majority of the state's SES units that provide sea rescue. That is the only reason that that decision was made by the chief officer of the SES.

I think we have reached a stage where, as I said, the chief officer, for operational and administrative reasons, made a decision in relation to the make-up of the council. The person in question is also a proxy, that is my understanding, of the VMR Association of South Australia on that council.

I conclude by saying that his commitment to the SES, and indeed many other sections of the community that he is involved with, is highly appreciated, and he is incredibly well respected in the community. There is not too much else that I can say, but the decision was made at the operational level.

VOLUNTEER MARINE RESCUE

The Hon. C.V. SCHAEFER (15:19): Given the answer arising from my question, can the minister explain why the minutes of the meeting where this decision was taken were not circulated to SES volunteers? Can she further explain why the person we are referring to was required to get a visitor's permit to get access to the state and regional headquarters while a paid staff member accompanying him was not required to do the same thing?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:20): I received in the mail (possibly yesterday) a drop copy of the letter I think the honourable member is talking about. I have not had the opportunity to follow it through with the Chief Officer of the SES. However, I will do so and, if we need to apologise to the person in question, clearly that will also happen.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:20): Given the slow progress the government has made on its two priority bills this week, I would like to test the will of the council. I move:

That standing orders be so far suspended as to enable Matters of Interest and Notice of Motion, Orders of the Day: Private Business to be taken into consideration after government business.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:21): I move:

That the motion be amended by adding the words 'with Notice of Motion and Orders of the Day: Private Business being resumed at 7.45pm.'

The Hon. M. PARNELL (15:21): I support the amended motion. I think it is with some reluctance that we would put off private members' business, but I am happy for us to proceed with the bikie bill. The Attorney-General has been telling us in the media that it is a priority. We are part way through it, and we are almost there. Let us keep going with the bill and commence Matters of Interest and private business after dinner.

The Hon. D.G.E. HOOD (15:21): Family First also supports the motion as amended.

The Hon. P. HOLLOWAY: This week, the government listed two important bills that we need to pass. It is quite clear to anybody watching that there has been filibustering.

Members interjecting:

The Hon. P. HOLLOWAY: The world will see it. I oppose both the amendment—

The Hon. R.I. LUCAS: On a point of order—

The Hon. P. HOLLOWAY: So, in closing—

The PRESIDENT: Order! The Hon. Mr Lucas has a point of order.

The Hon. R.I. LUCAS: I seek clarification from you, Mr President. I understand that there is a motion for suspension of standing orders. Is someone entitled to speak twice?

The PRESIDENT: He is wrapping up the debate.

The Hon. P. HOLLOWAY: It is important that this government gets on with the business of the council. We oppose the amendment. Surely two important pieces of legislation, such as the serious and organised crime bill and the WorkCover bill, should take priority over some of the issues that are listed. However, let us have the vote.

Members interjecting:

The PRESIDENT: Order! Members may want to listen to how I will put the question, that is, that the amendment of the Hon. Mr Ridgway be agreed to.

The council divided on the amendment:

AYES (14)

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

NOES (7)

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

Majority of 7 for the ayes.

Amendment thus carried; motion as amended carried.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:28): Given that the government has had two priority bills this week and we have had lengthy discussion on one of those, now that we are on to government business, I move:

That the council postpone Orders of the Day: Government Business Nos 3 to 6.

This will enable us to begin debate on the other matter of importance this week that we need to pass, namely, the WorkCover bill.

The council divided on the motion:

AYES (9)

Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.K.	Wortley, R.P.	Zollo, C.

NOES (12)

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

Majority of 3 for the noes.

Motion thus negatived.

The Hon. P. HOLLOWAY: Perhaps I can ask the Opposition: what can we do in government business? You've decided what we do! It does not happen in any other parliament in the western world. So, as Leader of the Government I have to ask the opposition what can we do.

The Hon. R.I. LUCAS: On a point of order, under what standing order is the Leader of the Government standing and ranting and raving at the moment?

The PRESIDENT: I think the Leader of the Government is seeking what the opposition would now like the government to do because it seems to have taken the business out of the government's hands.

The Hon. D.W. RIDGWAY: It is clear that we are almost—

The Hon. B.V. Finnigan: Point of order! What's your point of order? What standing order?

The Hon. D.W. RIDGWAY: Chuck him out! The President has just asked me a question—listen!

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: It is clear that we have almost completed the serious and organised crime legislation. It is a priority for this opposition and the Premier as public safety is of the utmost importance. We want to see the debate concluded and then we will deal with WorkCover.

The Hon. P. HOLLOWAY: It is very nice of the opposition to allow the government to discuss its legislation. I move:

That Order of the Day: Government Business No.2, adjourned on motion, be taken into consideration forthwith.

Motion carried.

SERIOUS AND ORGANISED CRIME (CONTROL) BILL

In committee (resumed on motion).

(Continued from page 2728.)

Clause 35.

The Hon. SANDRA KANCK: I move:

Page 20, lines 28 to 37 [clause 35(3) and (4)]—Delete subclauses (3) and (4)

This amendment deletes subclauses (3) and (4) from clause 35—Criminal Associations. Again, I will read into the *Hansard* record subclauses (3) and (4) so that people reading *Hansard* will know what it is I am removing. They provide:

> (3) A person who—
>
> (a) has a criminal conviction (against the law of this state or another jurisdiction) of a kind prescribed by regulation; and
>
> (b) associates, on not less than six occasions during a period of 12 months, with another person who has such a criminal conviction,
>
> is guilty of an offence.
>
> Maximum penalty: Imprisonment for five years.
>
> (4) A person does not commit an offence against subsection (3) unless, on each occasion on which it is alleged that the person associated with another, the person knew that the other had the relevant criminal conviction or was reckless as to that fact.

So, in fact, we are back, in a way, dealing with the issues the Hon. Mark Parnell has raised throughout today about this issue of being reckless to the fact. As this is worded, this means that, if you had a stealing offence 35 years ago and you associate with someone who had a stealing offence 20 years ago, you could both potentially go to gaol. I have a whole range of questions that are associated with the bill as it currently stands. I would like to know from the minister what offences are to be prescribed as part of clause 35.

The Hon. P. HOLLOWAY: The government is still considering the kinds of convictions that will be prescribed. However, an example being given serious consideration is serious drug convictions, and the reason for this is that regular associations between people with a history of drug importation, manufacturing, cultivating and dealing are high risk in terms of the likelihood that the associations are for criminal purposes. Regulations are, of course, disallowable under section 10 of the Subordinate Legislation Act and, as such, the kinds of convictions prescribed for the purpose of this offence will be subject to parliamentary scrutiny.

The Hon. SANDRA KANCK: I do have some further questions that relate to this. We again have this issue of the six criminal associations during a period of 12 months, and it raises some very interesting questions. Members who saw the *Stateline* investigation into this bill about a month ago would know that the Longriders Christian Motorcycle Association, which operations from St Luke's Mission in Whitmore Square, was interviewed on that program. That association raised concerns not about its own status but about the other people at that church who become involved, and I do not believe it is covered in subclause (6), which relates to lawful occupation, business or profession—and in a lot of cases you are talking about volunteers. So, I would like to know what protections can be expected for people in this situation, such as lay preachers, church wardens and church volunteers.

Another example is the good old Salvos who go around to the pubs as volunteers; it is not part of their professional work, but for decades they have gone around with their collection tins. I understand that a lot of the people who will be targeted by this legislation hang out in bars of hotels, so what protection will there be as far as the Salvos are concerned, and as far as the specific example I gave of the volunteers who work at the St Luke's Mission?

The Hon. P. HOLLOWAY: Clause 35(6) provides:

> The following forms of associations will be disregarded for the purpose of this section...
>
> (b) associations occurring in the course of lawful occupation, business or profession;

The Hon. SANDRA KANCK: I would like to respond to that. Is a volunteer an occupation?

The Hon. P. HOLLOWAY: There is the defence of reasonable excuse, which is contained in subclause(7) which provides:

> Without derogating from subsection (6) but subject to subsection (8), a court hearing a charge of an offence against this section may determine that an association will be disregarded for the purposes of this section if the defendant proves that he or she had a reasonable excuse for the association.

Given the range of issues that will be involved, will police really spend their time, and occupy the court's time, with those sorts of relationships when there are obviously ones of much more criminal interest for them to deal with?

The Hon. S.G. WADE: I want to ask a question similar to that asked by the Hon. Sandra Kanck. I am disturbed that the minister is backing away from subclause (6)(b) on the basis of

whether or not the person is acting in a paid or voluntary capacity. Surely you are engaged in a lawful occupation whether or not you are being paid for it. Is a psychologist suddenly not a psychologist simply because they are not being paid?

The Hon. P. HOLLOWAY: I am saying there is also another clause. You can argue that particular clause but there is, if you like, a further back-up in subclause (7). Even if a court were to make an interpretation that we might consider unreasonable in relation to subclause (6)(b) there is still subclause (7) as a back-up.

The Hon. SANDRA KANCK: I read, from what the minister is saying, that the protection for these church volunteers is that when they are taken to court they will have an opportunity to argue their case by saying that what they were doing was reasonable. Is that what the minister is saying?

The Hon. P. HOLLOWAY: I am saying that, first, the police would have to charge them with criminal association, or would have to make the decision. As I said, I am not sure that would be the priority but we have to consider what is possible, even if highly unlikely. Clause 35(7) is really a back-up, because we accept that we probably cannot—through paragraphs (a), (b), (c), (d), (e) and (f) of subclause (6)—cover every conceivable relationship that one might want to exclude for the purposes of this section.

You can prescribe them through paragraph (f), that is one back-up. So, if there is an association of a prescribed kind, if something gets through, if something inadvertently happens, if someone is charged whom we do not believe should be, that is one option. Then there is subclause (7) as well, that without derogating from that subsection, a court hearing 'may determine that an association will be disregarded for the purposes of this section if the defendant proves that he or she had a reasonable excuse for the association.' So there is—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Well, the point is that that is just a protection. As I indicated earlier, it is highly unlikely that police officers would charge people. If we have a look at the current law, there is no defence whatsoever under 'consorting', but people are not knocking on the doors of parliament arguing that police have been unfairly harassing them.

The Hon. SANDRA KANCK: I do not think it is actually a fair comparison, because at the moment the consorting laws are not based on this question of who you associate with. Having said that, I want to raise this question of what is in (3)(b) (and it is also in (1)), and that is this question of association on not less than six occasions during a period of 12 months.

I find this a very interesting concept. It means that people are going to be trapped. If somebody is seen to associate with someone who has been targeted by the police and the Attorney-General, that person's details are going to have to be kept somewhere. Would the minister advise where that information will be kept, and who will be keeping it?

The Hon. P. HOLLOWAY: I suspect it is the criminal intelligence branch, but I will confirm that. If I interpret the question asked by the Hon. Sandra Kanck correctly, the information will be kept in police records, as is all other similar information. This is not special or significantly different in that regard from any other information that would be kept in police records.

The Hon. SANDRA KANCK: Let us say that the person that was talking to the bikie was called Fred. So, Fred (innocent Fred) has made the mistake of talking to a bikie and the police now have a record about Fred because he spoke to a bikie. He is not guilty of anything but there is now a record being kept by the police about him. That means that Fred, from this point onwards, becomes vulnerable in terms of the operations of SAPOL. He will then be watched over a period of 12 months to see whether there are another five such interactions. Would the minister confirm that that is the case?

The Hon. P. HOLLOWAY: The honourable member is putting a particular slant on it. What is likely to happen is that with police operations with serious organised crime gangs they are likely to see other people associating. Some of those might be incidental or coincidental contacts, but unless there is reasonable suspicion I do not believe that the police would be looking at following some particular person just because on some occasion they happened to be seen with a bikie.

Of course, if there was some suspicion that they were meeting with someone subject to a control order or someone involved in organised crime, or if there was some suspicion that involved them, then they might be observing them.

However, if people are there when the police are observing organised crime individuals and they see someone there, I do not expect that they are, therefore, going to go out and start surveillance operations on every single person who happens to come across a bikie. Rather, it is going to be a pattern of observations and a pattern of behaviour.

The Hon. SANDRA KANCK: I point out that, although the minister says that the police will need to have reasonable suspicion to do this, there is nothing in this legislation that sets out the processes. Without knowing what the processes are, there are, effectively, no protections. I would like to know whether the people who are being observed by the police in this manner (so that the police can collect this information) will be able to obtain information that that is, indeed, occurring.

The Hon. P. HOLLOWAY: The police can observe people now. For example, if there is lot of car theft in one particular area and the police have a surveillance operation, they will even use cars that lock up on people when they steal them. In an operation like that, if the police note some suspicious behaviour it might go on to a police file. It does not need this act for that sort of information to go on to a file. Any information recorded here is no different from any other information or from what is common, everyday practice.

The Hon. SANDRA KANCK: I take the minister back to the conversations that we were having in this chamber before the lunch break. We were trying to find out whether there was a system where people who have been associated with a bad person can find out if they are effectively close to reaching their maximum demerit points. Being able to have this information, one way or another, is quite important if you are to avoid that sixth event that could put you in the position of imprisonment for five years.

The Hon. P. HOLLOWAY: Is the honourable member saying that somebody is going to ring up the police and ask, 'How many times have I been seen with a bikie?' Surely, we have answered that already at length in the debate earlier today. It would make sense for the police to notify people if it is becoming apparent that their behaviour is drawing them to the police's attention. There may be some circumstances, if there is an operation that police are undertaking into organised crime, where they would not notify a person. However, that would be a very special situation. In any case, if there is some ongoing operation they are scarcely likely to put that operation in jeopardy by giving somebody notice; presumably, they are not going to put it in jeopardy by charging them with criminal association, are they? It just does not follow.

The Hon. SANDRA KANCK: My final question before allowing this to go to a vote (and unless others want to comment, of course) is: will the proposed new police volunteers be involved in any way in observing these people?

The Hon. P. HOLLOWAY: I do not know what proposed volunteers the honourable member is talking about. There have been volunteers for years; for example, Neighbourhood Watch. If a Neighbourhood Watch person notices somebody trying to break into a house down the road and takes down the car number and, hopefully, reports it to police, that will go on a file somewhere and the police may follow it up. It may be coincidence, but is surely all recorded somewhere. What is proposed through the police volunteer system, as has been publicly indicated on a number of occasions, is simply to clarify what has been done for many years.

Police operations would just not work without cooperation from the public. How do you think we catch criminals? Through Crime Stoppers, people ring in and report car numbers and things like that, and it is through piecing all that information together that the police make arrests. They put all that information together. So, there would be hundreds of bits of information that may or may not be relevant to criminal behaviour, and this is really no different.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 21, line 6—Delete 'close family members' and substitute:

persons in a prescribed relationship

I will treat this amendment as a test for my Amendments Nos 35, 36, 37 and 38, all of which relate to clause 35.

The thrust of this amendment is to soften the social impact of this criminal association provision by expanding the range of people who can have legitimate contact with members of declared organisations, persons with control orders against them or persons with a criminal history without themselves suffering the possibility of a criminal conviction.

The provision that provides for these exceptions is subclause (6), which provides:

The following forms of associations will be disregarded for the purposes of this section unless the prosecution proves that the association was not reasonable in the circumstances:

So, the onus of proof is on the prosecution to prove that any of the listed relationships were not reasonable.

At the top of that list of what I would call protected relationships in paragraph (a) is associations between close family members. To work out who close family members are, we need to go to subclause (11), which has section-specific definitions, including the definition of close family member. It provides:

(b) a person is a close family member of another person if—

(i) 1 is the spouse or domestic partner of the other; or

(ii) 1 is the parent, step-parent or grandparent of the other; or

(iii) 1 is a child, step-child or grandchild of the other; or

(iv) 1 is a guardian or carer of the other; or

(v) 1 is a brother, sister, step-brother or step-sister of the other.

That list of family relationships might be regarded as the small nuclear family. It is mum, dad and the kids, and it is one other step up in terms of grandparents, one other step down in terms of grandchildren and a step sideways, being brothers or sisters.

When we consider that definition of close family members, we should think of the people who are not included. For example, this refers to relationships by blood; it does not refer to relationships by marriage. So, it is okay if your brother is perhaps a member of a declared organisation, has a control order against him or has criminal associations—there is some level of protection.

You can talk to your brother presumably as long as you are not talking about planning a crime. If you are talking at family get-togethers, you have some level of protection, but not if it is it is your wife's brother, your brother-in-law. What this means is that, for the most common of family situations, we will have to have lines down the middle of rooms and people will not be able to cross those lines; they cannot talk to each other.

The government may well say that there is a catch-all provision which provides that, if you can prove to the court that you have a reasonable excuse for the association, you may not be caught by these laws. However, I agree with the Hon. Sandra Kanck that that is too late in the process. What we need to do is entrench the value of family, put family first (if I can use those words) and move away from what I think is the government's flawed premise in the bill.

The flawed premise in relation to this clause is that the way to redemption, preventing crime and turning these people around is to starve them of normal human contact and keep them away from other people in society. I can understand keeping them away from people such as criminals with whom they are known to associate and, although I think that these laws do not have sufficient checks and balances, I can certainly understand why you would want to discourage or keep people away from such contacts.

However, when you start getting into splitting up families and stating that family members do not have any guaranteed right to communicate with each other, these laws have gone far too far. The amendments I have put on file seek to expand the list of protected relationships under the definition of close family members. I have extended it so that, rather than its stating just a spouse or a domestic partner, I have included spouses or a former spouse or domestic partner, and that has expanded that category.

Uncles and aunties are excluded by this definition. You have only to think in terms of the stories we have all heard, whether they be in our own families or in the public realm, of people for whom an important influence in their life might not have been a parent, who might not have been there for them, but an uncle, an aunty or someone who was their connection to the real world and to things that were right, rather than to things that were wrong. So, I want to see those people included in this legislation.

I have also included cousins—not 34th cousins seven times removed but first cousins, the children of your parents' brothers and sisters. Most of us have cousins and, when we reflect on our social circles, we see that cousins are in abundance, so let's add cousins to the list of close family members. I have gone one step further and included girlfriends and boyfriends. People may well

think that this is open to abuse as there is no DNA test and it is not a test of blood or marriage because there is no certificate.

The reason I have included this clause comes again out of the story run by the *Sunday Mail* some months ago in which a bikie's road to redemption was his relationship with his girlfriend. In fact, his girlfriend's sister's child was ultimately his road to redemption. I have not got that far in the bill, but I have included girlfriends and boyfriends, because excluding those relationships in this legislation is effectively the law of the land entering the bedrooms of South Australians and telling them with whom they can and cannot have a relationship.

Can you imagine going to court and having to defend yourself by saying, 'Your Honour, I had a reasonable excuse for the association.' 'What was that?' 'Well, I am sleeping with them,' or, 'I am in a close romantic relationship with them.' I do not think that that would get you very far. I think we need to recognise the types of relationships that are common, fairly close and meaningful in our society, and we need to reflect them in this legislation.

So, as I say, I have amendments which seek to expand that definition of close family members. However, I am happy to discuss this issue of protected relationships in toto, and I am not going to divide on every one of the clauses, but I will speak to the other aspects of my amendment.

Before I do that, there is one slight omission from the list that I put in—and that has been circulated—in my eagerness to get some of these extended family members included. Accidentally, brothers and sisters were left out, so I have put them back in, and I thank parliamentary counsel for their assistance with that. So there is an amendment to my amendment, but it is one that we will get to later. It is not the one that I am moving as the test now.

The other area in which I want to expand the list of protected relationships is in the area of Aboriginal people and their extended kinship ties. My amendment No.37 basically includes, as a protected form of relationship, the following:

> in the case of persons who are Aboriginals or Torres Strait Islanders—one is held to be related to the other according to Aboriginal kinship rules, or Torres Strait Islander kinship rules, as the case may require;

That is not a novel provision. It is included in other legislation in South Australia. It is legislative recognition of the fact that people are close to, have enduring attachments to, and are influenced by people other than their direct blood relationships. The classic case, I think, in relation to Aboriginal people would be the aunties. We often hear about the aunties. Who has not been to a conference where an aunty has come along and given us the welcome to country? That welcome to country by an aunty might mean something for non-Aboriginal people but, for people who are Aboriginal or Torres Strait Islander, these extended kinship relationships are important.

Again, the question would be: what benefit is it to society to effectively outlaw these types of relationships and not include them in the list of protected relationships? Often the influence that is going to turn around someone's life, especially younger people, and help them get back on the straight and narrow, will be these communications and contacts with their extended kinship group. So, my amendment seeks to incorporate that principle back into this legislation.

We will hear from the minister shortly. The minister has some amendments to this section as well in relation to the protected family relationships. They do not go as far as I would like to go, but I am happy to hear from the minister as to why he believes that is sufficient. That is what I will say for now, and I look forward to hearing other members' contributions.

The Hon. P. HOLLOWAY: Clause 35(6) of the bill excludes from consideration for the new offence of criminal association certain types of associations. These are listed in paragraphs (a) to (f) of clause 35(6). The first categories set out in paragraph (a) are associations between close family members. Both the Hons. Mr Parnell and Ms Kanck have placed on file amendments to replace the concept of 'close family member' with that of 'prescribed relationship'.

Currently, clause 35(11) provides that a person is a close family member of another person if one is a spouse or domestic partner of the other; one is a parent, step-parent or grandparent of the other; one is a child, step-child or grandchild of the other; one is a guardian or carer of the other; or one is a brother, sister, step-brother or step-sister of the other. As the Hon. Mark Parnell has said, I have circulated an amendment which slightly changes that, and we will come to that when we discuss subclause (11).

Under Mr Parnell's amendments, 'prescribed relationship' is defined to include, first, relationships in which one person is held to be related to another under Aboriginal or Torres Strait Islander kinship relationship rules; and, secondly, these relationships include spouses or domestic

partners, parents or grandparents (whether by blood or marriage), uncles or aunts (whether by blood or marriage), first cousins (whether by blood or marriage), guardians or carers, and boyfriends or girlfriends (but there must be a degree of intimacy that extends beyond friendship).

The government opposes these amendments. The term 'held to be related to the other' under Aboriginal or Torres Strait Islander kinship rules is not defined, and it is far from clear in a workable sense how far it extends. The government does not support such a broad and uncertain exemption in an offence provision, nor does it support treating Aboriginal and Torres Strait Islander people differently under the criminal law.

As to the other categories of prescribed relationship proposed by the Hon. Mr Parnell, spouses or domestic partners are already in the list, as are parents, grandparents, uncles, aunts and first cousins, whether by blood or marriage. The government opposes expressly extending exempt family relationships this far. Guardians or carers are the same as the current provision. With boyfriend or girlfriend there must be a degree of intimacy that extends beyond friendship. the government considers this to be too vague. Honourable members should note that, except in relation to members of declared organisations, persons who are subject to control orders and persons with convictions of prescribed kinds, the defence of reasonable excuse applies to prosecutions for the offence. This means that associations between aunts, uncles, first cousins or any relative may be excluded by the court. The government's position is that the categories of close family member are broad enough and, when combined with the defence of reasonable excuse, provide adequate protection to innocent people.

Let us be realistic about how this measure will operate. Police have limited resources. It is very expensive. There will be a lot of work and expense involved in getting one of these orders. Why would you target somebody's girlfriend? Why would you bother pursuing a relationship like that? If these control orders come into place I am sure the police will have more than enough to do dealing with people whose relationships or criminal associations ostensibly are for criminal purposes. If there is some doubt, if it is just a relationship, why would the police waste their time doing it? Similarly, even earlier when we talked about 'the not less than six occasions during a period of 12 months', if its considered marginal why bother?

There will be enough for the police officers to do, with enough expense and work before the courts to deal with cases that are clear cut to worry about these marginal cases. That is important to consider. These are the protections—the absolute exclusions—but beyond that the police will not pursue the sort of relationships that are marginal but, on the other hand, if there are these associations which their observations strongly suggest are for criminal purposes, then of course they will be and should be the priorities.

The Hon. A. BRESSINGTON: I do not support the amendment. Most of the people coming to me from where I live in the northern suburbs have a real issue with motorcycle gang members recruiting young people into their groups. One of the most disturbing stories I heard was from a mother who came to me whose 13 and 14 year old daughters were supposedly the girlfriends of one of these motorcycle guys, of whom we have many out in the northern suburbs. The 14-year old girl was pregnant to this man and was also prostituting for him and selling drugs at the Munno Para shopping centre. If you start to include girlfriend and boyfriend, these minors claim black and blue that they are the girlfriend of this guy, that it is all okay, mum knows and it is fine, but it is not. As soon as we start to get into this we may as well rip up the bill and absolutely forget about it.

I do not think the Hon. Sandra Kanck or Mark Parnell have a glimpse of how these guys operate and run their daily lives, wreaking havoc on good, law-abiding families that are doing nothing more than trying to keep their kids safe. We do not have harbouring laws in this state, so the parents have absolutely no legal foot to stand on to have their children removed from these people and returned back to their families. This is not a one-off thing; this is happening a lot. If they had a concept of that, they would not even propose this.

The Hon. S.G. WADE: My question to the minister is to clarify my understanding of how the provision would operate. The Hon. Mark Parnell used terms the gist of which was basically that these relationships provide a guaranteed exemption.

The Hon. M. Parnell: Some level of protection.

The Hon. S.G. WADE: Yes; some level of protection. Certainly, people have been using the word 'exemption', and I think that that is misleading. My reading of it is that it is more in the form of a rebuttable presumption of a reasonable excuse, and I ask the minister to confirm that. At the beginning of subclause (6) it provides that 'The following forms of associations will be disregarded

for the purposes of this section'. It does not stop there but goes on to provide 'unless the prosecution proves that the association was not reasonable in the circumstances.' It then goes on to set out in paragraphs (a) to (f) a series of circumstances, which are put in the category of rebuttable presumption.

Then, in subclause (7), there is a general reasonable excuse. So, my understanding of the provision is that, in respect of a significant relevant relationship, such as all of those miscellaneous relationships that have been referred to by the Hon. Mark Parnell (and I am not belittling any of them), that is, if the court was to receive evidence of those and it was sufficient to be a foundation of reasonable excuse, they would have exactly the same protection as those specified under subclause (6). It is just that we would give people more upfront confidence that their relationship will be recognised if it is under subclause (6), paragraphs (a) to (f).

The Hon. P. HOLLOWAY: Effectively, what this does is to shift the burden of proof. As I said earlier, the other protection against this is that the police are scarcely likely to pursue cases that are marginal from the point of view of the court. As I have said, there will be more than enough hard cases, where there is a clear criminality behind the relationship. Obviously, they will be the cases that will be targeted because they will be the ones that are the easiest to prove—they will be the ones that will be the most important from a police perspective to knock on the head.

These sort of marginal relationships the Hon. Mark Parnell talked about are scarcely likely to be as important. We are talking about the offence of criminal association, which is scarcely likely to be as important if it is an assumed girlfriend/boyfriend-type relationship. As the Hon. Ann Bressington said, if it is clearly just a front to get around the law and there is evidence that, in fact, it is really a criminal relationship, as well as a private relationship, that is where the prosecution can prove the association. However, they will to try to do that only if it is clearly in the public interest to pursue that to try to break the association.

The whole purpose of this bill, and this clause in particular, is to break up the influence of these organisations. It is the associations with people combined with their codes of secrecy, intimidation of witnesses, and all that sort of thing, that gives them their power. If you can break that up, you can do something about these organisations. But, really, to use this particular offence in a sort of marginal case will not assist the police or the community, and that is why I think it is unlikely to be used. In any case, we have included these extra provisions, as we properly should have.

The Hon. SANDRA KANCK: I indicate Democrat support for this amendment. I have an identical amendment on file and, like the Hon. Mark Parnell, I have some consequential amendments. In fact, having looked at the Hon. Mark Parnell's amendments compared with mine, I think his amendments are better than mine because of the extra categories he includes in his amendment, particularly cousins, boyfriends and girlfriends, which my amendments do not include.

The reason I have my amendments on file in this particular matter and the reason I am supporting the Hon. Mark Parnell is that, at this point, the bill is defining issues of kinship, that is, a close family relationship. The problem for me is what this means for Aboriginal people. We know that Aboriginal people are over-represented in our justice system, and we also know that their family structures are different from ours.

The consequence of going ahead and bulldozing things through in the way the government wants is that this will impact a lot harder on Aboriginal people than it will on the rest of the population. The minister seemed to be suggesting that this would give the Aboriginal people favourable treatment. However, I would also suggest that these are amendments that would be supportive also of many battlers and people in working families, people who have blended families, and so on. Many of those people are more likely to run aground in our criminal justice system, and we need to take that into account in dealing with this.

The minister said, 'Why would you bother?' Well, I remind members (and I have done it a number of times in this debate, and I will keep doing it) of the Haneef affair, where the person he was associating with was his cousin. If we do not have provisions like this, we face the potential for a miscarriage of justice similar to what almost happened to Mohammad Haneef.

The Hon. S.G. WADE: The opposition commends the government for picking up some positive elements in the amendments moved by the crossbench MPs; we believe there were some good ideas there. In that context, we prefer the government's amendment, particularly in the context of our understanding of the way in which the bill will work, which is that no relevant positive relationship will not be relevant for establishing reasonable excuse for the association. We hope,

and we will certainly be watching to ensure, that there will be no inappropriate infringement on free association.

The Hon. M. PARNELL: I will be very brief. We are assisting the committee, I think, by effectively discussing several of my amendments, an amendment to my amendment, and the Hon. Sandra Kanck's amendment, as well as the minister's amendment, all at once. I think we need to do this—

The Hon. P. Holloway: I haven't moved mine yet.

The Hon. M. PARNELL: No; we are anticipating. I want to put on the record that the words I have used in describing Aboriginal and Torrens Strait Islander kinship relationships come out of the South Australian Children's Protection Act. In fact, the existence of those concepts in the act shows that they are regarded as important enough forms of relationship to describe in legislation, the purpose of which is to protect children. Therefore, they are recognised relationships.

The second thing I want to say is that the minister, I think quite reasonably, says he has trouble imagining why police would be chasing the more distant relationships; they will be looking for the key villains rather than people on the periphery. I hope that is the case, but I need to point out that subclause (9) makes it very clear. It provides:

> For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.

In other words, it is the fact of the association itself which is absolutely enough to trigger these provisions. Subclause (6), which lists what I call the protected relationships, includes the words 'was not reasonable in the circumstances'. There is some small level of protection in those words, but let us be clear here. When we are talking about the cousins, if they are getting together to plan crime then they are caught—and you might say, 'So they should be.' However, if the cousins are not planning crime, but were just getting together—

The Hon. Sandra Kanck: For a birthday party.

The Hon. M. PARNELL: —for a birthday party, as the Hon. Sandra Kanck says, they may be able to convince a judge that they had a reasonable excuse. However, the police just need to point to subclause (9) and say, 'We don't have to prove that they were actually doing anything wrong, that they were planning crime. They should not have been getting together; it is a criminal association.' I am keen to nip this in the bud by adding clarity to the legislation, and I wanted to put those points on the record before we proceeded.

The Hon. R.D. LAWSON: Could the minister place on record the reason the offence in clause 35(1) was not framed as follows: 'A person who associated without reasonable excuse on not less than six occasions...', etc.? Why was that not the preferred formula; why was the formula contained within the bill preferred?

The Hon. P. HOLLOWAY: I am advised that it was more to do with the structure of this clause, which provides that, 'A person who associates on not less than six occasions during a period of 12 months with a person...is guilty of an offence.' If you put 'without reasonable excuse' prior to 'on not less than six occasions' that would change the emphasis. It would mean that the six in 12 was reasonable rather than each individual occasion. So, I am advised that it would change the construct of the clause.

The Hon. R.D. LAWSON: I would have thought that the purpose was to ensure that prosecution did not have the onus of showing an absence of reasonable excuse. However, the minister has provided *Hansard* with an explanation, which goes on the public record.

The Hon. P. HOLLOWAY: The government's intention was always that the onus would fall on the defendant. However, the honourable member is correct; if it had been expressed in that way, without anything additional, then it would have put the onus on the prosecution. That was not the government's intention.

The committee divided on the amendment:

AYES (2)

Kanck, S.M.	Parnell, M. (teller)

NOES (19)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.K.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Schaefer, C.V.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

Majority of 17 for the noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: I move:

Page 21, after line 10 [clause 35(6)]—After paragraph (c) insert:

(ca) associations occurring in the course of a charitable event or activity;

There is a list of associations that are to be disregarded by police when they are working out whether or not a criminal association has occurred. They are as follows:

(a) associations between close family members;

(b) associations occurring in the course of a lawful occupation, business or profession;

(c) associations occurring at a course of training or education of a prescribed kind between persons enrolled in the course;

(d) associations occurring at a rehabilitation, counselling or therapy session of a prescribed kind;

(e) associations occurring in lawful custody or in the course of complying with a court order;

(f) associations of a prescribed kind.

I do not know what the government has in mind for 'associations of a prescribed kind'. It may be that the government is intending to include an exemption for the annual toy run—I do not know that. It is missing, and we are going to have to wait and see what the government intends by 'associations of a prescribed kind'.

I will ask the minister, when he responds, to let us know what 'associations of a prescribed kind' are, because when I asked yesterday about regulations he indicated that they were in preparation, and I think he said that probably within about a month or so they would be completed. So, they must have some idea of what 'associations of a prescribed kind' are.

What my amendment does is specify associations occurring in the course of a charitable event or activity, and I do have in mind the annual toy run which occurs each year in December. That raises money and toys that are given to the St Vincent de Paul Society each year. I understand that last year about $300,000 worth of toys was contributed to St Vincent de Paul as a consequence of this activity. I think it is an important activity and one that needs to be continued. I will leave it at that.

The Hon. P. HOLLOWAY: This amendment will add to the list of excluded associations in clause 35(6) of the bill; associations occurring in the course of a charitable event or activity. The government is opposed to this. We question the extent to which the members of criminal motorcycle gangs have contributed positively to charitable events in the past, maybe other than the occasional toy run. It is my understanding that there are hundreds of motorcyclists involved in that and I think it is organised under the auspices of the Motorcycle Riders Association. If there are outlaw motorcycle gangs participating in it obviously, given their numbers, they are a very small part of it.

The inclusion of this amendment has the potential to see all future criminal motorcycle gang convoys advertised as charitable events with some monetary contribution made by the gang or its members to a legitimate charity in order to circumvent the legislation. Alternatively, and from the government's point of view, a far worse outcome is that we could see bona fide charitable events used by criminal gang members and their associates to meet and congregate, to avoid it. That is why we are opposed to this measure.

The Hon. SANDRA KANCK: Even though the minister is indicating opposition to this, I would still like to know, in terms of the toy run, if members of outlaw motorcycle gangs do turn up the toy run will go ahead and there are thousands of bike riders who will participate in it. The

minister has said that only a small number of those bike riders will be banned. Is this an event that the police would make public safety orders around in order to prevent outlaw motorbike gangs from attending?

The Hon. P. HOLLOWAY: That is really a hypothetical question. We have already debated the section on public safety. Does it have to be a threat to public safety to make a public safety order? There would have to be strong reasons for doing so. I must admit that I have not asked but I am certainly not aware of any incidents in past toy runs which would warrant the police considering those sorts of orders. However, I suppose it is not inconceivable.

If there is a risk to public safety in terms of the act then I suppose the police would consider using the measure, but I think the honourable member could ask that about any one of a hundred events. I think it is a bit mischievous to try and suggest that one particular event somehow or other would be targeted.

The Hon. SANDRA KANCK: Assuming that members of these prescribed organisations will turn up at the toy run in December this year, if a member of the Gypsy Jokers bumps into another member of the Gypsy Jokers at the toy run, will this be listed against them as evidence of criminal association?

The Hon. P. HOLLOWAY: I guess it could be but, first of all, I do not know whether that is a priority for the police. I think the police involved with that run are more concerned with people participating in the run behaving safely and enjoying the day—it is not ostensibly for criminal purposes. However, knowing the way that criminal outlaw motorcycle gangs operate, it might very well be the sort of event that they might try to utilise for other purposes. One could just as easily talk about any one of a number of other events that they may attend. If they are associating for criminal purposes then I guess that might come under it. They might will be using this as a cover for doing something, but that can be judged on the facts.

If the honourable member is trying to suggest that, in some way, the ordinary person who rides a motorcycle is somehow or other going to be the target of direct and deliberate police surveillance then, in that sense, I reject that notion.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 21, line 16 [clause 35(7)]—Delete 'but subject to subsection (8)'.

The Hon. SANDRA KANCK: This amendment is in anticipation of my next amendment which is to delete subclause (8). Clause 35(7) says that the court can disregard the accusation of criminal association if the defendant proves that he or she had a reasonable excuse for the association. That is a good thing. However, it has a rider which says this only applies if the defendant was not doing what is said in subclause (8), which provides:

> In proceedings for an offence against this section, subsection (7) does not apply to an association if, at the time of the association, the defendant: (a) was a member of a declared organisation; or (b) was a person the subject of a control order; (c) had a criminal conviction against the law of the state or another jurisdiction of a kind prescribed for the purposes of subsection (3).

So, on the one hand, subclause (7) is saying that you or I, in the course of our duties, will not be charged with criminal association with the defendant, but then when we get to paragraphs (a), (b) and (c) of subclause (8) they basically turn it around. So, in the end it is not any real protection, hence my amendment to remove that reference to subclause (8) in subclause (7).

The Hon. P. HOLLOWAY: This is an amendment that follows a part of a series, and I suggest that we treat this as a test. Subclause (8) provides that the defence of reasonable excuse to the new offence of criminal association does not apply to:

(a) members of a declared organisation; or

(b) persons who are subject to a control order; or

(c) persons with a conviction of a prescribed kind.

Ms Kanck's amendment deletes this subclause from the bill. The government opposes the amendment. The new offence of criminal association complements and supports the control order provisions. It is aimed at breaking up not only declared organisations but also breaking up associations between members of declared organisations, and non-members, and particularly members of juvenile street gangs.

SAPOL advises that to insulate their criminal activity from law enforcement, criminal motorcycle gangs are increasingly relying on non-members to commit offences. Gang members actively recruit the services of members of lesser-known street gangs and use them to undertake high risk aspects of their criminal enterprises, including violence, carrying weapons and the manufacture and distribution of illegal drugs.

Clause 35(8) was included in the bill on the advice of SAPOL. SAPOL advises that the offence of criminal association, a key part of the government's strategy, would be rendered ineffective because criminals—members of declared organisations, those who are subject to a control order and those who have convictions of a prescribed kind—would be able to use the defence to hide associations that have a criminal purpose. The government accepts SAPOL's advice.

The Hon. M. PARNELL: Can the minister clarify this, just so that I fully understand it? It seems to me that the effect of subclause (8) is to say that it does not matter if you have a reasonable excuse or not: you are pinged if you have this criminal association. It just removes the possibility of a reasonable excuse. It says, 'Without derogating from subclause (6)', but subclause (6) has a rider saying, 'unless the prosecution proves that the association was not reasonable in the circumstances.' So, I want to know how these phrases work together. 'Was not reasonable in the circumstances' is still in, but 'reasonable excuse' is now out. How do the two work together?

The Hon. P. HOLLOWAY: What it effectively means is that a member of a declared organisation, a person subject to a control order or a person with a prescribed kind of criminal conviction has the benefit of clause 35(6) in terms of the associations that will be disregarded, unless, of course, the prosecution proves that the association was not reasonable in the circumstances. So, they have that protection, but they do not have the protection of subclause (7).

The Hon. M. PARNELL: I really need to clarify this. They have the advantage of subclause (6), so let us just pick subclause (6)(a), the family members, and let us say it is a brother. They have the advantage of saying, 'I can't be had for criminal association because it is my brother but, because I'm a member of a declared association, I cannot rely on the defence of reasonable excuse; but the police still have to prove that it was not reasonable in the circumstances.' I just do not see how they fit together.

The Hon. P. HOLLOWAY: Prima facie associations between close family members are excluded under clause 35(6)(a). However, the prosecution may be able to prove that the association was not reasonable in the circumstances, whereas subclause (7) is a general defence of reasonable excuse. Subclause (7) operates independently of subclause (6), but subclause (7) cannot be used by those people referred to in subclause (8); that is, members of declared organisations, etc.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 21, lines 26 to 29—Delete subclause (9)

This is a very important amendment, because it is characteristic of this bill in that we have here an example of guilty until proven innocent. We have gone through a lot of discussion so far today about criminal associations.

For example, when I asked questions about church volunteers and so on, I was told by the minister that it would be a defence to the court that they were not associating for criminal purposes. However, subclause (9) provides:

> For the avoidance of doubt, in proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant associated with another person for any particular purpose or that the association would have led to the commission of any offence.

So, here we have it: guilty until proven innocent. The person concerned, who has had an association, must prove their innocence to the court—unlike the way it has been done for centuries. In this case, I know that the minister will argue that it is not a charge per se but merely criminal association. I am sure that that is what he will argue. However, effectively they will have been charged, and the defendant must prove their innocence. That is what this clause provides. It goes against the best of all we have created in our justice system in this state and in this country. This is really an appalling provision.

The Hon. P. HOLLOWAY: Subclause (9) provides that, for the avoidance of doubt, in proceedings for the offence of criminal association it is not necessary for the prosecution to prove

that the defendant associated with the other person for any particular purpose or that the association would have led to the commission of any offence. The Hon. Ms Kanck's amendment would delete that subclause, and the government opposes it.

The offence of criminal association replaces the offence of consorting which, likewise, does not require there to be any proof that the consorting was criminal in nature. The purpose of this offence, as is the case with the offence of consorting, is not to prevent the commission of a particular offence: it is to prevent criminal relationships forming and existing, for example, the association between members of criminal motorcycle gangs and members of juvenile street gangs. These associations foster crime and aid recruitment by criminal motorcycle gangs.

Removing subclause (9) will leave open the possibility that courts will interpret the offence provision as requiring proof of criminal intent or purpose, and that is obviously Ms Kanck's intention. This would impose an impossible evidentiary burden on the prosecution. It would turn the offence into something akin to conspiracy and undermine its effectiveness. In short, we might as well give the bill away.

The Hon. M. PARNELL: I support the amendment, but I also accept what the minister says, namely, that it cuts to the heart of what the government is trying to do. I just believe that what the government is trying to do is wrong.

Members interjecting:

The Hon. M. PARNELL: No; this bill, as the Attorney-General keeps telling us, is so important that we are doing our job and giving it thorough scrutiny. This provision provides that the fact of the association is enough; you do not have to prove that they were doing anything. All of us can probably remember as children that, if we got a smack, we might have said, 'I didn't do it,' and the response was, 'Well, you probably did something in the past I didn't know about, and you're probably going to do something in the future, so we're going to punish you.'

It seems to me that that is the analogy here: the prosecution does not have to prove any particular purpose (and I guess that planning crimes would be a particular purpose), and it does not have to prove that the association would have led to the commission of any offence. If this bill is about preventing crime, yet one of its key provisions does not require the prosecution even to draw any connection between crime and the people who are the subject of this consorting clause, I think that we have missed the point.

The whole premise of the government's bill seems to be that we have bad people and, once we have determined that they are bad, we will make sure that they do not talk to each other, because they will probably do bad things. I talked about the speed dating clause, and this is the Santa clause: he's making a list, he's checking it twice and he's going to know who is naughty or nice. That is what this is about.

Once you have labelled someone as bad because of their membership, their history or their past membership, there is no escape from it. The government does not need even to prove that they are still involved in planning or committing crime: their history and their status are sufficient. I think that this subclause deserves to be opposed.

The committee divided on the amendment:

AYES (2)

Kanck, S.M. (teller)	Parnell, M.

NOES (19)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.K.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Schaefer, C.V.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

Majority of 17 for the noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: My amendments Nos 31 to 34 are consequential.

The Hon. M. PARNELL: I want the record to show what my amendments were, so I am going to move them but not speak to them and not divide on them. I said I would take it as a test clause, but I would like the record to show what my amendments are because they make no sense out of context. I move:

Page 21, line 41 [clause 35(11)(b)]—Delete 'a close family member of' and substitute:

in a prescribed relationship with

Amendment negatived.

The Hon. M. PARNELL: This amendment is the same. I will not speak to it but would like it on the record. I move:

Page 22, before line 1 [clause 35(11)(b)]—Before subparagraph (i) insert:

(ai) in the case of persons who are Aboriginals or Torres Strait Islanders—1 is held to be related to the other according to Aboriginal kinship rules, or Torres Strait Islander kinship rules, as the case may require; or

Amendment negatived.

The Hon. M. PARNELL: I move this in an amended form. I will not speak to it but would like it recorded in its amended form. I move:

Page 22, lines 1 to 5 [clause 35(11)(b)(i) to (v)]—Delete subparagraphs (i) to (v) and substitute:

(i) in any case—

(A) 1 is a spouse or domestic partner of the other or is a former spouse or former domestic partner of the other; or

(B) 1 is a parent or grandparent of the other (whether by blood or by marriage); or

(Ba) 1 is a brother or sister of the other (whether by blood or by marriage); or

(C) 1 is an uncle or aunt of the other (whether by blood or by marriage); or

(D) 1 is a first cousin of the other (whether by blood or by marriage); or

(E) 1 is a guardian or carer of the other; or

(F) 1 is a boyfriend or girlfriend of the other (provided that a person will only be taken to be a boyfriend or girlfriend of another person for the purposes of this subparagraph if the relationship between the 2 people involves a degree of intimacy that extends beyond mere friendship).

The Hon. P. HOLLOWAY: I move:

Page 22, lines 1 to 5 [clause 35(11)(b)(i) to (v)]—Delete subparagraphs (i) to (v) and substitute:

(i) 1 is a spouse or former spouse of the other or is, or has been, in a close personal relationship with the other; or

(ii) 1 is a parent or grandparent of the other (whether by blood or by marriage); or

(iii) 1 is a brother or sister of the other (whether by blood or by marriage); or

(iv) 1 is a guardian or carer of the other.

Government amendments Nos 1 and 2 of series 2 relate to the same matter, and I suggest that amendment No.1 be treated as a test for both.

As honourable members will have noted, associations between close family members are excluded from consideration in proceedings for the new offence of criminal association. The term 'close family member' is defined in clause 35(11) and includes where one person is a spouse or domestic partner of the other. Relevantly, 'domestic partner' is defined to mean a person who is a domestic partner of another within the meaning of the Family Relationships Act 1975, whether declared as such under that act or not.

The term 'domestic partner' is defined in section 11A of the Family Relationships Act and requires not only that the relevant person be living at the relevant date in a close personal relationship but also that they have done so for at least three years, or three out of the preceding four years, or that there is a child of the relationship. The government concedes that this is too narrow and would, in the absence of a declaration under section 11B of the act, rule out genuine relationships that have existed for less than three years, or three out of the four years, where there is no child of the relationship. This amendment therefore replaces 'domestic partner' in the definition of 'close family member' with a person who is or has a close personal relationship with the other person.

The term 'close personal relationship' is also defined in the Family Relationships Act in section 11 and means the relationship between two adult persons, whether or not related by family and irrespective of their gender, who live together as a couple on a genuine domestic basis (not including marriage or relationships) where one party provides domestic support or care for a fee or reward. A relationship that is the subject of a declaration under section 11B of the Family Relationships Act would also be covered.

The amendment also adds to the list associations between former spouses or between people who were but no longer are in a close personal relationship, and extends each of the relevant categories to cover relationships by blood and marriage. This amendment covers matters raised by both the Hon. Mark Parnell and the Hon. Sandra Kanck in their amendments. The government agrees that such associations are quite properly included within the list of protected family associations in clause 35(11).

The Hon. M. PARNELL: I support this amendment but, as would be clear to members, I do not believe that it goes far enough. I acknowledge that the government has moved in the area of personal relationships and also has moved to extend the definition of family relationships from simply blood relationships to in-law relationships.

I think the importance of this amendment—and I am disappointed that the Attorney, who was in the gallery, has now left—is that it shows that the amendments that have been put up by the crossbench are serious amendments that have triggered the conscience of the government to make improvements to its legislation. The amendments that we have been putting up have been serious amendments. They have not been mickey mouse amendments and they have not been time-wasting amendments. They have been serious amendments, and it is good to see that at least one of them has found its way through the process of government into some ministerial amendments, and I think this softens some of the provisions of the bill. It takes the hard edge off the criminal association provisions. Whilst I say they are not perfect and that we should have gone further, I will accept them for what they are: a slight improvement on the status quo.

The Hon. SANDRA KANCK: I indicate Democrat support for these amendments. They do not go far enough in my view, and it is ironic that with the number of media interviews I have done on this bill in the past month that a number of journalists were told by people in the Attorney-General's office that the delay was because the government was preparing its own technical amendments. It is amazing, therefore, to think that we have had the bill on hold for three consecutive sitting weeks so this could be prepared. Nevertheless, it is an improvement on the bill itself, albeit not a massive improvement, and may stop some miscarriages of justice and therefore the Democrats will support it.

The Hon. M. Parnell's amendment negatived; the Hon. P. Holloway's amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 22, lines 7 and 8 [clause 35(12), definition of domestic partner]—

Delete the definition of domestic partner and substitute:

close personal relationship has the same meaning as in Part 3 of the Family Relationships Act 1975;

This amendment is consequential on the previous amendment and inserts the definition of 'close personal relationship', taken from the Family Relationships Act, into clause 35(12) of the bill.

Amendment carried; clause as amended passed.

Clause 36 passed.

Clause 37.

The Hon. SANDRA KANCK: I move:

Page 22, lines 31 to 35—Delete subclause (1) and substitute:

(1) The Attorney-General must, before 1 July in each year (other than the calendar year in which this section comes into operation), appoint a retired judicial officer to conduct a review—

(a) to determine whether powers under this act were exercised in an appropriate manner, having regard to the objects of this act, during the period of 12 months preceding that 1 July; and

(b) to otherwise consider the operation and effectiveness of this act.

The bill provides that the Attorney-General will appoint a retired judicial officer to conduct a review to determine whether powers under this act were exercised in an appropriate manner. I am okay with that although, as members know, last night I indicated that I really would have liked the Legislative Review Committee to look at it, but that effectively got knocked on its head. My amendment adds another part to that so that not only will the retired judge look at whether the powers were exercised in an appropriate manner, but my amendment would require that retired judge to look at the operation and effectiveness of the act overall. That is a very sensible measure, seeing as so much is turned on its head within our justice system as a consequence of this legislation.

The Hon. P. HOLLOWAY: Clause 37 of the bill requires the Attorney-General to each year appoint a retired judge to conduct a review to determine whether in the preceding 12 months the powers under the act were exercised in an appropriate manner, having regard to the objects of the act. This amendment amends clause 37 to also require the judge to review the operation and effectiveness of the legislation every year. The government opposes this amendment. Until declarations have been sought and if successful made against the main criminal organisations in South Australia, SAPOL will be constrained in terms of the number of control order applications it can make to the court. Likewise, until and unless declarations are made against the main criminal organisations and control orders obtained against the leading members of the organisations, the new offence of criminal association will have little impact on the relevant criminal associations.

Although the government is confident the measures in this legislation will impact upon the criminal activities of the members and associates of the relevant criminal organisations (assuming the bill is passed intact), it will not be possible to determine within 12 months, as this amendment requires, whether and to what extent the measures contained in the Serious and Organised Crime (Control) Act have been effective in breaking up criminal organisations and disrupting their activities. Clause 38 of the bill requires the Attorney-General to conduct a review of the operation and effectiveness of the act five years after its commencement. This is a more appropriate time frame. The government's position is that the retired judicial officer appointed under clause 37 should focus his or her attention on whether the powers exercised under the legislation have been exercised appropriately and in a manner that conforms with the parliament's intention. That is why clause 38 provides for a separate review by the Attorney-General.

The Hon. M. PARNELL: I support the Democrat amendment, which is a sensible amendment to an important clause in relation to the oversight of the legislation. The honourable member's amendment provides for a greater level of scrutiny than does the government's existing provisions.

The Hon. R.D. LAWSON: Liberal members will support this amendment. It is important that the review provisions of this act be strengthened in the manner suggested. We are delighted that the government has acknowledged the important role of the Legislative Council by itself introducing necessary amendments to ensure that the bill operates effectively. We hope the government will support this small but significant amendment.

The Hon. D.G.E. HOOD: Family First opposes the amendment.

Amendment negatived; clause passed.

Clause 38.

The Hon. R.D. LAWSON: On behalf of the Hon. Mr Wade, I move:

Page 23, line 12 [clause 38(1)]—Delete 'fifth' and substitute 'fourth'

This simple amendment reduces from five to four years the time for the undertaking of the review. The current clause provides that the Attorney-General must, as soon as practicable after the fifth anniversary, conduct a review of the operation and effectiveness of the act. We believe that four years is a more appropriate time for this review to be undertaken. After the fifth anniversary of the commencement, the review will be put out to 2013; we believe it would be far more appropriate to have the review after four years.

The Hon. M. PARNELL: I will not be moving my amendment to clause 38, but I advise that I support the Liberal amendment.

The Hon. P. HOLLOWAY: This amendment will reduce from five years from commencement to four years from commencement the date by which the Attorney-General must conduct a review of the operation and effectiveness of the act. It is really consequential upon Hon. Mr Wade's fourth amendment, which reduces the sunset period clause in clause 39 from 10 years

to five years. The government opposes the amendment, which I guess should be treated as a test amendment for his next amendment, which is the sunset clause.

Although the measure in the bill 'Declarations, control orders, public safety orders' and the new offence of criminal association can be used in isolation from one another, the legislation is intended for criminal organisations and their members; indeed, the legislation will work most effectively against criminal organisations and their members if the measures are used in conjunction with one another. That is how the government intends the legislation to be used.

I have already advised members why the government believes that a 10-year sunset period is appropriate. However, I will add that, although the government is confident that the measure in this legislation will impact upon the criminal activities of the members and associates of the relevant criminal organisations, to suggest that the job will be done within five years, or that a definitive judgment on the effectiveness of the legislation will be able to made at that time, is, the government believes, overly optimistic.

The risk in reducing the sunset clause to five years is that any gains made against organised crime will be lost if the legislation is repealed at that time. The 10-year sunset period is one of three review measures aimed at ensuring that the powers in this legislation are used properly and that, when so used, they are effective.

As I have said, the three review mechanisms are designed to work together, that is, an annual review of the use of the powers under the legislation; a review of the operation and effectiveness of the legislation after five years, each with parliamentary oversight; and the expiry of the legislation itself after 10 years. The government believes this is appropriate, and it opposes this amendment and the amendment to reduce the sunset period to five years.

The Hon. R.D. LAWSON: I indicate that the minister is correct in assuming that this is the first part of two amendments, the second of which is to shorten the sunset period from 10 years to five years. In supporting this bill, we have every expectation that, at the conclusion of the first five years, the act will be renewed; in fact, if we thought it would be repealed or would not work, we would not have supported it.

However, there would be many in the community who would be concerned, and some other members have outlined their concerns. We believe those concerns are ill-founded, but the proof of the pudding is in the eating and, if, within the first five years, this bill is found to have been effective or, certainly, found not to have had the deleterious effects that have been described, the parliament will renew it for a further period.

Members will recall that the terrorism legislation has similar sunset clauses and, for that reason, we are proposing a five-year sunset clause. If there is to be a five-year sunset clause, it is appropriate that the Attorney should report on the operations before the expiration of that five-year period. It is for that reason that we are proposing the amendment before the committee.

The Hon. SANDRA KANCK: I will address what the Hon. Mr Lawson has said. He requires this review to occur at a shorter interval (I think that is probably the best way to put it), and I certainly support a review occurring much sooner than is anticipated in the act.

The committee divided on the amendment:

AYES (12)

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

NOES (9)

Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.K.	Wortley, R.P.	Zollo, C.

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 39.

The Hon. S.G. WADE: I move:

Page 23, line 23—Delete '10 years' and substitute:

5 years

In moving this amendment I would like to briefly outline my understanding of the alternatives before the committee. The government proposes a 10-year sunset clause for the legislation, but the opposition is of the view that this is too long in a period of such rapid change and especially in the context of concerns expressed by the Director of Public Prosecutions only yesterday that this bill was soft. We want to consider that, and we also want to consider the legislation in terms of its impact on personal freedoms, because we have concerns both that it does not go hard enough on non law-abiding citizens within our community as well as, on the other hand, that it may catch law-abiding citizens inappropriately.

We put to the committee that the 10-year sunset clause is too far out, and we propose a 5-year sunset clause. My understanding is that the Hon. Sandra Kanck, on behalf of the Democrats, is suggesting a sunset clause of 30 June 2010—which, I believe, is about 2½ years—while the Hon. Mark Parnell's amendment proposes a sunset clause two years after the commencement date. So there are four alternatives, including the government's status quo proposal of 10 years, available to the committee, and the opposition urges the committee to see the wisdom of our 5-year proposal. In our view, the alternatives of two years and two and a bit years are too short. The government and the police will need to engage in a fair amount of activity to get the act operational, including declaring organisations and so forth. So, we believe that a five-year sunset clause is appropriate.

The Hon. P. HOLLOWAY: Certainly, the government would prefer five to 10, but obviously, for the reasons I argued earlier, 10 is our preferred position. I also point out that I think that under the Subordinate Legislation Act, generally speaking, 10 years is regarded as an appropriate period for a sunset clause.

I could not let the comments of the Hon. Mr Wade go when, on the one hand, he thinks this bill might not be tough enough and therefore we need to review it, and then on the other hand, in his very next amendment, he seeks to basically allow appeals against the Attorney-General's decision, the privative clause (clause 41). As I pointed out last night, if we do that—

The Hon. S.G. Wade interjecting:

The Hon. P. HOLLOWAY: You are not moving that one? We had that debate the other day so at least—

The Hon. S.G. Wade interjecting:

The Hon. P. HOLLOWAY: That is fine; if you are not going to have that one—

The Hon. S.G. Wade interjecting:

The ACTING CHAIRMAN (Hon. I.K. Hunter): Order!

The Hon. P. HOLLOWAY: If that has gone then that is fine; that does remove one of the real risks to delay that this bill would have faced. Again, I would ask the chamber to support the 10-year view. It is consistent with subordinate legislation and it does give a sufficient period for this bill to work.

The Hon. M. PARNELL: I move:

Page 23, line 23—Delete '10 years after the date on which this section' and substitute:

two years after the date on which Part 1.

I foreshadow that I support all the amendments, and I support them in order. I think that the civil liberties that are affected by this legislation are so important that we should bring this back sooner rather than later. I think a two-year sunset clause is appropriate. If I am unsuccessful then I think the Hon. Sandra Kanck's proposal that it be two and a bit years is the next best option, and then I would support the Liberal amendment to bring it back after five years, because I do think that the government's 10-year period is too long: it is beyond the parliamentary lifespan of many of us.

By the time it comes back we will have pretty much forgotten the debate, but in five years a few of us will still be here. I think it is important that we bring such fundamental human rights legislation back to the parliament sooner rather than later. So, my fallback will be to support the Liberal position, but I would urge all honourable members to support a very rapid sunset clause of two years.

The Hon. SANDRA KANCK: I move:

Page 23, line 23—Delete '10 years after the date on which this section comes into operation' and substitute:

on 30 June 2010.

The effect of my amendment is to have this new legislation go out of existence 3½ months after the next state election. Too all intents and purposes I think it will work out as almost the exact same date that the Hon. Mr Parnell is moving, because his is two years after the legislation comes into existence, so I expect that it will be around the same time.

My reason for doing this is that this is such draconian legislation that I believe the members of the next parliament must be forced to look at it and look at it very early in their term. It is all very well for this parliament to make decisions like this and have it carry over until 2018, as the government intends, but this is a bill (an act, as it will become) that needs a lot of oversight.

The previous amendment of Mr Wade's was to bring back the review period so that it is at four years rather than five years. I still do not think that that is enough because it is such bad legislation. Under the government's proposal, as it is in the bill, 10 years takes us to 2018. We will have an election in 2010, an election in 2014 and an election in 2018, which means that by the time this legislation goes out of existence in 2018 it will have covered four different parliaments. It is quite extraordinary for a bill of this nature to have that span of existence.

I do not particularly mind whether it is the Hon. Mr Parnell's amendment or my own that gets up, because I think it is fairly much the same, but I think that either his or mine should be preferred over Mr Wade's amendment which, in turn, should be preferred over the bill in its current form.

The Hon. S.G. WADE: The Hon. Sandra Kanck seems to be talking in terms of this legislation not being considered again for two, five or 10 years. I want to clarify the opposition's position. We have indicated our significant concern that this regime will not address serious and organised crime. The Leader of the Opposition in the other place has indicated that we reserve the right to come back to this parliament well and truly before two, five or 10 years if we take the view that it needs to be fixed. We certainly will not be dilly-dallying like the government has.

The Hon. A. BRESSINGTON: I rise to say that I will be supporting the Hon. Stephen Wade's amendment of five years. Unlike the Hon. Sandra Kanck, I do not think that this is draconian legislation, considering the group of people and the fact that this is a bill that is being developed to deal with serious and organised crime. I think that there would be a lot of people (average, reasonable citizens) out there who will be happy to see that our government is at least prepared to make an attempt to get this under control and rein it in now, because we have seen over the past six to eight months that there is a pressure cooker building out there. The shootouts at Tonic nightclub and Gouger Street—

An honourable member interjecting:

The Hon. A. BRESSINGTON: Yes; it is starting to happen more and more often. I look forward to the review in five years and I look forward to knowing that I will be here for it. I am not sure that this bill is tough enough in some areas, as I have shared with the Hon. Paul Holloway. It is not a civil libertarian issue. This is about the rights and freedoms of law-abiding citizens.

The Hon. P. HOLLOWAY: To save time, I indicate that I will not divide on this. Clearly, the five years has the numbers and so I will not divide on it, although I want to make a couple of comments in relation to this bill. Inevitably, bills of this type probably will be revisited, because we know how proficient organised crime is at getting around provisions. I would like to think that we have thought of everything here and put it in, but history shows us that these people will have top legal brains at work on this legislation as soon as it gets through, to try to find loopholes.

If we are ever to get on top of organised crime we probably will be revisiting this regularly. Of course, the Attorney has to review this now after four years, with the amendment that was just carried, and its particular provisions are perused by the retired judge every year, but the legislation will be revisited. As the government has said, this is really the first stage, in effect, of its attack on organised crime. There is other legislation; we passed the firearms protection order last week and we have other drug-related legislation which will also impact, in a more peripheral way, on organised crime and, obviously, there is other legislation to come. This is by no means the last word on organised crime.

The Hon. R.D. LAWSON: I am particularly glad that this has passed, because it will be a Liberal government that will be reviewing the legislation.

Honourable members: Hear, hear!

The ACTING CHAIRMAN (Hon. I.K. Hunter): There is a lot of opinion on that comment.

Members interjecting:

The ACTING CHAIRMAN: Order! The question is: that the words '10 years' in line 23 stand as printed. If you are supporting the government you will be voting yes; if you are supporting any of the three amendments, you will be voting no. Then I will be putting the amendments as they were filed. If you were going to vote for Mr Wade's amendment you will be voting yes on that; but, if you do so, the other amendments standing in the name of the Hon. Mr Parnell and the Hon. Ms Kanck will not be considered. If you want those amendments considered you will need to be voting against the amendment of the Hon. Mr Wade. Is everybody clear? If there are no further contributions I will put the question: that the words '10 years' in line 23 stand as printed.

Question negatived.

The ACTING CHAIRMAN: The next question standing in the name of the Hon. Mr Wade is to insert the words '5 years'. Again, I remind you that if you are supporting this amendment then the amendments in the name of the Hon. Mr Parnell and the Hon. Ms Kanck will not be considered.

The Hon. S.G. Wade's amendment carried; clause as amended passed.

Clause 40 passed.

Clause 41.

The Hon. M. PARNELL: I move:

Page 23, lines 33 to 39 and page 24, lines 1 to 8—Delete clause 41

This seeks to remove the privative clause. I do not propose to again have the debate that we had yesterday on the privative clause. We agitated the issues at some length. However, I will say that I find this provision one of the most abhorrent in the legislation. I have opposed privative clauses wherever they have reared their ugly head in legislation, because privative clauses put administrative decision-makers beyond the reach of the legal process. These provisions effectively say, 'It doesn't matter if you don't follow due process; it doesn't matter if you disobey the law; no-one has any right to go to the umpire and call you to account.' That is bad law. It is bad law whether it is in the Development Act or whether it is in the Serious and Organised Crime Act. I am not going to say any more than that, but members will be pleased to know that this is the last of the amendments on which I have written the word 'divide' in capital letters. However, it is such an important issue that I do want to test the will of the council on this clause.

The Hon. SANDRA KANCK: I have a similar amendment which I will not be moving, because I will be supporting the Hon. Mark Parnell. I echo his sentiments; this clause is one of the fundamental flaws of this bill.

The Hon. P. HOLLOWAY: I oppose the amendment for the reasons I outlined yesterday: it would totally frustrate the whole purpose of the bill.

The Hon. S.G. WADE: Like the Hon. Mark Parnell, the opposition does not propose to detail the arguments we put yesterday in an earlier debate on a related matter. We indicate that we would have been attracted to a more limited privative clause. We believe that the proposal of the Hon. Mark Parnell is too expansive, but a more limited privative clause would have both facilitated the sound administration of the policing and also protected the rights of individuals. We will not be supporting Mark Parnell and we will not be moving our amendment.

The committee divided on the amendment:

AYES (19)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Evans, A.L.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P.	Hood, D.G.E.
Hunter, I.K.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Schaefer, C.V.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

NOES (2)

Kanck, S.M. Parnell, M.

Majority of 17 for the ayes.

Amendment thus negatived; clause passed.

Remaining clauses (42 and 43), schedule and title passed.

Bill recommitted.

Clause 3.

The Hon. SANDRA KANCK: I move:

Page 5, lines 1 to 4—Delete the definition of serious criminal offences and substitute:

serious criminal offences means offences of the following kinds:

(a) an offence against Part 5 Division 2 or 3 of the Controlled Substances Act 1984;

(b) an offence against the Firearms Act 1977;

(c) an offence against section 15 or 15A of the Summary Offences Act 1953;

(d) an offence against Part 3, 5, 6A or 6B of the Criminal Law Consolidation Act 1935;

(e) an offence involving damage to property by fire or any offence involving explosives;

(f) a conspiracy to commit, or an attempt to commit, an offence referred to in a preceding paragraph;

(g) and indictable offence committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence.

If members recall, last night I had a similar amendment but I withdrew it. Although the opposition indicated that it had a preference—as I do—to have this properly defined within the legislation rather than leaving it to regulations, the minister indicated that the police believe that the amendment I moved yesterday was lacking. So, in order to cover the accusation by the police that it is lacking, I have had it redrafted.

I hope that, as a consequence of this new amendment, the opposition, who yesterday indicated its preference for this to be in legislation rather than in regulations, will now support this amendment.

The Hon. P. HOLLOWAY: I can understand why the honourable member, and others, would codify to the maximum extent possible the sort of serious criminal offences to which this would apply. However, the problem is in dealing with organised crime and outlaw motorcycle gangs. They are very mobile in terms of the sorts of crimes that they deal with.

If one looks at the list here, I am not sure whether or not it covers money laundering, which is one of the principal offences that we know bikie gangs are involved in.

We know that they are moving into telecommunications and a whole range of other things. The great risk SAPOL fears in relation to this measure, if it is carried, is that it may miss something and that what will happen is that, once you codify things and you do not have the ability to keep up rapidly by bringing in offences, it will simply shift their crime towards the loophole.

That is why I think that, if we are dealing with such a mobile crime front, as we have been with organised crime, it is necessary that we have a catch-all clause. The government's definition of serious criminal offences in clause 3 is:

(a) indictable offences (other than indictable offences of a kind prescribed by regulation); or

(b) summary offences of a kind prescribed by regulation.

Under this definition, you have the capacity to keep up with any shifts in crime trends. However, paragraph (a) removes the offence if you do not want it included, and summary offences can be prescribed by regulation. I ask the committee to support this so that, if there are any shifts in crime trends, we can keep up, rather than have to bring back the bill every time outlaw motorcycle groups or other organised crime groups shift into a different type of crime.

The Hon. D.G.E. HOOD: Family First opposes the amendment. By passing it, potential loopholes are created for serious criminals to exploit, but they are not held to account.

The Hon. M. PARNELL: The Greens support the amendment. We think that this legislation is so important that we need the parliament to provide with a level of specificity the types of offences that are covered, rather than leaving it to the executive through regulation.

The Hon. P. Holloway interjecting:

The Hon. M. PARNELL: The minister says that we can move to disallow the regulations. I have been here a short time, but I do not think that in the two years I have been here any disallowance of regulation motion has ever succeeded.

The Hon. Sandra Kanck: One has.

The Hon. M. PARNELL: I am reminded by the Hon. Sandra Kanck that one has.

The Hon. R.I. Lucas: Stick around!

The Hon. M. PARNELL: The Hon. Rob Lucas says that if I stick around I will see some more. I am sure that what he has in mind are some regulations I have moved to be disallowed that the Liberals are chomping at the bit to support. I support the Hon. Sandra Kanck's amendment. I think that it is a sensible move to put a list of the types of offences in the legislation itself, rather than leaving it to regulations.

The Hon. S.G. WADE: On this occasion, the Hon. Sandra Kanck accurately reflects the opposition's general discomfort with provisions that are prescribed offences by regulation rather than in the legislation itself. We would certainly have been more comfortable had the government developed a comprehensive set of offences and put it in the bill.

On the issue of principle, it is not that the Liberal Party has the view that specification by regulation is never appropriate. For example, in an area as technical and dynamic as pharmacological products in drugs legislation and so forth, specification by regulation might well be appropriate. However, in an area where we are actually specifying statutory provisions, it seems to be reasonable for the government to enumerate it in legislation, rather than by regulation. Having said that, and considering that the government was not willing to do it, we do not propose to support the amendment.

The Hon. P. HOLLOWAY: I have just been given two examples of where organised crime is shifting and where it would not be covered in this amendment: one is identity theft, which is a growing area, and the legislation will obviously need to evolve as identity theft evolves which, in turn, depends on technology; and another is computer crime. These are just two areas where we would expect organised crime to shift and just another example of why we need to be flexible, but I can understand the sentiments of the honourable member.

The Hon. S.G. WADE: Just briefly, as now is not the time for a discussion on good drafting practice, the point the minister just made is that those are two clearly foreseeable areas where the criminal element has been or might be involved. We do not believe that it was beyond the wit of the government to come up with a list of offences; it chose not to. We do not propose to support the amendment.

Amendment negatived; clause passed.

Clause 13.

The Hon. P. HOLLOWAY: Honourable members will recall that yesterday there was some confusion as to whether the Hon. Sandra Kanck and the Hon. Mark Parnell had the opportunity to have their amendments debated, and I can understand why the committee voted the way it did. I indicated at the time that we could come back and revisit the clause. I move:

That this clause be reinserted.

It is really up to those two members whether they wish to use this opportunity to consider their amendments.

The Hon. M. PARNELL: My amendment was to throw it out, so it is diametrically opposed to what the minister has just suggested, that we put it back in. I do not propose to revisit all the debate over—

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

The Hon. M. PARNELL: A number of times today when I have said that I do not propose to do something that might take time, the Hon. Rob Lucas has said, 'Hear, hear!' We have thoroughly debated the question of criminal intelligence. I am very concerned, for the same reasons that I am concerned about a privative clause, about any measure where there is no scope for judicial challenge for evidence. So, having moved yesterday, as part of a fairly convoluted debate that we do not need this clause, to have it withdrawn, I do not need to have that dealt with separately from the minister's question, which is to put it back in. So, I am happy just to hear the will of the committee on the minister's amendment but put on record that I oppose it going back in.

The Hon. SANDRA KANCK: I suppose the Hon. Rob Lucas would be very happy if I just said 'ditto'.

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

The Hon. SANDRA KANCK: We went through the debate last night. My amendment also was to delete clause 13. I was pleased when it was knocked out, albeit accidentally from the perspective of some members, and I oppose its reinsertion.

The Hon. S.G. WADE: I indicate that the opposition would prefer a more limited privative clause but supports the reinsertion of clause 13. We had the debate yesterday.

The Hon. D.G.E. HOOD: Family First supports the reinstatement of the clause.

The CHAIRMAN: The question is: that this clause be reinserted.

Question agreed to.

Clause 14.

The Hon. P. HOLLOWAY: I move:

Page 8, lines 8 to 11 [clause 14(2)(a)]—delete paragraph (a) and substitute:

(a) the defendant—

(i) has been a member of an organisation which, at the time of the application, is a declared organisation; or

(ii) engages, or has engaged, in serious criminal activity,

and regularly associates with members of a declared organisation; or

We had a discussion last night in relation to clause 14. I undertook to look at the matter. I think the Hon. Rob Lawson raised some issues. My amendment clarifies the matter that was raised by both the Hon. Robert Lawson and the Hon. Mr Parnell during the committee debate. Clause 14(2)(a) provides:

The court may, on the application of the Commissioner, make a control order against a person (the defendant) if the court is satisfied that—

(a) the defendant—

(i) has been a member of a declared organisation or engages, or has engaged, in serious criminal activity; and

(ii) regularly associates with members of a declared organisation.

The question raised is: does a former member of a declared organisation (used in this context in clause 14(2) of the bill) include a person who ceased to be a member of an organisation before it was declared? The government concedes that, as currently drafted, this is not clear. It is the government's position that clause 14(2)(a) should provide for control orders to be made against former members of declared organisations, including those whose membership ceased before the Attorney-General makes a declaration against the organisation. The reason for the government's position is that this will ensure that members of criminal organisations, including criminal motorcycle gangs, cannot avoid a declaration by resigning or leaving the organisation before a declaration can be made.

As honourable members would be aware, clause 9 of the bill requires the Attorney-General to publish a notice in the *Gazette* and in a newspaper circulating throughout the state specifying that an application has been made.

The Hon. M. PARNELL: I am conscious in rising to speak to this amendment that people are aware of the time. However, last night I pushed the minister for an answer to this issue, and I am going to push a little further now. As a courtesy, I mention that I want to make a very brief third reading contribution on this bill.

I understood the minister to say that he wants to avoid the situation of people pre-empting a declaration and resigning. It seems to me that that also catches people who resigned 20 years ago, before this legislation was even contemplated. It seems to me that one of the evils I was trying to pick through and to undo in the amendments yesterday has, in fact, been entrenched. As I understand it, the words are, 'the defendant has been a member of an organisation which at the time of the application is a declared organisation'. That is absolutely retrospective. That is saying that you resigned from the Hell's Angels 20 years ago. Next month the Attorney-General declares it to be a declared organisation and you are caught by that mechanism. I make it clear that it is not just people who resign in anticipation of this legislation, but people who have ever been a member of that organisation in the past.

The Hon. P. HOLLOWAY: Yes, that is correct, but it is a discretionary order. It is not a mandatory order as it would be for a current member. Again, because it is discretionary, it does have to apply to all the other tests, in particular, that the making of the order is appropriate in the circumstances.

The Hon. R.D. LAWSON: I am glad to see that the government has closed a gaping loophole in this legislation, which loophole would not have been discovered had there not been a full debate in the Legislative Council—again, demonstrating the value of a comprehensive debate of these matters. If we had been intimidated by certain government ministers into not giving this bill a thorough debate, this loophole would have persisted and the legislation would have been a laughing stock.

The Hon. M. PARNELL: On that point, as the person who drew attention to the inconsistency, I am somewhat disappointed that the result has been the opposite to what I would have liked. In fact, this draconian legislation is now more draconian as a result of my diligence and vigilance going clause by clause. All levity aside, I am very unhappy with this provision. I will not divide on it now. We have divided on this topic before. I just want the record to show that the ability, effectively, to make illegal today something that was not illegal 20, 30, 40 or 50 years ago is called retrospective legislation, and we go down that path at our peril. I think that this is the wrong way to go.

Amendment carried; clause as amended passed.

Bill reported with amendments.

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

That this bill be now read a third time.

I thank members, and I would particularly like to mention the Hon. Ann Bressington, who first raised the issue of those gangs that associate with organised crime. I thank her, the Hon. Mr Darley and the Family First members in particular for their support. I thank opposition members for their general support of the thrust of the bill. I also thank the advisers for the job they have done.

The Hon. M. PARNELL (18:09): This will be a very brief third reading contribution. I am bitterly disappointed that, shortly, this measure now looks like becoming a part of our statute book. I think it is bad law. I think it is misguided in that it attacks a nut with a sledgehammer. That is not to say that the nut of the 250 so-called outlaw motorcycle gang members involved in crime is not something we need to do deal with—of course we do. However, I do not think that this bill is the way to do it.

It has been an interesting exercise going through this debate, which took a new turn when we had the outrageous attacks from the Attorney-General, aimed personally at me and partly at the Hon. Sandra Kanck. Those attacks effectively accused us of all but firing the shots in Gouger Street, and the message coming out was that we were personally responsible for the fact that this law was not yet through and not part of the statute books. I have said before but will say again: we came into this place day after day, having received a letter from the minister saying that this bill was the No.1 priority. I moved heaven and earth to get my amendments ready and to be ready for the debate, only to have it adjourned. I did not mind its being adjourned, but to then be attacked and blamed as the reason for the delay was outrageous.

It was unseemly yesterday. The elephant in the room is WorkCover, and we were told that the bikies legislation was a priority, then it was and then it was not. This Legislative Council took control of its own agenda and said, 'Stop dilly-dallying; you've told us in the past, week after week, that this bill was a priority, and we're going to debate it.' We have debated it now thoroughly. The Attorney-General said that we were holding it up with mickey mouse amendments and that

somehow the new rule of democracy in this state is that you either vote for or against something; that you do not bother trying to amend it or scrutinise it. Why do we not all just sit in our rooms with a computer screen with a yes and no button on it and not bother with debating?

The Hon. B.V. Finnigan: Hear, hear!

The Hon. M. PARNELL: The Hon. Bernard Finnigan says 'Hear, hear.' His commitment to democracy is that he would rather not have anyone ask questions or debate legislation. Having got that off my chest, even though I am disappointed with the outcome, I thought it was one of the better debates we have had in this place. Most members approached the amendments put forward with a degree of respect, even though not many of them got up. It was not a debate characterised, over the hours we went on, with slanging and vitriol. I might have started a bit of that now, but during the debate, clause by clause, it was a very civilised debate and we gave this legislation thorough scrutiny. It is to the credit of the Legislative Council that we have gone through this process. My commitment is that whenever legislation like this comes before the parliament I want to go through it carefully and make sure we do the right thing by the people of South Australia and properly keep the government accountable for its legislation.

The Hon. A. BRESSINGTON (18:13): First, I congratulate the government for actually taking the initiative and listening to the concerns I raised here, as the Hon. Paul Holloway said, 18 to 20 months ago. This is not the legislation I put up, but I will withdraw my piece of gang legislation because this bill does the job I was looking to be done. I am grateful that, although the process of debate has been a bit rickety (but that is beside the point), the government has taken the initiative and decided to listen, especially to an Independent who has little influence in this place. I congratulate the government on the bill: thank you.

The Hon. SANDRA KANCK (18:14): I, too, want to comment on the process by which we have got to this point and express my great disappointment at the way that particularly the Attorney-General choose to attack us when we turned up for three consecutive weeks with our bill and all our amendments ready to debate, and the government day after day adjourned it. I do not accept the argument that the minister has given here that this was because the Hon. Mark Parnell and I dared to put in place a great deal of amendments, because the Attorney-General has a whole department of people who could have gone through those amendments within a day. It is an absolute nonsense to suggest that those amendments prevented the government from going ahead.

Having said that, I note that, despite my best endeavours with the amendments that I moved, we have a bill that will not stop people from committing crimes. What it will do is encourage the police to pull more people over who are riding Harley-Davidsons and wearing black leather. A number of bike riders have told me that, as this bill has built up momentum, more and more of that is happening.

The Hon. A. Bressington: So, that is without this legislation?

The Hon. SANDRA KANCK: And it is without the legislation; exactly. So, what will it be like when the legislation is in place? This bill does nothing to increase the difficulty of committing a crime or to reduce the profits of crime. It is not justified. Only 10 per cent of the arrests of members of bikie gangs are for what we would call serious crimes. One passionate bike rider has communicated this message to me: 'The passing of this legislation is the single most disgraceful thing I have ever witnessed in my lifetime.' I cannot say that it is the single most disgraceful thing I have ever witnessed, but it is certainly the most appalling legislation. Article 11 of the United Nations Declaration of Human rights states:

> Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

However, despite that, we have a bill that requires people to prove their innocence rather than the police proving their guilt. This bill gives increasing powers to the police—even though we tried during the committee stage to rein them in—at a time when we do not have the protections of an independent commission against crime and corruption. This is a bill about who you know, not what you do. It turns everything that we have known about the law on its head, and I will continue to strenuously oppose it.

The PRESIDENT: The question is that the bill be now read a third time. All in favour say aye, against say no.

The Hon. SANDRA KANCK: No.

The PRESIDENT: I think the ayes have it.

The Hon. SANDRA KANCK: Divide.

The Hon. A. Bressington interjecting:

The PRESIDENT: Order! The Hon. Sandra Kanck has as much right as anyone else in here to call for a division: it is called democracy.

The council divided on the third reading:

AYES (18)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hood, D.G.E.	Hunter, I.K.
Lawson, R.D.	Lensink, J.M.A.	Lucas, R.I.
Ridgway, D.W.	Schaefer, C.V.	Stephens, T.J.
Wade, S.G.	Wortley, R.P.	Zollo, C.

NOES (2)

Kanck, S.M. (teller)	Parnell, M.

Majority of 16 for the ayes.

Third reading thus carried.

Bill passed.

[Sitting suspended from 18:21 to 20:00]

PALESTINIAN STATE

The Hon. SANDRA KANCK (20:02): I move:

That this council—

1. Recognises the event known to the Palestinian people as Al-Nakba—the Catastrophe;

2. Affirms the special connection of Australia to the land of Palestine and the Palestinians;

3. Regrets the failure of both sides, over the last 60 years, to reach an agreement which guarantees justice and lasting peace for both Israelis and Palestinians; and

4. Calls for the rapid establishment of the State of Palestine within the 1967 borders in accordance with UN Resolution 242.

On 14 May 1948, the British mandate in Palestine expired and, at midnight, the Zionist movement, consistent with UN recommendations, declared large swathes of that land to be the State of Israel. In this coming week, on 15 May, Israel will celebrate 60 years of statehood and, for the Palestinians whose land was stolen, it will be a day of mourning for what they know as Al-Nakba (or, to translate it, 'the catastrophe').

That catastrophe did not happen overnight on 14 May 1948: it was more like an active volcano erupting violently from time to time. Zionist forces had commenced an ethnic cleansing program well before 14 May 1948, with 250,000 Palestinians having already been uprooted, displaced or killed by April 1948; so that is two weeks ahead of the Declaration of Independence.

However, things came to a head in 1948, and in that year more than 400 Palestinian villages were destroyed, with the residents either moved on or killed. Three-quarters of a million Palestinians were forced to flee their homes during 1948, and 10 per cent of the total male population was murdered. It is not surprising that the Palestinians refer to this as a catastrophe. This was ethnic cleansing on a large scale, not dissimilar to what we saw in the early 1990s with the fracturing of Yugoslavia. The people of Bosnia, at that time, were very lucky: the world saw what was happening and intervened. However, the world turned its head and looked the other way in 1948.

Palestinians were dispossessed of their land, internally displaced or exiled to surrounding nations, 720,000 of them fleeing to Egypt, Jordan, Syria and Lebanon, and 60 years later they still have no right to return to their land. I point out that 96 per cent of the land now known as Israel and the Occupied Territories was owned by Palestinians in 1946. The UN decision in 1947 to carve up

the land clearly envisaged that the Palestinians would have only 55 per cent of their land left after partition. Al-Nakba ensured that it was significantly less than that. Huge tent encampments sprung up, and 60 years on those camps, swelled by the events of 1967, have become the permanent residences of tens of thousands of internally displaced Palestinians, who are now refugees in their own land.

That the World Food Program is active in the occupied territories says much about the disadvantage of the Palestinian people. There is good reason for that international intervention. Subsequent to the Six-Day War, Israel annexed further land with the construction of illegal settlements. From 2002 onwards a further 15 per cent of agricultural land belonging to Palestinians has been annexed as a consequence of building what the Israelis call the 'separation wall', and which others, such as former US president Jimmy Carter, call the 'apartheid wall'.

Land dispossession by this method will only increase as the wall continues to be built. With a population of 3.5 million in the occupied territories, but without the land to grow their own food, coupled with the problem of denial of access to water, Palestinians are not able to produce enough food for themselves. This problem has been exacerbated by Israeli control of road transport routes, the banning of any sea trade through Gaza, and the restriction of food supplies into Gaza.

More than 80 per cent of the population in Gaza is now dependent on UN food aid. According to recent data from the World Health Organisation and UNICEF, over 40 per cent of Palestinian five year olds are anaemic, and nearly 76 per cent of children aged one to six years show signs of becoming vitamin A deficient. Using, I suppose, bureaucratese, 35 per cent of all Palestinian families are 'food insecure' and another 20 per cent are vulnerable to insecurity.

Despite the fact that the combined population of Israel and Palestine makes up 0.15 per cent of the world's population, in the history of the United Nations 5 per cent of the Security Council resolutions have been about Palestine; that is 33 times what ought to be expected for the population size. There have been related resolutions about Israel's attacks on Syria, Iraq, Jordan and Lebanon, but I have not included them in these figures. In addition to the Security Council resolutions, there have been resolutions and decisions of the General Assembly, the Economic and Social Council and UNESCO.

That 1948 was a disaster for the Palestinian people is well illustrated by the 16 resolutions passed by the UN Security Council in 1948 alone. This represents a supreme irony, because much of the impetus to establish the United Nations and for the adoption of a convention on human rights sprang from the appalling treatment of Jewish people in World War II.

The decision was made by world powers in the 1940s to provide a homeland for the Jewish people, but it surprises me that the world imposed Israel on Palestinian land in the way that it did without thought to the consequences. After all, the world had seen the impact of colonisation for a couple of centuries.

It is interesting to compare the statistics for the two sides. There have been 1,648 Israelis killed in clashes since 1948; that is about 27 Israelis killed each year in these clashes. By contrast, around 400 Israelis are killed per annum on their roads. Meanwhile, compared to the 1,648 deaths over 60 years, in 1948 alone 13,000 Palestinians were killed. There have been 4,719 Palestinians killed in clashes with the Israelis since 2000. Since that time, Israeli forces have killed more than 29,300 Palestinians in refugee camps in Lebanon; 15,000 Palestinians and other Arab combatants and civilians during the 1967 war; and, in the Palestinian uprisings from 1988 through to 1996 and from 2003 to 2006, Israeli forces killed 2,939 Palestinians. Human rights groups have estimated that 80 per cent of those killed were civilians.

Up until a week ago (I checked this last night) 340 Palestinians have been killed by the Israeli military this year. The ratio of deaths of Palestinians compared to Israelis in 40 years of fighting is something like 300:1. However, having statistics does not help when might is right, not morality.

I sometimes feel quite despairing when I hear or read what is going on—and for me that raises the question of what is going on now. What is going on now is systematic provocation. Last week the Left Bank was closed down for three days by Israel, because Israel was commemorating Holocaust Remembrance Day. For what the Israelis say were security purposes, all travel between West Bank towns was stopped, there was forced closure of all Palestinian public services, a ban on hospital procedures involving travel, and the prevention of visits to the Al-Aqsa Mosque. Having got that out of the way only three days ago, it is happening again, this time in anticipation, in a couple of days' time, of Israel's day to commemorate the 1,648 Israelis killed since 1948.

It would not be possible, despite all the history and even if it were desirable, to return the 5 million Jews who have emigrated from Europe and the US to what was Palestine, and so there is nothing to be gained by seeing this in black and white terms. In order to stop the bloodshed we have to find a solution that allows these two groups of people to live in peace. Former US Secretary of State, James Baker, in his foreword to Father Elias Chacour's book *Blood Brothers* (which I will lend to anyone who would like to read it), states:

> To the fiercest partisans, all questions are answered in cold absolutes. There can be no forbearance, no balancing of costs and benefits, no tolerance, no respect for the other side, no mercy.

Yet forbearance, tolerance and respect will be required if the massive tensions in this tiny area in the world that have fuelled some of the world's major terrorist acts are to be resolved. While I condemn many of the Zionist actions of the past 60 years, I know, from my visit to Palestine last year, that there are some wonderful Israeli people who also recognise the injustices that have been perpetrated in that time. There are so many good people, such as those in the Israeli Committee Against House Demolition, the residents and supporters of the Oasis of Peace, Machsom Watch, Christian Action for Israel, Jews for Justice for Palestine—the list goes on and on, and I suspect that when eventually a decent peace can be brokered with Palestine as an independent state, we will hear many Israelis saying, 'Yes, I supported this all along but I wasn't brave enough to speak out.' Both Israeli and Palestinian communities have the right to exist within secure borders. As part of that, a separate and viable state of Palestine needs to be created, with equal sovereignty and equivalent inalienable freedoms and human rights.

In November 1967 the UN Security Council unanimously passed Resolution 242 (and that, of course, means Australia was involved) stating the principles for a just and lasting peace in the Middle East. There were two principles. The first was the withdrawal of Israeli troops from territories they had occupied six months earlier. That still has not happened, and that was in 1967—and it is, by the way, why the West Bank and Gaza are called the Occupied Territories. The second principle was:

> Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognised boundaries free from threats or acts of force.

That has not happened either. The resolution then went on to affirm the necessity for achieving a just settlement of the refugee problem. However, 41 years after passage of the resolution, none of this has been achieved for the Palestinian people.

In 2002, at a meeting of the Arab League in Beirut, a proposal called the Arab Peace Initiative was developed. Although it was about normalisation of relations between all the Arab states and Israel, it was quite specific about Palestine. The initiative:

- offered peace in exchange for the return of land, specifically that land captured during the war in 1967;
- invoked UN Security Council Resolutions 242 and 338;
- called for the establishment of an independent Palestine with East Jerusalem as its capital; and
- called for a just settlement to the Palestinian refugee problem in terms of UN General Assembly Resolution 194.

I will address those points now that are part of the Arab Peace Initiative.

Peace for land seems to me a very sensible solution. The ongoing conflict between Israel and Palestine has occurred because land was taken from the Palestinian people. When any of us have our property stolen, we usually try to get it back. So much is dependent upon land, because it is what we build our homes on, it is where we grow our crops, it is how we feed ourselves, it is our refuge and, when it is stolen, most people fight back, as have the Palestinians.

Handing back the land to the Palestinians based on the pre-1967 borders might seem tough for Israel but it was not their land for the taking, nor has been the land on which the Israeli settlements have encroached since 1967, nor has been the land appropriated by building the separation wall inside the Green Line—that is, the pre-1967 borders which have been agreed to in numerous UN motions.

UN Security Council Resolution 338 was passed in October 1973 in the context of the Yom Kippur War, calling for a ceasefire and, again, the implementation of UN Security Council Resolution 224, which I have already discussed. It decided that negotiations would start

immediately to establish a just and lasting peace in the Middle East. That, I remind members, was 1973.

The issue of East Jerusalem as the capital of an independent Palestine is one that has been hotly contested over the years. The original UN Partition Plan envisaged that Jerusalem would be part of a UN protectorate to resolve the disputes about ownership. But to me, it seems that if Palestine gets the east section, then Israel gets the north, south and west, and that seems to be a reasonably fair division of land.

Solving the refugee problem, as it is called, is the final basis of the Arab Peace Initiative. Once again, the UN (which I remind you is responsible for the creation of Israel in the first place) is invoked. This time it is in terms of General Assembly Resolution 194, passed in November 1948, with particular reference to clause 11. Clause 11 reads:

> The General Assembly, having considered further the situation in Palestine...
>
> 11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or inequity, should be made good by the Governments or authorities responsible;
>
> Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;

It is a point of great contention to the Palestinians that their exiled countrymen are not allowed to return to their own lands. At the same time as this return is prevented by Israel, anyone of the Jewish faith or culture is granted permanent residency and/or citizenship if they so desire. Not only is it permitted; it is encouraged. This increasing population—from people in places like Russia and the Sudan who have no emotional connection to this particular piece of land—is, in turn, creating more illegal settlements on Palestinian land.

Australia has a unique historical connection to Palestine that should give all of us reason to support this motion. Australian soldiers fought and died to liberate the Arabs from the yoke of the Ottoman empire during World War I, and their names are etched on thousands of stones in Palestine and numerous war memorials here in Australia—35 Australians were killed in the battle of Beersheba. I quote Sonja Karkar from Women for Palestine, about that special relationship:

> During World War II, Palestine was under a British mandate and Australian and New Zealand soldiers were back helping the British army to stop the Germans from reaching Jerusalem. They fought alongside several Palestinian brigades enlisted into the British army under the Palestine regiment. That decisive offensive took place in 1942 at El Alamein, Egypt, the first allied land victory of the war.
>
> Tragically, more than 2,000 ANZACs from both campaigns would never see Australia or New Zealand again. Over 600 lie in unknown graves with Muslim and Christian Arabs who also died trying to defeat the German Army. Other ANZACs are buried in war cemeteries throughout Palestine, two of which can be found in Gaza—one beautifully cared for in the Palestinian town of Deir El-Balah, and the other in Gaza City. The Beersheba Commonwealth War Cemetery has graves of some 175 Australian soldiers and lies on the edge of today's sprawling commercial city that Israel has renamed Be'er Sheva. Our soldiers knew it as Beersheba with a largely Palestinian population.

One of the reasons that I have moved this motion is that on 12 March of this year the federal government moved a motion in both the House of Representatives and the Senate congratulating Israel on this impending anniversary, but it did not acknowledge the impact that this has had on the people of Palestine.

A short time ago, on a website called the American Friends Service Committee, I discovered what I thought was a wonderful quote about the continuing tensions between Israel and Palestine. It states:

> We recognise that behind rhetoric, posturing and blame lies mortal fear on both sides that the essentials to living in dignity and fullness will be denied.

We have to acknowledge and address that fear because it is real, and until it is addressed I fear that tensions in the Middle East will go on simmering, with an occasional eruption. The toll over the last 60 years has been immense, and it is time that all those peace plans and resolutions were actually implemented rather than merely talked about.

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

SOCIAL DEVELOPMENT COMMITTEE: SOUTH AUSTRALIAN CERTIFICATE OF EDUCATION

Adjourned debate on motion of Hon. I.K. Hunter:

That the report of the committee, on its inquiry into the South Australian Certificate of Education, be noted.

(Continued from 9 April 2008. Page 2353.)

The Hon. R.I. LUCAS (20:24): I am keen to speak to this motion because only today in *The Advertiser* there is a story about the recent release of an assessment paper by the Senior Secondary Assessment Board of South Australia about the Future SACE here in South Australia.

At the outset, I want to congratulate my colleague the Hon. Stephen Wade for his minority report on the investigation by the Social Development Committee and, in particular, the reservations that he and his colleagues in the other house expressed on the issue of assessment in relation to the Future SACE.

I indicate that the strong views that I want to express are my personal views. I do not profess that they are the views of my party in relation to the concerns I have and continue to have about the direction of change that we are seeing in our senior secondary assessment system. I make these comments on the basis of having been a shadow minister for education for seven years and then a minister for education for four years and, since that period for the last 10 or 11 years, I have maintained an ongoing and abiding interest in education issues, in particular the issues as they relate to the senior secondary certificate. Further, through my work in the education area, I have maintained a close network of teachers, principals and educators, together with parents and students with some knowledge of the South Australian Certificate of Education.

The assessment system we currently have, the South Australian Certificate of Education (SACE), is simply that year 11 is based on school assessment done by teachers within the school, and at year 12 (there is a third category) you have broadly school-assessed subjects, or SACE subjects, and other subjects which are generally a combination of school assessment and external assessment where the external assessment is by and large the use of public examinations.

In some cases, such as English studies, there is particular project work that must be undertaken but generally there is a combination of public exams and school assessment. This has come from a situation many years ago where year 12 subjects were essentially all publicly-examined subjects and you then had separate school-assessed subjects. There has been a long campaign against examinations on the basis that it is unfair to assess students in that particular way and that it does disadvantage some students.

That long campaign over a number of decades has led to those year 12 subjects moving from being 100 per cent publicly examined down to the situation where, at best in my terms, you have a 50 per cent public exam component and a 50 per cent school-assessed component. Some of them only have a 30 per cent public exam component and, as I say, even more subjects these days have no publicly-examined component at all. That is the current situation.

I also want to congratulate Lucy Hood, who is the education writer for *The Advertiser*, particularly for her front-page exclusive on 17 April 2008: 'Year 11 made easy'. Lucy Hood, in *The Advertiser*, had the courage (the first I have seen in many years) to challenge what I will refer to as the conspiracy of silence and the climate of denial that exists within our education system in relation to some of the problems and challenges with which, I believe, we are being confronted. The article from Lucy Hood states:

> Year 11 teachers are being encouraged to make subjects easier for students to pass so their schools do not appear to perform poorly in comparison with others. A memo from [a western suburbs] high school reveals that teachers are modifying subjects to include fewer assignments and in some cases no classes...The Woodville High School memo states that students undertaking the modified subjects are not required to attend classes, only have to complete the easiest assignments for the subject despite other students completing up to seven tasks, and only need a 15 per cent grade to gain a Recorded Achievement.

The memo states:

> As a school, we need to ensure that our students are not disadvantaged when compared to...schools across the state. Currently, we are allocating a lot more RAs (recorded achievement) and R&Ms (requirements not met).
>
> The modified course only needs to contain one assessment task (maybe the easiest one). The student only needs to get 50 per cent to get an SA (satisfactory achievement) or 15 per cent to get an RA (recorded achievement). It's that easy!

Lucy Hood is highlighting the circumstances in one particular school, as part of the current SACE for year 11 students, and that particular school is saying, 'Look, we've got too many students who are not performing up to the level of other schools.' The way around that is not to lift the educational performance of those particular students but to construct a new assessment program which means, in essence, as this memo says, that these students in this particular school for those particular subjects need not necessarily attend classes; they only have to do one particular assignment task, which will be the easiest and, as long as they get a 15 per cent grade, they can get a recorded achievement.

From discussions I have had with parents, principals and teachers, that appears to be just one example of very many examples that Lucy Hood and others are able to refer to within our school system at the moment. Since that article appeared a number of teachers and principals have indicated to me that this is just the tip of the iceberg. There is widespread rorting of the South Australian Certificate of Education in South Australia.

I can give examples where the situation in some secondary schools is such that, if a teacher wants to assess a student on the basis of performance as 'requirement not met' (that is, the lowest level under the current system at year 11), that teacher is not entitled, allowed or permitted to assess the student in that way until he or she goes to the deputy principal and justifies why a 'requirement not met' is being given to the particular student. That is done on the basis that the school (and the deputy principal, undertaking it on behalf of the school) is desperate to ensure that there are not too many students being classified as 'requirement not met'—the lowest level of classification at year 11.

Under the current system there is widespread rorting. I am not suggesting that it is occurring at all schools but it is certainly occurring at a significant number of schools. There is a conspiracy of silence about problems with the current SACE. One of the challenges that is confronting teachers at the moment (and I have a good deal of sympathy for them) is that government policy required a number of young people to stay in school until the age of 16, when they did not want to be there. Now, of course, the government requires further numbers of young people, up to the age of 17, to stay on at school unless they go on to get a TAFE certificate or something else like that.

Teachers are being confronted with young men and women, young adults aged 16 and 17, who have no interest at all in being within the school environment; have no interest at all in turning up to classes; and have no interest at all in undertaking a range of assessment measures and tasks that the rest of the students in that particular cohort are being required to do.

What is occurring within schools is what Lucy Hood has identified in relation to Woodville High School. I am not singling out Woodville High School, because the point I am making is that it is just one example of very many examples that can be given. Teachers in schools are now saying, 'Okay, we are going to have to respond to this by, in essence, dumbing down the SACE at that particular level and, also, by constructing an assessment program that virtually anybody can get through.'

There are some aspects of the changes in the Future SACE which, on the surface of it in relation to stage 1 or year 11, I do support. As a result of federal government policy (both the former federal government and the current federal government), there will be a requirement to put in grade levels of A through to E, but let me assure members that at year 11 level, if the issue is left (as it will be) to teachers and to schools, there will inevitably be the pressure for modification of what on earth an A, a B and a C actually means in relation to some subjects. There will be assessment programs which will have to be modified to try to ensure that significant numbers of these young people are given the A, B or C grades.

There are also, as the minister has indicated on a number of occasions, some claims in relation to a requirement for students to pass English and maths. In essence, the document released in the past week indicates that evidently it is really literacy and numeracy in some form from a range of English and maths courses. That will mean that there will be the normal range of maths courses ranging down through to what I might politely call basic maths—it has a number of other titles, but let me call it basic maths—which will be modelled along the line of this assessment program that Lucy Hood has referred to at Woodville High School, to ensure that virtually anybody who attends a class will be able to undertake perhaps one particular assessment task, and will be able to be assessed as having met the requirements of the first level, stage 1—year 11—of the South Australian Certificate of Education.

Another part of the current problem with SACE at the moment—and I referred earlier to the conspiracy of silence—is that there is also widespread cheating occurring as a result of the greater concentration on the use of school assessed subjects—that is, essays and assignments being completed by students in their own time and in their own environment, such as at home and away from the school place.

There are many examples that I place on the public record of other students or older students doing assignments for students in the South Australian Certificate of Education. In a small number of cases those students are being paid for the work that they undertake on behalf of other students. There are many examples of parents—well intentioned perhaps—undertaking assignments and completing assignments on behalf of their children, as they see their children stressing out and struggling to complete the requirements of the South Australian Certificate of Education.

There are very many examples of plagiarism, obviously now, with the wonderful technology of the Internet and computers in almost every home, being able to download massive texts and passages from texts from all around the world in relation to whatever particular assignment students have either been given or are undertaking for themselves. This is an issue—and I will refer to it later—which is already being confronted in universities, as universities have to increasingly employ sophisticated software, which seeks to recognise downloaded tracts of text from Internet sites in assessment works being submitted by university students towards their university qualifications. We had exactly the same problem within our South Australian Certificate of Education.

There are also a small number of examples—certainly not to the degree of the other three categories I have referred to—of inappropriate or excessive assistance being provided by teachers to particular students. The South Australian Certificate of Education makes quite clear the extent of assistance that can be provided by a teacher to students in relation to the completion of assessment tasks within the South Australian Certificate of Education. However, there is a small number of examples where inappropriate or excessive assistance is being provided by teachers to students. They are just four of the general categories of what I have referred to as widespread cheating which is occurring currently within our Future South Australian Certificate of Education.

I move now to the grave concerns that I have for the Future SACE. That is occurring within the current climate, where the reliance on public exams has been downgraded a bit but, nevertheless, it still exists, and with the Future SACE, where very significant changes are about to be imposed on our schools. As I will refer to later, one of those changes will be a significant downgrading in the importance of public examinations as part of the year 12 assessment tasks. The document which has been released in the last few days by the Senior Secondary Assessment Board of South Australia and which was referred to in *The Advertiser* article today highlights some of the details of what the government proposes.

As I speak to this motion tonight, I predict that we are seeing the sowing of the seeds of destruction of the credibility of the South Australian Certificate of Education by the changes that are about to be imposed. In my view, we are seeing the sowing of the seeds of an educational disaster which will roll out over the coming decade or so. Again, I believe we will see what we have seen for some time: a conspiracy of silence in relation to these issues, because it is in no-one's interests within the education sector to bell the cat, to blow the whistle and to highlight particular concerns on these issues.

The problem that we have within education when we talk about predictions of educational disasters is that these things do not happen overnight. It is not like a drought, where all of a sudden the rain stops and the crops dry out and, within the space of six or 12 months, you can see the disaster that unfolds as the implications of that roll through the countryside, through the city and through the nation.

That is not what occurs with major educational change. We have seen fads and phases over the past decades: the open plan classrooms; experimentation with every teacher in the classrooms; and, in essence, the structure that used to be provided decades ago to individual classroom teachers being removed in terms of what is taught in the syllabus and documents that are provided to classroom teachers. Each teacher was allowed to develop their own courses and frameworks.

After 30 or 40 years (from the 70s through to now)—and I give credit to the former federal Liberal government for the past five years, and the current federal Labor government is at least talking the same language at this stage—we are moving away from that particular fad or

experiment. It has been about 20 years since we moved away from the open plan classroom philosophy. In relation to curriculum and syllabus, we are now moving to the stage where everyone is saying, 'What we did for the last 30 years was wrong. We were leaving the poor teacher in the classroom—everywhere over the nation—to develop their own syllabus, documents, course outlines and class work, and everyone was doing something different.'

When we look back on it now, we say, 'How silly was it?' but, at the time, the educational philosophy was in vogue and everyone was pushing down that particular path. We are seeing with the changes being imposed at the moment—as I said, almost without comment from the Social Development Committee, with the exception of Dr Rod Crewther from the University of Adelaide—little comment in terms of expressing concern.

Normally, on a range of educational issues—it does not matter what you pick—strong and divergent views will be expressed, because it is not always black or white or right or wrong. People have strongly differing views. But there is an inevitable and inexorable pressure within the system—a conspiracy of silence—which, in my view, in essence, is quietening what ought to be an open debate about the problems we currently have and the direction in which we are heading, with no-one—with the exception of Dr Crewther—being prepared to speak out. It will perhaps attract criticism, but let us get the debate going in relation to whether or not what is occurring is right.

I cannot prove tonight that my views are any more right than the views of the minister and the others. In the end, it will be the passage of time—10 or 15 years—that will prove what is right. As I stand here tonight, I predict that in 10 or 15 years' time many of us will look back on this experiment in relation to the Future SACE—the downgrading of the importance of public examinations and the increasing importance of school-based assessment—and we will say that we got it wrong and that it has been a major problem.

A future minister or government will have to conduct a review and, inevitably, we will move back (as we have with earlier experiments in relation to teachers undertaking all their coursework themselves in the classroom) to a situation where there will have to be greater concentration on public exams and assessment methods that require the undertaking of coursework under the supervision of teachers in schools, rather than at home with the assistance of parents, other students, older brothers and sisters, etc.

As I said earlier, the Future SACE changes refer to up to 30 per cent external assessment. As she has been with many other things, the minister has been very clever with the use of language. In relation to the debate about assessment, she says, 'We are introducing external assessment for the first time into all subjects at year 12,' and everyone assumes that an external assessment is public examination.

On page 6 of a consultation paper released in the last few days by the Senior Secondary Assessment Board, entitled Assessment Performance Standards and Moderation, it states that external assessment is not just public examination (and I will not go through all the detail) but includes written examinations, oral assessments, performance (which could be group performance or solo performance), design requirements, supervised assessment, a product (that is, design requirements, submissions, etc.), or online examinations.

So, the document indicates that external assessment is not what people suspect it may be, that is, public examinations. I have expressed the views of Professor Alan Reid, who was the educational leader of the Success for All committee that opposed basic skills testing in the nineties when we introduced it. He has been the educational grunt behind these changes willingly taken up by minister Lomax-Smith.

By using the phrase 'external assessment', the hidden agenda behind all this is a sneaky way of seeing over the next five to 10 years an inevitable further significant reduction in the use of public exams in year 12. The Success for All document states:

> External assessment does not simply equate with written three-hour examinations, which are only one form of external assessment. There are any number of ways in which students can demonstrate their learning to 'outsiders' that can be more closely linked to the learning. It can include performance, vivas, project or artefact production, physical skills tests, and presentation of a portfolio of work to a community meeting or roundtable gathering; and it can happen at any time during the learning process.

The very strong cautionary note I express tonight is also backed up by what I referred to late last year and refer to again, namely, the evidence of what is occurring in other parts of the world. There are a number of examples, but I will talk about what is happening in the United Kingdom.

As I have indicated before, the head of the Qualifications and Curriculum Authority in the United Kingdom, Dr Ken Boston, is a former chief executive of the South Australian Department of Education and Children's Services. He was appointed by a Liberal and a Labor government to head up the education department in New South Wales, and he is now the head of the Qualifications and Curriculum Authority in the United Kingdom.

On 11 July last year, Ken Boston was interviewed in relation to the major controversial changes that were being implemented by him in the United Kingdom. He said:

> As with many top education bureaucrats across the globe, Boston is fighting on several fronts to contain the insidious influence of the internet on coursework that students often claim as their own. From next year awarding bodies, the equivalent of state examination boards, will be using the same sort of software used by universities to catch cheats. But plagiarism is not the only problem thrown up by allowing students to complete work outside a controlled environment, Boston says. Helpful relatives pose almost as big a threat. The QCA used a polling company to speak to a wide range of people, including parents, about their input into assignments that were being used to assess students for their GCSEs—

that is the General Certificate of Secondary Education—

> We found that there was, I guess it is not too strong a word to say, some abuse in relation to coursework being done by relatives, Boston says. In fact, 8 per cent of the parents interviewed confirmed that they had contributed quite significantly to their children's equivalent to the South Australian Certificate of Education. With coursework accounting for up to 40 per cent of the mark in some courses—and GCSEs being used to help determine if a student will proceed to an A-level course and possibly university—it was a problem that could no longer be ignored.

In a letter from Dr Boston in April 2006 to the then education secretary, the minister for education, Ruth Kelly, he said:

> We recognise that the practice of students carrying out coursework at home and the wide availability of the internet have created greater opportunities for malpractice. This gives problems with ensuring authenticity—the extent to which we can be confident that internally assessed [within schools] work is solely that of the candidate concerned. This is a threat to the fairness of GCSE.

Dr Boston is there highlighting exactly the same issues that I am highlighting in relation to the South Australian Certificate of Education. The only difference is that the percentage of coursework in our assessment is much higher than the percentage of coursework in the subjects that Dr Boston is talking about, yet he still sees the problems being significant in the United Kingdom. Dr Boston's report went on and stated:

> There were 3,500 cases of alleged malpractice investigated by awarding bodies in 2004—that is just one year—but not all of the malpractice involved coursework...The most common malpractice offences in relation to coursework are: collusion, plagiarism and over-coaching by teachers.

This is the official report of the Qualifications and Curriculum Authority, which looks at the equivalent of our SSABSA board in England, Ireland and Wales.

Dr Boston's group has recommended that, in some cases, coursework—in essence, school assessment coursework—be removed completely from certain subjects. That is, that there be no coursework at all. As I said, we are moving to a situation where, at the very least, we are looking at the total assessment of subjects being 70 per cent. Dr Boston, having looked at the problems in the UK is saying, 'Hey, in some subjects we will remove coursework completely because of the problems of cheating through plagiarism, collusion, over coaching by teachers and assistance by parents.' In other cases it is recommended that the percentage (that is, in the UK) be significantly reduced; that is, the percentage of coursework be significantly reduced.

In other cases, he says that there will be what he calls controlled assessments. That is, rather than a student being able to take a particular essay home and have their parents or relatives (or someone else) assist in the writing, or whatever it is, a student will have to do the work in a controlled environment like the school and under supervision. They might be given the task and have to go away to do the work on it, but in terms of the writing of the essay, they would have to come into a controlled environment at school and be seen to have written the essay themselves, not have the essay written by their parents, a mate, or an older brother or sister.

The student will then have to undertake that particular work within the controlled assessment environment of the school because of the concern that parents and others are actually writing it. Various reports that have come out on these changes, as I said, make it quite clear that the authority is moving to control very tightly and to try to reduce the extent of cheating within their equivalent certificates in the United Kingdom. As I said, they are doing that by reducing the extent of work that can be done at home and outside controlled environments by increasing the percentage of exams and increasing the percentage of assessments which, in essence, are externally assessed.

When we look at the United Kingdom experience, at the moment they are identifying the problem of subjects where the coursework—that is, the non-examination component—is as low as 20 or 30 per cent. The problem that he is talking about is in relation to subjects where coursework is 20 to 30 per cent and public exams are 70 to 80 per cent. We are now moving to a situation where we will have coursework of 70 per cent. He thinks they have a significant problem with cheating when it is 20 to 30 per cent of course work, and he says that it is a threat to the fairness of the certificate in the United Kingdom.

Late last year, during the debate on SSABSA, I asked a series of questions of the government and the minister. I will not repeat them all here, but I believe some of them to be important—and the minister did not provide responses or answers. I asked the government, for example, whether SSABSA was now looking at purchasing and using the sort of anti-cheating, anti-plagiarism software which universities are using and to which Dr Boston is referring. I asked the minister to indicate how many examples of alleged cheating or malpractice have been made to SSABSA in the past few years, and what action has been taken by SSABSA in relation to those issues. I also made a relatively simple request; that is, an assessment breakdown of the current year 12 subjects, namely, which components of public exams are within the subject assessment outline at present.

There were a number of other areas, but they were the three key areas, and the government for its own reasons chose not to provide responses or answers to those questions. I am now forced into a situation of having to pursue some of them through freedom of information. The dilemma is that the Senior Secondary Assessment Board, either in significant part or completely, is beyond the purview of freedom of information legislation. Therefore, the capacity to get some of this information, if it is not provided by the government, is significantly restricted and inhibited.

In my view, the Future SACE is heading in completely the wrong direction. It will only lead to much more widespread cheating and rorting than already exists. It is already significant within the SACE at present. It is time that someone was prepared to look at what is happening in other parts of the world, in particular in the United Kingdom. Dr Ken Boston knows the Australian and South Australian system. We should listen to some of the lessons they have learnt in the United Kingdom and realise that we are signing a recipe for educational disaster, if we are not prepared to look seriously at the decisions that this government is implementing through the Future SACE; and, sadly, we will not see the end result until 10 years down the track.

The Hon. I.K. HUNTER: I thank the Hons Mr Wade and Mr Lucas for their contributions on this motion. As a result of the Hon. Mr Lucas mentioning the Hon. Mr Wade's dissenting report, it is important to note that the dissenting report was not so much a dissenting report. The Hon. Mr Wade went to some lengths to note that he supported the majority report but, rather, had an additional recommendation which was not supported by the majority of members and which he wanted to append to the report. It is perhaps a minor detail but, nevertheless, important.

Having had the benefit of hearing the evidence presented to the committee, I must say that I do not share the pessimism expressed by the Hon. Mr Lucas for the future of the education system in this state. Based on the evidence before the committee, I think I can say that that pessimism is not supported by the education sectors—the state sector, the Catholic and Independent schools sector or the tertiary sector. I commend the motion to the council.

Motion carried.

STATUTES AMENDMENT (ETHICAL INVESTMENT—STATE SUPERANNUATION) BILL

Adjourned debate on second reading.

(Continued from 2 April 2008. Page 2218.)

The Hon. R.I. LUCAS (21:00): I rise to support the second reading of the bill and, for those avid readers of *Hansard* (including my mother and the other 29 South Australians), I refer to pages 2,409 to 2,413 of *Hansard* to indicate the reasons the Liberal Party supports the second reading. The debate that we had on the police superannuation bill, which was a government bill, involved the Hon. Mr Parnell moving an amendment in relation to ethical investment, and the Liberal Party supported that amendment. I spoke at length in relation to the issue, and I will summarise it very briefly.

I outlined that there were two issues to be resolved. I indicated, first, that it is a matter of individual choice and, personally, I would not be investing money in an ethical investment option if I had that choice. The second issue is whether we as a state ought to prevent others, such as the

Hon. Mr Parnell, who might want to choose an ethical investment option for themselves in their superannuation fund, from doing so. As I said then, the shadow treasurer and shadow minister for finance indicated the Liberal Party's position was that it would be prepared to support that option. I outlined that in the police superannuation bill at pages 2,409 to 2,413.

In indicating our support for the second reading, I canvass briefly that the Hon. Dennis Hood has given notice of moving an amendment to the Hon. Mr Parnell's bill. As I have outlined to the Hon. Mr Parnell, the Liberal Party room has not yet had an opportunity to debate what looks relatively simple and innocuous but is a potentially difficult and complex amendment of the Hon. Mr Hood. We will certainly be in a position when the house next sits for private members' business to indicate the party's position on the Hon. Mr Hood's amendment.

The Hon. D.G.E. HOOD (21:02): I rise to support the second reading of the bill on behalf of Family First. With respect to the Hon. Mark Parnell, it is a fairly simple bill so far as what is written in the paper goes. It simply inserts the requirement for state superannuation to provide an investment option for state superannuants that takes into account the impact upon society and the environment.

Ethical superannuation is a welcome and recent trend, but it is also something that has considerable historical tradition, which I will reflect upon briefly. Indeed, the Quakers were one of the first groups to promote ethical investing in about 1758 when they precluded their members from investing in the slave trade. Notably, that was 50 years before William Wilberforce famously achieved the abolition of the slave trade, as my colleague the Hon. Andrew Evans celebrated in his matter of interest on 1 August last year. Another early thinker in ethical investing (during the 18th century) was the famous theologian John Wesley, and it is said that in 1928 it was Wesley's Methodists who founded the first ethical mutual fund. Today, funds such as the Mennonite-founded Meritas Fund in Canada and the Quaker-founded Joseph Rowntree Charitable Trust give grants to groups concerned with peace, disarmament and human rights, and still maintain a healthy return to investors.

After many social issues, such as the Holocaust and, indeed, apartheid in the last century, I think it is fair to say that ethical or 'socially responsible' investing has broadened in its outlook, and this century one of the strongest aspects of concern for ethical investment relates to the environment. I am sure that is one of the major underpinnings of the Hon. Mr Parnell's reason for introducing this bill in the first place. Family First celebrates the history of ethical investing and believes in that strong tradition continuing, but we also welcome this new trend in ethical investing as a form of consumer activism to get big business to behave more responsibly, where appropriate.

To set the record straight, we have opposed the honourable member's pushes—initiatives, is perhaps a better way of putting it—for ethical superannuation previously, and the reason is they have been targeted at specific aspects of the superannuation industry, if you like, or particular options within that field, and we strongly favoured a whole-of-government approach across the whole state for all people who would be affected by this proposed legislation.

The next obvious question that needs raising, therefore, is: if it is to affect many people, then exactly what is 'ethical'? I think that most conscience votes and, indeed, a number of other votes, hinge on that question, so I believe we must explore briefly in this bill what is 'ethical'. The Hon. Mr Parnell is right in saying that, in many cases, superannuants have no idea where their funds are going; and, in some cases, if they knew they would be horrified. What might horrify one superannuant might be neutral or, perhaps, even positive to another. That is how people differ in their ethics; or, perhaps to be fair, they place a different emphasis on what they think to be a more important ethical issue.

Perhaps the right phrase here is 'issues of conscience'. I want to explore this issue of conscience briefly because, as indicated by the Hon. Mr Lucas, I have filed amendments to that effect. If it agrees to this bill in the other place, it will require the government to consider issues of conscience in determining whatever fund or funds would be offered to state superannuants as ethical investments. In briefings on superannuation bills, Family First has questioned how the government would approach ethical superannuation. The impression we get is that the government will consider one or two so-called off-the-shelf ethical investment products.

Relating back to my comment about people having different ethics or different points of view on issues of conscience, I trust that members can see our concern that, if one fund is taken off the shelf, so to speak, and put forward to state superannuants as an ethical or so-called ethical option, that fund might not reflect the ethical values of all superannuants. Indeed, these people may

wish to invest ethically because it sounds good but, when they discover where their so-called fund investments are going, they might feel somewhat disappointed with the outcome.

Examples of funds that offer ethical superannuation include one called SunSuper, of which my wife is a member. SunSuper, in one of its particular ethical options, avoids investing in companies that have a material exposure to the production of alcohol, gambling, pornography, tobacco and, interestingly, uranium mining. A national group called Australian Ethical and the New South Wales based group called Local Government Super Scheme take a dim view, among other things, of investments in gambling, tobacco and alcohol production.

With respect to some overseas examples, in the US funds such as the Appleseed Fund, the Aquinas Growth Fund and PIMCO refuse to invest in companies that manufacture alcohol, tobacco products or pornography, amongst other things. The Aquinas Growth Fund also precludes investing in products that aid in abortion and other contraceptive measures and goes so far as to rule out investing in what it considers to be particularly violent forms of media, such as, I suspect, Rockstar Games, which produce Grand Theft Auto, and other companies that produce similar material.

In Canada the Investors Summa Fund Family, Mackenzie Sustainable Opportunities Fund and Meritas Investments Incorporated will not invest in companies whose revenues primarily derive from alcohol, tobacco, gambling, pornography or critical weapon systems. The point there is that, whilst the word 'ethical' is used for all these funds, one can see that what they choose to invest in and choose not to invest in can be quite different. Stepping back for a moment, in an ideal world (and this might not be far out of the question), it would be wonderful if superannuants (just as they can with investment strategies, such as aggressive, balanced or conservative options) could also check with a box whether they want their funds in a way that respects a certain environmentally ethical, biological and/or conscience-ethical way.

Ideally, a person could nominate these, but at present it is probably only those people financially wealthy—and, perhaps, time wealthy enough—to run self-managed superannuation funds who could invest with that level of specificity. Indeed, the very near future may well be different. Before I turn to those three headings, I want to raise what I have discovered in my consultation on this bill. There is a strategy described as 'best of industry' within the ethical investing industry, which sees funds say, 'We will invest in the uranium mining industry', and they invest in the market leader in terms of environmental sensitivity within that field.

That means that ethical funds are still investing in areas that some may consider unethical, for instance, the uranium mining industry, but they invest in that particular company in that industry that they consider to be the most ethical option. In essence, within ethical investing there are some unsatisfactory practices if one is really being ethical about the processes. It is quite conceivable that, if ethical investing was one of the next big things, some unscrupulous players could enter the field saying that they are doing research to ensure that the companies invested in are ethical when, in fact, they are not; and the so-called ethical fund is only an ethical fund by name and may in fact deceive people, given that the word 'ethical' might be quite misleading. I am not making any allegations here, but I believe it is a real possibility and again highlights the fact that 'ethical' means a lot of different things to a lot of different people.

The question of present industry practice is a relevant consideration and demonstrates the merit of the Family First amendments to this bill. Our amendments, though numerous, are very simple in that they include the words 'issues of conscience generally recognised in the community' as a third parameter. That is in addition to the impacts on society and environment as outlined by the bill that the Hon. Mr Parnell has put forward. The purpose is to ensure that these issues of conscience are also considered in what is deemed ethical or not ethical.

In addition to providing for issues of conscience, it is highly relevant for the government to consider in selecting funds or a fund to offer to state superannuants, should this bill pass, that state superannuants should not be offered investment options in an activity that is illegal in South Australia. For example, on the social ethical side, if exploitation of child labour is part of the business operations of an overseas company, and it is against the law in South Australia (as clearly it is), then no state superannuation money should be invested in such funds. That sounds like an obvious thing to say, but when you investigate where some of these funds put their money, it is surprising to say the least.

It should be apparent to members that the issues I raise demonstrate how ethical investment adds another level of disclosure requirement to ensure that the ethical investments match the ethical concerns of the superannuants concerned. In conclusion, Family First supports

ethical investing and certainly supports the second reading of this bill. However, our overarching concern is that a one-size-fits-all ethical fund might be chosen by the government, but does not reflect the ethical concerns of a significant number of superannuants, so the fund or funds in question ought to provide that level of investment choice to superannuants. Again it goes back to the issue of the word 'ethical' being attractive, but under investigation means different things to different people.

Without prejudicing the process, perhaps the government will have to choose separate funds that score well respectively on the environmental ethics, social ethics and issues of conscience grounds, as indicated in my amendment, and then provide information for superannuants to make their own choice to the extent that they want their own money invested in those areas. I ask members to consider my amendment. It has been a popular addition to so-called ethical funds in the US where people do not want to invest in companies that promote pornography, for example, and this wording has been lifted directly from the legislation over there where it seems to have achieved that effect.

The Hon. SANDRA KANCK (21:13): I indicate Democrat support for this bill and commend the Hon. Mark Parnell for his repeated efforts to ensure that any superannuation funds covered by state laws have an ethical investment component. As he highlighted in his remarks, this is not a radical move but follows a trail blazed by many others around the world and in Australia. The main achievement in this campaign in Australia so far is the fact that the Victorian government has signed up to the United Nations principles for responsible investment. This means that its $40 billion worth of investments are to some degree shaped now by ethical considerations.

Members will also recall specific campaigns, particularly strong in regard to South Africa, to withdraw investment from companies operating in South Africa under the apartheid regime. For 30 years of my own life I had my own ethical investment stance in refusing to buy anything French as a result of its testing of bombs at Mururoa Atoll. The Democrats have a long history of fighting for ethical investment in the national parliament. In 2001 Senator Andrew Murray successfully amended the financial services bill to require ethical environmental and social considerations to be taken into account by fund managers.

I find it hard to see how anyone could argue against the bill because all it does is give investors more choice. Freedom of choice, as we are constantly told, is one of the foundations of our economic system. I have a very small amount in the Statewide Superannuation Trust as a result of some work I did some 20 years ago and I have moved that to what they call the socially responsive portfolio since it was made available.

As we have heard in this debate, Super SA's own research shows strong support for socially responsible investment. When asked, 'Would you choose to invest your super in socially responsible investments if that option were open to you?', 31 per cent of respondents said yes and 58 per cent said maybe.

A poll co-sponsored by PricewaterhouseCoopers and the St James Ethics Centre found 92 per cent of Australians believe that large companies should go beyond the minimum definition of their role in society, which is to employ people and make profits. And yet, as outlined by the Hon. Mark Parnell, the government has resisted this modest attempt to let public servants choose to invest their super in an ethical way.

This bill and the whole issue of ethical investment is an example of how to intelligently use mainstream market mechanisms to drive social and environmental reform. It is also an excellent illustration of the fact that economic mechanisms and processes are not value neutral. The blinkers and the bias that permeate other areas of life also exist and distort everything from super funds to corporate planning processes. So, today we are dealing with the blindness surrounding issues such as superannuation.

Last year, this parliament passed the statutes amendment equal opportunity bill, which redressed the discrimination against same-sex couples that was endemic in 80 different areas of life. We should continue to look for opportunities to make changes for good in the laws and institutions that govern our lives. This bill is one such step.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (21:16): I do not intend to take up the time of the council: there are far more important things to debate. We discussed the issue in principle at some length in relation to the police superannuation bill, which is still before the House of Assembly. I know that the Treasurer is looking at these issues. The Hon. Rob Lucas spoke in some detail and I think summed up very well in his speech on the police superannuation bill some

of the complexities that this issue involves—in particular, deciding what is ethical and what is not ethical investment. Obviously, what is ethical to one person may well be unethical to another.

The dilemma that I indicated during the debate on the police superannuation bill is that, if you do not have a significant number of people who wish to invest or who wish to be involved in such a scheme, it provides problems for the operators of the state superannuation scheme and, as I indicated during that earlier debate, it is likely that it would have to be outsourced to some other body that ran it and, of course, their definition of 'ethical' may not necessarily correspond with what the members of the state super scheme who wish to be involved in that sort of investment would like, anyway.

So, a number of issues are involved with this matter. As I said, I know that the Treasurer is considering those issues, and the government will have to make a decision with respect to the police superannuation bill. I believe it is premature to deal with this measure in finality until the Treasurer has made the decision. So, whereas I will not waste the time of the council in opposing the bill's second reading, if it does come to a final vote, the government will oppose it. At this stage, as I said, the government needs the opportunity of finalising its position in relation to the amendments which were moved to the police superannuation bill and which are now before the House of Assembly.

The Hon. M. PARNELL (21:18): I rise briefly to close the second reading debate. I wish to thank honourable members for their contribution, in particular, the Hon. Rob Lucas, the Hon. Dennis Hood, the Hon. Sandra Kanck and the minister. I particularly thank the Liberal Party, Family First and the Democrats for supporting this move.

I am disappointed that the government is not there yet. Clearly, this is an idea whose time has come. We know that it has come because other states have managed to do it and have overcome the difficulties that members have spoken about. I asked for this bill to be brought to a conclusion today because I wanted to strike while the iron was hot. I wanted to bring it back to the council while the memory of our discussion on the police superannuation was still fresh, and I thought we could dispose of it quickly. However, for the reasons that the Hon. Rob Lucas has mentioned, I am now prepared not to push it to a final vote today. I would like us to vote on the second reading, and we will make the committee stage an order of the day for the next Wednesday of sitting.

The additional words the Hon. Dennis Hood proposed be inserted appear at first blush not to create any difficulties. However, I will have a closer look at them, as will the Liberal Party, and we will come back in early June and see this vote through.

I very briefly remind members that the difficulty that many people have raised about what is ethical and what is not ethical and that to one person something might be acceptable but to others might not acceptable can be resolved; in fact, it has been resolved in many other jurisdictions, including state superannuation funds, where these principles are already in place.

I know the Hon. Dennis Hood said last time that he was keen for a whole of public sector approach, and I think that is the right position to take. As members would appreciate, we did not cover the whole of the Public Service last time because we were dealing only with the police superannuation bill. However, we did manage to pick up lot of public servants in that, because we had already amended the Triple S scheme. So, we now need to tidy up loose ends.

In particular, I am very excited about the fact that, if this bill gets the support of the council, I will be getting a letter from my superannuation fund (the Parliamentary PS3 Superannuation Fund) advising me that, among the seven choices it offered me last time, there will now be a new choice for an ethical investment option. I also make the point that we do not need this legislation for this to happen. This legislation can be seen as a 'hurry up' call to government. The government could have done this a long time ago, as other states have done, but it has chosen not to.

The government has surveyed public servants and asked them whether they would like the option of ethical super, and public servants have overwhelmingly expressed support for the idea; very few people think it is a bad idea. We know that few public servants exercise any election at present because none of them are particularly attractive to people. They are offered high growth or low growth, or various models of traditional investment, and most people do not bother making that choice. Most people just say, 'Oh, well, the one in the middle; we'll just take that.' However, they will be offered a choice that is more stark if an ethical investment option is available.

My feeling is that Funds SA and Super SA will probably enter into some relationship with an existing ethical superannuation provider and perhaps take a product off the shelf that meets the criteria of the legislation and offer that to members. It might not suit everyone, but it seems to me that having some ethical, environmental or, as the Hon. Dennis Hood prefers, conscience consideration, would be better than nothing; even if there were just a small number of companies that someone had trouble with, disagreed with or excluded, that would be a better outcome.

With those few words, I again thank members for their support. We will put this to a second reading vote now and make the committee stage an item of business for when we come back in June.

Bill read a second time.

FAIR WORK ACT

Adjourned debate on motion of Hon. R.D. Lawson:

That the regulations under the Fair Work Act 1994, concerning clothing outworkers, made on 18 October 2007 and laid on the table of this council on 23 October 2007, be disallowed.

(Continued from 30 April 2008. Page 2518)

The Hon. M. PARNELL (21:20): The Greens oppose this motion, because we support the regulations. This motion seeks to disallow regulations that support the outworker code of practice. The Greens strongly support that code of practice, and we therefore strongly oppose any disallowance of the regulations that give effect to that code. A large number of people have written to me since the Liberals put this item on the *Notice Paper*, and they are universally in opposition to the disallowance motion with one very curious exception, which I will explore a little later on, and that is the position of Business SA.

The Hon. A. Bressington interjecting:

The Hon. M. PARNELL: The Hon. Ann Bressington laughs; I think she knows what I am talking about. We have seen their logo on the brochure promoting the new outworker code of conduct, and we have had other correspondence from them where they appear not to be entirely supportive of it; but I will get to that shortly.

One of the pieces of correspondence that I received was from the Working Women's Centre in Adelaide. I will refer briefly to its submission, but I will also make the point that many members might have received communication from the Working Women's Centre seeking their support, because that centre is now under risk of defunding from the federal government. I have written to the federal government telling it that this is an important service that we need to keep going, and I urge other honourable members to do so also.

One of the points made in the Working Women's Centre submission addresses the complaint, I guess, of the Liberal Party that the burden will be too onerous on retailers. The Working Women's Centre points out that retailers are not legally responsible for the wages and conditions of outworkers, which are regulated by an award. However, the retailers do hold decisive power and influence in the clothing industry. They are a key part of the trail from cloth to made garment.

State and federal awards have proven to be insufficient in tracking the manufacturer of clothing through the supply chain thereby being able to protect workers and prevent exploitation in the Australian garment industry. The Working Women's Centre points out that we need more, and this code of conduct is part of that additional regulatory task.

Another piece of correspondence that I received was from the Textile Clothing and Footwear Union of Australia, whose website provides information about the outworker code of practice. It states:

People who work at home, away from the employer's premises, are known as outworkers or homeworkers. Being isolated and with very little bargaining power, homeworkers are in an extremely vulnerable position. The vast majority of homeworkers are women from non-English speaking backgrounds.

I think that is an important point to note, that we are dealing with people who need our protection, because they do not have the same access to resources that the rest of us have to be able to insist on and protect our rights. The Textile Clothing and Footwear Union document goes on to state:

It is not uncommon to find homeworkers receiving $3 an hour and sometimes less. Due to poor working conditions and inferior machinery, homeworkers are three times as likely to have work-related injuries, both acute and chronic, than their counterparts who work in factories.

A little later on we will talk about their counterparts who work in factories and who suffer injury, but for now that is a fairly staggering statistic: they are three times as likely to be injured in their homes. The document continues:

Homeworkers face irregular work and an insecure income and [they] very rarely receive industrial entitlements such as paid annual leave, superannuation or sick leave.

I have also received correspondence from a number of individuals urging me to disagree with the motion to disallow these regulations. I will not read through all of those but, as well as the groups I have mentioned, there is also the FairWear Campaign, a group which has been instrumental in lobbying for the code of conduct and which now finds itself lobbying to make sure it is not undermined by having supportive regulations disallowed.

I also had another piece of correspondence—an important and influential one, as far as I am concerned—from the Office of the Employee Ombudsman. He actually came to see me some while ago to discuss this, and it was pointed out that an outwork group was set up which had representatives from all the stakeholder organisations involved and which unanimously supported implementation of the code. Some of those organisations included SafeWork SA, WorkCover, the Working Women's Centre (as I have mentioned), the FairWear Campaign, the Dale Street Women's Health Centre (a centre that is very likely to come across injured or underpaid workers), Business SA, SA Unions, the Retailers Association (that is also behind this), and the Migrant Women's Lobby Group.

From my point of view the most fascinating position is, as I mentioned earlier, that of Business SA. I think all members were sent a copy of the brochure headed 'New clothing outworker code of practice'. On the front page of that brochure are the logos of a number of organisations: the South Australian government and SafeWork SA, the Working Women's Centre, the Textile Clothing and Footwear Union, the Australian Retailers Association, SA Unions, the Office of the Employee Ombudsman, and Business SA. The logo of Business SA is on the front of the brochure, and the words inside say, 'This brochure is a joint initiative between SafeWork SA…and Business SA' (I will not read all the names again, because they are the same ones). They are listed as supportive. The back of the brochure has the Business SA address, phone number, and website.

I find it most curious that in his speech of 13 February the Hon. Robert Lawson referred to a letter from Peter Vaughan, the chief executive of Business SA, saying:

...on 7 February this year Business SA wrote to the chief industrial relations adviser at SafeWork SA, saying that it did not agree with the outworker code of practice or its immediate implementation.

I do not understand what is going on here. On one hand it is part of a coalition that includes practically everyone involved in this industry, but behind the scenes it is writing to the government saying it does not like the code of conduct. I wrote to Business SA asking for a clarification, and I am still uncertain.

I wrote to Peter Vaughan in March, and I will refer briefly to some of his reply. On 18 April this year Business SA wrote to me saying:

Business SA does not condone or support the exploitation of outworkers.

That is good, I am glad they do not condone exploitation. It would be a hard case to argue the opposite. It continued:

There must be safeguards in place to ensure that exploitation does not occur in South Australia.

I agree with that as well. It continues:

However, Business SA is also opposed to the introduction of inappropriate legislation, including regulations that impose unnecessary and excessive administrative requirements on South Australian business.

It goes on to talk about reducing red tape. So, I do not understand where they are coming from. They conclude their letter by stating:

Business SA believes it will be inappropriate to proceed with the proposed regulation.

So, it is a most curious response.

The Hon. Robert Lawson, in moving this motion, said that the regulations are too broad and they impose unreasonable, indeed, quite draconian burdens on small business. In other words,

more red tape, more regulations, more form filling, for, importantly, no demonstrable good reason. I say that surely the fact that clothing outworkers are some of the lowest paid workers in Australia and that they work under a raft of unique characteristics which make them prone to abuse and exploitation—that includes their cultural and language barriers and isolation from conventional industrial frameworks—are all demonstrable reasons for the provision of protective legislation.

These outworkers, as I have said, are primarily migrant women who work in their homes or in premises not usually regarded as commercial premises. The honourable member dwelt on the lack of research on the extent of outworker employment in South Australia, but I do not see that as relevant to this debate. We know that they are amongst the most vulnerable workers in our society. We know that they fall outside the protection of legislation as a result of their lack of bargaining power and their isolation. It seems to me that this is an ethical issue that we are debating. If manufacturers make their production chains transparent then exploitation can be more easily identified and addressed.

The requirements of the South Australian code of practice are no more onerous than the current award provisions and contains the benefit that it provides a means of tracking the often complex manufacturing supply chain and thus ensuring that outworkers' conditions and wages are meeting relevant award provisions and that these workers have access to the occupational, health, safety and welfare protections to which they are legally entitled.

So, rather than creating more onerous red tape for small business, the provisions of the code of practice actually serve to create a niche marketing opportunity for ethical and local clothing manufacture. Ethical consumers concerned over the exploitation of workers are a growing segment of the retail market, and this code of practice encourages the transparency that allows consumers to make ethical decisions regarding the place and means of manufacture of clothing.

We have just finished debating ethical superannuation and the fact that people are looking to incorporate their values, as diverse as they might be, into a range of decisions they make. We have been talking about the decision as to where to invest your superannuation funds, but now, under this system here, we are talking about where people spend their money. People do want to buy products that are made ethically.

I can recall traipsing around Adelaide with a 15 year old daughter looking for the particular style of running shoe that was known not to be produced in a sweatshop. I cannot remember the exact name of it, but it is branded as such. You pay a bit of a premium for it—

The Hon. Sandra Kanck: Go to Oxfam.

The Hon. M. PARNELL: The Hon. Sandra Kanck says I should go to Oxfam: I think that is where we went in the end and we managed to get them. The point is that I think there is a marketing edge that can come from not engaging in exploitation and I think that that is something that is a counter to the argument that we are just creating more red tape: we are actually creating market opportunities instead.

The Hon. Robert Lawson stated that if we want to protect outworkers then we should do it by 'the usual method'. I guess he means legislate to make the employers meet their obligations and if the employers do not, then prosecute them. The honourable member argues that SafeWork SA is failing in its duty to find and prosecute these employers. That is why I say we need this mandatory code of practice, because the rogue employers are currently falling through the cracks.

The Hon. Robert Lawson says that no wholesaler ever reveals his supplier to retailers for fear of being cut out of the chain. I can accept that, but the details under this code of practice are not to be revealed to the industry at large, only to SafeWork SA and the union. I believe that this is an obligation that aids in transparency and that there are obvious benefits for workers who will no longer be invisible and unprotected by legislation that provides for their rights.

The 'usual methods' that the Hon. Robert Lawson talks about currently allow unscrupulous employers to evade their obligations by hiding them in complex supply and production chains. Why should it matter whether the figure is 300,000 or 25,000 outworkers across Australia? The very existence of a sector of the workforce that is commonly being paid far below the award and being denied superannuation, sick pay or leave demonstrates the need for legislative protection regardless of the size of this group.

The Hon. Robert Lawson's argument, I think, is fairly basic: increase the paperwork and industry will look overseas for a similar product. I do not accept that. I think that it ignores the growing market sector that prefers to choose locally-made products and ethical manufacture. Surely the decision to look overseas would involve far more factors than merely the amount of

paperwork required. This is very much a secondary argument to the primary argument which is in relation to rights, and the rights of these people to proper treatment.

The code actively eliminates any competitive advantage that unscrupulous employers previously enjoyed and places all employers on an equal footing, competing on an equal playing-field. I think that is reason enough to support the regulations. The Greens will not, therefore, support the motion for disallowance.

The Hon. B.V. FINNIGAN (21:42): I rise in opposition to the disallowance motion. My colleague the Hon. Russell Wortley has already spoken, I think, on the government's position. I would like to place on the record some comments and responses to the contributions of the Hon. Robert Lawson in his moving this motion.

The Hon. Mr Lawson said that the proposed code will commence on 1 March this year unless disallowed, and that it is proposed that there be an amnesty for a further six months after commencement. This is incorrect, as the six-month amnesty period will actually conclude rather than commence on 1 March. During this amnesty period, SafeWork SA and members of the outwork group have conducted an education and awareness campaign which included targeted mailouts, posting information on the SafeWork SA website, conducting presentations in workshops, shopping centres displays and the distribution of explanatory leaflets at relevant community events. The Hon. Mr Lawson said that the code required retailers to provide details of their business to the union on a quarterly basis. This is incorrect, as retailers have the option of reporting the required details every six months.

Further, these details in the form of schedule 1 of the code are to be provided to SafeWork SA and the TCF union. No retailer needs to be covered by the provisions of the mandatory code; they can simply opt out by joining up to the national voluntary code at no cost. The Hon. Mr Lawson also said that on 7 February this year, Business SA wrote to SafeWork SA stating that it did not agree to the code or its immediate implementation.

The letter referred to was the submission provided by Business SA to SafeWork SA as part of the public consultation process. The submission is in fact dated 7 February 2007. I believe that is where the confusion arises to which the Hon. Mr Parnell referred. Business SA attended at least four clothing outworker group meetings subsequent to the date of that letter in 2007. Business SA has explicitly sponsored an explanatory brochure which the Hon. Mr Parnell referred to.

The Hon. Mr Lawson stated that he supports the existing outworker protections under the relevant award and the Fair Work Act and states that there is no desire not to ensure that outworkers are protected. The existing protections contained in the Clothing Industry Award and the Fair Work Act do play an important role in regulating practices in the clothing industry. However, given the complex networks and relationships within the industry, these protections are not sufficient by themselves to ensure the protection of clothing outworkers. The code fills in this void by reaching up to retailers located at the top of the supply and production chain.

Quoting directly from Business SA's submission, the Hon. Mr Lawson stated that Business SA maintains that there should have been a regulatory impact assessment (RIA) in relation to the need for and impact of the introduction of the code. A comprehensive regulatory impact assessment and accompanying business cost calculator assessment were completed in July 2007, and this was part of a cabinet submission regarding the promulgation of the code dated 18 October 2007. All members of the outwork group, including Business SA, were clearly notified that an RIA and business cost calculator assessment had been prepared as part of the cabinet process.

The general outline of the findings of the RIA and business cost calculator assessment were provided to the outwork group. Business SA's submission stated that a formal regulatory impact assessment should have included a number of things—and I will address those. It said that it should have assessed the scope of the outworker problem in South Australia and that it provided no empirical evidence regarding the scope of the problem in this state. By its nature outwork is isolated, unseen and generally non-unionised, and it is difficult to accurately assess the number of people involved in home-based garment manufacture in Australia and South Australia.

However, research commissioned in 2003 for the New South Wales government established an estimated ceiling to the number of potential pool of outworkers at 84,000. Prior to this, in 1995, the Senate's Economics References Committee looked at the question and said that the likely minimum was between 50,000 and 300,000 outworkers throughout Australia. While it is hard to gauge an accurate figure for this state, if we look at the normal pro rata's that apply there are certainly many thousands.

Business SA's submission also stated that the RIA should assess the number and size of businesses that would be covered by the code. In fact, extensive consultation and liaison was carried out between key stakeholders regarding the potential coverage of the code, including the New South Wales Office of Industrial Relations, the ARE (Australian Retailers Association), the federal Workplace Ombudsman, the Workplace Authority, the TCE Union and key community organisations. A database of manufacturing and retail clothing establishments that may be affected by the code was compiled with the assistance of WorkCover. This data was used during the public consultation period and, during this period, over 450 South Australian businesses were provided with draft copies of the code and an explanatory memorandum.

Business SA's submission refers to its own research and feedback. During outworker group meetings in 2006 and 2007, Business SA was asked to provide information regarding the members that may be affected by the code, but no such information was provided. During the public consultation period, Business SA arranged a seminar for its members regarding the code, and SafeWork's chief adviser for industrial relations was to attend the seminar. SafeWork was advised, prior to the seminar, that only two members had responded to the invitation to attend the seminar and, subsequently, one was held with approximately five members attending. That is in reference to Business SA's claim that it needed to do more research and get more feedback. Obviously, there was not much interest from its members.

Business SA also stated that the RIA would have revealed whether the code would achieve the intended outcome. A detailed assessment of the economic and social costs and benefits of four regulatory options was included in the RIA. The adoption of the current code was assessed as being of greatest net benefit. The RIA would have provided an analysis of the difference in imposition on business relating to the voluntary and regulatory codes, and a detailed assessment of these factors was provided in the RIA and the business cost calculator assessment. Again, Business SA stated that the RIA would have analysed current methods and resources available to address outworker issues.

The relevant South Australian award and federal award do not extend to retailers located at the top of the supply and production chain. The exception to this is where a retailer is a direct employer of an outworker (a situation that rarely occurs in South Australia).

In the Fair Work Act our workers are deemed to be employees without restriction. Our workers can also recover unpaid wages from fashion houses, manufacturers, contractors and other suppliers in the clothing production chain. The South Australian award and Fair Work Act currently impose substantial direct financial liability upon clothing manufacturers in South Australia who supply goods to South Australian retailers. This liability is both contractual and statutory; however, these provisions do not reach up to the top of the supply and production chain.

The biggest problem in attempting to assess how many outworkers are in South Australia and the overall levels of compliance is the hidden nature of the industry and the difficulty in finding outworkers' work locations, employment relationships, their employers and appropriate employment and business records. Put simply, the current regulatory system does not reach far enough to provide inspectors with sufficient information to penetrate the complex supply chain.

Business SA also asserted that the regulatory impact assessment would have analysed whether it is appropriate for employers bound by the Clothing Trades Award who comply with the award's (what they describe as) onerous requirements also to be required to comply with even further regulatory obligations on top of award requirements. For employers involved in supply chains already complying with the relevant federal or state award, there are no additional reporting requirements under the code. If employers have artificially reduced minimum terms and conditions of employment, they will incur increased costs.

The South Australian award currently imposes substantial direct financial liability upon clothing manufacturers in South Australia who supply goods to South Australian retailers. By contrast, the code will not impose any further regulatory obligations in the form of financial liability for remuneration upon any retailers at all, or upon any manufacturers who are already complying with either the federal award or the South Australian award.

Business SA said there was a lack of clarity in the terminology used in the code; however, the terminology is consistent with that used in the equivalent New South Wales code. Business SA raised a further point regarding the practical impact of the code on businesses.

In our view, there will be no further impact regarding manufacturers whose supply chains are covered by and comply with the state or federal award. The code does create some new obligations for retailers, albeit minimal, by requiring greater compliance and record-keeping.

Business SA also asserted that the RIA would have revealed there are differences in definitions used in other state and federal legislation, but the code is entirely consistent with other state and federal instruments dealing with clothing outworkers. The RIA, according to Business SA, would have identified what is required to ensure appropriate consistency with other jurisdictional activity with respect to outworkers.

It has been made clear on numerous occasions at outworker group meetings that there is only one other mandatory code of practice in operation, that being the New South Wales Extended Responsibility Scheme. There are no other mandatory codes operating in Australia; however, the Queensland and Victorian governments have committed themselves to the introduction of mandatory codes for clothing outworkers. According to Business SA, the RIA would have ensured that the record-keeping requirements are not in conflict with the Premier's commitment to reducing red tape on South Australian businesses.

The record-keeping requirements for manufacturers are no greater than that which already exist under the award. Retailers subject to the requirements of the code have particular reporting requirements which, to a large extent, mirror what is required of manufacturers under the state award. Of course, retailers have the opportunity—and, indeed, the code creates an incentive for this to happen—to become a signatory to the voluntary code. The impact of the code on retail businesses is of a minor machinery nature and does not substantially alter existing arrangements in terms of record-keeping, and the record-keeping requirements have been fully assessed in the regulatory impact assessment and the business cost calculator analysis.

Business SA further asserts that the RIA would have researched the impact on the equivalent regulation on small business in New South Wales. Prior to the introduction of the code, there was consistent and intensive consultation between SafeWork SA and the equivalent New South Wales agency which looked at the effect and experience of small businesses in New South Wales.

Business SA states that there was a significant disturbing lack of awareness of the proposed regulation throughout the employer community. The duration of the public consultation period was approximately 13 weeks. Prior to this the outworker group (of which Business SA is a member) was fully aware of the details of the proposed draft code. Extensive consultation occurred prior to the official public consultation period and the 13-week public consultation period provided ample opportunity for business to comment on the code.

Business SA again says that there has been a significant and disturbing lack of awareness in the employer community regarding the code. In fact, there has been a comprehensive mail out by SafeWork SA to over 450 individuals and businesses that may be affected by the code. Comprehensive information has been available on the SafeWork SA website, including the draft code and the explanatory memorandum. Throughout the public consultation period there was also a provision on the SafeWork SA website for individuals and businesses to launch their submissions online.

According to Business SA, the further concern is that the voluntary code was not made available to the proposed regulation. The explanatory memorandum which accompanied the draft code referred to the voluntary code and provided a link to it, as did the SafeWork SA website.

Business SA asserted that a privately established voluntary code exists in New South Wales that constitutes an agreement between the union and other organisations in that state. Contrary to this assertion, the voluntary code is a national voluntary code and not merely a New South Wales specific voluntary code. Signatories to this national voluntary code have for some considerable period of time included prominent retailers and manufacturers based in South Australia.

The voluntary code is operated and controlled by a committee made up of the following industry, union and community organisations: the TCF Union; the Council of Textile and Fashion Industries of Australia; the Brotherhood of St Laurence; Australian Business Ltd; Yakka; the Australian Industry Group; and Poppets Schoolwear. The committee oversees the establishment and ongoing management of the voluntary code. This includes registering and maintaining the 'no sweatshop' trademarks, logos and other ID items.

Business SA asserted that there are many businesses that sell T-shirts and memorabilia, some of which might be covered by this code. In fact, the provisions of this code only apply in respect of clothing that is manufactured in Australia. No business needs to be covered by the provisions of the code; they can opt out by joining up to the national voluntary code at no cost.

Businesses also have the option of reporting the required details every six months to SafeWork SA And the TCF Union.

In the Hon. Mr Lawson's contribution on 27 February, he said, 'There is no exercise to undertake the regulatory impact statement.' In fact, SafeWork SA completed the required regulatory impact statement in the first half of 2007, and this was taken into account in the decision to proceed with the code.

The Hon. Mr Lawson also said he had spoken to Mr John Brownsea of the State Retailers Association who told him that he had members in the clothing retail industry who were entirely unaware of the code.

In my understanding, the claim that Mr Brownsea was unaware of the formulation of the code does not match the history of the matter. He was invited to join the consultation process on separate occasions by Mr Bourke and Mr Hulme of SafeWork SA, but declined on the basis that he had no membership in the clothing industry.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The Hon. Mr Finnigan has the floor.

The Hon. B.V. FINNIGAN: Thank you, Mr Acting President. I was responding to what the Hon. Mr Lawson said in relation to Mr Brownsea of the State Retailers Association. The Hon. Mr Lawson also said:

> You might say, 'Well, what's all the fuss about? They ought to sign up to the New South Wales homeworkers code, and they will not have to bother about this one.'

The claim that the voluntary homeworkers code is a strictly New South Wales homeworkers code is untrue. The voluntary homeworkers code is a national code with long-standing South Australian participation; most notably, the active participation of the most high-profile textile clothing and footwear manufacturer and retailer in the state of South Australia, RM Williams, which has been a signatory to the national code—

Members interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Finnigan does not need any help from either side of the chamber.

The Hon. B.V. FINNIGAN: Finally, the Hon. Mr Lawson said:

> There are serious inconsistencies between this homeworkers code, which is called the 'voluntary code', and what is called the 'mandatory code' that is being imposed. The most significant one is that the mandatory code applies only to goods manufactured in Australia...The voluntary code applies to all goods, whether manufactured in Australia or outside of Australia.

The final statement by the Hon. Mr Lawson is not correct. The Homeworkers Code of Practice only applies in respect to goods manufactured within Australia, consistent with the definition of 'supplier' in Part One: Retailers at clause 1—Definitions.

It has taken a little while to go through that, but I think it is important to respond in detail to the assertions made in the submission by Business SA, which the Hon. Mr Lawson took the time to read into *Hansard*.

In conclusion, I thank honourable members who made a contribution to this motion, particularly those members of the crossbenches who indicated that they will also oppose this disallowance motion, as will government members. I congratulate all those who were involved in putting together the outworker code of practice in the outworker group and those at—

The Hon. A. Bressington interjecting:

The ACTING PRESIDENT: Order! The Hon. Ann Bressington is out of order.

The Hon. B.V. FINNIGAN: I extend my thanks to those at SafeWork SA, particularly Mr Stephen Brennan, the Employee Ombudsman, Michelle Gilbert from his office, Andy, Elizabeth and anyone else there who has made a contribution.

Members interjecting:

The Hon. B.V. FINNIGAN: I am glad that members opposite are so excited to be voting on this disallowance motion, and I urge all honourable members to join me in opposing it.

Members interjecting:

The ACTING PRESIDENT: Order! I call the Hon. Robert Lawson to conclude the debate.

The Hon. R.D. LAWSON (22:01): I thank those honourable members who contributed to the debate on this motion. I regret that a couple of the addresses given this evening miss the essential point of our opposition to this particular regulation.

The Hon. R.P. Wortley: Poor old outworkers.

The Hon. R.D. LAWSON: The Hon. Russell Wortley says, 'Poor old outworkers,' and we do not have any problem with that statement. We believe, however, that the government should be enforcing the laws that already exist in relation to outworkers. It should not be attacking retailers. I ought remind the council, for those who are still undecided in relation to this motion, that the Fair Work Act contains provisions that protect outworkers.

As he rushed through the paper that was obviously written for him by somebody else, the Hon. Bernie Finnigan failed to put sufficient emphasis upon those provisions. Section 5 of the Fair Work Act specifically deals with outworkers and defines them. It states that all the provisions of the Fair Work Act apply to outworkers if a provision of an award relates to them.

The South Australian clothing industry award specifically contains provisions dealing with outworkers, and schedule 4 contains all the sorts of provisions you would expect to find in an appropriate industrial instrument relating to outworkers. The award is binding on the union and the industry of the occupations of persons described (namely, outworkers), whether as employers or employees and whether as members of a union or not.

So, there is award coverage for outworkers. They are protected by the industrial award. If the union is so keen to get better provisions, it can apply to change the provisions of that award. I assure members of the council who may not be familiar with these provisions that schedule 4 of the clothing industry award provides appropriate protections.

In part 3A of the act, commencing at section 99A, there are other provisions dealing with outworkers. It is interesting to note that those provisions specifically provide that a person whose sole business in connection with the clothing industry is the sale of clothing (clothing by retail) will not be taken to be a responsible contractor for the purposes of this legislation.

So, there is a specific provision in the Fair Work Act that, although there are provisions for the protection of outworkers, and conditions are imposed upon responsible contractors (the employers of outworkers), a person whose sole business is in connection with the sale of clothing by retail is not covered. The unions, with the assistance of the government, have sought not to amend that provision and impose obligations on the retail industry, which clearly are intended to be exempt. They have come along by the backdoor and made a code of practice. It is only a notional code of practice because it says, 'This is mandatory. There are heavy penalties if you do not abide by it. However, if you sign up to something else in New South Wales, you can avoid everything.'

More importantly—and I do not believe sufficient evidence was given either in the speech of the Hon. Bernie Finnigan or the Hon. Mark Parnell especially—the New South Wales voluntary code to which you subscribe says that, if you buy goods only made outside Australia, you do not have to do anything. What greater incentive is there to people to buy overseas-made goods than that? That is to say, 'You don't have to fill in these forms, whether quarterly or every six months. You do no have to disclose information to a union about your business. You do not have to seek to go behind your wholesaler and identify from whom the wholesaler is dealing. You do not have to do any of those things: all you have to do is buy overseas gear.' How can that help the Australian footwear and clothing industry?

The Hon. Bernie Finnigan repeats the union's mantra that there are some 300,000 outworkers in Australia. The fact is that the Productivity Commission in an extensive review of the footwear and clothing industry identified about 25,000 outworkers in the whole of Australia. What form of gross exaggeration—

The Hon. B.V. Finnigan: If it is only 25,000, forget them, they don't need protection.

The ACTING PRESIDENT: Order! The Hon. Mr Finnigan had his go. The Hon. Mr Lawson has the floor.

The Hon. R.D. LAWSON: That is not the point. The point is that, at every corner, the proponents of this regulation exaggerate the issue grossly. There is no need to say that there is 300,000—that would make 30,000 in South Australia, which anyone in this chamber would know

must be nonsense. There are 25,000 across the whole of Australia, and not the Hon. Bernie Finnigan or anyone—the brochures or the material—has shown how many of those are in South Australia. No attempt at all to ascertain—

The Hon. B.V. Finnigan: Even if it is 3,000, does that mean that this is irrelevant?

The Hon. R.D. LAWSON: No, not at all. There maybe 300, but there will not be any left if retailers in this state are told, 'Don't buy local, buy overseas goods.' The Hon. Bernie Finnigan relied upon a regulatory impact statement that Business SA says should have been made, but the government has not produced that regulatory impact statement either to Business SA or the parliament. They have not come along and said, 'This shows what the Hon. Bernie Finnigan was trying to suggest, that is, it really had very little impact at all.' It is all very well for someone who has been employed by a union to say, 'Oh, there is nothing about filling out a form, a 10-page form, providing copies of your invoices and so on every three months or every six months.'

I can tell the honourable member that anyone who has been in business in this state will know that form filling is a major imposition. Of course, their argument is, 'Well, you don't have to worry about that, you can sign up to this voluntary code and avoid all problems.' That shows what an artificial and inappropriate scheme it is. If we want to make laws to require South Australian retailers to undertake things, let us pass a law, let us have it debated in parliament and let us make a decision based upon a full understanding of the impact of the provision, not come in the backdoor and slide in this way.

I do not care whether Business SA or anyone else has agreed to have their name or logo put on it—and great play is made of the fact that the Australian Retailers Association has agreed to this. The Australian Retailers Association is so interested in South Australia that it abandoned its office here, it has no representative here and it has departed the shores of South Australia. I regret to say that it appears that Business SA is not adequately looking after the interests of the small retailer. It might be regarded as the fact that it does have many members in that particular segment.

The Hon. B.V. Finnigan interjecting:

The Hon. R.D. LAWSON: As the honourable member said, Mr John Brownsea of the State Retailers Association does cover a number—

The Hon. B.V. Finnigan interjecting:

The Hon. R.D. LAWSON: The honourable member says, quite wrongly, that Mr Brownsea acknowledges that he has no members in the clothing industry. That is not the issue here. The issue here is retailers. He does have members in the retailers. It is the retailers who are affected by this motion, not those in the clothing industry. Mr Brownsea acknowledged to me—and I can assure the council of the truth of this conversation—that he does have members who retail clothes. He is concerned about this, but he was not adequately consulted about it and he did not consult with his members. He runs a small organisation—and I do not hold that against him—but the fact is that the one representative in South Australia who does represent small retailers was not involved in the development of this proposal and does not endorse it.

The Hon. Mark Parnell said that this regulation would encourage ethical trading. Ethical trading requires the trader to have some choice about whether or not he does something. If ethical traders want to provide the union with material about their business—where they get their material—they are quite entitled to do that. One does not make someone ethical by legislating and requiring them to do something.

The Hon. Mark Parnell also said that we want to put all retailers on an equal footing. This does not put all retailers on an equal footing. It imposes an obligation on those who sell Australian goods and imposes no obligation at all on those who sell overseas made goods. This is not a matter of an equal footing for retailers; it is a matter of unequal footing. This regulation is defective and it ought not be supported by the parliament.

The council divided on the motion:

AYES (9)

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

NOES (12)

Bressington, A.	Evans, A.L.	Finnigan, B.V. (teller)
Gago, G.E.	Gazzola, J.M.	Holloway, P.
Hood, D.G.E.	Hunter, I.K.	Kanck, S.M.
Parnell, M.	Wortley, R.P.	Zollo, C.

Majority of 3 for the noes.

Motion thus negatived.

BAIL (DISCRETION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October 2007. Page 1120.)

The Hon. S.G. WADE (22:17): I do not usually say that I am disappointed to get the call, but I am surprised that there is no government speaker listed on this bill today. I find it extraordinary that this bill has been before the council since October last year and, by current indication, we will not have a government speaker. The Hon. Dennis Hood has given us four weeks' notice that he would like to bring this matter to our consideration tonight, yet the government has not deigned to form a view. The practice of this council is that parties within the chamber cooperate in the management of the business of the council, and I am disappointed that the government has not seen fit to come forward.

The PRESIDENT: The Hon. Mr Wade has the duty to give us his view.

The Hon. S.G. WADE: But my concern, Mr President, is that I am not able to do that without the information to which only the government has access. Only the government can consult the magistracy and consider what the implications of this provision would be. Only the government can seek legal advice from the Crown Solicitor's Office and tell us what this bail discretion measure might involve. Only the government has access to the bureaucrats within the police administration to consider how this legislation might impact on the ground. Only the government can consult the Courts Administration Authority to see how the bill might work. Yet the government is not willing to engage in this debate. It has demonstrated petulance, as usual. It has decided not to contribute to the second reading. The government might well decide to contribute to clause 1, but what use is that? Those of us who are non-government members in the council will not have the opportunity, as is usual practice, for a government speaker to tell us what the wider implications of the bill are.

We know where this attitude comes from. It comes from the bully boys in the lower house. The Treasurer, Kevin Foley, this morning at a press conference, and in what was called a stunning broadside—in fact, members will notice that it was not a stinging broadside, because Foley's bully-boy tactics are hardly well timed or well placed—

The Hon. B.V. FINNIGAN: I have a point of order, Mr President.

The PRESIDENT: The Hon. Mr Foley.

The Hon. S.G. WADE: The Hon. Mr Foley. I take the point, Mr President. I do not need the Hon. Bernard Finnigan's help.

The PRESIDENT: Order! The Hon. Mr Finnigan has a point of order.

The Hon. B.V. FINNIGAN: Mr President, I would like your ruling on whether comments by the Hon. Mr Foley have anything to do with the Bail (Discretion) Amendment Bill that is before the council.

The Hon. S.G. WADE: There is a second half to the sentence, Mr President.

Members interjecting:

The PRESIDENT: I do not quite know yet whether they have, but so far the Hon. Mr Wade really has not directed any of his comments to the bill, but I think he might be getting there.

The Hon. S.G. WADE: The point of my comment is that, as non-government members, we would have thought that this government has learnt its lessons over the past two years and felt that on an issue as important as bail—after all, this is a government that says that it cares about law and order—it might deign to give the council advice. We have had this bill before the council since October last year. We have had four weeks to bring it on, yet the government is not contributing at the second reading. I hope that it will humble itself to make a comment on

clause 1—how generous of it that might be! The arrogance of this government was shown this morning when the Hon. Kevin Foley (I am told that he is honourable), in relation to private member's business, said:

> There is a quaint tradition in the upper house of this state. They spend a few hours on a Wednesday pontificating and rabbiting on about private member's issues that have little relevance to the goodness of the state, and we want that process scrapped this afternoon.

I suggest that if it has the view that bail is unimportant to the law and order of this state the government might tell us that; rather than staying silent on the second reading, stand up and tell us that bail does not matter to the people of this state. On our part, we are willing to engage the Hon. Dennis Hood's bill, and I now intend to do so. This bill was introduced by the Hon. Dennis Hood in October 2007 in an attempt to curb what he describes as the 'skyrocketing number of breaches in bail'. The Hon. Mr Hood highlighted figures that I think would support his argument of skyrocketing breaches in bail.

The Hon. Mr Hood advised that the number of breaches of bail has increased from 2,394 in 2001 to 8,202 in 2006-07. The Hon. Mr Hood is concerned that this is largely due to persons being granted bail, breaching that bail and then being granted bail again. Section 10 of the Bail Act 1985 lists the matters to be taken into consideration in determining whether bail should be refused. Section 10(1)(f) requires that a court have regard to 'any previous occasions on which the applicant may have contravened or failed to comply with a term or condition of a bail agreement'. The Hon. Mr Hood's bill confirms that the provisions are not limited to breaches or alleged breaches of bail.

I am led to believe that we are going to ignore the normal processes of this chamber. In spite of four weeks' notice of a bill that has been on the *Notice Paper* for (forgive my maths) seven months, late advice is that the government is not even going to allow its progress as is normal practice. I continue with my comments, then. The Hon. Mr Hood confirms that the provision is not limited to breaches of bail on previous occasions but also includes any such breaches in relation to the current occasion. The amended section would read, '...the fact that the applicant may have contravened or failed to comply with a term or condition of a bail agreement (whether on this occasion or some previous occasion);'.

Family First intends that the amendment confirm the practice of some bail authorities and 'place a heavier onus on magistrates and other bail authorities to treat ongoing breaches of bail allegations much more seriously than is currently the case'. The opposition supports this goal. As I mentioned during my remarks, I understand that the government might deign to address this issue next week. I hardly see that that detracts from my basic complaint, which is that non-government MPs (including me; and I understand that the Hon. Mark Parnell may be considering making a contribution today) were forced to make a contribution without the benefit of a government contribution.

If the government does not deign to provide advice to the house from organs of government, perhaps the least it could do is to let us get briefings. I indicate that the opposition supports this bill.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (22:24): I will say a few words, because—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Not at all. It is well known—

The Hon. S.G. Wade interjecting:

The Hon. P. HOLLOWAY: No; I do not have any advice at all. What I do know is that the matter of bail is something about which the Attorney has made quite clear he has been considering in some detail. He was looking at a whole response in relation to that. It is not necessarily that the government has any objection to the specific measures, but there is a lot more to the bail issue than just one thing.

I compliment the Hon. Dennis Hood on raising this issue. From questions and other issues in this place he has raised his concern about some of the apparent inconsistencies we get and I compliment him for his ongoing interest in that regard, but I am aware that the Attorney is looking at the whole issue in relation to bail and it is a matter of whether we should be waiting for a more comprehensive response from the Attorney as it is a complicated issue and there are many elements to bail. There is police bail and a number of issues in relation to the courts. I assure the

honourable member that I will get a response from the Attorney before the next sitting week. The only reason the government has not dealt with this issue further is that I know the Attorney has been looking more broadly at the issue of bail.

The Hon. D.G.E. HOOD (22:26): I will briefly sum up, put the bill into committee and adjourn it from there. I thank the Liberals for their support. I can generally rely on them and thank them very much. I echo the comments of the Hon. Mr Wade. The bill has been on the *Notice Paper* for some time. I do not put these bills to the council lightly. It is a genuine attempt to make what I see as an improvement in the law. I look forward to the government's response on clause 1 on the next Wednesday of sitting.

This is a simple change to the Bail Act. Essentially it will raise the bar slightly in order for applicants to get bail. To put it in layman's terms, at the moment there is a presumption in favour of bail in the Bail Act. This amendment will allow that to continue, but if somebody has breached bail while on bail that would have to be considered by the judge in determining whether or not to grant bail again, and at the moment that is not the case.

Section 10(1)(f) is being changed. The current Bail Act provides 'that any previous occasions on which the applicant may have contravened or failed to comply with the term or condition of a bail agreement', and I propose to delete that and amend it so that it states 'the fact that the applicant may have contravened or failed to comply with the term or condition of a bail agreement, whether on this occasion or on some previous occasion'. So, if they have breached the bail they are on currently, that needs to be taken into account by the judge before deciding to grant bail again, in simple terms.

We see in the community, as the Hon. Mr Wade outlined very well from referring back to data I provided, that the incidence of breaches of bail is increasing substantially. Back in 2000-01 there were 2,394 breaches of bail; in 2001-02 there were 2,960; in 2002-03, 4,010; in 2003-04, 4,612; and, 2004-05, 5,729. There is a clear linear increase in the number of breaches of bail, but we are not seeing the courts respond in order to make it more difficult or to grant bail less often.

This amendment will change that and be another factor the judge will have to consider and, as a result, if somebody breaches their bail whilst already on bail that will need to be considered when the judge makes a decision to grant bail or not in that instance: simple as that. It is a serious problem and something that has been going on for some time. I will quote a couple of people who seem to be in support—maybe not specifically but generally—of this amendment. I wish to quote the Acting Police Commissioner's words, as reported in *The Advertiser* recently. He said:

> If an offender has breached conditions intended to protect victims, then the assumption they should receive bail should no longer exist. The offender should have to prove why they deserve bail again.

Someone fairly influential—if not in this place, certainly, in the other place—the Premier himself, said recently:

> While alleged offenders who have not yet been convicted are presumed innocent when given bail, frankly, at times it wears a little thin to see them hauled back before the courts for breaches of bail conditions only to be bailed again. In my book, these serial bail offenders blow their rights away by their own actions.

Those are the words of the Premier. This amendment to the Bail Act will go some way to fulfilling the point that he is making here and make it harder for people who breach bail to get bail again. I thank opposition members for their support. I have had indications of support from other members, and I thank them as well. I look forward to the government's contribution on clause 1.

Bill read a second time.

SOUTH AUSTRALIA POLICE

Adjourned debate on motion of Hon. D.W. Ridgway:

1. That a select committee be appointed to inquire into and report on the staffing, resourcing and efficiency of the South Australia Police (SAPOL) with particular reference to:

(a) resource utilisation;

(b) rural policing;

(c) the need for, and allocation of, minimum staffing levels;

(d) effectiveness of recruitment and retention of police personnel;

(e) recruitment and in service training resources and requirements;

(f) selection and promotion processes and policies;

(g) adequacy and standard of equipment;

(h) mechanisms for dealing with internal complaints;

(i) prosecution;

(j) the role of police in and the adequacy of crime prevention programs throughout South Australia; and

(k) other relevant matters.

2. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.

4. Standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 27 February 2008. Page 1885.)

The Hon. SANDRA KANCK (22:31): I indicate Democrat support for this amendment. The original select committee with identical terms of reference was established in 2003 by my former colleague, the Hon. Ian Gilfillan. It was a very effective select committee.

The PRESIDENT: Yes.

The Hon. SANDRA KANCK: Were you a member, Mr President?

The PRESIDENT: Chairman.

The Hon. SANDRA KANCK: That is probably why it was so effective. As I said, the committee was effective and, in a media release of the Hon. Ian Gilfillan dated 10 November 2003, he said:

'At last the government has heeded the call of the Democrats that more police will be far more effective than the constant beating of the hollow drum of "tougher penalties" ', said Ian Gilfillan, spokesperson for Police, Law and Justice, in response to Minister Foley today. Mr Gilfillan was commenting on the Minister's statement that recruitment is to commence for an additional 200 police officers and eight public servants for SAPOL. 'This is a clear and welcome response to the Democrat Select Committee which is pressing for adequate police resources in South Australia'.

I met the now retired head of the police union, Peter Alexander, I think, at the beginning of last year. He came to see me about police numbers and was talking about the increase that occurred at that point. He gave credit to the Hon. Ian Gilfillan and this select committee for being able to create the publicity that forced the government into that move.

The committee reported on 30 November 2005. It was an interim report, and it was basically a one-page statement that allowed the members to say, 'We've heard lots of evidence and we're tabling the evidence before parliament is prorogued.' But they made no recommendations. In a sense, there is now some unfinished housework to do in association with this committee, including some people who wanted to appear before it then who still want that opportunity.

I draw to the attention of the Hon. David Ridgway, so that his new committee does not make the same mistake, that the introduction states, 'On 26 March 2003 the Legislative Council appointed a select committee', and so on. It was not on 26 March 2003; that was the date on which the Hon. Ian Gilfillan moved his motion. The motion was passed in April of 2003. So, when this new committee reports, the Hon. Mr Ridgway can make sure that the history is correct. The former committee was highly effective and, because there is some unfinished business associated with it, I indicate Democrat support for its re-implementation.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (22:35): I advise the chamber that the government opposes this motion.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, in 2003; it is now 2008. Notwithstanding the good work you did, Mr President, as the chair of that committee, we really have to ask why we need a select committee with identical terms of reference. I understand that the Legislative Council has a love affair with select committees: it cannot have enough. No matter how many we have, it just is not enough for this council. So, I will not bother wasting the time of the council by dividing, because I

know it would be futile. This must be one of the few parliaments in the world with 22 members that has more than a dozen, I think it is, standing committees and, with all these select committees on top of that that, we have more committees than we have members, which is a fairly unique position.

I just want to make the point that, if this select committee is established, we will be taking police officers from the front line—from their job of catching criminals—so that they can prepare submissions and responses to matters that are raised during the life of this committee. The question is: is there really anything so serious within our police force today that such a committee that will take police off the front line is needed?

An honourable member interjecting:

The Hon. P. HOLLOWAY: I guess that makes the point that members in this place believe that this parliament is essentially for their own entertainment and is something to keep them busy. Perhaps they do not do enough.

The point is that the terms of reference of this committee are essentially the responsibility of the Commissioner of Police. He is best placed to determine what type of equipment is used by his officers and where police resources are placed. These matters have traditionally and appropriately been the domain of senior police, who are in the best position to make such decisions. Indeed, it is constitutionally inappropriate for parliament to interfere in the executive functions of the Commissioner of Police and to interfere in his operational responsibilities. This parliament passed the Police Act 1989, and part 2, section 6 of that act provides:

> Subject to this act and any written directions of the minister, the Commissioner [that is, the Commissioner of Police] is responsible for the control and management of SA Police.

That provision of the act is quite clearly laid out to ensure that there is no political interference in the operation and management of the South Australian police force. SAPOL is not like other government departments, and that is why the act is quite clear—and tradition and convention quite clearly indicates—that, unlike other public servants, the Commissioner cannot be directed, other than by any written directions, which have to be published. It is not like the situation with other public servants, and there are good reasons for that. As I have said, there is a long tradition for that.

This government has full confidence in the Commissioner of Police and his management of the police force. We have given the South Australian police force record resources; every year its funding has gone up well in excess of the CPI. It is the one government department that not only has not been touched by budget cuts but has been given significant resources, not the least of which is the fact that, by the completion of the term of this government, it will have something like 600 extra sworn police officers.

Essentially, this proposal can be seen only as an attack on the Commissioner of Police and the police department's independence. After all, it is the Police Commissioner who has the legal responsibility under the act to control and manage the police of this state.

This government has confidence in our police force, and one can only suspect that members opposite do not have confidence in the police. Why else would we be continuing this committee, which essentially has the same terms of reference as a committee established five years ago? For those reasons, the government opposes the committee but, as I said, we accept that this Legislative Council has an irresistible urge to establish more committees.

We will provide a member for the committee. Obviously, a lot of other members in this place have very little to do with their time. I hope that, at least as a result of this, they learn something about our police. I hope they become aware of the fact that our police force has never been better resourced than it is at the moment and that it does a great job in protecting the community of this state.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (22:41): I thank the Hon. Sandra Kanck for her support. I will make a couple of quick comments, because I realise that we have other business to move on to.

The Hon. P. Holloway: Very important business.

The Hon. D.W. RIDGWAY: Very important business. It is interesting that the minister really has not listened to what I said when I initially moved the motion—and the Hon. Sandra Kanck also alluded to this: it is really just to complete the business of that particular select committee that met before the last election. There is a handful of people who were denied an opportunity to give some oral evidence.

I have spoken to the Police Association, which made a very comprehensive submission at the last select committee meeting, which you chaired, Mr President. Neither I nor other committee members expect the association to make any submission at all. I spoke to both the retiring president and the new president of the association about the matter when this motion was moved. I have also mentioned it to the commissioner in an off-the-record situation when I have met with him at graduations. I explained that this is not about a full-blown inquiry about the police force; it is about letting the four or five people, who feel as though they have missed the opportunity, give oral evidence to the committee.

The minister talks about the resourcing of the police force. I raised this issue the other day and people laughed: it is interesting to note that South Australian police officers are not issued with their own wet weather gear; they have to share it. So, if you have police on a shift in wet weather, they go back to their station and take off their wet gear, which officers on the next shift then have to put on. They are not issued with their own wet weather gear.

It is interesting that the minister says that they have never been resourced to a greater level. It makes me laugh to think that something as simple as a raincoat cannot be issued to our police officers. Those sorts of things are in the submission from the Police Association as basic entitlements and requirements for equipping South Australian police officers. Mr President, you might laugh, but I bet you did not like shearing wet sheep.

I think it indicates the way in which some of the issues are examined by this government. It likes to talk about its contribution to resourcing police officers, but here we are discussing something as simple as a raincoat for officers, probably costing half a million dollars. Maybe it would cost $800,000 to equip all of our police officers with their own wet weather gear, which would belong to them and which they would look after. I am sure we would find that the wet weather gear would last much longer if it were issued to the police officers themselves to look after and care for as if it were their own, rather than something that is just used on a rotational basis.

There was some evidence in the United Kingdom to show that, where police officers are issued with their own equipment rather than stuff that is left at the station, it lasts much longer and actually saves the government a significant amount of money. However, I will not go on any longer. I thank members for their contribution, and urge all members to support re-establishment of the select committee.

Motion carried.

The council appointed a select committee consisting of the Hons A. Bressington, J.A. Darley, D.W. Ridgway, T.J. Stephens and R.P. Wortley; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 23 July 2008.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 May 2008. Page 2619.)

The Hon. T.J. STEPHENS (22:45): I rise to speak on this most important bill—although I am not sure whether 'important' is the correct word, perhaps it should be most 'infamous' bill—which has come about as a result of WorkCover's $1.3 billion black hole under the watch of the Rann Labor government.

For six years this Labor government has messed about with this scheme while its financial performance has rapidly deteriorated. I also continue to be disappointed that state Labor spent all of 2007 attacking the federal government's WorkChoices legislation while Premier Mike Rann was secretly planning to cut the entitlements of workers. All I can say to that is: shame Premier Rann, shame. No wonder the union movement is now rallying against this Rann Labor government, with advertisements that are not dissimilar to the anti-WorkChoices campaign. Labor has well and truly deserted its true believers, and it did not have to be this way.

Premier Rann now claims that the only way to fix the WorkCover problem is to proceed with the Labor Party's plan to cut payments to workers. The problem is that this is just another example of the Premier claiming that his government will fix WorkCover but, Mr President, you and I both know that it has form on this. Labor claimed 18 months ago that changing the claims management model of WorkCover would fix the return to work problems that had plagued the scheme. It claimed, shortly after its election in 2002, that replacing the board and senior management would result in much better performance. Neither of these claims provided

solutions—in fact, they have been proven to be untrue. So here we go again, with the Labor government claiming that it can solve the problem. This government is all talk.

In his report, Mr Alan Clayton writes, 'The scheme began the 2000s in an apparently healthy position with respect to both financial stability and a reputation for forward thinking.' That was until Premier Rann and his Labor government fell in, in 2002. Since Premier Rann came into power in 2002 WorkCover has become a disaster for South Australia. It now threatens the state's financial reputation and credit rating. The Liberal Party had to clean up after Labor after the collapse of the State Bank, and it is becoming clear that we will have to do the same in 2010 and clean up this massive mess.

I cannot shake the thought that we simply should not be here debating this bill today. The fact that we are doing so is testament to a history of government inaction, a government that has been arrogant, and a government that has been in a state of denial over WorkCover's problems. Since late 2002 the state Liberals have asked truckloads of questions, which should have alerted the government to a whole range of problems that were growing within the WorkCover Corporation. Those questions are documented in *Hansard,* and the Labor Party knows that they will continue to sit there, serving as a gruesome reminder that warnings were given but were arrogantly ignored.

Many of those questions came directly from the WorkCover quarterly reports. The problems were hardly hidden and, for the state Liberals, these reports pointed out what was actually happening within WorkCover. We were alarmed by it—as we should have been—and we are still deeply concerned. However, we Liberals are a helpful bunch, and those warnings were graciously shared with the government during many question times. Again, it was a state of denial. Time and time again the warnings were ignored, and usually in a most arrogant way.

We then saw that the information in the quarterly reports was disappearing or being cut back This clearly demonstrated that the government did not want to know about it; it simply wanted to sweep things under the carpet and enjoy the trappings of government.

Since 2002, WorkCover has had a history of acting CEOs who, understandably, cannot make the sorts of wide-ranging changes that were certainly needed in that corporation. We had a stand-off on the appointment of a new CEO, and the delay coincided with a time when things started to go downhill very fast. If you trace the history of the whole WorkCover mess, the fact that we lost a CEO who was running the scheme efficiently and all of a sudden we did not have a CEO appointed for an extensive period of time really did see the problems grow.

The fact that the former CEO, Mr Keith Brown, did not reapply for a contract extension because the government made it quite clear that it would not be granted, shows the sort of unrest that has beset the WorkCover Corporation and demonstrates that the organisation has been lacking in strong and consistent leadership. It is disappointing that all the denials, mistakes and general incompetence are now going to affect injured workers.

All Liberal members of parliament have received dozens of letters from workers asking for our help, but also warning us that they will watch how we vote. To these people I say that the opposition would like to amend or defeat this legislation. Sadly though, the fact is that the government has created this situation through its own incompetent mismanagement and it now must be fixed. Amendments will not fix this legislation. Unfortunately for the workers, the government must now be given the opportunity to fix this scheme.

I also say to those people, and they must know this, that a Liberal government would never have allowed this to happen. In opposition, with the little resources that we have had, we were able to follow the deterioration of WorkCover and alert anybody who would listen about what was going on. Premier Rann and his Labor government have ignored our warnings and now it is up to Premier Rann and Labor to attempt to clean up the mess they have created. From here until the next election we will hold this government accountable for this disgraceful situation.

We will hold it accountable for the disaster it has delivered and the mistakes it has made over the last six years, and for the mistakes it will no doubt continue to make, until South Australians will have the opportunity to throw out this incompetent and arrogant government. It is a government that just doesn't get it. It is a government that is losing touch; it is a government that is tired; and it is a government that is going to crucify the most vulnerable of South Australians. This legislation and this government are a disgrace.

The Hon. R.I. LUCAS (22:52): I say at the outset that the shadow minister for the party in another place, the Hon. Robert Lawson and others have very comprehensively outlined the Liberal Party's position in relation to the WorkCover legislation. I do not intend to traverse many of the

issues that they have already comprehensively covered, but there is enough wriggle room to allow me to make a modest contribution to the second reading debate.

First, I pay tribute to the Hon. Rob Kerin, the Hon. Iain Evans and now Mr. Martin Hamilton-Smith, but in particular the Hon. Rob Kerin, who, back when this was deemed by the media and other supposedly respected political commentators and the government not to be an issue, week after week after week went out there highlighting and warning this government (from 2002 onwards) of the problems of WorkCover.

I will not go through all of it, but he asked literally hundreds of questions. He issued dozens and dozens of press releases. He made countless speeches, warning the government (from 2002 onwards) of the problems of WorkCover. We saw the arrogance of ministers such as the Hon. Mr Holloway, but in particular the Premier, the Treasurer, the Minister for Infrastructure and the minister responsible for WorkCover (the Hon. Mr Wright), who just ignored it. They laughed, they scoffed, they belittled, they did whatever they could, with a compliant media, I might say, and ignored the warnings that the Hon. Rob Kerin was giving from 2002.

To his credit, for a period of a year or so when he was leader, the Hon. Iain Evans also pursued the issue. So, for six years, predominantly under Rob Kerin but latterly under Iain Evans and Martin Hamilton-Smith, Liberal leaders and the Liberal Party have been trying to highlight the issue.

One of the problems has been encapsulated by a number of prominent members of the media in recent times now that it is an issue, in terms of trying to rationalise away why they did not give this issue prominence when Rob Kerin raised it. They basically said, 'Well, this was not a sexy issue. It was a difficult one.' The television journalists said, 'It was a difficult issue to get pictures for. It wasn't a good television story. It wasn't a sexy story in terms of what was going on.'

Perhaps that is a sad statement on the state of the electronic media and television, particularly in relation to those circumstances. I agree that it is a difficult story for television in terms of pictures but, around the world, a major financial scandal was brewing and was being warned about as a political issue. We now see in essence what Rob Kerin was warning: an unfunded liability which is heading towards $1 billion. Supposedly—and it has not been denied by the Premier—the Premier told the state executive of the Australian Labor Party that this threatens the AAA credit rating of the state, something he denied on a number of occasions when it was raised earlier, but supposedly that is what he has said to the state executive of the Labor Party.

The point that I am trying to make at the outset is that there are other areas like this to which the media is not attracted because it is not media-sexy or not a good television story, but the reality is that this was (and is) an important political issue deserving of prominent treatment by members of the media irrespective of how difficult an issue it was. The challenge for the Liberal Party through Rob Kerin and others is obviously to work harder to try to make it more attractive to the media, so we accept some responsibility there.

What I am saying is that the media has some responsibility, in my humble view, to make a judgment as to whether or not what the person—in this case Rob Kerin—said was correct or not and, if they believe that it was correct, then irrespective of how difficult an issue it might be in terms of media coverage, they had a responsibility to report prominently and frequently the problems in relation to the issue.

Because we have a one-newspaper town with limited alternative political comment from other sections of the media, we have a situation where if the media on a week-by-week basis is belting the hell out of a government (whether it is Liberal or Labor), inevitably the chances of a government responding in a shorter time frame are maximised. We are seeing it in the transport system at the moment, because the government and the Minister for Transport are getting belted on a daily basis.

I am sure we are going to see government responses sooner than we otherwise would have, whether it be on electrification or an extension of the tram line down to the Port in the coming budget, because of a combination of political pressure and media pressure on a government and ministers making it impossible for the government not to respond. I think that is the first lesson that all of us should learn: the politicians, the opposition and government, but also members of the media in relation to this issue of WorkCover.

The second point I want to canvass is the issue regarding the hypocrisy and integrity of the Rann government on this issue and of its senior ministers, from the Premier and the minister down. To that end, I am not going to quote Liberal politicians or media operators; I am going to quote

friends of yours, Mr President, and friends of your union colleagues within the Labor caucus, as to the sorts of commitments that they were being given by this government.

I refer to an interview on ABC Radio on 30 January 2007 with Mr Nick Thredgold (who was, at that stage, the president of SA Unions) on the issue of WorkCover's unfunded liabilities. At that stage, ABC Radio was asking some questions about issues the Liberal Party had been raising about WorkCover's unfunded liability. The question from David Bevan was, 'Have you been given a commitment by the minister responsible'—that is, Michael Wright—'that workers' benefits won't be cut?' That is a pretty blunt question.

Nick Thredgold said, 'We've got the commitment from the appropriate minister.' David Bevan said, 'And that is Michael Wright?' The response was, 'Yes.' David Bevan then asked, 'Have you got a commitment from Kevin Foley that the workers' benefits won't be cut?' Nick Thredgold replied, 'Look, we deal with the appropriate minister for the appropriate issue that we're dealing with that concerns members of unions.'

Matthew Abraham then said, 'So you've got it in writing or is it a handshake or—?' Mr Thredgold responded, 'We've written and sought commitments and my understanding is that we have verbal commitments from the minister that employee entitlements will not be cut.' David Bevan said, 'Do you think you'd better get it in writing?' Nick Thredgold replied, 'Well, we've sought that response.' David Bevan said, 'And it hasn't been forthcoming?' Nick Thredgold answered, 'Not to my knowledge at this point.' David Bevan asked, 'Does that worry you?' Nick Thredgold replied, 'No, it doesn't worry me. Michael Wright is a man of his word. We are confident that the commitment that we've been given will hold up.'

Mr President, I know that you were very active in discussions with minister Wright, going back some years, with some of your union colleagues, when he was tossing a coin as to whether to join the left faction or the right faction of the Australian Labor Party, so you know Mr Wright pretty well. However, here we have Nick Thredgold, on behalf of SA Unions, telling everyone as of January last year, 'Look, we've had a commitment. Michael Wright, he is a man of his word. We are confident that the commitment he has given us will be held up.' What was the commitment? That is, that there will not be any cut in worker benefits or entitlements whilst he was the minister. That was Mr Nick Thredgold.

I am indebted to my lower house colleague, the shadow minister Duncan McFetridge, because when he addressed this issue in the House of Assembly he referred to a copy of an email which had been given to him, again, Mr President, from someone you would know pretty well—and that is Mr Les Birch. He was described by Mr McFetridge as a workers compensation advocate employed for the past 14 years by the Construction, Forestry, Mining and Energy Union in the Forestry and Furnishing Products Division. He is more than just a workers compensation advocate, as you, Mr President, would know but, nevertheless, he has been actively engaged in workers compensation since 1979. From 1987 to 1994 he was actually a WorkCover Board member. What did Mr Birch say in relation to this issue? He stated:

> In 2000 and 2001 Michael Wright attended at least three meetings at the United Trades and Labor Council's office on South Terrace in Adelaide. On one occasion the opposition leader Mike Rann accompanied Michael Wright. On each occasion Michael Wright gave an absolute assurance that, on the election of the ALP to government, the Workers Rehabilitation and Compensation Act would be improved to benefit injured workers.
>
> On one occasion Michael Wright stated that should the ALP be elected in 2002, he would have a review conducted of the workers compensation scheme within six weeks after being elected, and the findings would be introduced through legislative change. The trade union representatives involved in workers compensation at the time felt that the time frame was ambitious, but the commitment was welcomed.

Further it states:

> Minister Wright is to be condemned for his failure to honour his commitment to the trade union movement and his lack of responsibility in addressing the leadership management problems within the WorkCover Corporation...In mid-2007, I and another union official—

that is Les Birch—

> were invited to minister Wright's office to discuss our concerns that the corporation was outsourcing their responsibilities under sections 58B and 58C of the act to Employers Mutual, which is like putting Dracula in charge of the blood bank. The minister stated that he shared our concerns but was powerless to do anything about it as it was a WorkCover Board decision. During our discussion I raised with minister Wright the trade union movement's concerns that the corporation was working on amendments to the legislation that were draconian. He gave his undertaking that while he was the minister responsible for workers compensation in South Australia he would not introduce legislation that was detrimental to injured workers. History has now shown that minister Wright has reneged on that undertaking just as he reneged on [his] promise in relation to the Stanley review in 2002.

So we have minister Wright giving a commitment face to face to Nick Thredgold on behalf of Unions SA that he would not cut workers' benefits, and then Les Birch and another union official—unnamed—had a discussion with minister Wright and minister Wright gave the undertaking that while he was the minister responsible for workers compensation he would not introduce legislation that was detrimental to injured workers.

There are a number of other examples of that, but I give those as two examples of the stark hypocrisy of the Rann government, from the Premier through to the minister responsible, minister Wright, and the other ministers. They were prepared to make any commitment that they believed was necessary to union leaders, to former friends and colleagues—to anyone—in relation to workers compensation, knowing full well that they had no intention of keeping those particular commitments.

In talking about the hypocrisy of the government and the Premier, I go back to the 1995 debate briefly—not to all the quotes but to some of the quotes of the now Premier, Mike Rann (who was then state opposition leader) in relation to the workers compensation changes being proposed at that stage by the former Liberal government.

I might say that the chair of WorkCover conceded recently that if some of those changes in relation to step-downs, which were of a more modest proportion than the government is proposing, had actually passed the parliament in 1995, our WorkCover scheme would not be facing the same level of problems and unfunded liabilities that we currently confront. So there was a proposition to fix this back in 1995, and Mike Rann and the Australian Labor Party fought tooth and nail to defeat those particular propositions. As a result, 13 years later the situation has spiralled out of control and, of course, they now have to introduce and are introducing much more draconian changes in the workers compensation legislation. Going back to 1995:

> State Opposition Leader Mike Rann says the Liberals must recognise the human toll of their draconian WorkCover bill which will be debated when parliament returns this week...Mr Rann today met with two injured workers and their families and heard first hand their concerns about having their income cut down to below pension level under the Liberals' radical plan.

I wonder whether Premier Rann is meeting with injured workers as we debate this particular bill, listening to their concerns at the moment about the proposals that he is now introducing, because he was not prepared to take action or support action going back as far as 1995. Then further on, the quote that he loved to use during that period, 'There are better ways of attracting business than on the broken backs of workers,' was the famous Mike Rann quote in the 1995. Further on, he said:

> WorkCover cannot substantiate any savings from privatising claims management, except on the basis of an ideological assumption.

The Rann government, under its watch, has a privatised claims management system which it confirmed in a monopoly arrangement with Employers Mutual. Further on, he said, 'This bill is an attack on families.' In 1995, he said, 'I want to talk a little bit about the hypocrisy of this government.' During this debate, I and other members want to talk about the hypocrisy of Premier Mike Rann, the Treasurer, Kevin Foley, minister Wright and others.

As part of my research into the arrant hypocrisy of members of the Labor Party, you will be pleased to know that I had a good look at contributions that you, Mr President, and other Labor members have given in this chamber over the past years. I need not remind you, Mr President, or the Hon. Mr Gazzola in particular, of your vicious attacks on Liberal members and the Liberal government over a range of issues in relation to workers' entitlements and benefits, extending from debate about the WorkChoices legislation and through debate on workers compensation or other benefits for workers in South Australia.

One can go back, as I did last night, to look at the contribution from former president the Hon. Ron Roberts when we last debated the WorkCover legislation in this chamber, as well as the contributions from people like the Hon. Paul Holloway on a range of issues. In the 2007 debate on Australian workplace agreements, the Hon. Paul Holloway said:

> The Australian Labor Party was founded in the 1890s. It is the oldest political party in Australia by a long way...to protect the conditions of Australian workers and to give them a fair go.
>
> In the 21st century, we live in a different industrial environment. Many of the practices of the past have been changed by both Labor and Conservative governments. What has not changed is that the Australian Labor Party believes in a fair go for Australian workers and their families, and that will continue.

They were the lofty words of the Leader of the Government in this place as he launched an attack on the Liberal Party, Liberal members and Liberal governments, trying to argue that the Australian

Labor Party was the party that would protect the conditions of Australian workers and give them a fair go and that what had not changed in the 21st century—according to the Hon. Mr Holloway—was that the Australian Labor Party would always deliver a fair go for Australian workers and their families.

They have been the claims by Labor representatives over the years and, in particular, in this chamber in recent times. In this debate, we have been the fearless advocates of South Australian workers. This bill has been before the chamber for a couple of weeks and, so far, members of all political persuasions have spoken, with the exception of the Australian Labor Party.

This party, according to its leader and others like yourself, Mr President, was there to fight for South Australian workers. We might as well have had four garden gnomes sitting on the back bench for all the contributions we have had from the four Labor backbenchers in this council: not a squeak out of the Hon. Mr Wortley, the Hon. Mr Finnigan, the Hon. Mr Hunter or the Hon. Mr Gazzola.

We have heard lots of talk in the corridors and in the media of the fierce opposition of certain unnamed members of the Labor caucus—some in this chamber—to the government's proposals They roar like lions in the corridors, but they perform like pussycats where it counts—that is, in this chamber. They are out in the corridors talking to people about what they are doing and how they are fighting for the unions and the workers but, where it counts—in this chamber—there is not a squeak out of a single Labor member on behalf of working-class families in South Australia. Why? Because Labor members in this chamber are gutless.

They are prepared to talk big to their union mates and colleagues. They are prepared to talk big to the journalists who will listen to them and protect their names and identities. They are prepared to talk big about what they are prepared to do and what they are trying to do. But, in the end, they are doing nothing. They are not prepared even to stand up in this chamber and speak on this issue.

Let me refer to the contribution made in 1995 by the very good friend of the Leader of the Government (and I am delighted to see him), the Treasurer (Mr Foley). When addressing marginal seat members of the Liberal Party in 1995 on the WorkCover legislation, Kevin Foley (now Deputy Premier) said:

> I can tell the members for Hanson, Elder, Reynell and Kaurna that, if they want a career in parliament beyond four years, they had better start making noises in their caucus. If they are fair dinkum representative members of parliament they should be standing in their caucus and thumping this government for some of the most malicious legislation that any government has introduced.
>
> At the end of the day, we on this side of the chamber will acknowledge the care, the financial security and the wellbeing of members of the workforce who are injured are our paramount priority.

When addressing the Liberal backbenchers, he said:

> I say: stand up for once. It is about time a few of you showed a bit of guts, took on this front bench and stood up for people who voted for you. If nothing else, if you have no compassion, have some political brains.

That was Kevin Foley in 1995 on a much milder version, in terms of step-downs in particular, of the WorkCover legislation than we are being confronted with. He was challenging members of the caucus to have some guts and stand up for South Australian families and workers. It is even worse and accentuated for members of unions within the Labor Party caucus.

Where are their guts to stand up on behalf of the workers of South Australia? As I said, it is easy for them to talk to the media and union leaders and say what they are going to do but, of course, this is where the action should occur.

We have all these government members refusing to speak on this bill. It is obviously not a big enough or important enough issue for them. If this issue is not big enough, what are these garden gnomes on the back bench really passionate about? What really drives them to get up and speak? If they are not prepared to speak on WorkCover, what sorts of issues do the garden gnomes want to speak on? What are they passionate enough about to speak on in this chamber? For the Hon. Russell Wortley it was David Hicks, a confessed supporter of terrorism.

The Hon. P. HOLLOWAY: On a point of order, Mr President, I suggest that David Hicks has nothing to do with WorkCover.

The PRESIDENT: No; I do not think that David Hicks has been injured lately.

The Hon. R.I. LUCAS: We do not know that, do we? The point is that the Hon. Russell Wortley felt so strongly that he was prepared to speak passionately about the problems that he saw

for someone like David Hicks, but he is not prepared to stand up in this place and speak passionately on behalf of the workers of South Australia in relation to this legislation. It is the same thing when one looks at the contribution of the Hon. Russell Wortley on the May Day March, something about which he wanted to speak passionately—

The Hon. P. HOLLOWAY: Mr President, I rise on a point of order. I suggest that the comments of the Hon. Rob Lucas have nothing whatsoever do with the WorkCover bill.

The PRESIDENT: Order! The Hon. Mr Lucas will stick to the bill.

The Hon. R.I. LUCAS: When the Hon. Russell Wortley spoke on the May Day March, he was talking about the working conditions of South Australian workers. He proudly indicated that he had been attending the May Day March for probably 30 years now, although I do not know whether he attended the most recent May Day march a week ago. He said:

> With the enactment of the federal industrial relations legislation, the federal Liberal government has actually declared war on the working people of this country. That industrial relations act has stripped away the rights and conditions for which generations of working people in this country have fought...One of the reasons for that was the very fact that the Liberals have embarked upon this war against working people, and it only goes to show the myth about the Liberals being a friend of the working person is just that—a myth.

From the mouth of the Hon. Russell Wortley, the point is that the real myth about which we are talking is that the Australian Labor Party is a friend of the South Australian worker. The Hon. Russell Wortley is often prepared to attack the Liberal Party and Liberal governments in relation to issues relating to working conditions for South Australian workers, but on this particular issue nothing at all.

The Hon. Mr Gazzola has spoken passionately on topics such as the Murray Bridge ALP sub-branch centenary, European carp and Port Vincent. They are the sorts of issues about which he has been passionate and about which he has been prepared to stand up and speak in this chamber, but not WorkCover. I am delighted to see the Hon. Bernie Finnigan. What is he passionate about? What does he speak on in this chamber? Certainly not WorkCover. He is passionate about (perhaps not surprisingly) things such as edible estates—that is, lawns that you can eat—and the Mount Gambier Christmas pageant. They are the sorts of things that will get the Hon. Mr Finnigan up, but he will not speak on the WorkCover legislation. He is not prepared to justify his vote and his position on the WorkCover legislation.

The Hon. B.V. Finnigan: How do you know? The debate has not finished yet.

The Hon. R.I. LUCAS: Because you are not listed to. We have been waiting days on end for you to have the courage to speak on this issue, but not one of the garden gnomes on the back bench is prepared to justify their vote on the WorkCover legislation. All we get is hypocrisy from the Leader of the Government, and we cannot get a squeak out of the garden gnomes behind him on this particular issue. Members opposite have every opportunity to get up tonight: one of you get up tonight and justify your position to South Australian workers on this particular legislation. If you have the guts and the courage, get up and speak, because I am sure that the unions of South Australia, the workers of South Australia, want to hear you justify your position in relation to this issue. They are delighted to know that the Hon. Mr Finnigan is prepared to talk about edible estates and the Christmas pageant, but they want to here him speak on the WorkCover bill.

The Hon. P. HOLLOWAY: Mr President, I rise on a point of order. My point of order is one of relevance. The Hon. Rob Lucas has been speaking for at least 10 minutes and has not once referred to what he believes about the bill. Instead of talking about what other people might be doing, I suggest that he adhere to standing orders and confine his remarks to the bill.

The PRESIDENT: The Hon. Mr Lucas will confine his remarks to the bill.

The Hon. R.I. LUCAS: I am certainly doing that. The last of the garden gnomes is the Hon. Mr Hunter.

The Hon. P. HOLLOWAY: Mr President, I rise on a point of order. The Hon. Robert Lucas is quite out of order in using that description. It is unparliamentary and I suggest that he not use it any further.

The Hon. R.I. LUCAS: I am talking about the Hon. Mr Hunter now. What is the Hon. Mr Hunter passionate about? Why will he not speak on the WorkCover legislation and justify his position to South Australian workers?

The Hon. P. HOLLOWAY: Again, the Hon. Rob Lucas is defying the standing orders of this place. I ask you to bring him to attention and make him speak to the substance of this bill.

The PRESIDENT: The Hon. Mr Lucas will refrain from going off the subject of the bill.

The Hon. R.I. LUCAS: Thank you, Mr President. Mr President, you will be pleased to know that he is the last of the garden gnomes to whom I will be referring.

The Hon. P. HOLLOWAY: Mr President, I have a point of order. There are standing orders in this place. I suggest that it is out of order for the honourable member to refer to members in that way. Either we have standing orders in this place or we do not. I suggest that he be asked to withdraw, and I request that the Hon. Mr Lucas withdraw that term.

The PRESIDENT: The Hon. Mr Lucas will refer to members opposite as 'honourable members'.

The Hon. R.I. LUCAS: The honourable garden gnomes—

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Mr President, the Hon. Rob Lucas is deliberately defying your ruling.

The PRESIDENT: The Hon. Mr Lucas will refer to members opposite as 'honourable members'.

The Hon. R.I. LUCAS: What is the Hon. Mr Hunter passionate about? He is passionate about red-tailed black cockatoos and glossy black cockatoos. He has a great interest in that particular species. He has also asked questions on native species and threatened native species. They are the sorts of issues about which the Hon. Mr Hunter is passionate.

The Hon. I.K. Hunter interjecting:

The Hon. R.I. LUCAS: There is a lot more than that. The point I make about the Hon. Mr Hunter, as I do about other members of the back bench who are not prepared to squeak up, is that they are the sorts of issues on which they are prepared to speak passionately in this council. Whether it is a black cockatoo, native species or an edible estate—or whatever it happens to be—they are prepared to stand up and talk about those issues because that is what drives them; they are passionate about those things.

They will stand up and talk about those issues, but on something such as the WorkCover legislation, on something which is important to their own constituency and the workers of South Australia, they will not stand up, squeak up and justify their position on the legislation. They can roar like lions in the corridors but they are judged by what they do in this chamber during this debate.

Mr President, as you would know, the Labor Party has a history of members who felt passionate about particular issues and were prepared to stand up and vote in accordance with their conscience. In relatively recent times, people such as the Hons Trevor Crothers and Terry Cameron felt so strongly about the state debt of South Australia and electricity that they spoke and voted in accordance with their conscience because it was so important to the future of the state and their own views in relation to it. Prior to that, the Hon. Norm Foster voted on the Roxby Downs development—a development that the Premier and the government seek to take as their own.

They are three examples where Labor members felt passionately about something and were prepared to put the interests of the state and their personal views ahead of the interests of their own party and their political masters and leaders. The four Labor members on the backbench—or indeed any of them—have supposedly felt so strongly about this issue that they have been whispering or roaring in the corridors to their union colleagues: 'We'll fight the good fight for you, comrade. We'll raise the issue in caucus. We'll try to get the issue addressed in caucus. Some of us are thinking seriously about crossing the floor.' The media was being told last week that four members of caucus in the lower house had thought about crossing the floor if the Liberal Party had voted against the legislation.

Supposedly some sections of the media have been told of one or two members in this chamber who were saying they felt so passionately and seriously about this issue that they were looking at all their options. It is easy to talk in the corridors, but you are judged as members on what you are prepared to say and do in this chamber, whether it be tonight or over the coming weeks.

The final issue I want to address is a specific issue concerning the actuarial advice that the government has used in relation to this issue, because this is just further testimony, I think, to the ineptitude and incompetence of the government, in particular, the minister. Mr President, you will

probably have forgotten, and I will not embarrass you by quoting your exact words, that you and, indeed, many other government members in both houses over recent years attacked the former Liberal government by consistently saying that the Liberal government had understated the level of unfunded liabilities back in 2001-02 by about $100 million. As I said, rather than embarrassing you, Mr President, by looking at one of your former contributions, let me refer to some of the contributions made by minister Wright and Treasurer Foley when he attacked the former government and the former actuary of the WorkCover board.

> I think it was the former board, not the current board, which is a good board, that sacked the former actuary, and they did it for a good reason—

said Michael Wright in December 2006—

> I was advised by the former board that the former actuary—who, to the best of my memory, was sacked by the former board—may have underestimated the unfunded liability by $100 million—

said minister Wright in December 2006. Not to be outdone, Treasurer Foley, in September 2003, said:

> The figures used under the Liberal government were wrong, and may have been wrong to the tune of $100 million. They significantly understated the true level of liabilities.

Again, Treasurer Foley in September 2003 said:

> Very, very poor actuarial advice from the then actuary under the Liberal government's governance saw a reduction in the levy rate that should not have occurred.

So, from 2003 to 2006, minister Wright, Treasurer Foley, your good self, Mr President, and any other number of Labor members in both houses, attacked the former government and said that we had deliberately understated the liabilities back in 2001-02, that we had used that to justify a reduction in the levy rate, and that there was, in essence, very poor actuarial advice, and the old board had properly sacked and got rid of the actuary.

I was intrigued when the Hon. Mr Holloway and his colleagues decided to have a review. We know why they had the review after November 2006, getting the recommendations from the board about reductions in benefits for workers. They had to buy a 12-month space for the federal election so they decided to have a review, and that has been referred to by other speakers. So they appointed two people, Mr Clayton and Mr Walsh, to conduct the review.

It just so happens that Mr Walsh was the actuary who was sacked by the former WorkCover board in 2001-02. They spent five years attacking Mr Walsh as the former actuary of WorkCover and the Liberal government, and then they said, 'We have appointed an expert actuary and an expert to conduct this review of WorkCover', and who do they appoint? They appoint Mr Walsh, whom they had spent five years attacking and denigrating in the House of Assembly and the Legislative Council.

The Hon. R.D. Lawson: No wonder you've lost your tongue, Bernie.

The Hon. R.I. LUCAS: Yes, exactly, and no wonder they are not squeaking up. That is just one example of the ineptitude and incompetence of minister Wright. It is not surprising that the political commentators are speculating that, if there is to be a ministerial reshuffle, he and the Hon. Gail Gago are the two likely prospects to go.

That is only one example of the incompetence and ineptitude of minister Wright on this issue. Imagine spending five years attacking an actuary and then you are asked to appoint an expert actuary to conduct this review so that you can go out to the unions and say, 'We have had this expert in and we have a major problem', and who does minister Wright appoint? He appoints the bloke they have been attacking for five years as, in essence, being incompetent and that it was a good thing he was sacked by the former board of WorkCover. My humble view is that the South Australian media have let the government and the minister off the hook in relation to that issue because, although the issue has been raised, minister Wright and Treasurer Foley have managed to wriggle their way out of some public justification on that issue.

Either they have been misleading the house for five years and they had to make an apology to Mr Walsh for five years of blatant attacks on him and his competence as an actuary, or they have bumbled and stumbled badly in terms of who they have used as an expert actuary to justify to the unions in South Australia, and others, that, 'We have the best actuary in. He is the one who told us that we have these problems and, sadly, we have to go down this path to reduce benefits for South Australian workers.' As I said, there are many other examples of the minister's

and the government's incompetence but, in the second reading, I do not intend to go through all those. That particular example has not been picked up by other members.

I await with interest the rest of this debate to see whether or not any of the government members have got the courage, have got the guts, to stand up in this chamber. The Hon. Mr Finnigan implies that he has a little of the latter, but let us see it in political terms. Let us see him or one of his colleagues stand up in this chamber and justify their position in relation to the legislation and justify to the people, the workers and the unions of South Australia as to why they are going down this path.

The Hon. J.A. DARLEY (23:37): I rise to speak on this important bill. At the outset I express my disappointment in the government for trying to push this bill through with undue haste. Members should surely have adequate time to properly prepare a contribution to a bill that is of such significance. I am sure that I am not alone in these thoughts, and I question the government's motives in attempting to push this bill through in such a short time without having gained a thorough and comprehensive understanding as to the effects of this bill. I believe that, in part, the unfunded liability has been caused by the management procedures applied by the WorkCover Corporation and its claims manager, EML, whereby injured workers are pushed and shoved into a position of frustration to a point where they become utterly dejected and understandably difficult to deal with.

It has been said on numerous occasions by a well-respected Adelaide psychologist that if you do not have a problem before you were injured at work and you become a WorkCover client you will have a problem soon afterwards. The board and the WorkCover Corporation allowed the unfunded liability to accumulate to its current position of around $1 billion. Under normal business governance, the executive would have taken immediate remedial action to get the scheme back on track. In March 2006, the WorkCover Corporation put out the following press release:

> We are confident we have the right settings in place to achieve improved service and results in coming years for injured workers and employers who fund the scheme, and we remain on target to achieve full funding by 2012-13.

Shortly afterwards in September 2006, the CEO of WorkCover, Julia Davison, indicated the following:

> Operationally the year has been one of notable achievement with the appointment of Employers Mutual as its sole claims agent and the sole provision of legal services by Minter Ellison. Internally we have established the organisational capability and leadership required to tackle the scheme's challenges.

Ms Davison also indicated that WorkCover had developed return-to-work performance targets that it and Employers Mutual would aim to achieve over the coming 12 months to avoid further increases in the claims liability. I would have thought that the board and the government would have closely monitored the situation, particularly in light of the fact that I understand the Under Treasurer attended board meetings. This close monitoring and reporting of the changed operation of the corporation clearly could not have occurred for the corporation to be now faced with the current predicament. There is no doubt WorkCover reforms are highly contentious as not only do they affect injured workers but also other parties who are involved, such as rehabilitation providers, the legal profession, doctors and unions.

In light of this, when trying to gain an understanding of the community and professional sentiment in regard to this bill, I met with a number of organisations including the Public Service Association, Self Insurers of South Australia, the Australian Lawyers Alliance, SA Unions, the Work Injured Resource Connection, representatives from rehabilitation providers, Business SA and a number of legal professionals with vast experience in working with the scheme. The overwhelming feeling from all these organisations, except Business SA, is one of concern attributed to the proposed amendments. There was general consensus that what is needed as a matter of urgency for the WorkCover scheme is not legislative change, as the government is proposing, but rather a cultural change throughout the scheme.

Whilst I appreciate the government is attempting to modify the scheme in order to improve it, I do not believe amendments will achieve anything other than addressing the issue of the unfunded liability and providing a short-term answer to the problems associated with the scheme. When initially introduced, the WorkCover legislation was specifically designed to be user friendly for injured workers, without necessarily needing to engage the services of a lawyer. This has been described as an abject failure and as problems have arisen with the scheme it seems that the solution each time has been to make amendments to the legislation.

It is of no surprise then that the government's solution to the current issues with the WorkCover scheme is to implement more amendments to the legislation. This is despite the fact that previous amendments have resulted in little or no improvement to the scheme; in fact, they have created further problems. As one representative of the legal profession I spoke to put it, when you cobble things on you create inconsistencies within the act. Legislation that was designed to be user friendly has now become so complex that even qualified lawyers with years of experience in the field have expressed frustration at the intricacies of the legislation, so much so that it has been suggested that a complete overhaul of the scheme is needed.

It is inevitable that there will be further inconsistencies and unintended consequences from these amendments. It is evident that there are other more far-reaching problems with the scheme that the bill will not address and that the government needs to implement changes to address these underlying issues that will result in a change to the attitude and culture of all parties involved in the WorkCover scheme. I say this despite suggestions that cultural change forms one of the reasons for the review of the legislation. The cultural issues go much further than those expressed by the government, which appear to be secondary to the financial deterioration of the scheme. The government is said to have framed the view and proposed changes to the South Australian Workers Compensation Scheme as occurring against a background of a deterioration of WorkCover's compensation funds.

Further, it suggests 'that the underlying influences on the financial deterioration of WorkCover is one common element, a shift in culture away from injury management and return towards a culture of compensation. It claims that this is the culture that needs to be turned around, with a renewed emphasis on rehabilitation and return to work'. Based on my discussions with WorkCover, I am not confident that incorporating a need for cultural change in the CEO's performance agreement is enough to ensure the sort of turnaround required, particularly given that in 2006 WorkCover's CEO indicated that, first, 'a great deal of progress has been made in implementing the changes needed to turn the scheme around' and, secondly, that internally WorkCover had established the organisational capability and leadership required to tackle the scheme's challenges.

I also question the follow-up of the board in this regard, given that it is a representative of the board made up of stakeholders, presumably with their own agendas. What became evident from speaking to various organisations is that there are a number of common concerns regarding proposed changes to the legislation. The proposed medical panels is just one area that raised significant concerns. Whilst the implementation of medical panels has been successful in other states, there is no guarantee that the same results could be achieved should they be introduced in South Australia.

Many of the new proposals, such as this one, are based on the Victorian workers compensation model. It should be noted that medical panels in Victoria are rarely used, whereas the proposals in this bill would see a greater reliance on panels. I question the need to re-establish medical panels, as I understand that they were previously a provision of the South Australian scheme and were abolished due to the lack of doctors and the delays associated with convening them. Not only does the government seek to re-establish medical panels, the powers of the proposed new panels are much wider than those prescribed in the original act.

Unions SA states that medical panels were abolished for good reasons and they should not be reintroduced, for the same good reasons. South Australia already suffers from a shortage of doctors, let alone specialists, who will temporarily absent themselves as practising clinicians. Despite having the backing of the AMA, concerns have been raised about finding the available expertise in South Australia, where shortages already exist, and the general view is that this will be problematic and cause further burdens to the system.

The suggestion to remove doctors from an already limited supply would cause further delays for injured workers, who currently have an average wait of 2½ months to see a specialist. What we will see are medical panels that are made up of generalists and not specialists, contrary to what is intended. In consideration of the fact that South Australia has such a small medical community, especially with respect to specialists, there is a high probability that conflicts of interest will arise on a frequent basis. SISA believes that 'panels are likely to see people who have been treated or reviewed by one of its members. While mechanisms of recusal will no doubt exist, obtaining replacements at short notice will be problematic, given the workforce issues'.

Furthermore, medical panels will address issues that go far beyond just medical issues. As the Law Society has highlighted, 'many of the issues that WorkCover identified as medical questions are not medical questions but questions involving medical issues and factual questions,

or medical questions that involve medical issues, factual issues and legal issues. The question of whether employment is suitable is not simply a medical question'. Doctors are not trained as judges, and it is unfair to expect workers to accept the decision that has been made by a panel whose members have not had the relevant training and do not possess the relevant knowledge to make a fair decision.

There is little incentive for doctors, especially specialists, to sit on these panels. It simply does not make sense that a practising specialist will leave their consulting rooms to sit on a panel that offers little remuneration or any other incentive when their skills are so highly sought after in the medical field. There is currently a delay in dispute resolution and, if all the cases are to be referred to the medical panel, it is inevitable that a queue would be created due to the backlog of cases that need to be heard, with some estimating as long as 18 months.

The operation of the medical panels also needs to be scrutinised. The little information that is available indicates a departure from the norm of having a clear and transparent decision-making process. The proposal has indicated that medical panels will operate essentially behind closed doors. Legal representation is prohibited. Whilst this applies to both parties, it would be fair to say that this would be a disadvantage to the worker, as their adversary would be experienced in appearing before the medical panel and in with dealing with other such claims. Injured workers usually only possess knowledge directly relating to their case and experiences.

Furthermore, injured workers are not given the opportunity to prepare their case, as they are not allowed to make a request to see the information that has been presented to the panel. The medical panels are not required to give in-depth reasons as to how they arrived at their decision, and there is no means to appeal the decision that is made. Conversely, should WorkCover be dissatisfied with the result, it can direct an injured worker to appear before the panel again and again. There is no limit as to how many times an injured worker can be sent to the medical panels, and it is WorkCover alone that possesses the power to order an injured worker to appear before them. This is done entirely at the discretion of WorkCover.

Another concern involves the composition of panels because, in general terms, there are said to be two diverging groups of medical experts who work in this field. The first takes a philosophical view that is sympathetic to employees, and the second takes a hard line and an unsympathetic view. It would appear to me that there is a need to aim for a level of consistency between doctors, as I understand exists in the New South Wales scheme. Safeguards will most definitely be required to prevent either group from prevailing on medical panels. Further, if the government insists upon the implementation of medical panels, their role should be limited to an advisory role in the context of work capacity reviews.

Common law is a feature of WorkCover's compensation schemes, even in limited forms, in all Australian states, with the exception of South Australia. This is a stark turnaround for a state that was once nationally recognised as having the best managed scheme and providing the most generous benefits to injured workers. It is worth noting that, at that time, South Australia did have access to common law. The importance of common law damages varies from state to state, and I have been provided with information by the PSA that outlines this. I seek leave to have a statistical table incorporated in *Hansard* without my reading it.

Leave granted.

Common Law Payments 2006-07					
	NSW	VIC	QLD	WA	TAS
Common Law Payments ($)	$190.0 million	$372.3 million	$279.3 million	$65.6 million	$5.3 million
Common Law Payments (%)	11.4	28.4	41.4	13.7	5.2

The Hon. J.A. DARLEY: The table demonstrates the extent of common law claims in recent years, and it shows the dollar amounts for common law payments that were made nationally in 2006-07, with the exception of data provided for New South Wales, where the only data that was available was for 2005-06. The Victorian WorkCover authority made the largest number of common law claims, at $372.3 million, which is in stark contrast to WorkCover Tasmania, which paid only $5.2 million. It also outlines the percentage of the total claims that were paid out through common

law in each state. This demonstrates the overall significance of common law in each individual scheme.

The jurisdictions that have a heavy uptake of common law payouts as a feature of their scheme obviously have the higher percentages. The table shows that common law plays only a minor role in the Tasmanian scheme, a moderate role in the New South Wales and Western Australian schemes, and a prominent role in the Queensland and Victorian schemes.

Considering that both the Clayton Walsh review and the Labor government have expressed the view that South Australia's WorkCover scheme needs to be re-aligned with its Victorian counterpart, it is interesting that the government has not chosen to adopt access to common law as part of these two new proposals.

The proposed bill has been criticised for adopting the negative sanctions against workers, as introduced by former premier Jeff Kennett in Victoria, such as reducing payments. However, the government has not adopted their approach to common law. This provides a disincentive to employers to manage workplace risk and prevents relief for those injured through negligence to pursue compensation in the form of damages.

In June 2007, the PSA provided a submission to the review into the WorkCover scheme (prepared by the University of South Australia), entitled 'WorkCover Under Siege—Review into South Australia's Workers Rehabilitation and Compensation Scheme'. It states:

> When considered in context, claims by the Premier and his Minister for Industrial Relations that the passage of Labor's workers compensation bill would leave South Australia's WorkCover scheme as the fairest in the country are untenable. These claims lack substance and are not supported by the evidence. Such claims may be best regarded as a cynical exercise in political spin, designed to obscure what in reality is a draconian assault on the entitlements of injured workers in this state.
>
> Instead of having arguably one of Australia's best systems of weekly payments for injured workers, the government's legislation if passed would ensure that most genuine South Australians seriously injured at work would have their payments dramatically reduced or discontinued should they have the misfortune of being unable to return to work within 130 weeks.

The fact that all other state workers compensation schemes in Australia provide injured workers with access to common law damages reinforces the lack of fairness that is at the heart of the government's bill. As suggested by the PSA, instead of being one of the country's best schemes, WorkCover looks like it could end up as a Clayton scheme.

The government has failed to recognise that even limited access to common law exists in other statutory no-fault schemes with no excessive funding or dispute risks. Furthermore, there are pure common law schemes that have no problems with being fully funded for the history of the scheme. Such an example would be the South Australian Motor Accident Scheme. Less than 1 per cent of all claims are resolved by way of judicial resolution within the South Australian Motor Accident Scheme.

The view to continue to enforce blocking access to common law is now outdated, as this method of resolution is no longer the open-ended damages regime that it once was, and it should be highlighted that there are few major heads of damage that do not have at least limited access to common law.

There will always be people who fall within the scheme and who will benefit from being able to seek damages from a negligent employer. This is especially evident in cases where the injured worker does not possess any capacity to return to work. In these cases, a judicial decision can hold a mutually beneficial arrangement for both the injured worker and the insurer. Common law could especially benefit seriously injured workers where they can establish negligence by their employers. This is especially the case in those schemes where weekly payments are arbitrarily terminated either when a specified dollar amount is reached or where deeming provisions cut in.

Whilst it could be argued that full access to common law could result in lengthy litigation, it seems unfair that South Australian injured workers are denied at least limited access to common law. The Law Society suggests that there should be a threshold for accessing common law damages. A threshold, such as allowing access of common law only to persons who have more than 15 per cent whole-of-body impairment, could potentially minimise the number of less significantly injured workers seeking common law solutions.

In contrast, the Australian Lawyers Alliance believes that access to common law should be unfettered and negligent employers should be held accountable. The society suggests that it should be up to the worker to determine whether they would like to pursue a common law claim

and, if so, their entitlements under the scheme should cease once a successful outcome has been obtained.

I am inclined to think that, on balance, the position of the Australian Lawyers Alliance is a better position, but I believe it is inevitable that this parliament will revisit the issue of common law damages. The government is trying to cut workers' entitlements and yet continues to deny them access to common law to seek damages, as is the right of every injured worker who falls within the workers compensation schemes of all other jurisdictions even in limited forms.

Throughout the legislative debate the Self-Insurers of South Australia (SISA), representatives for employers affected by balancing payments, maintained a somewhat objective approach, refusing to participate in media campaigns and the like in an effort to allow this parliament to remedy the shortcomings of the scheme without reference to sectional interests for the greater good of the scheme. At least that was the approach that SISA took prior to the government moving a series of amendments to the bill, including those relating to discontinuance fees, which will in effect legislate exit fees.

SISA has addressed the issue of exit fees in response to the bill. Balancing payments, or exit fees, as they are commonly referred to, are WorkCover's attempt to recover the future levy surcharges that employers would have had to pay should they have remained insured by WorkCover.

The logic behind this balancing payment, according to SISA, is that 'all insured employers have underpaid levies in past years and will need to pay more in future years to make up the shortfall. It believes that organisations moving into self-insurance should not be able to escape the repayments of the shortfall'. This argument is inherently flawed due to the fact that self-insurers accept the responsibility for any existing claims and liabilities from the moment they become self-insured, and WorkCover is also very well protected against the risk of self-insurers becoming insolvent. Should WorkCover be responsible for maintaining the existing claims, it could be argued that the balancing payment is necessary to order to fund these claims. However, it is quite clearly not the case. It seems to me that these exit fees are nothing more than WorkCover implementing a grab for money as a punishment for employers who choose to leave the mismanaged scheme. These payments commonly range from tens of thousands of dollars up to several million dollars, with at least one being contested in the Supreme Court at present.

Considering that the unfunded liability currently sits at close to $1 billion, the payments that are recovered from self insurers represent a drop in the ocean when compared with the unfunded liability. SISA's best estimate is that 'the system might at best recover $3 million to $5 million in a year, or .007 per cent of the last published figure for the unfunded liability'. This would, of course, be an average figure and would not take into account the exceptionally large exit fees payable by large corporations. This shows that a payment that often has a significant impact on businesses has only a miniscule impact in terms of reducing unfunded liability. This payment is especially unfair for small businesses, which simply cannot afford the exit fee and are therefore given no option but to remain insured by WorkCover. It also has the potential to act as a disincentive for investment in South Australia. There are examples of people who have gone bankrupt and who have been forced to close their business as a result of the exorbitant exit fees that were levied upon them.

While the premise of the proposed changes is to assist in reducing the unfunded liability of WorkCover, the fact is that more than 40 per cent of the total scheme is self insured and has no unfunded liability. This includes local government. At least one is in surplus, and they have the bonus of having lower levies to pay. They operate within exactly the same act and have exactly the same workers' entitlements. The injured workers from these employers, who do not have an unfunded liability issue, will suffer from these severe cuts because of the actions of the WorkCover board and its management.

The PSA and others argue that the WorkCover Corporation board members and general management team have not managed the scheme effectively. Continuous budget tightening, whilst the unfunded liability is continually growing, shows a lack of experience regarding the scheme. Self insurers have shown that operating workers compensation schemes under the act is not inherently unworkable. Changing the way WorkCover is administered will assist with many of the challenges currently facing it without having to resort to changing legislation or slashing workers' entitlements. The fact that the self-insured sector does not have the same problems reaffirms this argument. Perhaps the solution to fixing the problem is addressing the source of the difficulties rather than implementing changes to a system that will still not address the fundamental underlying problems.

There is no reason why the current system could not be reformed to ensure that injured workers are not bearing the brunt of the changes.

Another concern relates to the two-year review provisions. I believe that the two-year review clause within the current act is being ignored. This clause provides an avenue whereby workers who no longer have a legitimate need to be on the scheme are identified and entitlements are ceased. Effective use of this clause would see a reduction in the tail and a reduction in the number of workers who are exploiting the scheme. Again, there are a number of contributing factors as to why this particular provision has not been effective; however, it lies largely with the claims agents. Effective rehabilitation is required within the first two years to identify whether there is any capacity to return to work. Without the application of effective rehabilitation, a two-year review is insignificant, as the true potential of return to work would be masked by the need for further rehabilitation.

As previously mentioned, it is the early notification and intervention that are the key to gaining the most out of rehabilitation. There are only a small number of people on the scheme who are trying to rort the system for financial benefit. These are the people upon whom the two-year review will focus. Since WorkCover's adopting EML as its sole claims agent, the two-year review has virtually been ignored, and the number of people who are on the scheme long-term is continuing to rise.

It has been suggested that it is too time-consuming for WorkCover to prove that a worker has the capacity to work. One way of addressing this issue would be to reverse the onus of proof; that it is the worker's responsibility to prove that they still need to be on the scheme. Genuine cases would be relatively easy to identify, whereas fraudulent cases would be exposed. This would ensure that those who should be on the scheme will remain and those who should not will be removed.

From conversations I have held with the Public Service Association, SA Unions and especially with representatives from the rehabilitation sector, it is evident to me that one of the greatest concerns is in regards to claim efficiency, that is, the time which it takes from the moment of injury to rehabilitation. There has been strong evidence supporting the claim that early notification of injury results in a worker being able to return to work.

At the moment a number of contributing factors are hindering the process of a worker receiving rehabilitation within a reasonable timeframe and thus productively returning to the workplace as soon as possible. First, there is the issue of claims determination. EML suffers from a chronic staffing issue, where experienced claims managers are few and far between, and this is compounded by the high turnover of staff.

There have been suggestions that claims managers should be trained to deal with specific areas of industry so that they have a better understanding of the injured worker and are able to identify when a high risk claim is presented. It is often argued that claims managers do not possess the skills and maturity to deal effectively with the intricacies of high risk claims. No doubt having the skills to deal with claims effectively and seeing a positive result for injured workers would provide greater job satisfaction for claims managers.

It is recognised that claims managers are often under-resourced and this results in the time which it takes for a claim to be determined to be prolonged. This, in turn, results in delays in access to rehabilitation, which sees injured workers stay on the scheme for longer periods. Workers often become despondent while waiting for their claims to be determined which, in turn, can cause psychological blocks to rehabilitation.

Injured workers who have had to wait for rehabilitation are often harder to treat because they have been absent from the workplace for an extended period of time and have become deconditioned to the prospect of returning to work. An excellent example of early access to rehabilitation, being the key to returning injured workers to their place of employment, is shown with companies that have early incident notification arrangements with rehabilitation providers.

I have been provided with an example where two soft tissue injuries have occurred in the one workplace in the past two months. One case involved a wrist injury and the other an elbow. As a result of having an early incident notification arrangement, both injuries were reported to the rehabilitation provider within 48 hours. Consequently, rehabilitation was able to begin immediately with both workers and both have returned to work at their full pre-injury hours.

The duties that one worker performs is exactly the same as it was pre-injury, whilst the other has only needed a 5 per cent modification to their role. This shows that with early

rehabilitation it is possible to return to work within two months from the time of injury and function at 95 per cent, at least, if not 100 per cent, of pre-injury performance. It is obvious that having these workers undergo rehabilitation, instead of having them wait at home while their claims were being determined, was a much more productive use of the two-month time period.

I have also heard from rehabilitation providers who have contacted injured workers once a claim has been determined and found them to be very angry. They are frustrated at the time it has taken from the time of injury for it to be reported, the claim determined and finally passed on to the rehabilitation provider. During this entire process they are denied access to rehabilitation and are simply expected to wait.

I heard of one appalling example where the time from injury to first contact with the rehabilitator was 14 years. Determining claims earlier and providing rehabilitation sooner can only result in injured workers coming off the scheme at a much earlier stage. It has been suggested that claims should be determined within 21 days of submission by the employer. Whilst this period would be considered to be a reasonable time for a claim to be determined, it should be noted that New South Wales has a determination period of only seven days. That is based on research that if a claim is not determined within seven days there is only a 25 per cent or less chance of a satisfactory outcome.

What is often lost in the discussion of statistics and legislation is that these changes affect real people. I am sure that I am not the only member who has received letters and phone calls from constituents who have urged me to think about their personal situations when coming to a position in regard to the bill: people who have not only suffered the trauma of being injured at work but have suffered distress and financial strain due to their loss of income and consequent loss of confidence and self-esteem issues; people who feel worthless as they are treated as merely a case number without any regard to their personal situation; people who have been trapped in a system that was intended to help them.

Further compounding the issues already outlined is the problem of dealing with Centrelink. Anyone who has dealt with Centrelink would be aware that this in itself is a taxing and soul-destroying experience, let alone when coupled with all the other stressful factors already outlined.

Furthermore, the current bill has been criticised by many as an exercise in buck-passing and cost-shifting on to Centrelink. I have been made aware of people losing their homes, of marriage breakdowns and suicides as a result of workplace injury and the system that failed them. It should simply never get to that point. I think that the human aspect is often forgotten, and we need to keep in mind that these changes can have a very profound effect on people's lives.

In fact, just last week, my office received a call from a constituent who was already pushed to the limit with the existing legislation, and who had attempted to take his life on a number of occasions. These are generally the people who do possess some capacity to return to work. No doubt, there are some people who are not able to return to work. These people should be compensated by way of redemption.

I question why the government has chosen to legislate this particular feature of the WorkCover scheme. Surely the government can still achieve what it aims to do by way of a ministerial direction to the WorkCover Corporation to apply the suggested amendments in the bill relating to redemptions as guidelines. This option would allow for flexibility and discretion when considering redemptions, whilst also providing for situations where it is inappropriate for the employment relationship to continue or when all parties agree that a redemption would be beneficial to both.

This would still have the intended purpose of restricting redemptions and exposing those who simply hang on for a lump-sum payout. One of the strongest arguments against the new amendments is that they will disadvantage a large proportion of workers by cutting their entitlements early on in the scheme. The government argues that there will be better benefits for those who are severely injured. However, I would like to take the opportunity to highlight a recent example and also some case studies highlighting the effect that these amendments will have on typical injured workers.

The Advertiser recently published an article which highlighted the serious and dangerous conditions in which employees find themselves during their employment. The case concerned a firefighter working for Forestry SA, which is a South Australian government department. Eight years ago, the employee was almost killed when a fireball engulfed his car whilst he was working. The worker was forced to take shelter inside his vehicle which was engulfed in flames. Had he been

outside, he would have died. The vehicle offered a level of protection, but the fire was so intense that the worker was burned severely to the point of being virtually unrecognisable.

The injuries that he sustained were horrific, and he was placed in intensive care for 2½ weeks. Fortunately, this employee recovered, but he had to spend a total of 12 months away from work. Not only are people such as this dealt a severe blow by being injured, they are often then faced with the additional anxiety and stress of dealing with the economic realities brought about by the potential loss of income.

In today's terms of increasing interest rates, petrol costs and other demands, this could have devastating consequences. Do any workers, especially those doing dangerous work like firefighting to protect all South Australians, really deserve to be hit so unfairly?

The following case studies highlight the effects of the amendments. Case 1 concerns a correctional services officer who, as the result of a severe bashing by an inmate one day, was left with severe injuries to his head and upper body. Consequently, he was forced to take 20 weeks' leave from work in order to accommodate effective recovery. His place of employment has provided him with counselling in order to assist him to return to work. Under the new proposals he would be entitled to his full pre-injury wage of $1,000 per week for the first 13 weeks only. For the remainder of the time off his payments are reduced by 10 per cent, resulting in a loss of $700 over 20 weeks.

Case 2 concerns a cleaner who worked for an agency that was contracted to clean office blocks in the Adelaide CBD. The worker is a single mother with two young children. She had previously made a complaint to her employer regarding the weight of the vacuum cleaner provided to her. The vacuum cleaner was causing pain in her shoulders. Her employer agreed to provide her with a new lightweight vacuum cleaner but did not act promptly and, as a result, she suffers from chronic pain. She was away from work for a total of 45 weeks. Her payments were cut by 10 per cent after the first 13 weeks and a further 10 per cent after 26 weeks. After 45 weeks' leave she has lost $2,550 due to the new amendments.

Case 3 concerns a first-year paramedic employed by the Ambulance Service on $500 a week. During an emergency callout the ambulance he was travelling in was involved in an accident and he was severely injured. After 18 months of extensive medical treatment he was able to return to work. However, under the proposed amendments he not only has to suffer the after-effects of his injury but also suffer the loss of $5,250 due to the reductions in his payments.

Case 4 concerns a registered nurse who developed chronic back pain as a result of the continual lifting that is involved when working in an aged care facility. She had previously raised her concerns with her employer but no action was taken to purchase lifting equipment. Her recovery was slow and, on advice from an orthopaedic specialist, she underwent surgery. Unfortunately, this was not as successful as was hoped and she continues to suffer from chronic back pain.

The return-to-work plan that was devised by WorkCover's claims agent was not effective. Whilst trying to recover from her injury, her employment was terminated and she applied for retraining. WorkCover refused her application. She has not worked for over 30 months and has lost over $22,000 due to her injury. Her situation was further exacerbated by the fact that she was informed that WorkCover will cease her entitlements.

Case 5 concerns a formworker employed by one of Australia's largest construction companies. Whilst working on a major project in the southern suburbs he fell from a height of nine metres. The resultant injuries he received were compounded by the fact that his employer failed to implement adequate fall protection measures. His injuries were so severe that they required a lengthy hospital stay with a requirement for more surgery at a later date. Two weeks after being discharged from hospital, his employment was terminated. The following 18 months were peppered with hospital stays and he was frustrated at his inability to work. During the 30 months that he has been part of the WorkCover scheme, he has had four claims managers and his application for retraining is yet to be approved. Again, his situation is further compounded by the information that his entitlement will soon cease, as WorkCover has not determined his injuries to be severe enough to warrant ongoing payment or a redemption.

In all of the above cases, if the injured workers had been living in other jurisdictions, their financial losses as a result of their injuries would not have been so great. Furthermore, in the last two examples (the registered nurse and the formworker) they would have been eligible to apply for compensation for negligence through common law. Even though access is in a limited form in some states, it is still a better option than being denied access to common law entirely.

Again, I emphasise that I do not believe the legislative change, especially this change, is what is needed for the WorkCover scheme. The cultural shift which focuses on early intervention and return to work is required for the scheme to be successful.

The attitude of claims managers, lawyers, doctors, rehabilitation providers, workers and all others involved in the scheme needs to be altered so that the aim is to have the injured worker return to work as quickly as possible, but not to the detriment of their health.

The issues that I have mentioned are only some of the matters that concern me regarding the bill. I would like to have spoken more extensively on other matters; however, due to the short notice and the haste in which the government is trying to progress the bill, this simply was not possible, other than to say that, based on past performance, simply legislating to cut payments will not guarantee success.

I suggest that, unless the WorkCover Board and WorkCover Corporation ensure that a paradigm shift in the culture occurs, then this bill will not achieve anything. The opposition has maintained that it is committed to fixing the WorkCover scheme. I believe a sunset clause that would force whoever is in government to revisit this issue by 31 December 2010 is appropriate. I will not be supporting the bill.

The Hon. C.V. SCHAEFER (00:20): I am somewhat disappointed to see you in the chair, Mr Acting President, because I want to spend some time tonight going back into the history of why we find ourselves in this parlous state, where I do not believe we have any option but to support this dreadful piece of legislation.

I served for four years on the Statutory Authorities Review Committee, a committee that I enjoyed very much and which was chaired by our current president, the Hon. Bob Sneath. In 2005, we undertook an inquiry into the WorkCover Corporation of South Australia, and now this government chooses to tell us that all of a sudden the fact that they are almost bankrupt has come as a complete surprise to them. However, as the Hon. Rob Lucas pointed out earlier, Rob Kerin, when he was leader of the opposition, spent many hours and issued many press releases trying to warn this government that they were out of control and were not managing the finances. And it has taken them until now to realise that they have on their hands a financial situation which is almost as bad as the State Bank.

It is interesting to look at some of the principal players now and during the State Bank debacle, because many of them are the same people. At that time, the now Treasurer was a financial adviser. That is a bit of a worry, isn't it! At that time the now Premier was a member of parliament, and so perhaps there is a part of me that should not be surprised that they have been unable to see what is happening to the WorkCover Corporation in spite of the warnings that they were given.

So, I have gone back to our 2005 report, and I want to quote somewhat extensively from it because it quite clearly shows that blind Freddy, not just the government, should have been able to see that they were in strife then and that, had they implemented some measure of caution in 2005, we might not see a situation that is almost beyond redemption now.

Some of the things that were quoted at the time were that 'the 2002-03 annual report of WorkCover stated the financial position as the worst in the corporation's history: 55 per cent funded, with total liabilities of $1.3693 billion and an unfunded liability of $591.1 million'. As we know, it has continued to spin. That was its worst recorded financial position in its 14-year history. It has now almost doubled in the ensuing three years. The report went on to say that the most recent annual report, 2003-04, announced a small improvement; however, the quarterly report stated total liabilities had risen in that 12 months to $1.5297 billion. The position in September 2005 was even worse. The committee went on to say:

> Whilst the committee acknowledges that South Australia provides one of the most generous workers compensations in Australia, South Australia also has—

and this was in 2005—

> the highest average levy rate.

The committee went on to say:

> ...the lack of monitoring of rehabilitation programs and the associated complaints process by the corporation is disturbing...rehabilitation, return to work and the performance of agents indicate that South Australia is not performing well.

This is in 2005. So, in 2005 we had the highest average levy rate, one of the worst rehabilitation and return-to-work rates, and a lack of monitoring of rehabilitation programs. That was then, and we can only assume that everything since has got worse, and who can we possibly blame? We have to blame the government of the day. For once, the government cannot even blame us, because it was its choice to kick out the old board and put in a new board, kick out the old actuary and put in a new actuary. The only thing it failed to do was kick out the minister, who has never had his head around how to manage this particularly complex financial management.

The committee went on to say:

- …RTW, being 12 per cent—

This is in 2005—

below the Australian average and 24 per cent below the best performing jurisdiction of Seacare.

- 2 in 10 injured workers had not returned to work at all since their injury...
- South Australia's average rehabilitation cost is 38 per cent below the Australian average and 58 per cent below that of the highest paying jurisdiction, ComCare.

So, we really did not get anything right even then. One of the things that we picked up again—which to me pointed out at the time the arrogance of the minister who has continued to be the minister—was that he has refused to listen to any of the warning signs that he has been given to such an extent that, when this whole thing has collapsed around this government's ears, it has been minister Conlon who has had to run things. Even the government did not trust minister Wright to do it.

His performance was indicated very clearly, I think, in 2002 when he was appointed as minister. It is noted in this report, which, I repeat, our President chaired. This was not a Liberal Party report: it was a standing committee chaired by a member of the left wing of the Labor Party. Even then we were able to say that the minister had refused to meet with, and be briefed by, the chair and the CEO of the corporation for nearly two months after his appointment as minister. One can only assume, given his performance since, that he has kept up that high work ethic.

Some other things of note within this report are:

The corporation has made a number of statements in annual reports in relation to expectations of being fully funded within a particular time frame. Not a single one has been achieved. Based on the funding model and the past financial history of the corporation, the committee believes the potential for the statement by the board chair for the corporation to be fully funded by 2012-13 to be realised is very low.

And one can only say that that has to be the understatement of the century. It is not just very low; it is impossible, because it has continued to spin out of control ever since.

The committee made some 25 recommendations at the time and, to my knowledge, not one has been enacted or even listened to One of those recommendations was as follows:

- The committee feels that the workers compensation industry should be regulated by an independent arbiter similar in role to that of the Technical Regulator or the Essential Services Commission of South Australia, which regulate a number of outsourced government functions.
- WorkCover should develop and publish reports with key indicators which compare the performance of the self insured sector with that of the Scheme to make available best practice in as many areas as possible.

Was that done? Absolutely not. Further on, the committee noted:

The Hon. Michael Wright MP, Minister for Industrial Relations, stated in a 2003 media release that the government will take action to ensure WorkCover is more accountable and transparent and that its finances are rigorously assessed.

The comment from the committee was, 'The committee is looking forward to these actions occurring.' As I say, that comment was made in 2005, but those actions have still not occurred. The eventual losers are the workers of South Australia. Only tonight someone asked me, 'What would you do? Would you hang the injured workers in the street?' No; I would not, and it is not impossible to run a good, fair workers compensation scheme at, if not a profit, at least cut even. The report also states:

In April and October 2004 the Victorian WorkCover Authority announced an historic trifecta—a fully funded scheme, increased support for injured workers and reduced employer premiums for 2004/5. Announcing a funding ratio of 101, a $1.2 billion full-year profit, a reduction in the ALR from 2.220 to 1.998 whilst having improved worker entitlements for the inclusion of overtime and shift allowances in the calculation of weekly compensation benefits, the VWA Chair said that the Authority's financial results for 2003/04 represented the most significant turning point in the scheme's 20 years history.

So, not only were we out of control but our government was too ignorant or arrogant to look across the border into Victoria and take a leaf from its book.

I want to raise this again because someone had the temerity to say that this started under a Liberal government. However, from 1996-97 to 1998-99 the scheme was considered to be fully funded. In 1997-88, the funding ratio was 96.5 per cent; by 30 June 2000, it was at 97.3 per cent; and by 2002-03, it was down to 55 per cent and falling.

Instead of an expected funding ratio of 81 per cent for 2002-03, the actual figure was 55 per cent; instead of the claims liability rising to $934.7 million, it rose to $1.3 billion; and, instead of the unfunded liability reducing to $182.9 million, it rose to $591 million. The funding model used by the corporation allowed for a negative return for one in every five years. Based on this funding model and past history, the committee noted that the potential for the statement by the board to be fully funded by 2012 was very low, as I previously said. Finally, I bring to the council's attention another quote from that 2005 report. Further, the report states:

> No mention was made in the June 2003 actuarial report of the reform standards for the general insurance industry implemented from 1 July 2002 by the Australian Prudential Regulation Authority (APRA). APRA was created in 1998 as the single prudential supervisor for Australia's financial sector supervising, as well as general insurance companies, banks, building societies, credit unions, life insurance companies, friendly societies and superannuation funds. General insurers provide protection against a range of property and liability risks such as one or more of motor, marine, fire, health, mortgage, medical indemnity, business, workers compensation, home, sickness and accident.
>
> WorkCover is not required, from a regulatory perspective, to comply with APRA guidelines as it is solely an accident compensation authority. In fact conforming to APRA guidelines would render WorkCover currently insolvent as it does not meet the capital adequacy requirements.

By every standard of comparison, South Australia was already out of control in 2005, yet this government has spent the past three years spinning further and further out of control, leaving its workers further at risk and having higher and higher comparative levy rates for employers. There has been no winner in this ghastly situation, purely because we have a government that is either incompetent or so arrogant that it has refused to see not just subtle warning signs but warning signs that have been hung out everywhere. It has taken no action until it is too late and, unfortunately, it will not be the bearer of this, the workers of South Australia will be.

The Hon. M. PARNELL (00:37): Given the lateness of the hour, I suggest that it might be convenient for me to make my second reading contribution tomorrow.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Does the honourable member want to move the adjournment?

The Hon. M. PARNELL: If it does not stop me from speaking tomorrow morning, I move:

That the debate be adjourned.

The council divided on the motion:

AYES (12)

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

NOES (7)

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

Majority of 5 for the ayes.

Motion thus carried.

CONTROLLED SUBSTANCES (CONTROLLED DRUGS, PRECURSORS AND CANNABIS) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (00:45): I move:

That this bill be now read a second time.

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

Leave granted.

This is a comprehensive reform Bill dealing with a range of issues about controlled illegal drugs. This Government is determined to deter illegal drug use and offenders against the law in this State. It will continue to reform the law as and when needed to do so.

The Bill proposes big changes to the law with this general purpose in mind. It carries out some Government election pledges. In particular, it increases the penalties against the cultivation of hydroponic cannabis and requires the courts to treat amphetamines alongside the most serious category of illicit drugs. It revamps the way in which precursor substances are controlled in this State and introduces major new offences aimed directly at those who are operating drug laboratories in this State. It forms a strong measure as a part of this Government's pledge to crack down on organised crime, particularly motor cycle gang crime. The Commissioner of Police has urged these measures.

The Bill also proposes amendments to the Act to smooth further movement to a national standard for the regulation of controlled drugs and substances generally, with the aim of toughening the law, and proposes some miscellaneous amendments that have been urged on the Government from a variety of sources.

Election Promises

At the last election, the Labor Party made an election promise about drugs. It said in part:

If re-elected, Labor will:

- create a specific offence of cultivating cannabis hydroponically;
- legislate to ensure courts treat the manufacture, sale and distribution of amphetamines, ecstasy and similar drugs at the upper level of the penalty range, rather than the middle;
- make the possession of firearms in conjunction with drug offences an aggravating feature of the drug offence, attracting higher penalties.

The amendments proposed in this Bill directly and specifically enact the election promises detailed.

The Regulation of Precursors

The Commissioner of Police has argued that the Controlled Substances Act 1984 and the amending Controlled Substances (Serious Drug Offences) Amendment Act 2005 'do not adequately provide intervention opportunities necessary to effectively prevent the manufacture of illicit drugs'. He wants an offence of possession of precursor chemicals without lawful excuse. The basis for this argument is a resolution of the Australian Police Ministers' Council (APMC).

Precursor chemicals and the manufacture of synthetic illegal drugs are currently controlled directly in two ways.

First, there are current minor offences dealing with precursor chemicals. They are in Part 6 of the Controlled Substances (Poisons) Regulations 1996. This is a sophisticated scheme of regulation, although the penalties ($3,000-$5,000) are small because they are limited to the maximum permitted for regulations. The scheme is:

- It is an offence to manufacture, sell, supply or be in possession of listed chemicals without a permit from the Minister. There is no other lawful excuse for this.
- It is an offence to sell some listed precursors unless a particular regime applies, which includes purchaser identification and an end user statement, including keeping comprehensive records of purchase for at least five years. This list includes pseudoephedrine.
- It is an offence to sell some listed chemicals with another less stringent identification and end user regime, but with an obligation to report suspicious purchases to the police.

The list of chemicals in each case is different based on their legitimate uses.

The Controlled Substances (Serious Drug Offences) Amendment Act 2005 contained new serious offences of dealing with precursor chemicals. The Commissioner of Police thinks they are not satisfactory for catching drug laboratories because they rely on proof of an intention.

An extensive national list of 'controlled precursors' has been developed by the Intergovernmental Committee on Drugs (IGCD) for the purpose of the new offences.

The models of regulation of precursor chemicals in drug legislation throughout Australia vary markedly. I have decided on a new approach that mirrors recent events elsewhere and also takes into account established practice in this State.

There will be an offence of possession of more than a prescribed amount of precursor chemicals listed in regulations without lawful excuse. It is contemplated that the list of precursor chemicals will be that list of controlled precursors to be used for the purposes of the serious drug offences legislation. It is contemplated that the specified amounts will be the trafficable amounts determined by the national model schedules working party. The applicable maximum penalty will be three years imprisonment or $10,000 unless the offence is aggravated. The offence is aggravated if the offender is found either (a) in possession of two or more chemicals above the prescribed amount; or (b) in possession of one chemical above the prescribed amount and one or more prescribed items of drug

equipment. The applicable maximum penalty for the aggravated offence is to be five years' imprisonment or $15,000. What will or will not be a listed drug apparatus will be prescribed by subsequent regulation.

There will be an offence of possession of any amount of any listed precursor chemical or an item of prescribed drug equipment with intent to manufacture a controlled drug. The applicable maximum penalty is to be five years imprisonment or $15,000.

The Act will be amended to allow the Minister to issue a permit for the possession, sale or supply of precursor chemicals listed for this particular purpose. It is contemplated that this list of chemicals will resemble those currently listed under what is now regulation 32.

The Act will be amended to contain the schemes now contained in regulations 33 and 34. If the possessor of the chemicals complies with these statutory requirements, that compliance should be deemed to be a lawful excuse for possession. It is contemplated that the lists of chemicals to which these schemes apply will be retained. The applicable maximum penalties in each case will vary according to the severity of the offence from imprisonment for 12 months or $1,000 to imprisonment for three years or $10,000.

Section 33 of the Controlled Substances Act 1984, inserted by the Controlled Substances (Serious Drug Offences) Amendment Act 2005 contains tiered offences of manufacturing a large commercial quantity, a commercial quantity and a lesser quantity of controlled drugs with the intention of selling any of it or in the belief that another person intends to sell any of it. Section 33(4) contains a presumption. If the defendant manufactured a trafficable quantity of the controlled drug, the necessary intention of on sale is presumed in the absence of proof to the contrary. The common law says that the tiered offences will also be committed if the defendant attempts to manufacture or conspires to manufacture the quantities. I propose that the presumption be amended so as to provide that if the defendant attempts or conspires to manufacture a trafficable quantity of a controlled drug, the necessary intention of on sale is presumed in the absence of proof to the contrary for the purposes of an attempt offence or a conspiracy offence.

Amendments For New Regulations

The nationally prescribed Regulations (and related matters) require the Act to be amended so as to:

- permit the specification of prescribed amounts of controlled precursors in their pure form as well as their mixed form;
- permit the specification of certain kinds of chemicals as discrete dosage units so as to preclude arguments that the medium on or in which a pure amount is contained constitutes an adulterant;
- permit the specification of amounts of controlled plants both by weight and by number; and
- amend the defence of lawful manufacture, supply, administration or possession of controlled substances or equipment so that the defence is not confined to drugs of dependence but may extend, by regulation, to any controlled substances or equipment other than that specified by regulation.

Miscellaneous Amendments

In consultation, the Minister for Mental Health and Substance Abuse requested two amendments unrelated to election promises but which have awaited a miscellaneous reforming bill. They both need to be done.

The first concerns delegation. It consists of two amendments to section 18A. Section 18A deals with prescription of drugs of dependence and Ministerial authority to do so. Section 18A(6) allows a member or officer of the Department to authorise prescription temporarily in an emergency. When Pharmaceutical Services staff moved from the Department of Health and became employees of the Southern Adelaide Health Service, they were no longer officers or members of the Department. It is therefore proposed to amend the sub section to simply refer to the Minister. The second amendment is to section 18A(8). This also refers to authorities to prescribe. The current section deals only with revocation. The Minister was advised that there was legal uncertainty about the status of conditions placed upon the authority to prescribe. It is proposed to amend section 18A(8) to replace uncertainty with clarity.

The second technical amendment concerns regulations. It occasionally happens that codes, standards and other documents are picked up by the regulations or otherwise incorporated by reference. Section 63(5) says that the regulations may refer to or, by reference, incorporate (with or without modifications) any code, standard, pharmacopoeia or other document published inside or outside of this State and a code, standard, pharmacopoeia or other document so referred to or incorporated has effect, as amended from time to time by the authority responsible for its publication, as if it were a regulation made under this Act. The question is as to the status of the incorporated document. At the moment it seems that the incorporated document itself becomes a regulation. That is not sensible. There is no reason to apply the Subordinate Legislation Act to, say, the TGA Therapeutic Goods Order and every reason not to. The proposed amendment makes it clear that this is not so.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Controlled Substances Act 1984

4—Amendment of section 4—Interpretation

This clause amends the definitions section of the Act. A definition of artificially enhanced cultivation is inserted for the purposes of the Act (being the same as the definition that currently appears in section 45A of the Act in relation to simple cannabis offences, but not limited to that section). There is also a new definition of authorised officer which will apply generally to the Act (and not just to Part 7) and the definitions of commercial quantity and large commercial quantity are substituted with new definitions that will allow the regulations to prescribe amounts for mixtures containing a controlled precursor (where currently the provisions about mixtures apply only to controlled drugs) and these new definitions, as well as the proposed new definition of trafficable quantity, will also allow the regulations to prescribe amounts for mixtures in terms of discrete dosage units of the mixture. Consequentially to propose new section 33OA(2), the new definitions also specify that the regulations may prescribe amounts in relation to controlled plants by reference to a number of plants or the weight of the plants.

5—Amendment of section 6—The Controlled Substances Advisory Council

This clause makes a minor amendment to section 6 to specify that the presiding member of the Advisory Council may be a member of the Department or of another administrative unit of the Public Service, or body incorporated under the South Australian Health Commission Act 1976, involved in the administration of the Act.

6—Insertion of sections 17A, 17B and 17C

This clause inserts a number of new offences into the Act relating to precursors. The new offences are based on provisions currently contained in the Controlled Substances (Poisons) Regulations 1996 but have increased penalties.

7—Amendment of section 18A—Restriction of supply of drug of dependence in certain circumstances

This clause amends section 18A—

- to remove the reference to "a member or officer of the Department, authorised generally or specifically by the Minister" in the provision dealing with the grant of a temporary authorisation. Removing these words will allow the Minister to delegate this function as the Minister thinks fit;
- to specifically provide for the imposition of conditions on authorisations and to provide for variations to such conditions.

8—Amendment of section 31—Application of Part

This clause amends section 31, which specifies exceptions to the offences in Part 5 of the Act. Paragraph (a) of subsection (1) is substituted to allow for exceptions relevant to the proposed new offences in clauses 10 and 12 and the remaining paragraphs of that subsection are amended to allow for exceptions relating to controlled drugs other than just drugs of dependence.

9—Amendment of section 33—Manufacture of controlled drugs for sale

This clause clarifies the application of the presumption in subsection (4) where the proceedings are for an offence of attempting or conspiring to commit an offence against section 33(1), (2) or (3).

10—Amendment of section 33J—Manufacture of controlled drugs

This clause creates a new offence of having possession of a controlled precursor or prescribed equipment intending to use the precursor or equipment (as the case may be) to manufacture a controlled drug. The offence is punishable by a fine of $15,000 or imprisonment for 5 years or both.

11—Amendment of section 33K—Cultivation of controlled plants

This clause amends section 33K to—

- provide that cultivation of any number of cannabis plants by artificially enhanced cultivation is an offence against subsection (1) (which currently has a penalty of $2,000 or 2 years imprisonment);
- increase the penalty for an offence against subsection (2) to $1000 or imprisonment for 6 months (currently the penalty is a fine of $500);
- ensure that, despite the penalty increase in subsection (2), those offences against that subsection that would be expiable under section 45A will not be punishable by imprisonment.

12—Insertion of section 33LB

This clause inserts a new section creating 2 new offences. The first makes it an offence to possess a prescribed quantity of a controlled precursor. This offence is punishable by a fine of $10,000 or imprisonment for 3 years or both. The second makes it an offence to possess a prescribed quantity of a controlled precursor and either a prescribed quantity of another controlled precursor or any prescribed equipment. This offence is punishable by a fine of $15,000 or 5 years imprisonment or both. Both of these offences are subject to the defence of reasonable excuse set out in subsection (3) of the proposed provision.

13—Insertion of section 33OA

Proposed new section 33OA sets out provisions relating to charging of offences.

14—Amendment of section 44—Matters to be considered when court fixes penalty

This clause makes 2 amendments to section 44. Firstly, proposed new subsection (2) provides that a court sentencing a person for an offence against Part 5 involving a controlled drug (other than a cannabis offence)—

- must not take into account the degree of physical or other harm generally associated with consumption of that particular type of controlled drug, as compared with other types of controlled drugs; and
- must determine the penalty on the basis that controlled drugs are all categorised equally as very harmful.

The second amendment is proposed new subsection (3) which requires a court that convicts a person of both—

- an indictable offence against the Controlled Substances Act 1984; and
- an offence against section 32 of the Criminal Law Consolidation Act 1935 constituted of having a firearm for the purpose of carrying or using it in the commission of the offence against the Controlled Substances Act 1984,

to make any sentences of imprisonment for those offences cumulative unless the court is satisfied that special reasons exist.

15—Amendment of section 45A—Expiation of simple cannabis offences

This amendment is consequential to clause 4 and clause 11 and deletes the current definition of artificially enhanced cultivation.

16—Amendment of section 50—Authorised officers

This amendment is consequential to clause 6.

17—Amendment of section 51—Analysts

This amendment ensures that sufficient analysts can be appointed for the purposes of the Act (rather than just for the purposes of Part 7).

18—Amendment of section 56—Permits for research etc

This amendment allows a research permit to be issued relating to a controlled precursor.

19—Amendment of section 61—Evidentiary provisions

This clause amends section 61(1) so that the evidentiary certificate provided for in that subsection will be issued by the Minister rather than by a member or officer of the Department. This function would be able to be delegated by the Minister.

20—Amendment of section 63—Regulations

This clause amends the regulation making power to allow the regulation to refer to a code, standard, pharmacopoeia or other document either as in force at the time the regulations are made or as in force from time to time.

Debate adjourned on motion of Hon. D.W. Ridgway.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (CLASSIFICATION PROCESS) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (00:46): I move:

That this bill be now read a second time.

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

Leave granted.

The National Classification Scheme is an arrangement between the Commonwealth, States and Territories established under the 1996 intergovernmental agreement for a co operative censorship scheme. The Commonwealth Classification (Publications, Films and Computer Games) Act 1995, the 'Commonwealth Act', establishes the framework for the classification of publications, films and computer games, and review of classification decisions. The States and Territories each have complementary classification legislation.

Early in 2007, the Commonwealth Act was amended to integrate the Office of Film and Literature Classification into the Commonwealth Attorney General's Department and to streamline the film classification process by introducing an additional content assessment scheme for fast tracking the classification process for additional content released with already classified or exempt films and removing the requirement for compilations of already classified films to be reclassified.

Amendments causing the integration of the Office of Film and Literature Classification into the Commonwealth Attorney General's Department came into effect from 1 July 2007 and the complete Commonwealth Classification (Publications, Films and Computer Games) Amendment Act 2007 will start on 15 March 2008. Changes to the Commonwealth Act require some cognate amendments to the South Australian Classification

(Publications, Films and Computer Games) Enforcement Act 1995 and the classification enforcement laws in other jurisdictions. The consequential amendments to the South Australian Act are contained in this Bill.

The new Commonwealth administrative arrangements are based on the recommendations of the report made by John Uhrig AC, who conducted a review of the corporate governance of Commonwealth statutory authorities and office holders. The amendments are intended to reinforce the independent functions of the Classification Board and the Classification Review Board. They confine the existing powers of the Director to matters associated with the Board and give separate statutory powers to the Convenor for matters associated with the Review Board, and transfer from the Director of the Classification Board to the Attorney General, as Minister administering the Act, responsibility for delegated legislation. This includes the power to determine markings to be displayed about classified material to be exercised in consultation with State and Territory censorship Ministers.

The Bill amends the South Australian Act to take account of the administrative changes. In particular, the Bill inserts a definition of 'convenor' and 'classifiable elements' into the Act and amends the definition of 'approved form' to take account of the Commonwealth Act now providing for the Commonwealth Minister, and not the Director of the Classification Board, to approve a form for notice about classifications.

The Commonwealth amendments, which are aimed at streamlining the classification process and reducing the regulatory burden on industry, introduce an additional content assessment scheme, alter the definition of 'film' and allow for certain modifications, such subtitles, captions, dubbing and audio descriptions or the addition of navigation aids, to be made to already classified films, without affecting their classification.

The effect of the definition of 'film' in section 14 of the Commonwealth Act is that when a previously classified film is released with additional material, such as on a DVD, the new release is a new 'film' which is unclassified. The definition of 'film' has been expanded to provide special rules for the classification of films that comprise classified films, exempt films and additional content. New section 14A of the Commonwealth Act makes it clear that when several previously classified films are brought together for distribution as a single package, the product does not require classification simply because it is a compilation. The amendment is a response to changing technology.

The amendments to section 21 of the Commonwealth Act allow for the addition of descriptions or translations and navigation functions to classified films without requiring reclassification under section 21. Navigation functions improve the usability of video discs without changing, or adding to, the content of the film. They include menus from which the user makes choices using screen icons or a list of options, and simple functions such as 'fast forward' or the ability to choose particular scenes of the movie or additional content, such as interviews with the actors of the film. Descriptions or translations include subtitles, captions, dubbing and audio descriptions providing interpretation that allow people with visual or hearing impairments or language barriers to access already classified films.

The Bill accommodates the new definition of 'film' and the amendments to section 21(2) of the Commonwealth Act by amending section 23(2) and inserting new section 23AA into the South Australian Act. New section 23AA provides for the compilations of classified films to be dealt with as if each of the classified films were on a separate device. As it would be an offence under section 54 of the South Australian Act to sell or publicly exhibit a classified film unless the film is sold or exhibited with the same title as that under which it is classified, the Bill also amends sections 28 and 37 of the Act so that films that are modified in accordance with section 21(2) of the Commonwealth Act, or are compilations, can be lawfully sold and exhibited in South Australia.

The additional content assessment scheme introduced by the Commonwealth was worked up after public consultation on a discussion paper released early in 2007. The scheme is based on the successfully operating authorised computer games assessor scheme. Under the new scheme, a person appropriately trained and authorised by the Director may recommend to the Classification Board the classification and consumer advice for additional content released with an already classified film. The Classification Board retains responsibility for classifying the film, but will be helped by the assessment of an authorised assessor. Additional content in a film includes additional scenes for a classified or exempt film, such as alternative endings, a film of the making of the film and interviews with and commentaries by actors and other persons who took part in the making of the film, but does not include a work or any other material prescribed by the regulations. Additional content may also be prescribed by the regulations. Consistent with the Commonwealth amendments, the Board must revoke classifications in specified circumstances that demonstrate that the assessment on which the classification was based was unreliable and the Board would otherwise have made a different classification.

The Bill takes into account the additional content scheme by inserting new section 21A into the South Australian Act. This will allow the South Australian Classification Council or the Minister, for the purposes of the assessment of additional content associated with a film, or the formulation or publication of consumer advice about additional content associated with a film, to take into account an assessment of the additional content prepared by an additional content assessor and furnished in the prescribed manner. The Bill also inserts into the South Australian Act the amended Commonwealth Act definitions for 'additional content' and 'additional content assessor'.

Finally, the South Australian Act, although primarily concerned with offence and enforcement matters, also provides some scope for organisations approved by the Minister to make an application for the exemption from classification of a specific film at a specific event. The Commonwealth, Victorian Act, New South Wales and Queensland Acts all now apply the exemption to computer games. This Bill amends section 77 of the South Australian Act to extend its application to computer games, in line with other States and the Commonwealth classification legislation. The same tests that apply to the decision to approve an organisation for the grant of an exemption from classification of a film will apply in the case of a computer game. That is, the Minister must have regard to the purpose for which the organisation was formed, the extent to which the organisation carries on activities of a medical, scientific, educational, cultural or artistic nature, the reputation of the organisation in relation

to computer games and the conditions it intends to impose about the admission of people to exhibitions of computer games.

The proposed amendments are consistent with the changes enacted by the Commonwealth and will help to maintain the uniformity of the classification scheme.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Classification (Publications, Films and Computer Games) Act 1995

4—Amendment of section 4—Interpretation

This clause incorporates additional definitions in connection with the new provisions that are to be enacted by this measure. A definition relating to additional content is to be inserted. Another definition will allow an approved form to be a form approved under section 8A of the Commonwealth Act. (New section 8A of the Commonwealth Act provides that the Minister may approve a form for a notice about classification. As the note in the new section 8A in the Commonwealth Act explains, State and Territory legislation requires sellers and exhibitors of classified material to display a notice about classifications where the material is sold or exhibited.)

Clause 4 also inserts a definition of Convenor to mean the Convenor of the Review Board appointed under section 74 of the Commonwealth Act. Various amendments are required to give effect to the new amendments to the Commonwealth Act to give new powers to the Convenor for matters associated with the Review Board. These include obtaining copies of material to be reviewed, considering applications for waiver of fees, and issuing classification certificates.

5—Insertion of section 21A

This clause will allow the Council or the Minister to take into account an assessment of additional content prepared by an additional content assessor authorised under the Commonwealth Act.

6—Amendment of section 23—Declassification of classified films or computer games

This amendment reflects amendments made to the Commonwealth Act to provide that certain additions or removals will not lead to the declassification of a film.

7—Insertion of section 23AA

This clause inserts a new section 23AA in the Act. New section 23AA provides that a film that is contained on 1 device and consists of only 2 or more classified films, is to be treated for the purposes of this Act as if each of the classified films were on a separate device. The amendment is consistent with new section 14A of the Commonwealth Act.

(New section 14A of the Commonwealth Act makes it clear that, when several previously classified films are brought together for distribution as a single package, the product does not require classification simply because of the fact of compilation. The Commonwealth Act now recognises that, with changing technology, there is increasingly the capacity to put a number of already classified films on the 1 storage device. The Commonwealth Act clarifies that a new application and classification of a compilation of already classified films on a single storage device is not required as it does not constitute a new film.)

8—Insertion of section 23B

This clause will allow a classification based on an assessment prepared by an additional content assessor to be revoked in an appropriate case.

9—Amendment of section 26—Approval of advertisements

This amendment provides consistency with the Commonwealth Act.

10—Amendment of section 28—Exhibition of film in public place

This clause inserts a new subsection (2) at the end of section 28.

Section 28 provides that a person must not exhibit a film in a public place unless the film is classified, is exhibited with the same title as that under which it is classified and is exhibited in the form, without alteration or addition, in which it is classified.

Section 28(2) provides that section 28 is not contravened by reason only of the exhibition of a classified film under a title different from that under which the film is classified if it is contained on 1 device that consists only of 2 or more classified films.

Section 28(2) is required to prevent films that fall within section 14A of the Commonwealth Act (and new section 23AA to be inserted in the principal Act) from being captured by the offence in section 28. For example, in circumstances where a classified film or films contained on 1 device was or were screened in a public place, and the film(s) were screened under the title given to the compilation of the films on the 1 device, rather than screened under the title under which the film(s) were classified.

Section 28(2) also provides that it is not an offence to exhibit a classified film with a modification referred to in section 23(2) of this Act or section 21(2) of the Commonwealth Act. This is required to make sure the offences are consistent with the classification requirements under the legislative scheme. For example, section 21(2) of the Commonwealth Act provides that the following modifications to a film do not require it to be reclassified under section 21 of the Commonwealth Act:

(a) including or removing an advertisement, other than an advertisement to which section 22 of the Commonwealth Act applies;

(b) for an imported film or computer game that was in a form that cannot be modified and has subsequently been converted to a form that can be modified—removing from the film or game certain specified advertising material;

(c) for a classified film—the addition or removal of navigation functions;

(d) for a classified film—the addition or removal of material which provides a description or translation of the audio or visual content of the film and would not be likely to cause the film to be given a higher classification.

11—Amendment of section 37—Sale of films

This clause inserts new section 37(2) at the end of section 37 of the principal Act. Section 37 provides that a person must not sell a classified film unless the film is sold under the same title as that under which it is classified and in the form, without alteration or addition, in which it is classified. Section 37(2) provides that section 37 is not contravened by reason only of the sale of a classified film under a title different from that under which the film is classified if it is contained on 1 device that consists only of 2 or more classified films.

Section 37(2) is required to clarify that films which are captured by new section 14A of the Commonwealth Act (and new section 23AA to be inserted in the principal Act) are not captured by the offence in section 37. For example, in circumstances where classified films contained on 1 device are sold under a title different from the title under which each film was classified.

Section 37(2) also provides that it is not an offence to sell a classified film with a modification referred to in section 23(2) of this Act or section 21(2) of the Commonwealth Act. Such a modification does not require the film to be reclassified. This amendment is required to make sure the offences are consistent with the classification requirements under this Act and the Commonwealth Act.

12—Amendment of section 72—Advertisement to contain determined markings and consumer advice

This clause is consequential on amendments made to the Commonwealth Act.

New section 8(1) of the Commonwealth Act empowers the Minister (rather than the Director of the Classification Board) to determine markings for each type of classification giving information about the classification and to determine the manner in which markings are to be displayed. Omitting the phrase 'by the Director' from section 72 is required to make the section consistent with the Commonwealth Act.

13—Amendment of section 77—Exemptions—organisations

14—Amendment of section 79—Organisation may be approved (section 77(1))

15—Insertion of section 79A

These clauses facilitate exemptions for organisations that carry on activities of an educational, cultural or artistic nature. The scheme is consistent with provisions that have been enacted interstate.

16—Amendment of section 83—Evidence

17—Amendment of Schedule 1

These amendments are consequential.

Schedule 1—Transitional provisions

1—Transitional provisions

The schedule contains transitional provisions consistent with the arrangements for amendments to the Commonwealth Act.

Debate adjourned on motion of Hon. D.W. Ridgway.

At 00:47 the council adjourned until Thursday 8 May 2008 at 11:00.